

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. WC-2008-_____
v.)	
)	
Suburban Water and Sewer Company, Inc.,)	
and Gordon Burnam.)	
)	
Respondents.)	

COMPLAINT AND MOTION FOR EXPEDITED TREATMENT

COMES NOW the Staff of the Missouri Public Service Commission (Staff) pursuant to Section 386.390, RSMo (2000), and for its Complaint respectfully states as follows:

Complainant

1. Complainant is the Staff of the Missouri Public Service Commission (Staff), acting through the Commission's General Counsel as authorized by Commission Rule 4 C.S.R. 240-2.070(1). A "Complaint may be made. . .in writing, setting forth any act or thing done or omitted to be done by any corporation. . .in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission. . . ." Section 386.390.1 RSMo (2000).

Respondents

2. Respondent Suburban Water and Sewer Co., Inc., (Suburban or Company) possesses a certificate of convenience and necessity granted by the Missouri Public Service Commission (Commission) to provide water service in the Bon Gor Estates

subdivision located in Boone County, Missouri and is a water corporation pursuant to Section 386.020(52) RSMo. Suburban is also a public utility within the meaning of Section 386.020(42) RSMo. Suburban's business address is 1501 Vandiver Dr. #88, Columbia, MO 65202. Its registered agent is Bonnie Burnam, 3438 Woodrail Terrace, Columbia, MO 65203.

3. Suburban's President is Gordon Burnam. Mr. Burnam's business address is 1501 Vandiver Dr. #88, Coulmbia, MO 65202.

4. Gordon Burnam and Bonnie Burnam are Suburban's two shareholders. They each own 50% of Suburban's stock.

5. Suburban Water and Sewer Co. is a water corporation operating pursuant to a certificate of convenience and necessity issued by the Commission on April 12, 1973 in Case No. 17652.

6. Suburban provides water service to approximately 151 residential customers in the Bon-Gor Estates subdivision located in Boone County, Missouri. Suburban does not have any commercial customers. Suburban is the only entity currently authorized to provide water service in its service area.

7. The Commission has authority under Section 393.140(2) to investigate the quality of water supplied by persons and corporations and the methods employed by persons and corporations in supplying and distributing water for any purpose, and has the power to order such reasonable improvements as will best promote the public interest, preserve the public health, and protect those using the water system.

8. Suburban has failed and refused to comply with the Commission's June 16, 2005 Order in Case No. WR-2005-0455 directing Suburban to make improvements to the system, including:

- a) Installing meters to all buildings;
- b) Implementing a ten year replacement program for existing meters;
- c) Installing flush valves with the flushing capability of at least 3 feet per second in all mains;
- d) Replacing the standpipe inlet high enough to provide adequate circulation and detention time; and
- e) Contracting with a certified operator to maintain the company's well and distribution system.

9. Suburban's failure has put the system and its customers at great risk. Staff brought a complaint based on Suburban's failure to comply with the terms of the disposition agreement. (Case No. WC-2007-0452). That case is currently pending before the Commission. At present, the system has fallen into additional disrepair and is in need of additional improvements to maintain safe and adequate service, including but not limited to:

- f) Installing meters to each and every building;
- g) Replacing meters that are more than ten years old in compliance with Suburban's commitment to implement a replacement program and 4 CSR 240-10.030(37) and (38). Some meters may be 35 years old;

- h) Installing flush valves with the flushing capability of at least 3 feet per second in all mains;
- i) Contracting with a certified operator to maintain the company's well and distribution system;
- j) Installing a pressure reducing valve in the connection with PWSD #1;
- k) Replace, rather than repair, the standpipe; and
- l) Cap the well if water is taken from PWSD #1.
- m) Making repairs or installing equipment necessary to maintain a minimum pressure of 20 psi.

10. Suburban issued a Notice of Dissolution to its customers on or about March 30, 2007. (A true and correct copy of the Notice of Dissolution is attached as Attachment A and is incorporated herein by reference). The Notice informed Suburban customers that the shareholders and board of directors had voted to dissolve the corporation. The Notice also stated that customers would lose water service effective July 1, 2007. The Notice made no mention of how customers would receive safe and adequate water service after July 1, 2007, despite the fact that Suburban is the only source of water service currently available to these customers.

11. The Commission petitioned the Boone County Circuit Court to halt the threatened discontinuation of water service and an injunction was issued on June 29, 2007. (Transcript, June 29, 2007) (A true and correct copy of the Transcript of the June 29 hearing is attached hereto as Attachment B and is incorporated herein by reference). On June 25, 2007, Gordon and Bonnie Burnam as shareholders of Suburban, stated that

they had voted to delay dissolution due to pending litigation. (Unanimous Written Consent of the Shareholders of Suburban Water and Sewer Company) (A true and correct copy of the Unanimous Statement is attached as Attachment C and is incorporated herein by reference).

12. At the hearing on June 29, 2007, Respondent Burnam testified that Suburban would not shut off the water as long as the company was working with the Commission to resolve its financial problems. (Transcript, June 29, 2007, p. 39, ln. 1-8). However, Mr. Burnam would not commit to Suburban making repairs in the case of a system breakdown absent a court order. (Transcript, June 29, 2007, p. 42, ln. 6-25, p. 43, ln. 1-21).

13. Section 393.130(1) RSMo. provides that "every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."

14. Suburban is responsible for providing safe and adequate service to customers, pursuant to section 393.130(1) RSMo., and making all necessary improvements to provide safe and adequate service. Suburban and Mr. Burnam have refused to make the necessary improvements.

15. The Commission has authority to order Suburban to make the above and additional improvements under Section 393.140(2).

16. Section 386.020(58) RSMo. defines "water corporation" as including:

[E]very . . . person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any plant or property, dam or water supply, canal, or power station, distributing, or selling for distribution, or selling or supplying for gain any water.

17. The following facts are sufficient to show that Gordon Burnam owns, operates, controls or manages a water corporation:

a. At the hearing on the Commission's petition for preliminary injunction held in Boone County Circuit Court on June 29, 2007, Paula Belcher testified that to her knowledge she was not the Vice-President of Suburban (Tr., June 29, 2007, p. 86, ln. 15-17). At the deposition of Bonnie Burnam, one week ago, Ms. Burnam testified that Ms. Belcher was appointed vice president "[t]wo or three years ago, a couple." (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 9, ln. 6-9) (A true and correct copy of Bonnie Burnam's Deposition transcript is attached hereto as Attachment D and is incorporated herein by reference). Ms. Burnam testified that "We put her in there so she could sign papers in our absence." (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 9, ln. 8-9). Ms. Burnam also testified that she and her husband, Respondent Burnam, needed "to have an officer of the company when we're out of town—when both my husband and I are out of town, the president and the secretary. And she is left in charge and we needed somebody in charge while we are gone." (Depo. Tr. Bonnie Burnam, p. 8, ln. 21-24). At the deposition of Paula Belcher conducted on July 17, 2007, Ms. Belcher testified that she had not been aware that she was an officer of Suburban but that she had become aware of it when she heard the deposition testimony of Bonnie Burnam. (Depo. Tr. Paula Belcher, July 17, 2007, p. 8, ln. 7-19; p. 9, ln. 1) (A true and correct copy of Paula Belcher's Deposition transcript is attached hereto as Attachment E and is incorporated herein by reference). Ms. Belcher was not even aware of her status as an officer of the company until July 17, 2007.

Ms. Belcher also testified that she did not vote on the decision to dissolve the corporation. (Tr., June 29, 2007, p. 86, ln. 20-23).

b. Ms. Belcher testified that she is not a shareholder of Suburban. (Tr., June 29, 2007, p. 86, ln. 19). The only shareholders of Suburban are Respondent Burnam and Bonnie Burnam, each of whom own 50% of Suburban's stock. (Tr., June 29, 2007, p. 26, ln. 23-25; p. 27, ln. 1-7). Further, at the preliminary injunction hearing, Ms. Belcher testified that she deferred all decisions with regard to Suburban's water system to Respondent Burnam and that Respondent Burnam made all of the financial decisions for Suburban. (Tr., June 29, 2007, p. 87, ln. 4-12).

c. Respondent Gordon Burnam testified at the deposition taken by Staff counsel on July 17, 2007 that Suburban has no employees. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 14, ln. 15-18) (A true and correct copy of Gordon Burnam's Deposition transcript is attached hereto as Attachment F and is incorporated herein by reference). All manual work for Suburban is performed by employees of Vista Home Management, Inc. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 15, ln. 17-24). Vista Home Management, Inc. then bills Suburban for the hours worked on Suburban tasks by Vista Home Management employees. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 16, ln. 4-11). Vista Home Management, Inc. is a company whose stock is owned by Respondent Gordon Burnam and Bonnie Burnam. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 18, ln. 4-6).

d. Bonnie Burnam, who is the only Suburban shareholder other than Gordon Burnam, testified at her deposition that she had never seen the disposition agreement for the 2005 rate case before. (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 10, ln. 11-20).

e. Bonnie Burnam testified that official Suburban board of directors meetings with minutes and shareholders meetings are held only "infrequently." (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 22, ln. 1-6). Bonnie Burnam testified that Paula Belcher is sometimes involved in these meetings. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 22, ln. 7-10). The only signatures that appear on the resolution stating the company's intention to delay dissolution are those of Bonnie Burnam and Respondent Gordon Burnam. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 22, ln. 11-16; Attachment C).

f. Bonnie Burnam testified that she and her husband shared the authority to authorize attorneys to act on behalf of Suburban but that she did not believe Paula Belcher had such authority. (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 26, ln. 13-25; p. 27, ln. 1-2).

g. Respondent Gordon Burnam testified that he no longer owns any land in Bon-Gor, the subdivision he developed and that is served by Suburban. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 40, ln. 20-21). However, at the local public hearing on July 23, 2007, an attorney testifying on behalf of his client stated that his client purchased property from an entity owned by the Burnam family in 2004. (Transcript, Local Public Hearing, July 23, 2007, p. 56, ln. 2-4) (A true and correct copy of the transcript from the local public hearing is attached

as Attachment G). Staff's position is that this conflict of interest influenced Gordon Burnam's decision to keep water rates low to his own or his family members' benefit, while to the detriment of Suburban and its customers, and that it rendered Suburban unable to make necessary improvements to its water system.

h. Respondent Gordon Burnam testified that Suburban has notes outstanding "to—it could be one of our other companies, but Gordon and Bonnie Burnam." (Depo. Tr., Gordon Burnam, July 17, 2007, p. 23, ln. 18-20).

Respondent Burnam testified that he believed there were notes outstanding totaling approximately \$26,000. (Depo. Tr., July 17, 2007, p. 23, ln. 25).

i. Respondent Gordon Burnam testified that, following the 2005 rate case, he made the decision to stop reading the water meters. (Depo. Tr. Gordon Burnam, p. 49, ln. 49; p. 50, ln. 1). Respondent Gordon Burnam testified that he "[t]old Paula [Belcher] to quit reading the meters, having somebody read them." (Depo. Tr., Gordon Burnam, p. 50, ln. 4-5).

j. Respondent Gordon Burnam testified that Suburban had not installed flush valves as required by a condition in the 2005 rate case disposition agreement because Suburban lacked money. "Suburban was not making a profit. I either had to loan it money or it wasn't done." (Depo. Tr. Gordon Burnam, July 17, 2007, p. 58, ln. 4-5).

k. With regard to the condition in the 2005 rate case disposition agreement requiring the company to install a standpipe inlet high enough to provide adequate circulation and detention time, Respondent Gordon Burnam

testified, "Just didn't do it. Never thought about it, didn't do it." (Depo. Tr., Gordon Burnam, July 17, 2007, p. 60, ln. 6-7).

l. Respondent Gordon Burnam testified with regard to the letter that was dated January 31, 2007, and was addressed to the DNR and the PSC, that the letter was written by Mr. Volkert at his request and that the reason for the letter was to "[g]et me out of the water business." (Depo. Tr., Gordon Burnam, July 17, 2007, p. 74, ln. 7). However, Respondent Gordon Burnam testified later that it was Suburban that was getting out of the water business and that he personally "has never been in the water business." (Depo. Tr., Gordon Burnam, July 17, 2007, p. 74, ln. 11-14).

m. Respondent Gordon Burnam testified that he authorized the dissolution of Suburban. (Depo. Tr., Gordon Burnam, July 17, 2007, p. 79, ln. 16-20).

18. An Order is necessary in the current case because at the June 29th, 2007 Boone County Circuit Court hearing, Suburban President Gordon Burnam would not commit to Suburban making repairs to the system in the event of a system failure in the absence of a court order. (See Attachment B, Tr. June 29, 2007 at p. 42, ln. 6-14; and p. 43, ln. 1-21.)

19. The relief sought herein has been one of Staff's focuses throughout past Commission proceedings involving this respondent. Furthermore, evidence presented before the Boone County Circuit Court, on June 29, 2007, at the preliminary injunction hearing¹ specifically addressed suggested improvements for Suburban's water system.

¹ Case No. 07BA-CV02632, Missouri PSC v. Suburban Water and Sewer Company, Inc., and Gordon Burnam.

At that hearing, the Commission called Bob Gilbert, an engineer with Bartlett and West Engineers, to discuss a report he wrote concerning a study of the Suburban water system. (A true and correct copy of Bob Gilbert's report is attached hereto as Attachment H and is incorporated herein by reference.) While being questioned, Mr. Gilbert specifically testified that his study gave estimates for "[t]he demolition of the standpipe and the well that are there." (Attachment B, Tr. June 29, 2007 at p. 49, ln. 4-5). Further, cross-examination by Mr. Harrison, Respondents' counsel, questioned Mr. Gilbert on the issue of demolition of the standpipe. (Tr. June 29, 2007, p. 55, ln. 1-13). Respondents have been and are fully aware of the arguments for potential improvements that the system may need to safely and adequately serve its customers.

20. The Missouri Supreme Court has set out situations in which an individual may be held responsible for the obligations of a corporation. There are three elements that must be satisfied: "(1) control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and (2) such control must have been used by the corporation to commit fraud or wrong, to perpetrate the violation of statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and (3) the control and breach of duty must proximately cause the injury or unjust loss complained of." *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W.2d 32, 40 (Mo.banc 1999).

All three elements necessary to hold Burnam personally responsible for Suburban's obligations are satisfied in this case. First, Burnam is the President of

Suburban. (A true and correct copy of Suburban's annual report filing is attached hereto as Attachment I and is incorporated herein by reference). Burnam has complete control over the company. Suburban's only other shareholder is Burnam's wife, Bonnie Burnam, who is also the Secretary of the corporation. (Attachment H). Bonnie Burnam participates not at all or only marginally in Suburban's day-to-day financial or policy decisions. (Attachment D). Suburban has no employees of its own who might participate in such decisions. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 14, ln. 15-18). There are no employees; thus Suburban has no way of fulfilling its obligations as a public utility without Gordon Burnam. Defendant Burnam spoke on behalf of Suburban while he was giving testimony at the hearing on June 29, 2007. (Tr., June 29, 2007). Burnam did not in any way indicate that he would need to refer to anyone else in order to give testimony, despite the fact that Paula Belcher, acting as the corporate representative, was present at during his testimony. (Tr., June 29, 2007, p. 25, ln. 12-19). Ms. Belcher denied being an officer or a shareholder of Suburban on June 29. (Tr., June 29, 2007, p. 86, ln. 12-17). Ms. Belcher only found out that she had been made Vice-President of Suburban at the deposition of Bonnie Burnam on July 17, 2007. (Depo. Tr. Paula Belcher, July 17, 2007, p. 8, ln. 7-19; p. 9, ln. 1). Ms. Burnam testified that Ms. Belcher was made an officer so there would be someone "in charge" when she and Burnam were out of town. (Depo. Tr. Bonnie Burnam, p. 8, ln. 21-24). Ms. Belcher testified that Burnam makes all major decisions with regard to Suburban's water system. (Tr. June 29, 2007, p. 87, ln. 4-6). Ms. Belcher also testified that Burnam makes all of Suburban's financial decisions. (Tr., June 29, 2007, p. 87, ln. 10-12). Defendant Burnam and Bonnie Burnam are the only members of Suburban's board of directors. (Attachment H). Suburban did not have a

separate mind, will, or existence in the decision to dissolve the corporation and discontinue water service when the original Notice of Dissolution was issued. Suburban also did not have a separate mind, will, or existence when Defendant Burnam and Bonnie Burnam voted to delay dissolution while legal action was pending against the company. Defendant Burnam and Suburban are represented by the same counsel, despite the fact that they would appear to have opposing interests as to whether the entity or the individual is responsible for Suburban's financial and legal obligations. Counsel for the Defendants presented the same defense on the merits at the June 29, 2007 hearing, without distinguishing on which Defendant's behalf witnesses were being examined or exhibits were being offered. (Tr., June 29, 2007, p. 26-end). A witness from the Public Service Commission testified that, as far as he could recall, Burnam is the decision-maker for Suburban, although other people may explain or provide information. (Tr., June 29, 2007, p. 73, ln. 13-18). All of Suburban's tariff sheets were issued by Gordon Burnam. Gordon Burnam is the only person mentioned in connection with Suburban in the Report and Order granting Suburban a certificate of convenience and necessity. (Case No. 17652). The letter dated June 29, 2006, which was signed by Gordon Burnam as President, reads "let me hook on to Public Water District #1 as I am no longer willing or able to subsidize the water system at Bon-Gor Lake Estates." (A true and correct copy of the June 29, 2006 letter is attached hereto as Attachment J and is incorporated herein by reference). Clearly, in this letter, Defendant Burnam is identifying himself with Suburban. Plaintiff concedes that the certificate of convenience and necessity is issued in the name of Suburban. However, in this case, there is no real distinction between the regulated entity and the individual. Suburban Water and Sewer Co. is Gordon Burnam.

Second, Staff has alleged a violation of a positive legal duty. Suburban, as a regulated public utility subject to the jurisdiction of the Commission has a legal duty to provide safe and adequate service pursuant to Section 393.130, RSMo and a legal duty to obtain Commission permission prior to disposition of assets pursuant to Section 393.190, RSMo. Suburban must also abide by its currently effective tariff and by its certificate of convenience and necessity. Violation of any of these legal duties is sufficient to satisfy the second prong of piercing the corporate veil.

Third, if those legal duties are violated, it will be because of the actions and decisions of Defendant Burnam. The breach of Suburban's legal duties would be caused by Suburban's decision (made through Burnam) to dissolve the company and discontinue water service or by Suburban's decision (again made by Burnam) to refuse to make repairs that are necessary to continue to provide safe and adequate water service.

Staff has alleged sufficient facts to support holding Defendant Burnam personally responsible for Suburban's legal obligations. Suburban the corporation is in all material respects indistinguishable from Burnam the individual. The ability to reach out and hold individuals liable for the obligations of a corporation in appropriate circumstances is well-settled in corporate law. It is illogical to suggest that this same ability does not exist in the arena of public utility regulation, given that public utilities have far greater responsibilities to the public than do general business corporations. At the June 29, 2007 hearing, the Court dismissed Defendant Gordon Burnam's Motion to Dismiss and enjoined both Suburban and Burnam from ceasing to provide safe and adequate water service until such time as the Commission approves a change. The Commission has not yet approved any change in ownership that would release Suburban and Gordon Burnam

from their legal duties and at the same time protect the residents of Bon-Gor Estates from loss of safe and adequate water service.

WHEREFORE, the Staff moves the Commission for an order directing the Staff to investigate and file a recommendation concerning the quality of water supplied by Suburban Water and Sewer Co. and Gordon Burnam and the methods employed by Suburban Water and Sewer Co. and Gordon Burnam in supplying and distributing water for any purpose; order an evidentiary hearing to be held in this case; and directing Suburban and Gordon Burnam to make improvements necessary that will best promote the public interest, preserve the public health, protect those using the water and sewer system, and ensure the provision of safe and adequate water service in accordance with Sections 393.130 and 393.140(2), RSMo.

Motion for Expedited Treatment

21. Complainant hereby adopts by reference and re-alleges the allegations set forth in paragraphs 1-20, above.

22. Suburban has stated a clear intention to wind up its affairs and leave the water business. (Attachment A; Depo. Tr. Gordon Burnam, p. 74, ln. 2-16). Mr. Burnam is a resident of Florida, and is in Missouri only for limited amounts of time each year.

23. In order to resolve this matter and to ensure continued safe and adequate water service to Suburban's customers, expedited treatment is appropriate.

24. Staff requests that the Commission hold a hearing in this matter no later than October 15, 2007. Staff requests that the Commission issue its decision no later than November 15, 2007.

25. Expedited treatment will avoid harm to Suburban's customers by ensuring continuation of safe and adequate water service.

26. This pleading was filed as soon as practicable. This Complaint was filed as soon as possible following the denial of "Staff's Motion Under Section 393.140 to Order Suburban Water and Gordon Burnam to Make Reasonable Improvements to Promote the Public Interest, Preserve the Public Health, and Protect Consumers of Suburban Water and Sewer Company." Staff believes that it is in the best interest of all parties and Suburban's customers to resolve this matter as quickly as possible.

27. Furthermore, Staff believes that a system failure may be imminent due to the deteriorated condition of the system.

WHEREFORE, Staff moves for expedited treatment pursuant to 4 CSR 240-2.080(16).

Conclusion

WHEREFORE, Staff requests that the Commission:

- a. Order Staff to investigate the quality of water supplied by Suburban Water and Sewer Co. and Gordon Burnam and the methods employed by Suburban Water and Sewer Co. and Gordon Burnam in supplying and distributing water for any purpose,
- b. Order Staff to file a recommendation concerning the investigation into the quality of water supplied by Suburban Water and Sewer Co. and Gordon Burnam and the methods employed by Suburban Water and Sewer Co. and Gordon Burnam in supplying and distributing water for any purpose,

- c. Order a full evidentiary hearing to be held in this case,
- d. Order Suburban Water and Sewer Co. and Gordon Burnam to make reasonable improvements to promote the public interest, preserve the public health, and protect consumers of Suburban Water and Sewer Co.,
- e. Grant Staff's motion for expedited treatment pursuant to Commission rule 4 CSR 240-2.080(16). Staff requests that the Commission hold a hearing in this matter no later than October 15, 2007 and that it issue its decision no later than November 15, 2007.

Respectfully submitted,

/s/ Steven C. Reed

Steven C. Reed

Missouri Bar No. 40616

Shelley Syler Brueggemann

Missouri Bar No. 52173

Attorneys for the Staff of the

Missouri Public Service Commission

PO Box 360

Jefferson City, MO 65102

(573) 751-3015 (Telephone)

(573) 751-9285 (Fax)

steven.reed@psc.mo.gov

shelley.brueggemann@psc.mo.gov

VAN MATRE, HARRISON, AND VOLKERT, P.C.

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
1103 EAST BROADWAY
POST OFFICE BOX 1017
COLUMBIA, MISSOURI 65201

CRAIG A. VAN MATRE
THOMAS M. HARRISON
MATTHEW S. VOLKERT*

EVERETT S. VAN MATRE
(1922-1998)

(573) 874-7777
TELECOPIER (573) 875-0017
WRITER'S E-MAIL: mail@vanmatre.com

CARLA K. WILLIAMS
GARRETT S. TAYLOR
ROBERT N. HOLLIS
KATHLEEN D. FITZGER**
ERICK S. CREACH

*ADMITTED IN MISSOURI AND ILLINOIS
**ADMITTED IN MISSOURI, ILLINOIS, AND WASHINGTON, D.C.

March 30, 2007

Via U.S. Mail

NOTICE OF DISSOLUTION OF SUBURBAN WATER AND SEWER COMPANY

To Whom It May Concern:

We are attorneys for Suburban Water and Sewer Company, a Missouri corporation (the "Corporation"). You are hereby notified that the directors and shareholders of the Corporation have authorized its dissolution, to be effective as of July 1, 2007 (the "Effective Date").

As required by law, the Corporation will cease to carry on any operations except to wind up and liquidate its business and affairs, commencing on the Effective Date. Therefore, your water service will be shut off, indefinitely, on or about July 1, 2007.

Pursuant to Section 351.478 RSMo., all claims against the Corporation must be presented promptly, by letter to:

Van Matre, Harrison, and Volkert, P.C.
Attention: Matthew S. Volkert
1103 East Broadway
P.O. Box 1017
Columbia, MO 65205

All claims must include the following information: the name and address of the claimant, the amount of the claim, the basis for the claim, the date on which the claim arose or accrued, and any written documentation relating to the claim. All claims must be received by October 1, 2007. A claim will be barred if not received by this deadline.

VAN MATRE, HARRISON, AND VOLKERT, P.C.

By:


Matthew S. Volkert

Attachment A

NOTICE OF DISSOLUTION OF CORPORATION
TO ALL PERSONS WITH CLAIMS AGAINST
SUBURBAN WATER AND SEWER COMPANY

Suburban Water and Sewer Company, a Missouri corporation, will be dissolved effective as of July 1, 2007.

Suburban Water and Sewer Company hereby requests, pursuant to Section 351.482 RSMo., that all persons with claims against it present them immediately, by letter to: Van Matre, Harrison, and Volkert, P.C., Attention: Matthew S. Volkert, 1103 East Broadway, P.O. Box 1017, Columbia, MO 65205. All claims must include the following information: the name and address of the claimant, the amount of the claim, the basis for the claim, the date on which the claim arose or accrued, and any written documentation relating to the claim.

A claim will be barred unless a proceeding to enforce it is commenced within two years after the publication of this notice.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 28th of June, 2007.



Colleen M. Dale
Secretary

IN THE BOONE COUNTY CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT, DIVISION I
Honorable Gene Hamilton, Judge

MISSOURI PUBLIC SERVICE COMMISSION,)
)
Plaintiff,)
) Case No. 07BA-CV02632
vs.)
)
SUBURBAN WATER AND SEWER COMPANY,)
INC., and GORDON BURNAM,)
)
Defendants.)

TRANSCRIPT OF HEARING ON PETITION FOR PRELIMINARY INJUNCTION

On June 29, 2007, the above-entitled cause came on for hearing before the Honorable Gene Hamilton, Judge of Division I of the Thirteenth Judicial Circuit, at Columbia.

The Plaintiff was represented by its attorneys, Ms. Jennifer Heintz, Assistant General Counsel, and Ms. Peggy A. Whipple, Chief Litigation Attorney, Missouri Public Service Commission, Governor Office Building, 200 Madison Street, P. O. Box 360, Jefferson City, Missouri 65102.

The Defendants were represented by Mr. Thomas M. Harrison and Mr. Matthew Volkert, Van Matre, Harrison, and Volkert, P.C., 1103 East Broadway, Suite 101, Columbia, Missouri 65201.

The Intervenor, Office of the Public Counsel, was represented by Ms. Christina Baker, Assistant Public Counsel, Governor Office Building, 200 Madison Street, P. O. Box 2230, Jefferson City, Missouri 65102.

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EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>	<u>Offered</u>	<u>Rec'd</u>
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2	Suburban Water Company Tariff	23	23
3	Notice of Dissolution of Suburban Water Company	23	23
4	Complaint pending before the PSC	24	25
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* * *

1 HEARING ON PETITION FOR PRELIMINARY INJUNCTION

2 June 29, 2007

3 * * *

4 THE COURT: Okay. Case Number 2632, Missouri
09:01AM 5 Public Service Commission vs. Suburban Water and Sewer Company
6 and Gordon Burnam.

7 MS. HEINTZ on behalf of the plaintiff?

8 MS. HEINTZ: Yes.

9 THE COURT: And Ms. Whipple on behalf of the
09:01AM 10 plaintiff?

11 MS. WHIPPLE: Yes, your Honor.

12 THE COURT: And Ms. Baker, you are representing
13 the intervenor?

14 MS. BAKER: Yes.

09:01AM 15 THE COURT: And Mr. Harrison, you are
16 representing both of the defendants?

17 MR. HARRISON: That's correct.

18 THE COURT: Okay. Now, what's the matter
19 before the Court?

09:01AM 20 MS. HEINTZ: I note that there is a Motion for
21 Continuance?

22 MR. HARRISON: That's correct.

23 THE COURT: Is that correct? Okay. Do you
24 care to be heard on your Motion for Continuance?

09:01AM 25 MR. HARRISON: Thank you, your Honor.

1 THE COURT: Go ahead.

2 MR. HARRISON: Thank you, Judge.

3 The defendants filed that motion because the
4 defendants are not ready for this hearing today, your Honor,
09:01AM 5 which is on the plaintiff's petition or application, rather,
6 for preliminary injunction.

7 By way of background, your Honor, the petition
8 in this case seeks an injunction against the defendants with
9 respect to water service provided by the defendants, Suburban
09:02AM 10 Water and Sewer Company, to about 150 people in the Bon Gor
11 Subdivision north of Columbia.

12 They are seeking -- or the petition seeks an
13 injunction to stop the defendants, Suburban Water and Sewer
14 Company, and presumably Gordon Burnam, from ceasing to provide
09:02AM 15 water service.

16 Earlier this year, about three months ago, a
17 notice was served by Suburban Water that it was going to
18 dissolve and cease providing water service for reasons that
19 we'll get into if we have this hearing today. Since then,
09:02AM 20 your Honor -- well, and the reason that notice was given is
21 that the Suburban -- Suburban was trying to work out an
22 arrangement with the Public Service Commission and the
23 Department of Natural Resources and others with respect to
24 getting out of the water business.

3:02AM 25 Since that time, and I think largely because

1 that notice was given, we finally got the PSC's attention.
2 There had been what I think is accurately some lack of
3 attention from the PSC. Since that time we've gotten their
4 attention and we've been talking to them. And since that time
09:03AM 5 we've told the PSC, and as the PSC noted in its petition, I
6 would point out, your Honor, we have since told them we are
7 not going to dissolve and we are not going to shut off the
8 water service on July 1. We have told them that.

9 I am here confirming that with you, your Honor.

09:03AM 10 Mr. Burnam is here, and he can confirm that with you as well.
11 What our position is, is that as long as we're working
12 reasonably well with the PSC to try to find a solution to
13 these problems, and as long as the Missouri Department of
14 Natural Resources doesn't take some action to, you know, shut
09:03AM 15 us down -- because there have been findings made by the DNR
16 that Suburban is not in compliance with some of their
17 regulations -- we're willing to continue to provide water
18 service.

19 And so the immediacy of the situation, I think
09:04AM 20 even as set forth in the plaintiff's own petition where they
21 acknowledge that we've told them this, the immediacy of the
22 situation isn't there any more and the need to have this
23 expedited hearing has gone by the wayside.

24 Now, this lawsuit was filed on June the 7th. I
09:04AM 25 think we got -- I think our clients got served around

1 June 10th or so. We haven't even filed an answer yet, Judge,
2 let alone done any discovery. There are -- there are legal
3 theories and facts that we're still investigating, and that's
4 the main reason we haven't filed our answer yet.

09:04AM

5 We think there's probably going to need to be
6 some expert testimony if we have to proceed with this matter
7 and we just haven't had an opportunity to develop the facts
8 and to talk to the witnesses that we want to talk to.

09:05AM

9 I mean, I've subpoenaed some DNR witnesses here
10 today. I haven't even looked at the files yet. I don't even
11 know what they say. So the reason for the continuance request
12 is we don't think the immediacy is there. And again, if the
13 Court wants to hear from Mr. Burnam to confirm what I've told
14 you, I'm happy to let him come forward and confirm it.

09:05AM

15 And the other simple fact is, we just haven't
16 had enough time to develop the facts and the evidence and to
17 talk to the witnesses that we need to in order to competently
18 prepare here.

09:05AM

19 THE COURT: Well, I have looked at the file,
20 and there is the Petition for Preliminary and Permanent
21 Injunction and then there's a Motion to Consolidate; correct?

22 MS. HEINTZ: That's correct, Judge.

23 THE COURT: What are we consolidating?

09:05AM

24 MS. HEINTZ: Well, Judge, we believe that the
25 issues presented in a preliminary injunction hearing, which is

1 my understanding of why we're here this morning, would be the
2 same as the ones that we would present on a hearing for a
3 permanent injunction. So we think that judicial economy would
4 be served best by consolidating our request for a preliminary
09:06AM 5 injunction with our request for a permanent injunction,
6 hearing all of the merits today.

7 THE COURT: Okay. As I understand it, there is
8 an action pending before the Public Service Commission now?

9 MS. HEINTZ: Yes, there is, your Honor.

09:06AM 10 THE COURT: Which is set for hearing in July?

11 MS. HEINTZ: I don't know that we have a
12 specific hearing date set yet, but we have requested a hearing
13 by July 20th.

14 MR. HARRISON: Yeah, I don't believe it's been
09:06AM 15 set.

16 THE COURT: Well, would there be a problem with
17 me entering a preliminary injunction indicating that these
18 people are not to be cut off water until such time as the
19 Public Service Commission makes a finding?

09:06AM 20 MR. HARRISON: Judge, we have a couple of
21 problems with that. Number one, we don't think there's any
22 basis whatsoever for Mr. Burnam personally to be a party to
23 this lawsuit. He's individually been sued. He's not the
24 regulated utility. He's not the water supplier. And if you
09:06AM 25 look at their petition, they don't even allege facts that give

1 rise to any basis upon which you could enter an injunction
2 against him.

3 So yes, we would have a significant problem as
4 to -- with respect to any injunction that you might want to
09:07AM 5 enter against him.

6 As to the corporation, our fear is that, if you
7 enter that injunction, I mean, again, there are significant
8 DNR problems out there. We figure that if you enter that
9 injunction, we're worried about what's going to happen if the
09:07AM 10 system completely breaks down. What happens if there are
11 significant health, you know, safety-related problems? Are we
12 going to violate your injunction. You know, things like that.

13 We think there are significant practical
14 problems with doing that. And again, we're telling the Court
09:07AM 15 we're not going to cease water service. That's what we're
16 telling the Court, that's what we've told the PSC. But
17 entering an injunction opens up a whole new can of worms, and
18 we'd be worried about violating it unwittingly and things of
19 that nature.

09:07AM 20 THE COURT: Ms. Heintz?

21 MS. HEINTZ: Well, your Honor, the qualified
22 promise that Mr. Burnam and Suburban have offered here this
23 morning don't put my mind at ease at all. They've offered not
24 to shut off the water system as long as DNR doesn't have major
09:08AM 25 problems with them and as long as there are no major system

1 failures.

2 Well, they are obligated -- Suburban has a
3 duty, as a certificated public utility, to provide safe and
4 adequate water service. That statute doesn't have any
09:08AM 5 exceptions in it, such as the ones that the defendants are
6 here asking for this morning.

7 We think that they need to be ordered to obey
8 the law until such time as we can figure out what to do with
9 this system. We're not at that point yet.

09:08AM 10 THE COURT: What about the preliminary
11 injunction --

12 MS. HEINTZ: And I'm not --

13 THE COURT: What about the preliminary
14 injunction running against Mr. Burnam?

09:08AM 15 MS. HEINTZ: Well, your Honor, any injunction
16 entered against Suburban, first of all, would be binding on
17 Mr. Burnam. He is an officer of Suburban.

18 THE COURT: I understand, but --

19 MS. HEINTZ: And as far as him personally, I am
09:08AM 20 unaware of any other shareholder or decision-maker or entity
21 that has had any, any say in what happens with this water
22 system other than Mr. Burnam. I don't think that the two are
23 very distinguishable.

24 THE COURT: But the Certificate of Convenience
9:09AM 25 and Necessity is to Suburban Water and Sewer Company; correct?

1 MS. HEINTZ: It is.. That's correct.

2 THE COURT: And any hearing concerning a change
3 of that before the Commission would be in regard to Suburban
4 Water and Sewer Company and their Certificate of Necessity and
09:09AM 5 Convenience?

6 MS. HEINTZ: That is correct.

7 THE COURT: And you're not willing to accept
8 what Mr. Harrison has said today?

9 MS. HEINTZ: Because it's a qualified promise,
09:09AM 10 your Honor, and I need him to be able -- I need him to be
11 ordered to comply with the statutes as they exist, not with
12 the statutes unless and -- unless something else happens.
13 There are no exceptions.

14 THE COURT: Okay. Then the Court will overrule
09:09AM 15 the Motion for Continuance. The Court will hear only the
16 matter today as to the preliminary injunction.

17 MR. HARRISON: Your Honor, there are a couple
18 of other pretrial matters.

19 THE COURT: Go ahead.

09:10AM 20 MR. HARRISON: We did file a Motion to Dismiss
21 as to Gordon Burnam which we'd like to argue. There's also a
22 motion, this Motion to Consolidate the trial on the merits
23 with this hearing which we'd like to argue.

24 THE COURT: I'm only going to hear the Motion
9:10AM 25 for Preliminary Injunction.

1 MR. HARRISON: Okay. So I assume --
2 THE COURT: That matter is taken care of.
3 MR. HARRISON: That motion would be overruled.
4 All right.
09:10AM 5 THE COURT: Yeah.
6 MR. HARRISON: And there are a couple of other
7 motions pending that I think need to be heard before.
8 THE COURT: Okay. Go ahead.
9 MR. HARRISON: Now, let me also tell you, your
09:10AM 10 Honor, that Mr. Burnam, who's here because he's been
11 subpoenaed, is leaving for a trip to Europe today. His flight
12 is at 3:30 out of St. Louis. He needs to leave about noon.
13 I'm hoping, and I guess I'm hereby asking
14 counsel to put him on first, if they intend to call him. And
09:10AM 15 I'm hoping counsel will do that, and if not, I'm hoping the
16 Court will order that.
17 THE COURT: Any objection to that?
18 MS. HEINTZ: I have no objection to that.
19 THE COURT: Okay.
09:10AM 20 MR. HARRISON: All right. Do you want me to
21 argue the Motion to Dismiss, then, your Honor?
22 THE COURT: Sure.
23 MR. HARRISON: Judge, we filed a lengthy
24 motion. It raises numerous grounds. I won't talk about them
09:11AM 25 all because there's no need to repeat them all, but I want to

1 talk about the main points.

2 The relief we're seeking is, A, to dismiss him
3 personally as a defendant in this action; and B,
4 alternatively, there are motions to strike for a more definite
09:11AM 5 statement and to join a party, specifically, the Department of
6 Natural Resources, which we think is an indispensable party in
7 this case, a necessary party in this case.

8 As to the Motion to Dismiss, quite simply,
9 Mr. Burnam is not subject to the jurisdiction of the Public
09:11AM 10 Service Commission. The statutory regime that governs the PSC
11 makes that clear. And specifically talking about Section
12 386.020, 368.250 and 386.360, all of which are cited in
13 paragraphs 10 and 11 of our motion.

14 I also would point the Court to this Osage
09:12AM 15 *Water Company* case which is cited in paragraph 12 of our
16 motion, which says, "In order to be subject to regulation, one
17 must sell water to the public and one must own, operate,
18 control, or manage the water plant or property."

19 Mr. Burnam meets neither test. He doesn't sell
09:12AM 20 water to the public. Suburban sells water to the public. So
21 he doesn't meet that test.

22 He doesn't meet the second test. He doesn't
23 own, operate, control, or manage the plant or the property
24 that sells water to the public. That's Suburban. So there's
09:12AM 25 no basis on which Mr. Burnam personally should be a defendant

1 in this case.

2 As I pointed out previously, your Honor, there
3 really aren't any allegations in the petition that set forth
4 any theory or any facts on which he can be held responsible in
09:13AM 5 this limited injunction action.

6 So the plaintiff's petition doesn't even allege
7 that Mr. Burnam is a public utility, and I think counsel is
8 more or less admitting here this morning and the fact is that
9 he's not. There's no allegation that he is.

09:13AM 10 I would also point the Court to Section
11 386.570, which provides that all acts of an individual acting
12 on behalf of a public utility shall in every case be and be
13 deemed to be the act of the utility.

14 So that is more or less an affirmation of a
09:13AM 15 corporate protection and another reason that Mr. Burnam
16 personally has no business being a party in this case.

17 We also, your Honor, believe that the action
18 should be dismissed both as to Mr. Burnam and to Suburban
19 because the PSC has adequate -- other adequate remedies. And
09:13AM 20 I would cite the Court to the cases and the other authorities
21 that we point out in section or paragraph 17 of our motion.

22 I won't belabor that point. The Court can read
23 those authorities. But we think that those authorities are
24 persuasive and stand on the proposition that the Commission
09:14AM 25 has other adequate remedies here and that an injunction is not

1 needed.

2 We also have constitutional arguments as far as
3 takings and so forth which, again, are cited in our briefs and
4 I won't belabor that here.

09:14AM

5 I do want to emphasize another part of our
6 motion, which is, as I pointed out earlier, the Department of
7 Natural Resources has made findings, and there are witnesses
8 here today who are going to testify that there have been
9 findings made that Suburban is in violation of certain DNR
10 regulations. Those findings have been made.

09:14AM

11 We think the DNR needs to be a party under Rule
12 52.04 because we risk inconsistent results here. On the one
13 hand, you've got the PSC asking you to enter an order telling
14 us so stay open. On the other hand, we've got the DNR telling
15 us that we're in violation of the law.

09:15AM

16 Our obligation is to provide safe and adequate
17 drinking water. Well, I think the DNR is telling us that
18 we're not doing that; we're violating the regulations.
19 They've sent several notices and made findings, as I said, of
20 violations.

09:15AM

21 And, you know, but the problems, which will
22 come out in the evidence here, one of the main problems is
23 that Suburban doesn't have the revenue base, the revenues, the
24 assets, to make the significant and significantly costly
25 improvements that are going to be necessary in order to meet

09:15AM

1 the DNR's requirements.

2 Finally, your Honor, I'd point you to paragraph
3 27 of our motion which cites elements and portions of the
4 petition which are vague and which I think the Court will have
09:15AM 5 to get into, in the event the Court is inclined to enter the
6 injunction here against Suburban.

7 Is it going to be a mandatory injunction
8 telling us to do certain things, or is it going to be a
9 prohibitory injunction telling us not to do certain things?

09:16AM 10 If the Court is not inclined to dismiss
11 Mr. Burnam, I think the Court is going to have to grapple with
12 what, you know, what kind of orders are going to be entered
13 with respect to him and what are his precise duties going to
14 be.

09:16AM 15 Are you going to order him, for example, to
16 continue to fund this corporation to the extent he needs to,
17 to keep it running and to perform the maintenance and repairs
18 which have recently become quite costly?

19 And there are a host of other issues that are
09:16AM 20 going to come to light, if the Court is inclined to enter the
21 injunction.

22 Our motion, your Honor, is as to both
23 defendants. We filed Motions to Dismiss as to both
24 defendants.

09:16AM 25 So that argument that I just gave really goes

1 to both motions. Thank you.

2 THE COURT: Ms. Heintz?

3 MS. HEINTZ: Thank you, your Honor.

4 I have filed my suggestions in opposition to
09:17AM 5 the Motions to Dismiss and there are just a few things that
6 I'd like to highlight here for you now.

7 First of all, the very language of
8 Section 386.600, which is the statute that we are here under
9 this morning, your Honor, says that we may seek an injunction
09:17AM 10 against any public utility, person, or corporation who is
11 failing or omitting anything that it is required to do -- that
12 it is required to do by law, and that it is failing or
13 omitting or about to fail or omit to do anything required of
14 it by law. An injunction may be sought by the Commission in
09:17AM 15 those instances.

16 I would also like to reiterate my position that
17 the corporation is indistinguishable from Gordon Burnam. And
18 the DNR, I believe, is not a necessary party to this action.
19 Suburban Water Company will have obligations to DNR. That's
09:18AM 20 not why we're here. We're here because Mr. Burnam has
21 obligations to the PSC. Specifically, he is obligated to
22 provide safe and adequate water service.

23 Now, whatever his obligations to DNR are,
24 that's DNR business. And I cannot speak for them, but I do
09:18AM 25 not believe that they have any power to order Mr. Burnam or

1 Suburban Water Company to override Suburban's Certificate of
2 Convenience and Necessity, Suburban's tariff, which under
3 Missouri law has the effect of a statute, or Sections 393.130
4 or 393.190.

09:18AM

5 Also, your Honor, I would submit that, where
6 the legislature has provided for injunctive relief as it has
7 in 383.600, that irreparable harm and no adequate legal remedy
8 are presumed. Even if we have to show irreparable harm and
9 lack of a legal remedy, we believe that those are present in
10 this case.

09:19AM

11 Your Honor, defendants have threatened to shut
12 the water off on Sunday. And even though they've said today,
13 "We're not going to do that," they've also attempted to
14 disavow their obligation to provide service in the event that
15 DNR issues some other violation or in the event that the
16 system breaks down. And that is inadequate.

09:19AM

17 386.580, your Honor, provides for a misdemeanor
18 action to be brought against agents, employees, or officers of
19 public utilities who cause the public utility to violate a
20 Commission order or any other law.

09:19AM

21 So again, I believe that there is reason
22 for Mr. Burnam to be joined personally.

23 THE COURT: What's your statute number there?

24 MS. HEINTZ: I'm sorry?

09:19AM

25 THE COURT: What's the statute number?

1 MS. HEINTZ: 386.580, your Honor.

2 THE COURT: Go ahead.

3 MS. HEINTZ: If Mr. Burnam and Suburban feel
4 that their revenue is inadequate, their remedy is to bring a
09:20AM 5 rate case in front of the Commission. This Court, you know,
6 begging your -- your Honor's pardon and being very respectful,
7 doesn't have jurisdiction to set rates for Mr. Burnam's
8 company. That is for the Commission to do in the first
9 instance.

09:20AM 10 The injunction that we're asking for this
11 morning is both mandatory and prohibitory. It's mandatory in
12 that we are asking the Court to order Suburban Water Company
13 to continue its obligations under the law, which are to
14 provide safe and adequate service, to not dispose of its
09:20AM 15 assets without PSC approval, to abide by its tariff, and to
16 abide by its Certificate of Convenience and Necessary -- and
17 Necessity.

18 It's prohibitory in that we want Mr. Burnam to
19 be prohibited from shutting off the water or failing to take
09:21AM 20 steps necessary to keep the water flowing.

21 Thank you.

22 THE COURT: Ms. Baker.

23 MR. HARRISON: Judge, can I be heard for just
24 one second?

09:21AM 25 THE COURT: No, I'll let Ms. Baker and then

1 I'll let you.

2 MR. HARRISON: Well, it goes to whether she's
3 allowed to -- I mean, I don't know that the Office of Public
4 Counsel is a party to this case, your Honor.

09:21AM 5 THE COURT: They've been allowed to intervene.
6 I entered that order several days ago.

7 MR. HARRISON: Oh, I didn't get a copy of it,
8 so I wasn't aware of it. So pardon me. Pardon me.

9 THE COURT: You may proceed.

09:21AM 10 MR. HARRISON: Pardon me.

11 MS. BAKER: Thank you, your Honor.

12 The defendants sent a Notice of Dissolution to
13 its customers stating that it would cease providing water
14 service on July 1. That date is a Sunday. Therefore, the
09:22AM 15 customers have no other avenues to seek their water service
16 because the defendants are set up as a monopoly water system
17 in this state.

18 The customers have to be protected from the
19 whims of that monopoly. Whether they are given violations by
09:22AM 20 the Department of Natural Resources makes no difference in
21 this case. They are required to provide the service to their
22 customers.

23 And we would ask that -- that this Court deny
24 the Motion to Dismiss against Suburban. Gordon Burnam himself
09:22AM 25 is Suburban Water Company. He is the only, the only person

1 who is a member of Suburban Water system. His actions are for
2 and are done by him on behalf of Suburban Water system, so
3 therefore, his actions need to be -- need to be taken into
4 account.

09:23AM

5 The customers would be concerned that Gordon
6 Burnam would turn off the water acting on his own behalf,
7 stating that he did it on his own behalf and not on behalf of
8 the water system.

09:23AM

9 Therefore, we would -- we would suggest and
10 would request that the Motion to Dismiss both Gordon Burnam
11 and Suburban Water system be denied.

12 THE COURT: Mr. Harrison.

09:23AM

13 MR. HARRISON: Judge, the notice came from
14 Suburban. I mean, the -- the notice with respect to
15 dissolution came from Suburban. Suburban is the regulated
16 entity. Suburban is the regulated utility. There's been no
17 allegation at all that Mr. Burnam is the regulated utility.

09:23AM

18 There's also no allegation in this petition,
19 Judge, as to this -- I think what the other parties are
20 talking about is piercing the corporate veil. They haven't
21 alleged that. They certainly haven't alleged any facts that
22 would allow the Court to do that. They haven't even asked the
23 Court for that relief.

09:24AM

24 I would quarrel with their ability or I would
25 question their ability to do that. They haven't -- I mean,

1 just looking at the fundamentals here, the four corners of the
2 petition doesn't allege the facts that they need to allege to
3 get the relief that they're now telling the Court that they
4 want.

09:24AM 5 Again, we hear about the DNR. What happens if
6 you tell us to stay in business and the DNR says, "Your
7 problems have worsened. You're in violation"?

8 And what if it gets to the point where they
9 say, "You've got to stop"?

09:24AM 10 That's why we think the DNR needs to be a party
11 to this case. If that's not a substantial risk of
12 inconsistent results, I don't know what is, your Honor.

13 Counsel for the Commission cited 386.580.

14 That's not mentioned in the pleadings. That's beyond the
09:24AM 15 scope of the pleadings. That's well beyond the scope of
16 anything before the Court. That's got nothing to do with this
17 case.

18 And then finally, I don't know how more -- how
19 much more clearly we can be or how many more times we can say
09:25AM 20 it: We're not shutting off the water.

21 The company, Suburban, has made arrangements
22 with a public water supply district with respect to the
23 emergency water, if it comes to that. They would have to --
24 and it would be a substantial cost that, I guess -- I guess
09:25AM 25 Suburban would have to eat, that they couldn't pass on,

1 because of the PSC requirements. But if something happened
2 catastrophic that shut the water down, or shut the system
3 down, rather, Suburban has a way to do an emergency tapping
4 in, if you will, with the water supply district.

09:25AM 5 So I just don't think that's an issue as much
6 as counsel wants to make it an issue in this case. I just
7 don't think it is.

8 THE COURT: Okay. Defendant's Motion to
9 Dismiss as to Suburban will be overruled. Defendant's Motion
09:25AM 10 to Dismiss as to the defendant Burnam will be overruled.

11 The Court is looking at Chapter 386 and notes
12 that in 386.570 it indicates that any action by an officer
13 shall be deemed the action of the corporation.

14 And the Court would note that there is an
09:26AM 15 allegation that Mr. Burnam, as well as -- on behalf of
16 Suburban and on his own, has indicated he's going to cut the
17 water off. So I'm going to overrule that.

18 I'm going to overrule the motion to require
19 that DNR be joined. I think if DNR indicates that water
09:26AM 20 service is to be shut down, there's a way for that to go to
21 Circuit Court, as I recall. So that objection will be
22 overruled.

23 Okay. Anything else preliminarily?

24 MR. HARRISON: We're going to move to exclude
09:26AM 25 witnesses.

1 THE COURT: Okay. All witnesses will be
2 excluded. If you are a witness in this matter, you are
3 excluded at this time.

4 Evidence by the plaintiff.

09:26AM 5 MS. HEINTZ: Thank you, your Honor.

6 Before I call my first witness, who will be
7 Mr. Burnam, I have several documents that I would like to
8 admit as exhibits. Specifically, they're the exhibits that
9 were attached to my petition. And they have been certified by
09:27AM 10 the Secretary of the Commission, pursuant to 386.290, as
11 records regularly kept by the Commission.

12 THE COURT: What do you have?

13 MS. HEINTZ: I have the Report and Order
14 granting Suburban its Certificate of Convenience and
09:27AM 15 Necessity.

16 THE COURT: Which is what exhibit?

17 MS. HEINTZ: I have marked it as Exhibit A.

18 THE COURT: A?

19 MS. HEINTZ: A. I have a copy for your Honor.

09:27AM 20 THE COURT: Mark it as Exhibit 1, please.

21 MS. HEINTZ: Or 1, okay. Would you like a
22 copy, your Honor?

23 THE COURT: The court reporter will mark it as
24 Exhibit 1. It hasn't been admitted yet, so I don't want it
09:27AM 25 yet.

1 MS. HEINTZ: Okay.

2 (PLAINTIFF'S EXHIBIT 1 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 * * *

09:28AM 5 THE COURT: You're offering Plaintiff's
6 Exhibit 1?

7 MS. HEINTZ: I am.

8 THE COURT: Any objection to that,
9 Mr. Harrison?

09:28AM 10 MR. HARRISON: Is it certified?

11 MS. HEINTZ: It is.

12 MR. HARRISON: No objection.

13 THE COURT: Okay. Ms. Baker, any objection?
14 Ms. Baker?

09:28AM 15 MS. BAKER: I'm sorry?

16 THE COURT: Any objection?

17 MS. BAKER: No objection.

18 THE COURT: Okay. Plaintiff's Exhibit 1 will
19 be admitted.

09:28AM 20 (PLAINTIFF'S EXHIBIT 1 WAS ADMITTED INTO
21 EVIDENCE.)

22 * * *

23 THE COURT: Okay. What else do you have?

24 MS. HEINTZ: I have here a certified copy of

09:28AM 25 Suburban's tariff. I'll ask that this be marked as Exhibit 2.

1 (PLAINTIFF'S EXHIBIT 2 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)

3 * * *

4 THE COURT: Any objection to 2?

09:28AM 5 MR. HARRISON: It's certified as well?

6 MS. HEINTZ: It is.

7 MR. HARRISON: No, no objection.

8 THE COURT: Plaintiff's Exhibit 2 will be
9 admitted.

09:29AM 10 (PLAINTIFF'S EXHIBIT 2 WAS ADMITTED INTO
11 EVIDENCE.)

12 * * *

13 THE COURT: Okay. Anything else?

14 MS. HEINTZ: I have what I will ask to be
09:29AM 15 marked as Exhibit 3. This is the Notice of Dissolution of
16 Suburban Water and Sewer Company. The Commission received a
17 copy of this.

18 THE COURT: Mark that as 3.

19 (PLAINTIFF'S EXHIBIT 3 WAS MARKED FOR
09:29AM 20 IDENTIFICATION BY THE REPORTER.)

21 * * *

22 THE COURT: Any objection to 3.

23 MR. HARRISON: No.

24 THE COURT: Three will be admitted.

09:29AM 25 (PLAINTIFF'S EXHIBIT 3 WAS ADMITTED INTO

1 EVIDENCE.)

2 * * *

3 THE COURT: Okay. What else do you have?

4 MS. HEINTZ: And lastly, your Honor, I have

09:29AM 5 what I will ask to be marked as Exhibit 4.

6 MR. VOLKERT: Actually, I have an objection to
7 Number 3, your Honor.

8 THE COURT: Well, 3 has already been admitted.

9 MR. VOLKERT: Okay. Fine.

09:29AM 10 MS. HEINTZ: This is a certified copy of the
11 complaint currently pending against Suburban with the Public
12 Service Commission.

13 (PLAINTIFF'S EXHIBIT 4 WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

09:30AM 15 * * *

16 THE COURT: Okay. Now, any objection to 4,
17 Mr. Harrison?

18 MR. HARRISON: Four I object to on the basis of
19 relevance. It's a complaint. Well, relevance and hearsay.

09:30AM 20 It's full of hearsay. It's a complaint that hasn't been
21 heard, it hasn't been -- discovery hasn't been done on it, it
22 hasn't been proved. It's irrelevant to any matter before the
23 Court today.

24 THE COURT: The objection will be overruled.

09:30AM 25 It will be admitted simply for the purpose of showing that

1 there is an action pending before the Public Service
2 Commission and not for any truth of it.

3 (PLAINTIFF'S EXHIBIT 4 WAS ADMITTED INTO
4 EVIDENCE.)

09:30AM

5

* * *

6

THE COURT: Okay. Now, what else do you have?

7

MS. HEINTZ: That's all I have, your Honor.

8

THE COURT: Okay. Evidence by the plaintiff.

9

MS. HEINTZ: Gordon Burnam.

09:30AM

10

MR. BURNAM: Yes.

11

THE COURT: Okay. Please come forward.

12

MS. HEINTZ: Oh, I'm sorry, your Honor.

13

Yes, Ms. Belcher has been subpoenaed and she

14

will be a witness in this action and I need her to be secluded

09:31AM

15

as well.

16

MR. HARRISON: She's the corporate

17

representative for Suburban.

18

THE COURT: Okay. Very well. She doesn't have

19

to be excluded then.

09:31AM

20

Okay. Please come forward, raise your right

21

hand and be sworn.

22

(THE WITNESS WAS SWORN BY THE COURT.)

23

* * *

24

THE COURT: Okay. Please take the witness

09:31AM

25

stand.

1 (The witness complied.)

2 * * *

3 THE COURT: You may proceed, Ms. Heintz.

4 MS. HEINTZ: Thank you.

5 * * *

6 PLAINTIFF'S EVIDENCE

7 * * *

8 GORDON BURNAM

9 being first duly sworn, testified as follows:

10 * * *

11 DIRECT EXAMINATION

12 BY MS. HEINTZ:

13 Q. Good morning, Mr. Burnam. I won't keep you here
14 long.

09:31AM 15 A. Okay.

16 Q. Please state your name.

17 A. Gordon Burnam.

18 Q. And you are here under subpoena?

19 A. Yes.

09:31AM 20 Q. And you are the president of the Suburban Water and
21 Sewer Company?

22 A. That's correct.

23 Q. Okay. And you are the sole shareholder of the
24 company?

2:32AM 25 A. No.

1 Q. Who are the other shareholders?

2 A. Bonnie Burnam.

3 Q. And she's your wife; is that correct?

4 A. And secretary.

09:32AM 5 Q. Okay. And what percent of the -- percentage of

6 ownership do each of you have?

7 A. 50/50.

8 Q. Okay.

9 MS. HEINTZ: May I approach, your Honor?

09:32AM 10 THE COURT: You may.

11 BY MS. HEINTZ:

12 Q. I'm showing you what has been previously admitted

13 as Exhibit 3. That's a Notice of Dissolution that was sent to

14 Suburban's customers?

09:32AM 15 A. Yes.

16 Q. And this notice was prepared by your attorney at

17 your direction?

18 A. Yes.

19 Q. Okay. And this notice states that water service

09:32AM 20 will be discontinued on July 1st?

21 A. Yes.

22 Q. Okay. And that's Sunday?

23 A. Yes.

24 Q. Okay. And you actually planned to be on vacation

09:33AM 25 in Europe when the water service was disconnected?

1 A. Uh-huh. Yes.

2 Q. All right.

3 MS. HEINTZ: That's all the questions I have
4 for Mr. Burnam, your Honor. Thank you.

09:33AM 5 THE COURT: Cross-examination.

6 MR. HARRISON: Thank you, Judge.

7 * * *

8 **CROSS-EXAMINATION**

9 BY MR. HARRISON:

09:33AM 10 Q. Gordon, just so the Court knows, you wear hearing
11 aids?

12 A. I wear a hearing aid, but people are sure speaking
13 soft.

14 Q. All right. Well, if you don't hear a question I
09:33AM 15 ask, tell me.

16 A. Okay. I will.

17 Q. I just want everybody to understand that.

18 A. Okay.

19 Q. Okay. So when was Suburban Water formed, the
09:33AM 20 corporation formed?

21 A. I think it was officially 1972, maybe '73.

22 Q. All right. And is it correct that Suburban Water,
23 you know, owns the components of a water system?

24 A. Yes.

09:33AM 25 Q. Is that a fair statement?

1 A. Yes.

2 Q. When was that water system installed?

3 A. I think it went in, in process, in 1973.

4 Q. And what area, just so the Judge is aware?

09:33AM 5 A. It's Bon Gor Lake Estates. It's a subdivision
6 located northwest of Columbia.

7 Q. All right. And that's a subdivision that you
8 developed as well?

9 A. Yes.

09:34AM 10 Q. All right.

11 A. Uh-huh.

12 Q. Since the time that the system was -- Well, let me
13 back up. Give the Judge an idea of what the system consists
14 of, just very briefly.

09:34AM 15 A. Okay.

16 Q. Just the components of it, the physical components
17 of it.

18 A. Okay. The components of it is that we hired an
19 engineer to design the system. And we drilled the well
09:34AM 20 subject to the department -- State Department of Health and
21 met all the requirements, and then applied to the PSC for a
22 permit to charge people for water.

23 Q. But I want you to describe the physical components
24 of the system.

09:34AM 25 A. Okay. The physical components is a water tower

1 that sticks up 80 foot in the air, six foot in diameter. It's
2 a well that's 1,050 foot deep. The pump, the 20-horse pump is
3 located 500 feet below, and that's the one that pumps the
4 water and puts it into the distribution system.

09:34AM

5 Q. Have there been any major upgrades to the system in
6 the past 35 years?

7 A. The only thing that we've done is that usually
8 every three to five years we have to replace the pump.

9 Q. Okay.

09:35AM

10 A. Which is located 550 feet in the earth.

11 Q. Okay. You did that recently?

12 A. Yes. We did it in the early part of '06.

13 Q. All right. And so other than that, the standpipe
14 that we call it, it's been there for the past 35 years?

09:35AM

15 A. That's right.

16 Q. That's a tower?

17 A. Yes.

18 Q. And that's -- how tall is it?

19 A. Eighty foot tall.

09:35AM

20 Q. And what's the purpose of the standpipe?

21 A. Well, it keeps the water pressure. It's not a
22 pressure system. It's a gravity-fed system, and it's designed
23 to keep the water at 30 psi.

24 Q. Okay. How many people are served by the system, as
25 far as you know?

09:35AM

1 A. Okay. There's 37 single-family homes, and then
2 there's 118 various types of rental property, duplex -- all
3 duplexes and four-plexes.

4 Q. All right. And is it correct that the company's
09:35AM 5 only source of revenue, operating revenue, is what you charge
6 your customers?

7 A. That's correct.

8 Q. And is it correct that the operating revenues are
9 generally in the area of about \$23,000 a year?

09:36AM 10 A. That's correct.

11 Q. All right. Is it correct that there have been some
12 physical problems with the system that have become, you know,
13 more problematic in recent years?

14 A. Yeah.

09:36AM 15 Q. I want to --

16 A. The big thing is the water tower. And, of course,
17 it's going to be a big expense because the DNR is requiring us
18 to, you know, yeah.

19 Q. Again, just very briefly for the Court --

09:36AM 20 A. Yeah.

21 Q. -- explain to the Court what the basic problems are
22 with the tower.

23 A. The water tower.

24 Q. Well, what's the problem with the tower?

09:36AM 25 A. It leaks. In fact, we have a leak right now.

1 Q. Well, is it rusted in certain parts?
2 A. I'm sorry. I didn't hear.
3 Q. Has it rusted in certain parts?
4 A. Yes.
09:36AM 5 Q. Is that a problem? All right. You mentioned, you
6 mentioned a leak. Is that a leak that recently developed?
7 A. Yes. This week.
8 Q. All right. All right. Otherwise, are there
9 various leaks underground from time to time?
09:36AM 10 A. At time to time, but very minor and very few.
11 Q. And are there problems with the pressure in the
12 system?
13 A. Yes.
14 Q. All right. DNR has served you notice with respect
09:37AM 15 to the pressure; is that right?
16 A. Uh-huh.
17 Q. Is it correct that these -- that the physical
18 problems with the system have become worse, have worsened over
19 the past two or three years?
09:37AM 20 A. Yes. That's correct.
21 Q. All right. Do you have -- Has DNR provided you
22 with either requirements or suggestions as to upgrades they
23 want you to make?
24 A. Yes.
09:37AM 25 Q. Is one of those replacing the standpipe?

1 A. Yeah.

2 Q. Is that correct?

3 A. Yes.

4 Q. Yes?

09:37AM 5 A. At the present time, that's at our engineer's and

6 he's preparing estimates.

7 Q. Okay. Do you have an opinion as to what it would

8 cost to replace the standpipe?

9 A. It would just be a ballpark figure. And I'm just

09:37AM 10 not an engineer, so I couldn't tell.

11 Q. All right. Is it a correct statement that that

12 would be a fairly major undertaking?

13 A. Very major.

14 Q. You're talking about an 80-foot-tall piece of

09:38AM 15 metal, I guess; right?

16 A. Yeah.

17 Q. That would be to be taken out and put back in;

18 right?

19 A. Right.

09:38AM 20 Q. All right. What are the assets of Suburban Water?

21 A. It would be the water tower and the well.

22 Q. And the rights --

23 A. And that's the two major things, other than, you

24 know, the pipe that's in the ground.

09:38AM 25 Q. Right. Those are the physical assets?

1 A. Yes.

2 Q. And then you've got the operating revenues from

3 your customers?

4 A. That's it.

09:38AM 5 Q. And that's it?

6 A. Uh-huh.

7 Q. All right. There are no other source of revenue

8 other than the customers who you charge to provide water?

9 A. The only thing of it is, we've personally had to

09:38AM 10 loan money --

11 Q. All right.

12 A. -- to Suburban in order to keep it in business.

13 Q. But there's no other operating revenue?

14 A. No.

09:38AM 15 Q. Now, in terms of expense that the company has from

16 month to month and year to year, is the largest item of

17 expense repairs and maintenance?

18 A. Probably the largest is electricity --

19 Q. Okay.

09:39AM 20 A. -- for the water, you know, probably.

21 Q. The pump?

22 A. The repairs, you can't put a handle on it, you

23 know. One year you may have a lot and the next year nothing.

24 Q. All right.

09:39AM 25 A. It varies.

1 Q. All right.

2 MR. HARRISON: Your Honor, can I have one

3 second, please?

4 THE COURT: Sure.

09:39AM 5 BY MR. HARRISON:

6 Q. Could I look at Exhibit 3, which you've got there,

7 sir?

8 A. Yes.

9 Q. Which is now kind of crumpled up.

09:40AM 10 A. Yes.

11 Q. Just to be clear about a question you were asked on

12 direct examination --

13 A. Yes.

14 Q. -- you instructed Mr. Volkert, on behalf of the

09:40AM 15 corporation, --

16 A. That's correct.

17 Q. -- to send this notice out. Is that correct?

18 A. That's correct.

19 Q. All right. Mr. Burnam, do you anticipate

09:40AM 20 requesting a rate increase to the Public Service Commission?

21 A. Yes.

22 Q. And, in fact, have you already taken steps to

23 initiate a rate increase, the rate-increase process?

24 A. Yes.

09:40AM 25 Q. Yes.

1 A. Yeah, we're in the process of hiring an attorney in
2 Jefferson City.

3 Q. To pursue that?

4 A. To represent us for the PSC.

09:40AM 5 Q. And in fact, you've hired them and signed an
6 engagement letter?

7 A. Yes?

8 Q. Is that a correct statement?

9 A. I'm sorry, Tom?

09:40AM 10 Q. You hired, you've signed an engagement letter with
11 that law firm?

12 A. Yes.

13 Q. And you are working on submitting a retainer to
14 them --

09:41AM 15 A. That's correct.

16 Q. -- to get to work?

17 A. (Nodding head.)

18 Q. All right. You need to answer verbally instead of
19 nodding your head so the court reporter can take down your
09:41AM 20 response.

21 Mr. Burnam, do you personally hold any -- I'll call
22 them licenses or certifications from the Public Service
23 Commission?

24 A. No.

09:41AM 25 Q. Are you a Certified Water Operator?

1 A. No.

2 Q. Have you ever applied for any licenses or permits
3 or certifications from the Commission?

4 A. No.

09:41AM 5 Q. And, therefore, you've never been granted any?

6 A. Huh-uh.

7 Q. You personally are not a regulated utility. Is
8 that a fair statement?

9 A. That's correct.

09:41AM 10 Q. You personally are not a regulated water company.
11 Is that a correct statement? You personally are not?

12 A. No. No.

13 Q. All right. And again, you've never applied for any
14 of those, those types of designations. Is that correct?

09:41AM 15 A. That's correct.

16 Q. Mr. Burnam, you were here in the courtroom for the
17 pretrial matters that --

18 A. Yes.

19 Q. -- we discussed with the Court. You heard all
09:42AM 20 that?

21 A. Yes.

22 Q. You heard my statements to the Court about -- about
23 the -- my representations to the Court --

24 A. Yes.

09:42AM 25 Q. -- that Suburban is not going to turn off the water

1 on July 1?

2 A. That's correct.

3 Q. And, in fact, the notice, the Notice of Dissolution
4 for the corporation that was adopted previously has been
09:42AM 5 rescinded?

6 A. That's correct.

7 Q. The shareholders and directors of Suburban have
8 agreed not to dissolve the corporation?

9 A. That's correct.

09:42AM 10 Q. They've also agreed not to shut the water off on
11 July 1?

12 A. That's correct.

13 Q. Now, describe to the Court what kind of emergency
14 water, you know, backup situation you have arranged with the
09:43AM 15 public water supply system?

16 A. Okay. We have an arrangement with Public Water
17 District No. 1 where we have an interconnect that in case, you
18 know, we have major problems, which we do on a time like
19 replacing the pump or the water tower, and we have an
09:43AM 20 interconnection with them. And they charge us a rate of \$5 a
21 thousand gallon.

22 Q. Okay. All right. So is it correct that if
23 something major, if some major malfunction would happen with
24 the system, you've got that as a backup?

09:43AM 25 A. That's correct.

1 Q. All right. And is it also correct that Suburban is
2 not going to -- is agreeing and has agreed not to shut off the
3 water as long as things -- as long as we're talking to the
4 Public Service Commission about a way to resolve your
5 financial problems?

09:43AM

6 A. That's correct.

7 Q. And you're committing here on the stand to that?

8 A. Yes.

9 Q. All right. And you've authorized your attorneys to
10 tell the Commission that. Is that a correct statement?

09:44AM

11 A. Yes.

12 MR. HARRISON: Nothing further.

13 THE COURT: Ms. Baker.

14 MS. BAKER: Thank you, your Honor.

09:44AM

15 * * *

16 **CROSS-EXAMINATION**

17 BY MS. BAKER:

18 Q. Good morning, Mr. Burnam. Through the tariff that
19 was given to Suburban Water and Sewer, you collect revenue
20 from the customers; isn't that correct?

09:44AM

21 A. That's correct.

22 Q. And in return for that revenue, the customers are
23 to receive safe and adequate water service; is that correct?

24 A. Yes.

09:44AM

25 Q. Suburban Water and Sewer is the only source of

1 water that the customers have for water service; isn't that
2 correct?

3 A. Well, here's the situation. Like in the
4 subdivision, okay, one street may be on the Public Water
09:44AM 5 District No. 1 and one -- the back of it may be on Suburban.

6 Q. Okay. But for the customers of Suburban Water and
7 Sewer Company, Suburban Water and Sewer Company --

8 A. Yes.

9 Q. -- is the only source of water that they have?

09:45AM 10 A. That's correct.

11 Q. From your testimony today, you're stating that the
12 water system there for Suburban Water and Sewer, which
13 supplies water to Suburban Water and Sewer customers, has been
14 allowed to deteriorate; isn't that correct?

09:45AM 15 A. Yes. It has deteriorated.

16 MS. BAKER: I have no further questions.

17 THE COURT: Redirect.

18 * * *

19 **REDIRECT EXAMINATION**

09:45AM 20 BY MS. HEINTZ:

21 Q. Suburban has a Certificate of Convenience and
22 Necessity?

23 A. That's correct.

24 Q. All right. And Suburban is legally obligated to
09:45AM 25 provide safe and adequate water service?

1 MR. HARRISON: Calls for a legal conclusion.
2 THE COURT: Objection will be sustained.
3 THE WITNESS: Answer?
4 MR. HARRISON: No, you may not answer.
09:46AM 5 MS. HEINTZ: You may not answer.
6 Okay. Could I have one minute, your Honor?
7 BY MS. HEINTZ:
8 Q. Do you understand Suburban's obligations to provide
9 safe and adequate water service?
09:46AM 10 A. Say again, please.
11 Q. Do you understand Suburban's obligation to provide
12 safe and adequate water service?
13 A. Yes.
14 MR. HARRISON: Well, I'll object to that. I
09:46AM 15 mean, I think they can ask what his understanding is. I don't
16 think they can -- I think they're back-door asking for a legal
17 conclusion.
18 THE COURT: Re-ask your question.
19 BY MS. HEINTZ:
09:47AM 20 Q. Do you understand what Suburban's obligations are
21 with regard to provision of water service?
22 MR. HARRISON: Same objection because it's the
23 same question.
24 THE COURT: Objection will be overruled at this
09:47AM 25 point. You may answer.

1 MS. HEINTZ: You may.

2 THE WITNESS: I can answer?

3 MR. HARRISON: Yeah.

4 A. Yes.

09:47AM 5 BY MS. HEINTZ:

6 Q. Okay. Without an order of this Court, is it your
7 intention, Suburban's intention, not to pay for any major
8 repairs if there's a system breakdown?

9 A. Well, if you could explain to me how we're going to
09:47AM 10 get the revenue to make the repairs the DNR wants.

11 MS. HEINTZ: You're Honor, I'd like that answer
12 stricken as nonresponsive.

13 THE COURT: Okay. Answer the question, please.

14 THE WITNESS: Restate it, please.

09:47AM 15 BY MS. HEINTZ:

16 Q. Without an order of the Court, is it your intention
17 or Suburban's intention not to make any necessary repairs to
18 the system in the event of a breakdown that would cause a loss
19 of water service?

09:47AM 20 MR. HARRISON: Judge, I think that calls for
21 speculation because we don't know what's going to happen in
22 the future. We don't know the extent or the nature of what
23 kind of repairs might be needed.

24 THE COURT: Objection will be overruled. He
09:48AM 25 may answer if he knows.

1 A. We repaired a leak this week.

2 MS. HEINTZ: Your Honor, could I ask that that

3 answer be stricken as nonresponsive?

4 THE COURT: Okay. Just answer the question,

09:48AM 5 please.

6 THE WITNESS: I'm sorry. I can't hear you. If

7 you'd like to come closer, maybe I --

8 MS. HEINTZ: May I approach?

9 THE COURT: You may.

09:48AM 10 BY MS. HEINTZ:

11 Q. Without an order of the court --

12 MS. HEINTZ: Actually, could I have you read

13 the question back so we -- so I can say it the same way again.

14 THE COURT: Just ask the question again.

09:48AM 15 BY MS. HEINTZ:

16 Q. I hope I get this right.

17 Without an order of the Court, okay, is it your

18 intention or Suburban's intention not to pay for any repairs

19 that would become necessary to provide safe and adequate water

09:48AM 20 service?

21 A. I can't predict the unknown.

22 MS. HEINTZ: Thank you.

23 THE COURT: Any other questions?

24 MS. HEINTZ: I don't believe so, your Honor.

9:48AM 25 If I could have just one more minute.

1 THE COURT: Okay.

2 MS. HEINTZ: That's all. Thank you.

3 THE COURT: Mr. Harrison?

4 MR. HARRISON: One second, please.

09:49AM 5 No. No questions.

6 THE COURT: Ms. Baker?

7 MS. BAKER: No further questions. Thank you.

8 THE COURT: You may step down.

9 May this witness be finally excused?

09:49AM 10 MR. HARRISON: Yes.

11 THE COURT: Since he is leaving this afternoon.

12 THE WITNESS: Thank you.

13 MR. HARRISON: Judge, may I have one second?

14 THE COURT: Sure.

09:49AM 15 Further evidence by the plaintiff.

16 MS. HEINTZ: Bob Gilbert.

17 THE COURT: Please come forward, raise your

18 right hand and be sworn.

19 (THE WITNESS WAS SWORN BY THE COURT.)

09:50AM 20 * * *

21 THE COURT: Please take the witness stand.

22 (The witness complied.)

23 * * *

24 THE COURT: You may proceed, Ms. Heintz.

09:50AM 25 (PLAINTIFF'S EXHIBIT 5 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 * * *

3 BOB GILBERT

4 being first duly sworn, testified as follows:

5 * * *

6 DIRECT EXAMINATION

7 BY MS. HEINTZ:

8 Q. Good morning.

9 A. Good morning.

09:50AM 10 Q. Please state your name and give your business
11 address.

12 A. My name is Bob Gilbert. Business address
13 is 1 -- sorry -- 1719 Southridge Drive, Suite 100, Jefferson
14 City, Missouri.

09:50AM 15 Q. Thank you. Are you here under subpoena?

16 A. Yes.

17 Q. By whom are you employed?

18 A. Bartlett and West Engineers.

19 Q. Okay. And could you please briefly describe your
09:51AM 20 professional credentials?

21 A. I have a Bachelor of Science in Civil Engineering
22 from the University of Missouri-Columbia, and I'm a Licensed
23 Professional Engineer in Missouri and Kansas.

24 Q. How long have you been an engineer?

09:51AM 25 A. I've been practicing for 10 years.

1 MS. HEINTZ: May I approach, your Honor?

2 THE COURT: You may.

3 BY MS. HEINTZ:

4 Q. I'm handing you what I have asked the court
09:51AM 5 reporter to mark as Exhibit Number 5. Do you recognize this
6 report?

7 A. Yes.

8 Q. Who authored this report?

9 A. I did.

09:51AM 10 Q. Did you have primary responsibility for the
11 creation of the report?

12 A. Yes.

13 Q. And why was the report created?

14 A. The report was created at the request of
09:51AM 15 Consolidated Public Water Supply District No. 1 of
16 Boone County. Basically, the Public Service Commission had
17 approached the Water District to consider taking over
18 ownership or supplying water to Suburban Water Company. And
19 the District would like to understand and know what kind of
09:52AM 20 issues might be encountered if the Water District were to
21 supply water.

22 Q. Okay. And does this report give Consolidated No. 1
23 any advice about the feasibility of supplying water to the
24 Suburban system?

09:52AM 25 A. Yes, it does.

1 Q. And what advice is contained in that report?

2 A. Well, the advice is based on some of the concerns
3 that are presented in the report. Basically, the Water
4 District has water, in terms of gallons of water, in the area.
09:52AM 5 The Water District has a six-inch main on the west side of
6 Wade School Road and a four-inch main on the south side Miller
7 Road. And so the water is in the area.

8 But the concerns that were presented in the
9 report deal with more of how the water is actually conveyed
09:52AM 10 through the system. The concerns that I have in reviewing the
11 information is that the static pressures of the Suburban Water
12 Company system and the Water District system are different.

13 Basically, the static pressures are what we
14 refer to as the highest pressures that are in the middle of
09:53AM 15 the night, basically, when there's no demand on the system and
16 the tanks are filling up and receiving the highest pressure
17 point. That's the highest that the system sees.

18 We were made aware of the Suburban Water
19 Company's approximate pressure of around 30 psi in their
09:53AM 20 system. And then the static pressures in the District's
21 system nearby would produce pressures between 65 and 75 psi on
22 the Suburban Water Company's system, if it were to supply
23 water.

24 And so that difference in pressure is a concern
09:53AM 25 to me that that system would be able to handle that kind of

1 pressure, you know. Obviously, if it can't handle the
2 pressure, leaks can spring, whether it be in the system itself
3 or in homes in the area.

4 And so because of that, the report provided
09:54AM 5 advice to the district that, if water were to be served
6 through a connection, even on an emergency basis, that we'd be
7 concerned with the amount of pressure that's there; and that
8 one potential solution would be a pressure-reducing valve,
9 kind of like a pressure regulator in a home, to convert the
09:54AM 10 higher pressure to a lower pressure at that entry point.

11 Q. Okay. Thank you. And if I could have you turn to
12 the last page of the report, please.

13 A. Uh-huh.

14 Q. Are you familiar with the estimate contained on
09:54AM 15 this page?

16 A. Yes.

17 Q. Okay. And what does this estimate represent?

18 A. This estimate represents the cost of what I call
19 comprehensive improvements to the Suburban Water Company's
09:55AM 20 system to bring it up to the Water District standards, whether
21 it be the, basically, the line size upgrade, new pipes, as
22 well as some of the peripheral issues that are in the area.

23 There are no meters on certain structures and
24 buildings in that area. And so this estimate includes the
09:55AM 25 setting of all new meters and to meet the District's standards

1 and to meet the District's locations, too. The meters are all
2 in the back yards in this case. And so this estimate includes
3 setting new meters in front.

4 The demolition of the standpipe and the well
09:55AM 5 that are there. And so kind of a comprehensive estimate for
6 bringing it to what the District usually sees.

7 Q. Okay. So this is basically building a whole new
8 system up from scratch. Is that a fair statement?

9 A. Basically, yes.

09:56AM 10 Q. Okay. And if we put aside the cost of constructing
11 an entirely new system, what minimum improvements would, in
12 your opinion, would need to be made before Consolidated No. 1
13 could safely supply water to the Suburban system?

14 A. In terms of being able to supply the water, again,
09:56AM 15 the recommendation in the report of a pressure-reducing valve
16 at the entry point to the system is recommended. Obviously,
17 to supply the water to the system, there needs to be meters on
18 all of the units so that it's understood what is being
19 supplied and can be tracked.

09:56AM 20 One of the concerns and information contained in
21 the report is that the only data that we really had to do a
22 report was the pump meter on the well. Basically, there are
23 no meters on every single home.

24 So the only data that we had was what comes out of
9:57AM 25 the ground and then try to convert that to average supply and

1 demand in the system. So meters are needed so that we can
2 understand what's being supplied as well as what is being paid
3 for.

09:57AM 4 And then also, the standpipe and well itself would
5 have to be disconnected, decommissioned in some fashion to get
6 it off the system, because again, the District's system is at
7 a higher pressure and it would need to be essentially
8 disconnected from their well is standpipe facility.

9 The other concern, I guess, that I would share,
09:57AM 10 too, is that just supplying water from the District to the
11 Suburban Water supply brings some concerns because of some of
12 the past operation of the system.

13 There have been instances in the past where the
14 District's connection that's already there through a two-inch
09:58AM 15 meter has served Suburban Water's supply for emergency
16 purposes. I understand it was during some repairs to their
17 standpipe and so forth.

18 The records that we received from Suburban Water
19 Company indicated that approximately 293,000 gallons of water
09:58AM 20 were passed through the District's meter in three days. And
21 just looking at the average consumption of the Suburban Water
22 supply system, basically 263,000 gallons is typically consumed
23 in seven days.

24 And so, again, we don't know where all that water
09:58AM 25 went, but in three days time, two-and-a-half -- more than

1 two-and-a-half times the water that typically goes into the
2 system was used.

3 That, again, it just presents concerns. I don't
4 know where that water went, if it was a very high demand
09:59AM 5 during those three days, if there was a leak. Those kinds of
6 concerns are there. And so, obviously, the concern, in terms
7 of supplying the water, you know, is: Can it all be
8 reimbursed for? That water just goes through the meter, and
9 we don't know where it's going.

09:59AM 10 Q. Okay. And do you have an estimate -- an estimate
11 of the costs of those minimum improvements that you talked
12 about? This estimate that is on the last page of the report
13 represents basically an entirely new system. But you talked
14 about wanting a pressure-reducing valve, wanting, you know,
09:59AM 15 the standpipe taken down, you talked about some other --

16 A. Meters.

17 Q. Meters, some things that you, minimally, that you
18 would think that Consolidated would need to -- well, to safely
19 supply water to the system even.

09:59AM 20 A. I don't know.

21 Q. You don't know?

22 A. I haven't done an estimate on that.

23 Q. Okay. Fair enough.

24 MS. HEINTZ: I don't believe I have anything
10:00AM 25 else. Let me just take one minute.

1 THE COURT: Mr. Harrison.

2 MS. HEINTZ: I'm sorry, your Honor. I asked
3 for one minute, please.

4 BY MS. HEINTZ:

10:00AM 5 Q. Okay. Mr. Burnam has assured this Court that
6 Consolidated No. 1 is standing by to provide water to
7 Suburban's customers in the event of an emergency. As a
8 professional engineer who is familiar with the Suburban
9 system, does this cause you any concern, just the provision of
10 water on an emergency basis?

11 A. Again, the concern I would have is that, in the
12 past, when that was used, the District's system was used to
13 supply water on an emergency basis, there was an extensive
14 water amount of used and we do not know why and where that
10:00AM 15 water went.

16 I would be concerned with an unconfirmed time frame
17 of, basically, of the District's system supplying water.
18 Again, in three days, a lot of water went somewhere, and we're
19 not sure where it went. Without the confirmation and
10:01AM 20 understanding of an emergency being just for a repair or a
21 short period of time, I would be concerned with, again, the
22 loss of a lot of water, and then on -- on the District's
23 standpoint of being compensated for that water.

24 Q. Okay. All right.

10:01AM 25 MS. HEINTZ: I offer Mr. Gilbert as an expert,

1 and I'd also like to offer Exhibit 5 into evidence.

2 MR. HARRISON: Is that the report?

3 MS. HEINTZ: That's the report.

4 THE COURT: Any objection to 5?

10:01AM 5 MR. HARRISON: No.

6 THE COURT: Five will be admitted.

7 (PLAINTIFF'S EXHIBIT 5 WAS ADMITTED INTO
8 EVIDENCE.)

9 * * *

10:01AM 10 THE COURT: Anything else?

11 MS. HEINTZ: That's all for Mr. Gilbert.

12 THE COURT: Mr. Harrison.

13 * * *

14 CROSS-EXAMINATION

10:01AM 15 BY MR. HARRISON:

16 Q. Sir, your report, Exhibit 5, again, it gives an
17 estimate of approximately \$400,000. And that's to bring the
18 Suburban system or to modify the Suburban system, if you will,
19 to make it compatible with the Public Water Supply District
10:02AM 20 system. Is that a fair characterization?

21 A. I wouldn't say compatible, but to bring it to the
22 District's standard.

23 Q. All right. When you prepared your report, did you
24 have any materials from the Department of Natural Resources
10:02AM 25 with respect to the Suburban plant, I'll call it?

1 A. No.

2 Q. You didn't consult any DNR materials, findings and
3 so forth?

4 A. I did not.

10:02AM 5 Q. With respect to Suburban?

6 A. Huh-uh.

7 Q. Have you since seen any of those materials?

8 A. No.

9 Q. Okay. So no one at the Public Water Supply
10 District or anyone else supplied you with any materials from
11 DNR as to problems that they see with the system, with the
12 Suburban system?

13 A. No, no records. In meetings with the PSC and the
14 District, I'm aware of concerns with the storage facility and
10:03AM 15 its previous repairs and need for repair.

16 Q. The standpipe?

17 A. Yes.

18 Q. Is that what you're talking about?

19 A. Yes.

10:03AM 20 Q. Okay. I'm sorry.

21 A. Yes.

22 Q. All right. So this report doesn't address DNR
23 concerns. Is that a fair statement?

24 A. Are you talking about the estimate?

10:03AM 25 Q. Correct. I'm sorry. The estimate.

1 A. The estimate. The estimate basically does answer
2 any concerns about the standpipe because it's taken out of
3 commission.

4 Q. But it doesn't address what it would cost to
10:03AM 5 replace the standpipe?

6 A. The standpipe would not be replaced if the whole
7 system were to be --

8 Q. Under your scenario; right?

9 A. Yes.

10:03AM 10 Q. But otherwise, outside your scenario, it doesn't --
11 this report doesn't address what it would take to replace the
12 standpipe, if that were required by the DNR?

13 A. No.

14 MS. HEINTZ: Objection. Relevance.

10:04AM 15 Q. Or by some other engineer?

16 A. No.

17 THE COURT: Objection will be overruled.

18 Q. Is that correct?

19 A. No, it does not.

10:04AM 20 Q. All right. And your testimony was that there was
21 water that was supplied -- or that there was a
22 larger-than-normal amount of water, I should say, in a
23 three-day period used by Suburban from the Public Water Supply
24 District?

10:04AM 25 A. Yes.

1 Q. But your testimony also was that you don't know
2 where that water went?

3 A. No. There are inadequate records of either meters
4 on buildings to tell if it was a demand situation or if it was
10:04AM 5 a leak.

6 Q. Right.

7 A. We don't know.

8 Q. Right. So there could be any number of
9 explanations for that?

10:04AM 10 A. Yes.

11 Q. Okay.

12 MR. HARRISON: Nothing further.

13 THE COURT: Ms. Baker?

14 MS. BAKER: Thank you, your Honor.

10:05AM 15 * * *

16 **CROSS-EXAMINATION**

17 BY MS. BAKER:

18 Q. Good morning, Mr. Gilbert.

19 A. Good morning.

10:05AM 20 Q. Suburban Water and supply has the ability to
21 continue providing water service through the Consolidated
22 Public Water Supply District's emergency connection even if
23 Suburban Water and Sewer's well and or water tower fails;
24 isn't that correct?

10:05AM 25 A. Yes.

1 Q. And Consolidated Water and Sewer has been -- has
2 provided water to its customers through this emergency
3 connection in the past; isn't that correct?

4 A. Yes.

10:05AM 5 Q. And your concerns that were addressed in your
6 report as Exhibit Number 5 are based on a determination of
7 whether Consolidated would encounter problems if Consolidated
8 owned the system, not on the emergency connection itself;
9 isn't that correct?

10:05AM 10 A. The report looked at the availability from both the
11 consideration of ownership and operations as well as potential
12 just supply issues.

13 Q. But nothing in your report came up with the
14 recommendation that the emergency connection be discontinued;
10:06AM 15 is that correct?

16 A. That's correct.

17 MS. BAKER: No further questions.

18 THE COURT: Redirect.

19 MS. HEINTZ: Thank you, your Honor.

10:06AM 20

* * *

21 **REDIRECT EXAMINATION**

22 BY MS. HEINTZ:

10:06AM 25

23 Q. I just have one. And this is again with respect to
24 Exhibit 5. Consolidated I prepared this report, had this
report prepared by you at its own expense after it was

1 approached by PSC; is that correct?

2 A. That's correct.

3 MS. HEINTZ: That's all. Thank you.

4 THE COURT: Mr. Harrison?

10:06AM 5 MR. HARRISON: No questions.

6 THE COURT: Ms. Baker?

7 MS. BAKER: No further questions.

8 THE COURT: May this witness be finally

9 excused?

10:06AM 10 MS. HEINTZ: Yes, your Honor.

11 THE COURT: Okay. You are finally excused.

12 You may step down.

13 Call your next witness.

14 MS. HEINTZ: Martin Hummel.

10:07AM 15 THE COURT: Please come forward, raise your

16 right hand and be sworn.

17 (THE WITNESS WAS SWORN BY THE COURT.)

18 * * *

19 THE COURT: Okay. Please take the witness

10:07AM 20 stand.

21 (The witness complied.)

22 * * *

23 THE COURT: You may proceed, Ms. Heintz.

24 MS. HEINTZ: Thank you.

10:07AM 25 Again, your Honor, I request that the Court

1 accept Mr. Hummel as an expert.

2 THE COURT: Proceed.

3 MARTIN HUMMEL

4 being first duly sworn, testified as follows:

10:07AM

5 * * *

6 **DIRECT EXAMINATION**

7 BY MS. HEINTZ:

8 Q. Good morning.

9 A. Good morning.

10:08AM

10 Q. Please state your name.

11 A. My name is Martin Hummel.

12 Q. Briefly describe your professional credentials.

13 A. I have a Bachelor of Science degree with -- Science
14 Education and a Bachelor of Science degree in Engineering from
10:08AM 15 the University of Missouri and I'm a Certified Water and
16 Wastewater Operator.

17 Q. Okay. And by whom are you employed?

18 A. I'm employed by the Missouri Public Service
19 Commission.

10:08AM

20 Q. How long have you been employed by the PSC?

21 A. I've been employed with the PSC since 1989.

22 Q. And could you briefly describe for the Court your
23 job duties?

24 A. I provide technical oversight to the provision of
10:08AM 25 water and sewer utility service.

1 Q. Okay. How far back does your knowledge of Suburban
2 Water and Sewer Company go?

3 A. I first worked with Suburban in 1989.

10:08AM

4 Q. Okay. And when is the last time that you performed
5 a thorough inspection of the water system?

6 A. In February of 2005.

7 Q. Okay. And did you perform a brief visual
8 inspection of the exterior of the system's well and standpipe
9 in the spring of this year, in 2007?

10:09AM

10 A. Yes, I did.

11 Q. Why did you perform that brief inspection?

12 A. I had not looked at the system for two years, and
13 we were in Columbia and felt like it was a good idea to see
14 what we could see at the time.

10:09AM

15 Q. And that was because the Commission had received
16 the Notice of Dissolution by that point?

17 A. Yes.

18 Q. Okay.

19 MS. HEINTZ: May I approach, your Honor?

10:09AM

20 THE COURT: You may.

21 BY MS. HEINTZ:

22 Q. I'm handing you what has been marked and admitted
23 as Exhibit 5. Are you familiar with this report?

24 A. Yes, I have seen it.

10:09AM

25 Q. Okay. And in your professional opinion, are the

1 concerns pointed out with regard to the condition of the
2 system in the report, are those concerns legitimate?

3 A. Yes.

4 Q. And would you agree that improvements would need to
10:10AM 5 be made to the system before Consolidated No. 1 could safely
6 provide water to it?

7 A. Yes.

8 Q. Okay. And what result would you ultimately like to
9 see with regard to the system?

10:10AM 10 A. I would want to see that the system is providing
11 safe and adequate service without a threat of any -- any
12 threat of discontinuance of that service.

13 MS. HEINTZ: Thank you. I believe that's all,
14 your Honor. If I could just have one minute.

10:10AM 15 That's all. Thank you.

16 THE COURT: Mr. Harrison?

17 * * *

18 **CROSS-EXAMINATION**

19 BY MR. HARRISON:

10:10AM 20 Q. Is it your opinion that improvements need to be
21 made to the Suburban system in order for Suburban to provide
22 safe and adequate water?

23 A. Yes.

24 Q. What would those improvements be?

10:11AM 25 A. The immediate improvements is that meters have to

1 be installed to all buildings.

2 Q. Okay. Are there any others?

3 A. The standpipe needs to be replaced.

4 Q. Are there any others?

10:11AM 5 A. There are some improvements needed probably at the

6 well. I'm -- I wouldn't give specific details on those. I

7 just know that there are -- that needs to be looked at.

8 Q. You wouldn't give them because you don't -- because
9 you're not familiar with them?

10:11AM 10 A. I haven't seen the well for over two years now.

11 Q. Are there any others that need to be made or any
12 other upgrades or changes that need to be made?

13 A. There may well be, but the primary one is that you
14 have to get meters in, in order to be able to make some

10:12AM 15 determinations about what other improvements to make and how
16 to prioritize them.

17 Q. Do you have an opinion as to what the cost would be
18 to make those changes and improvements that you just went
19 through?

10:12AM 20 A. I don't have an opinion in terms of a very specific
21 price.

22 Q. Do you have an opinion with --

23 A. And off the cuff, without putting a pencil to it, I
24 wouldn't want to give a dollar number. But the cost of

10:12AM 25 putting meters in, I would consider that to be nominal. It's

1 not expensive, it shouldn't be, on this system.

2 Q. You'd agree, though, that replacing the standpipe
3 wouldn't be nominal?

4 A. Correct.

10:12AM 5 Q. It would be substantial?

6 A. It would be the cost of the standpipe.

7 Q. Right. And do you have an estimate as to what that
8 cost would be?

9 A. Not without knowing what standpipe was going to
10 be -- I mean, whether I'm going to replace it with exactly the
11 same standpipe that I have there or not. Off the cuff, I
12 don't have a dollar number in my head. It wouldn't be that
13 difficult to -- If that was what was going to be done, as
14 opposed to getting water from the Consolidated Water District,
10:13AM 15 then it would not be that difficult to get that price.

16 Q. Would you agree that something like replacing the
17 standpipe is a significant and substantial improvement and
18 would cost a significant amount of money? It's not something
19 that you'd --

10:13AM 20 A. It would cost a significant amount of money, but
21 before you would ever do that, you would want to make a
22 determination as to whether that's what you want to do versus
23 buying water from the Consolidated Public Water Supply
24 District.

10:13AM 25 Q. If water was bought from the Public Water Supply

1 District, Suburban would have to continue to charge the rates
2 that it's currently charging to its customers; correct? It
3 couldn't alter the prices, it couldn't alter the rates that
4 are being charged without the Commission --

10:14AM

5 A. They certainly could come to the Public Service
6 Commission and have those rates changed. And we would expect
7 that. We would expect those rates to reflect the cost of
8 service, whatever that cost of service is.

9 Q. But without that consent, they couldn't do it?

10:14AM

10 A. Without what?

11 Q. Without that consent, they couldn't do it?

12 A. Correct.

13 Q. So am I to understand from your testimony that
14 right now that it's your opinion that Suburban is not
15 providing safe and adequate water to its customers?

10:14AM

16 A. I would say that they are not providing safe and
17 adequate service when there is a threat to those customers
18 that that water service might be shut off. That is not safe
19 and adequate.

10:14AM

20 Q. Well, but the quality of the water itself, aside
21 from that, aside from the threat to shut it off?

22 A. The quality of water that's available from that
23 well appears to be okay.

24 Q. So aside from the -- aside from the shut-off issue,
25 it your opinion that safe and adequate water and safe and

10:15AM

1 adequate service are being provided?

2 A. That's -- It's a matter of degree, to some extent.
3 Without providing metered service to those customers, that is
4 a problem in itself.

10:15AM 5 Q. I don't understand your answer. It's a matter of
6 degree?

7 A. When you say safe and adequate service, there are
8 certain components to that. There are -- It's not always just
9 a -- just a yes or a no exactly.

10:15AM 10 Q. Well, I guess I'm asking you to explain it. In
11 other words, as I understand the law, and that's what
12 Suburban's obligation is, I'm asking you, as somebody who's
13 been offered as an expert, whether --

14 A. There are improvements needed.

10:15AM 15 Q. Well, I'm asking you, though, whether safe and
16 adequate water and safe and adequate service are being
17 provided now. And I'm not sure I understand your answer.

18 A. If you -- if you just give one blank answer, the
19 answer would be no at this point.

10:16AM 20 Q. Sir, do you recall maybe in 2005 when a request was
21 made by Suburban to the Commission to allow Suburban to use
22 Public Water Supply District Water to pass through the costs
23 to the consumers, to the public, to the Suburban customers?

24 A. Yes.

10:16AM 25 MS. HEINTZ: Objection. That's a collateral

1 attack on a final Commission order.

2 THE COURT: Objection will be overruled.

3 Q. Do you recall that request being made?

4 A. I recall there was some kind of request along those
10:17AM 5 lines because at that time they were still wanting to decide
6 what's the way to go with the system --

7 Q. And were you involved --

8 A. -- how to move forward in the future.

9 Q. I'm sorry. Were you involved in that request and
10:17AM 10 the consideration of that request?

11 A. I was not involved in the -- in the looking at
12 those costs and -- except for evaluating it, the technical
13 aspects of the water system.

14 Q. And ultimately, at that -- Well, that was in 2005,
10:17AM 15 is that correct, as far as you can recall?

16 A. Yes.

17 Q. And at that time, that request was denied by the
18 Commission; isn't that correct?

19 A. I don't know that I could speak to that issue very
10:17AM 20 well because I was primarily involved in the technical aspects
21 of the system, not in the process of the rate design and
22 the -- and the issue of --

23 Q. Well, I guess I'm just asking for your
24 recollection. Are you saying you don't remember one way or
10:18AM 25 another?

1 MS. HEINTZ: Objection. The witness has
2 already said that he has no knowledge. He can't answer.

3 MR. HARRISON: I don't think he did.

4 THE COURT: He may answer. The objection will
10:18AM 5 be overruled.

6 A. That's not an area that I was primarily involved.

7 Q. I understand.

8 A. I can't give an answer on that. I was involved in
9 the technical aspects, the physical plant aspects and that
10:18AM 10 side of it.

11 Q. You don't have any -- I'm just asking about what
12 you remember, what you know, your knowledge.

13 A. No, I can't -- I don't remember enough to give you
14 a good answer on that.

10:18AM 15 Q. Do you have a file there relating to Suburban?

16 A. Yes..

17 Q. What's in that file? What's that file?

18 A. These are -- Most of this is notes that I use or
19 rely on from the standpoint of providing safe and adequate
10:19AM 20 service:

21 Q. I'm going to hand you --

22 MR. HARRISON: I guess I better mark this.

23 (DEFENDANT'S EXHIBIT A WAS MARKED FOR
24 IDENTIFICATION BY THE REPORTER.)

10:19AM 25

* * *

1 MR. HARRISON: May I proceed?

2 THE COURT: You may.

3 BY MR. HARRISON:

4 Q. Does your file contain any correspondence, sir,
10:19AM 5 your file that you have there?

6 A. I'm sure it does.

7 Q. Well, I'm going to hand you Defendant's Exhibit A,
8 which is a letter from the Public Service Commission to
9 Suburban, dated April 5, 2005. Do you see that?

10:19AM 10 A. Yes.

11 Q. Have you seen that letter before?

12 A. I don't recall actually seeing this letter.

13 Q. The author --

14 A. I don't.

10:20AM 15 Q. I'm sorry. Go ahead.

16 A. I wasn't involved in the sending of this letter.

17 Q. The author of the letter is James Russo?

18 A. Russo.

19 Q. And it says --

10:20AM 20 MS. HEINTZ: Objection. The witness has no
21 knowledge.

22 THE COURT: Objection will be sustained.

23 MR. HARRISON: I'm trying to refresh his
24 recollection, your Honor.

0:20AM 25 MS. HEINTZ: He has said he has no knowledge,

1 your Honor.

2 THE COURT: He said he's never seen it.

3 BY MR. HARRISON:

4 Q. What's Mr. Russo's capacity with the PSC?

10:21AM 5 A. He's revolved -- involved in the rate determination
6 and design for water and wastewater companies.

7 Q. All right.

8 MR. HARRISON: No further questions.

9 THE COURT: Ms. Baker?

10:21AM 10 MS. BAKER: Thank you, your Honor.

11 * * *

12 CROSS-EXAMINATION

13 BY MS. BAKER:

14 Q. Good morning, Mr. Hummel.

10:21AM 15 A. Good morning.

16 Q. From your inspection of Suburban Water and Sewer,
17 is it your opinion that the water system supplying water to
18 the customers has been allowed to deteriorate?

19 A. Yes.

10:21AM 20 Q. Are you aware that Suburban has an emergency
21 connection through Consolidated Water Supply District?

22 A. Yes.

23 Q. Does this emergency connection give Suburban the
24 ability to supply water to its customers even if Suburban
10:22AM 25 Water and Sewer's well and/or the water tower fails or is in

1 violation of DNR?

2 A. Yes.

3 Q. In your opinion, was safe and adequate service
4 threatened by the letter the customers received, saying their
10:22AM 5 water service would be shut off July 1st?

6 A. Yes.

7 MS. BAKER: No further questions.

8 THE COURT: Redirect.

9 * * *

10:22AM 10 **REDIRECT EXAMINATION**

11 BY MS. HEINTZ:

12 Q. Mr. Hummel, you had some role in the 2005 rate case
13 that Suburban had in front of the Public Service Commission?

14 A. Yes, in terms of --

10:22AM 15 Q. And do you know -- I'm sorry. Go ahead. Finish
16 your answer.

17 A. In terms of giving input as to the physical plant,
18 technical aspects of the water provision.

19 Q. Do you know what the outcome of that rate case was,
10:22AM 20 as to whether or not an increase was granted to Suburban, a
21 rate increase?

22 A. It -- I'm not very up-to-speed on the very
23 specifics of it, but I understand there was some increase
24 provided in that rate case.

10:23AM 25 Q. Okay. Thank you. And the questions Mr. Harrison

1 asked you about the cost of service and the cost of repairs
2 and everything like that, those issues would be thoroughly
3 addressed in a rate case filing in front of the Commission; is
4 that correct?

10:23AM

5 A. Would you repeat the question again?

6 Q. Well, Mr. Harrison asked you a series of questions
7 about improvements and how much certain improvements would
8 cost and what improvements might be needed, how expensive
9 those costs would be. Those are the issues that the

10:23AM

10 Commission would look at in a rate increase, would they not?

11 A. Yes. Yes.

12 MS. HEINTZ: Thank you. That's all.

13 THE COURT: Mr. Harrison?

14 MR. HARRISON: No questions.

10:23AM

15 THE COURT: Ms. Baker?

16 MS. BAKER: No questions.

17 THE COURT: May this witness be finally
18 excused?

19 MS. HEINTZ: Yes, your Honor.

10:23AM

20 THE COURT: Okay. You are finally excused.

21 You may step down.

22 Call your next witness.

23 MS. HEINTZ: Jim Merciel.

24 THE COURT: Okay. Please come forward, raise
25 your right hand and be sworn.

10:24AM

1 (THE WITNESS WAS SWORN BY THE COURT.)

2 * * *

3 THE COURT: Okay. Please take the witness
4 stand.

10:24AM 5 (The witness complied.)

6 * * *

7 THE COURT: You may proceed, Ms. Heintz.

8 MS. HEINTZ: Thank you.

9 JAMES A. MERCIEL JR.

10:24AM 10 being first duly sworn, testified as follows:

11 * * *

12 **DIRECT EXAMINATION**

13 BY MS. HEINTZ:

14 Q. Please state your name.

10:24AM 15 A. James A Merciel Jr.

16 Q. Thank you. Could you briefly describe your
17 professional credentials?

18 A. I have a Bachelor's degree in Civil Engineering
19 which I got in 1977. I am a Registered Professional Engineer
10:25AM 20 in the State of Missouri.

21 MS. HEINTZ: Okay. At this time, your Honor, I
22 would offer Mr. Merciel as an expert.

23 THE COURT: You may proceed.

24 MS. HEINTZ: Thank you.

10:25AM 25 BY MS. HEINTZ:

1 Q. By whom are you employed, Mr. Merciel?

2 A. I'm employed at the Public Service Commission.

3 Q. And how long have you been employed there?

4 A. Approximately 30 years.

10:25AM 5 Q. And could you briefly describe your job duties,
6 what you do for the PSC?

7 A. Well, I work in the water and sewer department.

8 I'm an assistant manager of the department. We, when

9 utility -- Well, when water and sewer utilities go into

10:25AM 10 business, they -- we recommend whether or not they get a
11 certificate to operate from the Commission. We do regular
12 inspections of the regulated utilities.

13 Our department also participates in rate increases
14 when the utilities file for rate increases. And there are

10:26AM 15 other types of cases that go on. We deal with customer
16 complaints, both informal and formal complaints. Some are --
17 some do go before the Commission. And if utilities sell their
18 assets to another utility, we deal with those types of issues.

19 Q. Okay. And are you familiar with Suburban's water
10:26AM 20 system?

21 A. Yes, I am.

22 Q. And when is the last time you performed a thorough
23 inspection of that water system?

24 A. A thorough -- Well, a thorough regular inspection
9:26AM 25 has probably been -- I haven't done -- I have never done an

1 inspection myself. Probably Mr. Hummel would have done the
2 last one. It could have been within the last couple of years,
3 probably.

10:26AM 4 Q. Okay. Mr. Merciel, did you participate in
5 Suburban's 2005 rate case in front of the Commission?

6 A. I did participate, to a limited extent.

7 Q. Okay. And do you recall whether Suburban was
8 granted a rate increase as a result of that rate case?

9 A. I believe there was an increase granted, yes.

10:27AM 10 Q. Okay. And to the best of your knowledge, was
11 Gordon Burnam the only person who participated in rate-case
12 negotiations on behalf of Suburban?

13 A. My recollection, both in that case and another, in
14 other dealings, is Mr. Burnam is the one who makes decisions
10:27AM 15 for the company. There could be other people who participate
16 as far as providing information or explaining information and
17 that sort of thing, but Mr. Burnam is the decision-maker with
18 the company.

19 Q. Thank you. And did you perform a brief visual
10:27AM 20 inspection of the exterior systems, well, and standpipe in the
21 spring of 2007?

22 A. Yes, I did.

23 Q. Why did you perform that inspection?

24 A. Well, on that particular day, we had a meeting with
10:27AM 25 the -- with the local water district, myself and Mr. Hummel

1 and some of the other people in the staff, and while we were
2 in town. For one thing, I hadn't been to the system in some
3 years, so we just decided to run out there and have a look at
4 it.

10:28AM

5 We did go out with Paula Belcher, Mr. Burnam's
6 employee, and we were able to get in to see a few things.

7 Q. Okay. And you were here because you were
8 participating in a board meeting with Consolidated Water; is
9 that right?

10:28AM

10 A. Yes, that's correct. The board meeting was --
11 Suburban Water and Sewer was the subject of the board meeting.
12 We were talking to the Water District about the possibility of
13 the District acquiring the system.

14 Q. Thank you.

10:28AM

15 MS. HEINTZ: May I approach, your Honor?

16 THE COURT: You may.

17 BY MS. HEINTZ:

18 Q. I'm handing you a copy of what's been admitted as
19 Exhibit Number 5. Are you familiar with that report?

10:28AM

20 A. I believe I have seen it. I can't say I'm
21 thoroughly familiar with it, but it does look familiar.

22 Q. Okay. Now, in your professional opinion, are the
23 concerns pointed out in the report with regard to the
24 condition of the system, are those concerns legitimate?

10:28AM

25 A. Generally, yes. Yes, I think the concerns are.

1 legitimate.

2 Q. And would you agree that there are some
3 improvements that would need to be made to the system before
4 Consolidated No. 1 can safely supply water to the system?

10:29AM 5 A. My answer is yes, I think there are some things
6 that need to be done, whether -- whether District 1 takes it
7 or someone else takes it, or for that matter, if Mr. Burnam
8 keeps it and operates it. There are some things that need to
9 be done.

10:29AM 10 There are a lot of things that are desirable but
11 don't necessarily need to be done immediately. But for
12 someone to consider taking this water system, I think there
13 are some things that they would -- it would certainly be
14 reasonable for them to expect to happen.

10:29AM 15 Q. Do you have a brief -- Can you describe briefly
16 what you think those would be?

17 A. Water meters on customers.

18 MR. HARRISON: I'm sorry. As to -- You're
19 asking him as to what improvements are needed if who
10:30AM 20 continues? If Suburban continues? If Public Water Supply
21 District takes over? What's the question?

22 MS. HEINTZ: Well, right now we're talking
23 about the eventual fate of the system, whoever is running it:
24 Suburban or Consolidated Water or some third-party entity that
10:30AM 25 we don't even know about yet.

1 MR. HARRISON: Okay. I just wanted to
2 understand what the question was.

3 BY MS. HEINTZ:

4 Q. I'm sorry. Can you answer me?

10:30AM 5 A. Okay. Well, as I understand, the question is:
6 What should happen to the system immediately?

7 And in my opinion, it needs water meters at all the
8 customers. The storage tank probably really needs to be
9 rehabilitated, although some preliminary patchwork is probably
10:30AM 10 reasonable, you know, from the start.

11 I don't know what the inside of the well house
12 looks like. We were not able to get in on my visit a few
13 months ago, so I can't speak to that. There could be some
14 improvements that are desirable in there as well.

10:30AM 15 Q. Okay. And I guess Mr. Harrison led me into my next
16 question, which is: Ultimately, what result would you like to
17 see with regard to this system?

18 MR. HARRISON: I'll object. It's irrelevant.

19 A. Well --

10:31AM 20 THE COURT: Objection will be sustained.

21 BY MS. HEINTZ:

22 Q. Mr. Merciel, is it the usual practice of PSC staff
23 to recommend that the Commission require a company to make
24 system improvements prior to recovering those costs in a rate
10:31AM 25 increase?

1 A. Yes, it is.

2 Q. Could you explain the rationale behind that,
3 please?

4 A. Yes. The rationale is, customers pay for what
10:31AM 5 they're using. And it is customary, not only in water and
6 sewer but all utilities, that the utility spends the money,
7 makes the improvements, and then they're able to recover that
8 money in rates. And there are a handful of exceptions, but
9 generally speaking, utilities don't get rates approved in the
10:31AM 10 hopes that they will actually provide the service that the
11 rates are intended to cover.

12 Q. So it would be typical --

13 A. So for capital investments, and that means spending
14 money on a tank or spending money on meters, you know, to buy
10:32AM 15 capital items, typically, the utility has to spend the money,
16 and then they recover the money over the period of time,
17 during the life of the property. They get a return on the
18 investment or interest expense and they get depreciation on
19 that asset.

10:32AM 20 Q. So it would not be typical for the PSC to grant the
21 utility the money to make improvements before the improvements
22 have been made?

23 A. That's very -- quite strictly correct, yes.

24 Q. Okay.

10:32AM 25 MS. HEINTZ: Thank you.

1 THE COURT: Cross-examination, Mr. Harrison.

2 * * *

3 CROSS-EXAMINATION

4 BY MR. HARRISON:

10:32AM 5 Q. You testified that you were involved, at least to
6 some degree, in the 2005 rate case?

7 A. Yes.

8 Q. Involving Suburban?

9 A. Yes.

10:32AM 10 Q. Are you aware that Suburban asked for what I'll
11 call a pass-through, and I don't know what the correct
12 terminology in the PSC parlance is, but a pass-through to be
13 able to use Public Water Supply District water and pass
14 through the cost to their -- to its customers?

10:33AM 15 A. Yes, I am aware of that.

16 Q. All right. Are you aware of what the
17 Commission's -- what the decision was on that?

18 A. Yes, I am.

19 Q. Which is what?

10:33AM 20 A. Well, in the rate case, Suburban had also submitted
21 an engineering report outlining some -- some system
22 improvements. And the report showed that it would have been
23 more economical to fix up the system as it was instead of
24 paying the rate that the district was charging.

10:33AM 25 Q. So the answer was no?

1 A. So the answer was the most economical alternative
2 was to fix the system up.

3 Q. And the request for the pass-through, in my lingo,
4 was denied?

10:33AM 5 A. And right, that's correct.

6 Q. Okay. You testified that -- And I want to make
7 sure I understand your testimony. You testified that some
8 improvements need to be done to the system no matter who was
9 going to operate it in the future?

10:33AM 10 A. Yes.

11 Q. Is that a fair statement?

12 A. Yes.

13 Q. And I guess what you're saying is, if the Public
14 Water Supply District is going to take over, then that's one
10:34AM 15 set of improvements, potentially. If Suburban is going to
16 continue to operate, then that's potentially another set of
17 improvements?

18 A. That's not what I said, sir.

19 Q. Okay. Well, I'm trying to understand what your
10:34AM 20 testimony is.

21 A. Okay. I'm saying -- I'm saying the improvements
22 should be made no matter -- the same improvements need to be
23 made no matter who it is takes over.

24 Q. Okay. So --

10:34AM 25 A. And in fact, some of these were addressed in the

1 rate case.

2 Q. Okay. So the same, I'll call them the same sort of
3 minimal, minimum improvements need to be made no matter who
4 continues -- no matter who operates it after today?

10:34AM

5 A. That would be correct.

6 Q. And are those the ones that you listed earlier:
7 meters, you said the tank needs some rehabilitation, I think
8 was your word?

9 A. Yes.

10:34AM

10 Q. And you said that maybe the inside of the well
11 house would have to be --

12 A. Right. I said I don't know what the inside of the
13 well house looks like. I don't know if there's any immediate
14 needs in there. The tank, it -- Well, we could spend some
15 time talking about the tank, but it does need some immediate
16 let's say patchwork. It is leaking. And Mr. Burnam is
17 looking at doing that. He is taking some action on that. But
18 that -- it is needed, no matter whether he keeps it, whether
19 the District takes it, no matter -- no matter who has it, this
20 type of work needs to be done.

10:35AM

21 And metering of customers. That was something that
22 was addressed in the rate case. It still is not done. The
23 agreement was that all customers would be metered.

24 Q. You said the tank, I think your word was might need
25 some rehabilitation. What did you mean by that?

10:35AM

1 A. Well, the fact is, this tank is -- it dates to
2 probably about 1972, when the system was built. You could
3 easily argue that the tank should be replaced for a couple of
4 different reasons. One being that it is rather old and there
5 is corrosion. But it is -- apparently it has been patched,
6 literally patched with some -- of course, it is a steel tank
7 and you can weld patches of steel on it to plug leaks. That's
8 necessary today.

10:35AM

9 It really should be inspected, the inside drained
10 and inspected. It may need a coat of paint inside and out. I
11 don't know that. I don't know what the inside looks like.
12 But I would -- It wouldn't surprise me if it needed it.
13 Again, you could go to the extreme and argue that the tank
14 should be replaced.

10:36AM

15 Q. What about the standpipe? Does it need work?

10:36AM

16 A. Well, that's the tank, the standpipe.

17 Q. Oh, I misunderstood your testimony.

18 A. Yeah, that's the standpipe.

19 Q. I thought you were talking about a different --

10:36AM

20 A. No.

21 Q. So your testimony about the tank is the --

22 A. I've been talking about the standpipe; right.

23 Q. Okay. Do you know how much it's going to cost, how
24 much it would cost to make these what you call minimum, what I
25 call minimum improvements?

10:36AM

1 A. Oh, no, I don't have a figure. We're talking about
2 a welder, a little bit of material, and spot-painting. No, I
3 don't have the cost. I don't have the cost information on it.

10:37AM 4 Q. So if one of your -- If one of your colleagues
5 testified that the standpipe needs to be replaced, you would
6 disagree with that?

7 A. Well, I said that. I said that's -- The tank is --
8 You could argue that the tank is at the end of its life. That
9 would be a desirable thing. I don't think that's an immediate
10:37AM 10 necessity. Patching leaks would be -- that's an immediate
11 necessity. The replacement of the tank would be desirable.

12 Q. Do you have an estimate of when replacing the
13 standpipe will be a necessity?

14 A. I don't have an estimate. The criteria would be if
10:37AM 15 it's more expensive to try to rehabilitate it than replace it.
16 That would be one way to look at it. But I don't have a
17 figure on that, sir.

18 Q. If the standpipe needs to be replaced or were to be
19 replaced, is the current rate structure in effect for the
10:37AM 20 company sufficient to pay for that?

21 A. The current rates are not designed to pay for a new
22 tank.

23 Q. Right. So the answer is no?

24 A. It would take different rates; right.

10:38AM 25 Q. Okay.

1 MR. HARRISON: Nothing further.

2 THE COURT: Ms. Baker?

3 MS. BAKER: Thank you, your Honor.

4 * * *

10:38AM

5 CROSS-EXAMINATION

6 BY MS. BAKER:

7 Q. Good morning, Mr. Merciel.

8 A. Good morning.

9 Q. If Suburban was forced to use the connection to the

10:38AM

10 Consolidated -- to Consolidated due to Suburban's well or
11 their water tank failing or being in violation of DNR,
12 Suburban would be able to request a rate increase through the
13 Public Service Commission reflecting this; isn't that correct?

14 A. The answer is yes. Whether used permanently or if
10:38AM 15 it's on a temporary basis, then in the next rate case, that
16 could be considered as part of their cost of service during
17 the period of time being studied for rates. If it's
18 permanent, then it would take different rates and that rate
19 could be designed to cover that, yes.

10:39AM

20 Q. Thank you. From your participation in
21 rate-increase requests, is it your understanding that public
22 water systems collect revenue from their customers and, in
23 return, customers are to receive safe and adequate service?

24 A. Yes. That is correct.

10:39AM

25 MS. BAKER: No further questions.

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10:39AM

10:39AM

10:40AM

10:40AM

THE COURT: Okay. Redirect.

MS. HEINTZ: I have no further questions, your Honor.

THE COURT: Mr. Harrison, anything else?

MR. HARRISON: No, sir.

THE COURT: May this witness be finally excused?

MS. HEINTZ: Yes, your Honor.

THE COURT: Okay. You are finally excused.

You may step down.

Call your next witness.

MS. HEINTZ: Paula Belcher.

THE COURT: Please come forward, raise your right hand and be sworn.

(THE WITNESS WAS SWORN BY THE COURT.)

* * *

THE COURT: Okay. Please take the witness stand.

(The witness complied.)

* * *

THE COURT: You may proceed, Ms. Heintz.

MS. HEINTZ: Thank you, your Honor.

1 PAULA BELCHER

2 being first duly sworn, testified as follows:

3 * * *

4 **DIRECT EXAMINATION**

5 BY MS. HEINTZ:

6 Q. Good morning, Ms. Belcher. I just have a few
7 questions for you.

8 Please state your name.

9 A. It's Paula Belcher.

10:40AM 10 Q. And you are here under subpoena?

11 A. Yes, I am.

12 Q. You are the vice-president of Suburban?

13 A. I am employed by Vista Home Management, and I am
14 the Vice-President for Vista Home Management Company.

10:40AM 15 Q. Okay. You're not listed as the Vice-President of
16 Suburban on its Annual Report with the Secretary of State?

17 A. Not to the best of my knowledge.

18 Q. And you're not a shareholder?

19 A. I'm not a shareholder.

10:41AM 20 Q. And so you are not one of the shareholders or a
21 member of the board of directors that voted on the decision to
22 dissolve the corporation?

23 A. No.

24 Q. Okay. You do oversee the day-to-day operations of
25 Suburban?

1 A. As executive vice-president for Vista Home
2 Management Company, my job is to manage the company that we --
3 that we oversee, so yes.

10:41AM

4 Q. Okay. But you defer all major decisions with
5 regard to the water system to Mr. Burnam?

6 A. Yes.

7 Q. And you don't have the authority to make any
8 financial decisions with regard to the water system?

9 A. No, I don't.

10:41AM

10 Q. Okay. And Mr. Burnam is the person who makes those
11 financial decisions with regard to the water system?

12 A. Yes. That's correct.

13 Q. Okay. And I think this number was out there
14 earlier but I just want to make sure. Suburban serves
15 approximately 150 residents?

10:41AM

16 A. That approximate number is based -- yes, that's
17 correct.

18 Q. Okay. Thank you.

19 MS. HEINTZ: That's all I have for you.

10:42AM

20 THE COURT: Mr. Harrison?

21

* * *

22

CROSS-EXAMINATION

23 BY MR. HARRISON:

24 Q. It's correct that you're the person who's in charge
25 of the files and books and records of Suburban?

10:42AM

1 A. That is correct.

2 Q. All right. It's also true, isn't it, that you'd be
3 considered the custodian of records of Suburban Water. Is
4 that a correct statement?

10:42AM 5 A. That would be correct.

6 Q. And you're familiar with the operations of the
7 company on a day-to-day basis; correct?

8 A. Correct.

9 Q. You're also familiar with the financial condition
10 of the company. Is that a correct statement?

11 A. That's correct.

12 Q. All right. You assist in paying the bills for the
13 company?

14 A. (Nodding head.)

10:42AM 15 Q. Is that correct? You have to answer verbally.

16 A. I'm sorry. That's correct.

17 Q. You assist in collecting money, collecting revenues
18 for the company?

19 A. That's correct.

10:42AM 20 Q. All right. Is it a fair statement, as a general
21 manager, you assist in the overall or overseeing the overall
22 financial condition of the company?

23 A. That's correct.

24 Q. All right. I want to ask about the revenues of the
25 company. Again, there's approximately 150 people who are

1 served, who receive water from Suburban?

2 A. That's correct.

3 Q. And how many people or how many people or entities
4 pay for their water?

10:43AM 5 A. There are 37 that are regular homeowners, and then
6 there are approximately three landlords.

7 Q. Okay. Explain that to the Court. What do you mean
8 by landlords? In other words, are you saying that there are
9 apartment complexes or something like that?

10:43AM 10 A. That's correct.

11 Q. And those apartment complexes, you send one bill to
12 them and they send one check to you, hopefully?

13 A. That's correct.

14 Q. All right. You don't separately bill all of the
10:44AM 15 apartment tenants, in other words?

16 A. No, we don't.

17 Q. Okay. And it's up to the landlord how the landlord
18 deals with that on the tenant side?

19 A. That's up to the landlord.

10:44AM 20 Q. Right. Okay. Do you know approximately how much
21 is in the bank account, the operating bank account, of
22 Suburban today, approximately?

23 A. Approximately today we -- Can I say we received
24 some money yesterday, so I think I have about \$600 in the
10:44AM 25 checking account.

1 Q. All right. Do you have an estimate, on an average
2 day, how much you have as to how much in the corporation's
3 operating account, cash?

4 A. I'm sorry. Can you repeat that?

10:44AM 5 Q. Do you have an estimate, just on the average day,
6 how much is in the corporation's operating bank account?

7 A. Depending on the time of the month it is and if
8 we've just paid the bills that we have to pay, I would say an

9 average of somewhere between three and four hundred dollars.

10:45AM 10 Q. All right. Is it correct that the company has no
11 operating -- I'm sorry -- source of operating revenue other
12 than the people who pay for water?

13 A. That's correct.

14 Q. All right.

10:45AM 15 (DEFENDANT'S EXHIBIT B WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 * * *

18 BY MR. HARRISON:

19 Q. I'm handing you Defendant's Exhibit B. Would you
10:45AM 20 look at that briefly and tell the Court what it is?

21 A. This is a form that we use for our customer
22 billings, and it shows the amount billed, and then when a
23 payment is paid, it's recorded on the sheet of paper.

24 Q. Is that maintained by Suburban in the regular
25 course of Suburban business?

10:46AM

1 A. Yes, it is.

2 MS. HEINTZ: Your Honor, may I see the exhibit?

3 MR. HARRISON: I'm going to show it to her as
4 soon as I get through laying the foundation.

10:46AM

5 THE COURT: Lay your foundation.

6 BY MR. HARRISON:

7 Q. I'm sorry. You said that was something that was
8 something that was prepared in the ordinary course of the
9 company's business?

10:46AM

10 A. Yes.

11 Q. All right. May I see it one second, please?

12 A. Uh-huh.

13 Q. Is Exhibit B specific to a particular period of
14 time?

10:46AM

15 A. Yes, it is. It is for this period of time. It's
16 for when -- Do you want me to --

17 Q. Yes.

18 A. It's from 5-13 to 6-13 of 2007. And then the bills
19 were mailed on June 14, 2007.

10:46AM

20 Q. All right. And does this exhibit show -- Well, the
21 last page, it's got a number at the bottom. Somebody wrote
22 "Total for 5-13 to 6-13, 2,269.33."

23 See that?

24 A. Uh-huh.

10:47AM

25 Q. What's that mean?

1 A. That would mean that if I would collect all the
2 money that's outstanding at those time periods, that's how
3 much the income could be.

4 Q. That's the total amount that was billed?

10:47AM 5 A. That's correct.

6 Q. The gross amount that was billed?

7 A. That's correct.

8 Q. Not collected?

9 A. No.

10:47AM 10 Q. All right.

11 MR. HARRISON: Offer Exhibit B.

12 THE COURT: Any objection to B?

13 MS. HEINTZ: I'm reviewing it, your Honor.

14 The Commission has no objection.

10:47AM 15 MS. BAKER: No objection.

16 THE COURT: B will be admitted.

17 (DEFENDANT'S EXHIBIT B WAS ADMITTED INTO
18 EVIDENCE.)

19 * * *

20 (DEFENDANT'S EXHIBIT C WAS MARKED FOR
21 IDENTIFICATION BY THE REPORTER.)

22 * * *

23 BY MR. HARRISON:

24 Q. I'm handing you Defendant's Exhibit C. Can you
25 tell the Court what that is?

9:48AM

1 A. It is an average monthly bill on the Suburban water
2 customers.

3 Q. Is this something that you prepared?

4 A. It was prepared at our office, yeah.

10:48AM 5 Q. All right. This information is kept and maintained
6 and produced in the ordinary -- I'm sorry -- in the regular
7 course of business of Suburban. Is that a correct statement?

8 A. It would be a correct statement that we would have
9 an average, yeah.

10:48AM 10 Q. Right. And this information was compiled from the
11 books and records of Suburban. Is that a correct statement?

12 A. That's a correct statement.

13 Q. All right. Explain to the Court -- I mean, I need
14 you to just sort of explain to the Court what this shows.

10:48AM 15 There's a column for service address, which is what? Where
16 the meter is?

17 A. The service address is where the meter is.

18 Q. And then there's a column that says average monthly
19 bill?

10:49AM 20 A. And that would be based on an average of based
21 over, say, a 12-month time period.

22 Q. All right. The question is, the next question is:
23 Does this cover the -- Well, at the bottom, there's a date:
24 June 28, 2007?

10:49AM 25 A. Uh-huh.

1 Q. So is this the average over the 12 months
2 immediately preceding June 28 of '07? Is that what this
3 shows?

4 A. That's correct.

10:49AM

5 Q. All right.

6 MR. HARRISON: Offer Exhibit C.

7 MS. HEINTZ: The Commission has no objection.

8 MS. BAKER: No objection from the Public
9 Counsel.

10:50AM

10 THE COURT: C will be admitted.

11 (DEFENDANT'S EXHIBIT C WAS ADMITTED INTO
12 EVIDENCE.)

13

* * *

14 (DEFENDANT'S EXHIBITS D AND E WERE MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16

* * *

17 BY MR. HARRISON:

18 Q. Now I'm going to hand you Defendant's Exhibit D and
19 E. I'm going to talk about these together because they're
20 largely the same but they are marked as two different
21 exhibits. Can you look at those and tell the Court what they
22 are?

10:50AM

23 A. These are actually the balance sheets for Suburban
24 Water.

10:50AM

25 Q. Exhibit D is dated as of when?

1 A. Exhibit D is dated -- this is dated -- this is
2 dated as of 1-22 of '06.

3 Q. And Exhibit E is dated when?

4 A. 01-23 of '07.

10:51AM

5 Q. All right. These balance sheets are part of the
6 regular record-keeping of Suburban. Is that a correct
7 statement?

8 A. That is correct.

10:51AM

9 Q. The Exhibit D shows the total assets of the company
10 of \$16,175.02. Is that correct?

11 A. That's correct.

12 Q. It shows total liabilities as of January 31st of
13 '06 of \$12,319.17?

14 A. That's correct.

10:51AM

15 Q. Exhibit E shows total assets of, as of
16 January 31st -- is that -- I'm sorry. Is that January 31st or
17 March 31st of '07?

18 A. I'm sorry. That is March. That's March 31st.

19 Q. Total assets of 17,189.81.

10:52AM

20 A. Yes.

21 Q. And total liabilities on Exhibit E, 28,211.66?

22 A. That's correct.

23 Q. Correct? I'm sorry?

24 A. That is correct. Right.

10:52AM

25 Q. All right.

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10:53AM

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MR. HARRISON: Offer D and E.
MS. HEINTZ: The Commission has no objection.
MS. BAKER: No objection, Judge.
THE COURT: D and E will be admitted.

(DEFENDANT'S EXHIBITS D AND E WERE ADMITTED
INTO EVIDENCE.)

* * *

(DEFENDANT'S EXHIBIT F WAS MARKED FOR
IDENTIFICATION BY THE REPORTER.)

* * *

BY MR. HARRISON:

Q. I'll hand you Exhibit F. Can you identify what
that is?

A. This is the Water and Sewer Annual Report that was
done for the year -- or it was ending December 31st, 2006.

Q. Was that report prepared for the company in the
regular course of its business?

A. Yes, it was.

Q. Part of this exhibit includes financial data. Is
that a correct statement?

A. That is correct.

Q. By the way, this Exhibit F covers what period of
time? Is it calendar year 2006?

A. It is calendar year.

Q. All right. Do you recall, in 2006, what the gross

1 operating revenues of Suburban were?

2 A. I -- I don't know. I -- We keep the information at
3 our office and then the information is also kept elsewhere.
4 So I did not actually prepare that report.

10:54AM

5 Q. All right. But the report was prepared in the
6 ordinary course of the company's business?

7 A. That is correct.

8 Q. The second-to-last page of the exhibit I'm pointing
9 out, showing to you now, do you see that?

10:54AM

10 A. Uh-huh. That's correct.

11 Q. At the bottom -- Well, at the bottom of the last
12 entry on that, it says total operating revenues. Is that
13 correct?

14 A. That's correct.

10:55AM

15 Q. What's the number?

16 A. 22,995.

17 Q. To the best of your knowledge, was that the total
18 operating revenue of the company for 2006?

19 A. Yes.

10:55AM

20 Q. And this was -- This report, Exhibit F, it was
21 submitted by the company to the Commission?

22 A. Yes.

23 Q. Is that a correct statement?

24 A. That is correct.

10:55AM

25 MR. HARRISON: Offer Exhibit F.

1 THE COURT: Any objection to F?
2 MS. HEINTZ: I haven't seen it yet, your Honor.
3 The Commission has no objection.
4 MS. BAKER: No objection.
10:56AM 5 THE COURT: F will be admitted.

6 (DEFENDANT'S EXHIBIT F WAS ADMITTED INTO
7 EVIDENCE.)

8 * * *
9 (DEFENDANT'S EXHIBIT G WAS MARKED FOR
10:56AM 10 IDENTIFICATION BY THE REPORTER.)

11 * * *
12 BY MR. HARRISON:

13 Q. I'm now handing you Exhibit G. Can you please
14 testify or tell the Court what that is?

10:56AM 15 A. This is a Profit and Loss Statement.

16 Q. For?

17 A. For 01-01-06 of to 12-31-06.

18 Q. For Suburban?

19 A. Yes.

10:56AM 20 Q. Is that document prepared in the ordinary course of
21 business for Suburban?

22 A. Yes.

23 Q. May I see it?

24 (The witness handed the document to Mr. Harrison.)

0:56AM 25 Q. And again, it covers calendar year 2006?

1 A. That's correct.

2 Q. And again, it shows water sales revenue --

3 Actually, it shows total revenue, 22,994.81; correct? I'm
4 sorry.

10:56AM 5 A. Yes. That's correct.

6 Q. All right. It shows total operating expenses at
7 37,031.05?

8 A. That's correct.

9 Q. So the company had an operating loss last year of
10 just over \$14,000?

11 A. That's correct.

12 Q. Exhibit G also shows a line item for a little over
13 \$17,600 for repairs and maintenance, it looks like it, to the
14 well?

10:57AM 15 A. That's correct.

16 Q. Can you tell the Court what that is?

17 A. That is -- The well went down and we had some
18 problems with the pump and the pipe going down in the ground
19 450 feet, and that had -- some of that had to be replaced.

10:57AM 20 Q. All right. Did Mr. Burnam loan money to the
21 company to make that repair?

22 A. Yes.

23 MR. HARRISON: Offer Exhibit G.

24 MS. HEINTZ: No objection.

10:58AM 25 MS. BAKER: No objection.

1 THE COURT: G will be admitted.

2 (DEFENDANT'S EXHIBIT G WAS ADMITTED INTO
3 EVIDENCE.)

4 * * *

10:58AM 5 (DEFENDANT'S EXHIBITS H AND I WERE MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 * * *

8 BY MR. HARRISON:

9 Q. Next are Exhibit H and I. Would you briefly
10 identify them, please?

11 A. Yes. This is the income tax return for Suburban
12 Water and Sewer Company for 2005.

13 Q. That's H?

14 A. That's H.

10:59AM 15 Q. All right.

16 A. And this --

17 Q. I is what?

18 A. I is the Suburban Water and Sewer income tax return
19 for 2006.

10:59AM 20 Q. These returns are prepared in the ordinary course
21 of business for Suburban?

22 A. That's correct.

23 MR. HARRISON: Offer H and I.

24 MS. HEINTZ: Your Honor, I have no objection to
25 these exhibits, but I have not practiced in this court before

1 and I am wondering if we will at any time be given copies of
2 these exhibits.

3 THE COURT: You may have copies of anything
4 that's admitted. Sure.

11:00AM 5 MS. BAKER: I have no objection.

6 THE COURT: H and I will be admitted.

7 (DEFENDANT'S EXHIBITS H AND I WERE ADMITTED
8 INTO EVIDENCE.)

9 * * *

11:00AM 10 BY MR. HARRISON:

11 Q. Okay. Now, I've given you Exhibit A, Defendant's
12 Exhibit A, which is a letter, is it not, from the Public
13 Service Commission addressed to Suburban Water?

14 A. That's correct.

11:00AM 15 Q. Is that letter contain -- Was that letter received
16 by Suburban in the ordinary course of Suburban's business?

17 A. Yes.

18 Q. And is that letter contained in Suburban's files?

19 A. Yes.

11:00AM 20 MR. HARRISON: Offer Exhibit A.

21 MS. BAKER: No objection.

22 THE COURT: A will be admitted.

23 (DEFENDANT'S EXHIBIT A WAS ADMITTED INTO
24 EVIDENCE.)

11:01AM 25 * * *

1 BY MR. HARRISON:

2 Q. Is it correct that over the last, oh, two or three
3 years, the company has had an increase in the amount, number
4 of repairs, and intensity, so to speak, of the repairs and
11:02AM 5 maintenance that needed to be done to the system?

6 A. Yes.

7 Q. I think you testified a minute ago that the well
8 was -- Was it was replaced in 2006?

9 A. No. What was replaced was the --

11:02AM 10 Q. It was the pump?

11 A. Was the pump.

12 Q. I'm sorry.

13 A. And then the 450 feet of piping down to the ground
14 that needed to be replaced in the well.

11:02AM 15 Q. All right. Those types of substantial repairs have
16 been paid for with loans, money loaned to the company by
17 Mr. Burnam. Is that a correct statement?

18 A. That's correct.

19 Q. Because the company's operating revenue isn't
11:02AM 20 sufficient to pay the substantial costs; is that correct?

21 A. That is correct.

22 Q. All right.

23 MR. HARRISON: Could I have one second, your
24 Honor?

11:03AM 25 THE COURT: You may.

1 MR. HARRISON: No further questions right now.

2 THE COURT: Ms. Baker?

3 MS. BAKER: I have no questions.

4 THE COURT: Redirect.

11:04AM

5 * * *

6 **REDIRECT EXAMINATION**

7 BY MS. HEINTZ:

8 Q. Ms. Belcher, you attended a public board meeting of
9 Consolidated No. 1 in the spring of 2007, did you not?

11:04AM

10 A. Yes.

11 Q. And you told Consolidated No. 1 at that public
12 board meeting that Suburban does not have and has never had
13 problems collecting from its customers?

11:04AM

14 A. Can I qualify that? I'm sorry. Can you repeat
15 that question again?

16 Q. Sure. You told Consolidated No. 1 at that public
17 board meeting that Suburban does not have and never has had
18 problems collecting from customers. Is that correct?

19 A. That is correct.

11:04AM

20 MS. HEINTZ: Thank you.

21 THE COURT: Mr. Harrison?

22 * * *

23

24

25

RECROSS-EXAMINATION

BY MR. HARRISON:

Q. Have you, in fact, had problems collecting from customers?

11:05AM A. There are customers that we have that we have to go out and we have to knock on the doors and ask them, just like any other company, to get the money from them, but eventually we get the money from them.

11:05AM Q. Right. In other words, some customers are slow pay?

A. That's correct.

Q. And some of them you have to pursue more aggressively than others to get them to pay?

11:05AM A. That's correct. That's why on this sheet of paper, the billing sheet that you have, some of those numbers are marked in red. And those are the numbers that are still outstanding from last month, but we're making efforts to collect that money now.

11:05AM Q. Well, you were asked a minute ago -- or you asked a minute ago if you could qualify the answer.

A. Right.

Q. What did you want to say?

A. That's what I wanted to say.

11:05AM Q. That some people you have to chase more than others?

1 A. Just like -- I assume like any other utility
2 company, yes.

3 Q. Okay.

4 MR. HARRISON: No further questions.

11:05AM 5 THE COURT: Ms. Baker?

6 MS. BAKER: No questions.

7 THE COURT: Okay. May this witness be finally
8 excused?

9 MS. HEINTZ: Could I just ask one follow-up
11:06AM 10 question?

11 THE COURT: You may. Sure.

12 * * *

13 **FURTHER REDIRECT EXAMINATION**

14 BY MS. HEINTZ:

11:06AM 15 Q. You testified, though, that you do eventually get
16 the money?

17 A. Yes.

18 Q. Even though they're slow pay?

19 A. That's correct.

11:06AM 20 MS. HEINTZ: Thank you. That's all.

21 And this witness may be finally excused.

22 THE COURT: Mr. Harrison?

23 MR. HARRISON: I may re-call hear.

24 THE COURT: Okay. You are not finally excused.

11:06AM 25 You may step down.

1 Court will be in recess for 15 minutes.

2 (A RECESS WAS TAKEN AT 11:06 A.M.)

3 THE COURT: Further evidence by the plaintiff.

4 MS. HEINTZ: The plaintiff rests, your Honor.

11:23AM 5 * * *

6 P L A I N T I F F R E S T S

7 * * *

8 THE COURT: Evidence by the defendant.

9 MR. HARRISON: I'd like to make a motion, your

11:23AM 10 Honor, if I could.

11 I'd like to make a Motion to Dismiss, Motion
12 for Directed Verdict, whatever the correct terminology is,
13 first as to defendant Gordon Burnam.

14 I don't think there's been any evidence to form
11:23AM 15 the basis for a decision that the Court could enjoin him
16 personally. I don't think that they've been able -- they
17 haven't come close to what their burden would be on an attempt
18 to pierce the corporate veil, if that is, in fact, their
19 intent. There's ample case authority that says mere control
11:23AM 20 isn't sufficient to pierce the corporate veil.

21 In effect, what they're asking for, Judge, is
22 to not preserve the status quo, which is the purpose of an
23 injunction, but it's to alter the status quo. They're, in
24 effect, asking you to make Gordon Burnam personally a utility.
11:24AM 25 They're asking you to make him stand in place of this utility.

1 He doesn't have the ability to levy charges on
2 customers, he doesn't have the ability to apply for a rate
3 increase and so forth.

4 Furthermore, if you grant an injunction as to
11:24AM 5 the corporation, he's going to be bound anyway as an officer,
6 but it's inappropriate to bind him in his personal capacity.
7 That's the first part of the motion.

8 In addition, Judge, I think that they've failed
9 under their -- they've failed to carry their burden under a
11:24AM 10 specific statute, which is 386.360, which provides that if the
11 Commission believes that someone is about to violate the law
12 or an order of the Commission, it has to direct the General
13 Counsel to commence an action.

14 I think they have to prove that the Commission
11:25AM 15 took that step, number one, and they haven't done that.

16 Number two, I think, under the regulations, our
17 client was entitled to a hearing on that under 4 CSR Part 240.
18 There hasn't been any evidence offered whatsoever on that
19 point.

11:25AM 20 So those are the -- Those are the bases for our
21 motion.

22 THE COURT: Okay. The motion will be
23 overruled.

24 Okay. Evidence by the defendant.

11:25AM 25 MR. HARRISON: Everett Baker.

1 MS. HEINTZ: Your Honor, at this point, I'm
2 going to object to the DNR witnesses. This Court has already
3 ruled that DNR is not a necessary party. Any testimony these
4 witnesses will offer is irrelevant to this action.

11:25AM 5 THE COURT: Objection will be overruled.

6 MR. HARRISON: Everett Baker.

7 THE COURT: Please come forward, raise your
8 right hand and be sworn.

9 (THE WITNESS WAS SWORN BY THE COURT.)

11:26AM 10 * * *

11 THE COURT: Okay. Please take the witness
12 stand.

13 (The witness complied.)

14 * * *

11:26AM 15 THE COURT: You may proceed, Mr. Harrison.

16 MR. HARRISON: Thank you, Judge.

17 * * *

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1 DEFENDANTS' EVIDENCE

2 * * *

3 EVERETT BAKER

4 being first duly sworn, testified as follows:

5 * * *

6 DIRECT EXAMINATION

7 BY MR. HARRISON:

8 Q. Would you state your name, please, sir?

9 A. My name is Everett Baker.

11:26AM 10 Q. What do you do for a living?

11 A. I am an engineer for the Missouri Department of
12 Natural Resources out of the Macon Regional Office.

13 Q. Does your office have jurisdiction over Boone
14 County, Missouri?

11:26AM 15 A. Yes.

16 Q. Are you familiar with the Suburban -- with Suburban
17 Water and Sewer Company and its operations?

18 A. Yes, I am.

19 Q. And its facility?

11:27AM 20 A. Yes.

21 Q. Tell me what your specific title is, sir.

22 A. I am an Environmental Engineer IV. I'm over the
23 engineering section and the public drinking water section in
24 the Northeast Regional Office.

11:27AM 25 Q. How long have you held that job?

1 A. Well, I've been a IV for about a year, but I've
2 been worked up through the ranks. I've been with the
3 department 36 years.

4 Q. How long have you been working on the Suburban
5 water system?

6 A. Since we -- since these counties were transferred
7 to the northeast region in, I think it was around 2000.

8 Q. Okay. And have you had occasion, since 2000, to,
9 you know, inspect and visit and view the Suburban facilities?

10 A. I've had people inspect it. I've been there
11 myself, but I've also -- but mostly I have people that work
12 under me --

13 Q. All right.

14 A. -- who do the inspections. I review everything
15 they do and have to approve it in order for it to be issued.

16 Q. Would those people include Michael Elkana?

17 A. Yes.

18 Q. That's E-l-k-a-n-a?

19 A. Elkana, yes.

20 Q. Elkana. I'm sorry. Would another one of those
21 people be Lantz Tipton?

22 A. Yes.

23 MR. HARRISON: And for the record, his first
24 name is spelled L-a-n-t-z.

25 (DEFENDANT'S EXHIBITS J AND K WERE MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2

* * *

3 BY MR. HARRISON:

4 Q. I'm going to show you what's been marked as

11:29AM

5 Defendant's Exhibit J, which is a series of documents. Do you
6 recognize those?

7 A. Yes. This is a report of Compliance and Operation
8 Inspection that Michael did in --

9 Q. It's dated.

11:29AM

10 A. The report was issued in 2006. It's got my
11 signature on it as approving it to be issued.

12 Q. All right. And the cover letter is dated June 19,
13 2006?

14 A. Yes.

11:29AM

15 Q. Okay. And again, the attachment is called
16 Compliance and Operation Inspection Report?

17 A. That's correct.

18 Q. Why was that report undertaken?

19 A. We do routine inspections of all the public water
20 systems within our region, and we do two different types of
21 inspections. One is a compliance and operation, which is to
22 see if a system is complying with the requirements and the
23 regulations and how the system is being operated.

11:30AM

24 We do another one called sanitary surveys, which
25 are done by engineers who do an engineering evaluation of the

1 system as well as compliance and operation. So that's a
2 routine inspection we do on all of our systems and each system
3 is evaluated according to the circumstances found.

4 Q. According to this, the inspection was done on
5 March 22, 2006?

6 A. Yes.

7 Q. But the report was not issued until June of 2006?

8 A. Yeah.

9 Q. Is that normal?

10 A. No. We generally try and get a report out sooner.
11 Michael was a relatively new person to drinking water at that
12 time and I think we had several revisions on the report that I
13 required him to do before it was issued.

14 Q. All right. So the primary author of this report
15 was Mr. Elkana and you --

16 A. More or less. And if it's not worded or if there
17 are things aren't covered that I know need to be in it, I'll
18 tell him to change the report.

19 Q. All right.

20 A. Or I may help him word it.

21 Q. Looking at the report, there under the Findings
22 section, there's a there's a finding that provides that the
23 minimum -- Well, do you have a copy of this report in your
24 file that you brought with you, sir?

25 A. Yeah.

1 Q. If you want to get it in front of you, you can
2 follow along, I guess. Do you have your copy in front of you
3 there?

4 A. Yes.

11:31AM

5 Q. Paragraph one says that "This minimum safe pressure
6 is set by regulation because pressures below 20 psi can allow
7 contamination to enter the water system."

8 A. That's correct. We have a regulation that sets the
9 minimum allowable pressure at 20 psi. It's quoted in the
10 paragraph.

11:32AM

11 Q. You're quoting 10 CSR Part 60?

12 A. 4.080(9).

13 MR. HARRISON: Judge, I'm going to ask the
14 Court to take judicial notice of the Code of State
15 Regulations.

11:32AM

16 THE COURT: Any objection?

17 MS. HEINTZ: I object on relevance, your Honor,
18 in that the PSC is not seeking to enforce any DNA regulations
19 here today.

11:32AM

20 THE COURT: What particular code section are
21 you asking me to take judicial notice of?

22 MR. HARRISON: Part 10 of the Code of State
23 Regulations, which contains the public drinking water
24 regulations.

11:32AM

25 THE COURT: Judicial notice will be taken.

1 BY MR. HARRISON:

2 Q. The next sentence says it is the conclusion that,
3 "Thus, the system is in violation of the regulations for not
4 maintaining safe water pressures."

11:32AM

5 Did I read that correctly?

6 A. That's correct.

7 Q. All right. Does the -- or did the department,
8 after issuing Exhibit J here, make any kind of recommendations
9 as to how to remedy the matters as described in this report?

11:33AM

10 A. The report itself makes a recommendation that says
11 that they should enlist the services of a consulting engineer
12 to determine the cause of the low pressures.

13 One of the things -- We had the recordings done
14 prior to this inspection. We have done pressure recordings
15 since then. And one of the things that we're trying to do is
16 to get enough information to determine why they're having the
17 low pressures and what's the cause of it. We generally need
18 to do that before we can say, "You must do these things to
19 correct it."

11:33AM

20 Q. Well, since June of 2006, when have pressure
21 recordings been taken?

22 A. Another set of recordings was taken in May of 2007
23 and the -- and a letter was issued June 14th.

24 Q. All right. That's going to be my next exhibit, as
25 a matter of fact. Have there been any other -- Since June of

11:34AM

1 '06, have there been any other pressure --

2 A. No, not since then. There were some -- also some
3 issues that I had with the recordings that we took in '06 in
4 that the recorder was set up inside of an apartment building.

11:34AM

5 And it was a little difficult for us to determine whether the
6 pressure problems were the water system's problems or the
7 apartment building's problems.

8 Q. Okay.

11:34AM

9 A. So that's one of the reasons why we set up the
10 recorder at a different location in May, so that we would have
11 a better indication of whether the system itself was having
12 low pressure issues.

13 Q. Have there been any other -- Since the June 19th
14 2006, report, have there been any other compliance and
15 operation inspection reports prepared by the DNR?

11:35AM

16 A. I think that's the last one that we have. We're
17 not scheduled to inspect them this fiscal year, I don't
18 believe.

19 Q. Did you say that you do that every two years?

11:35AM

20 A. No. No. It depends upon the size of the system
21 and the number of inspections and people that we have
22 available to do them.

23 MR. HARRISON: Offer Exhibit J.

24 THE COURT: Any objection to J?

11:35AM

25 MS. HEINTZ: I'm looking now, your Honor.

1 No objection.

2 MS. BAKER: I just have one question. Is this
3 a certified copy from DNR's file?

4 MR. HARRISON: It's not.

11:36AM 5 MS. BAKER: I have an objection in that this is
6 an uncertified copy.

7 THE COURT: Well, at this point, it's been
8 identified by the witness, so the objection will be overruled.
9 J will be admitted.

11:36AM 10 (DEFENDANT'S EXHIBIT J WAS ADMITTED INTO
11 EVIDENCE.)

12 * * *

13 THE COURT: I think we've already read most of
14 it into evidence anyway, without objection.

11:36AM 15 BY MR. HARRISON:

16 Q. Just for the record, Exhibit J here exists in the
17 file you have there; is that correct?

18 A. Yes.

19 Q. All right. Is the file you have there your
11:36AM 20 personal file or is it the DNR file?

21 A. No, it's State property.

22 Q. Okay. Exhibit K I'm going to show you now. Can
23 you identify that, please?

24 A. Yes. That's a copy of the letter we wrote after
C 1:37AM 25 the second pressure-recording session.

1 Q. Do you have a copy of Exhibit K in your file there?

2 A. Yes.

3 Q. All right. I'm going to ask you some questions
4 about it.

11:37AM

5 MS. BAKER: Your Honor, may I make an
6 objection, before this gets read into the record, that we be
7 able to look at it before portions of it are read?

8 THE COURT: Take a look at it, please.

9 MS. HEINTZ: I object that this is not a
10 certified copy.

11:38AM

11 MS. BAKER: And I will object as well.

12 THE COURT: Well, it hasn't been offered yet.

13 Lay your foundation.

14 BY MR. HARRISON:

11:38AM

15 Q. Okay. Exhibit K is a letter. The first page is a
16 letter dated June 14, 2007, written by you?

17 A. Yes.

18 Q. Did you, in fact, write that letter?

19 A. Yes.

11:38AM

20 Q. Is that your signature that appears on the second
21 page of it?

22 A. That's my signature on the file copy, yes.

23 Q. Well, okay.

24 A. Okay.

11:38AM

25 Q. Fair enough. And it's a letter, again, dated

1 June 14, 2007; right?

2 A. Yes.

3 Q. Attached to it are several pages that, I don't
4 know, they don't really have a title. It just says downloaded
5 data?

11:38AM

6 A. They're the printouts of the pressure recorder,
7 without getting technical on the explanation of it. They're
8 the printouts from the time period that they were on the
9 Suburban Water Company system.

11:39AM 10 Q. Which was in -- which was over what period of time?

11 A. It was from May 17th through -- I think I said in
12 the letter -- from it was installed May 3rd and the pressure
13 was until May 15th.

14 Q. Okay. So those, that recorder was installed as
15 part of the monitoring by DNR?

11:39AM

16 A. Yes.

17 Q. And the attachments to Exhibit K were -- are
18 records of what that recorder -- what that recorder shows?

19 A. Yeah, they're a photocopy of the printout which we
20 have in the file.

11:39AM

21 Q. All right. The Exhibit K also references an
22 individual named Lantz Tipton. Is he the one who installed
23 the recorder?

24 A. Yes.

11:39AM

25 Q. Is he the one who took the readings from the

1 recorder?

2 A. Yes.

3 Q. All right. And looking at the letter itself, you
4 say, "The recording shows frequent times that water pressures
11:40AM 5 in the system dropped below the minimum required protective
6 pressure of 20 psi."

7 A. That's correct.

8 Q. The last sentence of the first paragraph says.

9 "Thus, the Bon Gor system" -- which is the Suburban system;
11:40AM 10 yes?

11 A. Yes.

12 Q. "The Bon Gor system is in violation of the
13 regulations for failure to maintain the required minimum
14 pressure."

11:40AM 15 Is that what it says?

16 A. That's correct.

17 Q. So when these recordings were taken, the system
18 again wasn't meeting the pressure requirements?

19 A. That's correct.

11:40AM 20 Q. All right.

21 MR. HARRISON: Offer Exhibit K.

22 THE COURT: Any objection to K?

23 MS. BAKER: Again, this is still not a
24 certified copy.

11:40AM 25 THE COURT: Okay. It's been identified by the

1 witness. The objection will be overruled. K will be
2 admitted.

3 (DEFENDANT'S EXHIBIT K WAS ADMITTED INTO
4 EVIDENCE.)

11:41AM

5 * * *

6 BY MR. HARRISON:

7 Q. Are you aware of any other violations of the
8 Suburban Water system in terms of DNR requirements?

11:41AM

9 A. There were several violations that are listed in
10 the Compliance and Operation Inspection Report.

11 Q. You're talking about Exhibit J again?

12 A. That's correct.

13 Q. Okay.

11:41AM

14 A. In addition to low water pressures. There's the
15 one concerning the requirement for daily testing of chlorine.
16 That's on number 4. There's one requiring public water,
17 community public water systems to have an emergency plan for
18 continuing water service in the event of an emergency.

19 Q. That's number 5?

11:41AM

20 A. That's number 5. There's one concerning the need
21 to have a certified, qualified chief operator responsible and
22 in charge of the system. That's number 7.

23 There's the one concerning maintaining of records
24 on the system. That's number 9.

11:42AM

25 That's the regulations quoted in the report. The

1 rest of them have to do with operation of conditions that
2 aren't directly related to a regulation. However, we do have
3 some authority to require them to take action on, whether we
4 quote a regulation or not.

11:42AM

5 Q. Has the DNR made a decision about whether to take
6 any such action against Suburban?

7 A. If we had decided to take action against Suburban,
8 we would have issued notices of violation and started the
9 enforcement process. What the report is doing is notifying
10 the company that there are violations of the regulations that
11 they need to address.

11:43AM

12 Now they have the opportunity to address those
13 violations. If they're not addressed, then we will reconsider
14 as to whether to take the next step.

11:43AM

15 Q. So is it correct, then, that no decision has been
16 made as to whether that --

17 A. That's correct.

18 Q. All right. And so, therefore, you can't rule it in
19 and you can't rule it out?

11:43AM

20 A. That's correct.

21 MR. HARRISON: Nothing further.

22 THE COURT: Cross-examination, Ms. Heintz.

23 * * *

24

25

CROSS-EXAMINATION

1
2 BY MS. HEINTZ:

3 Q. Hi, Mr. Baker. DNR has not told Suburban that it
4 has to shut down, has it?

11:44AM

5 A. The department, to my knowledge, has never shut
6 down a water system, not a community water system, especially.
7 There's too many public health implications with shutting
8 water off to homes. In my history, the most we've ever done
9 is to apply to a court to have a system placed under a
10 receiver that would assure that the public water is maintained
11 and service is provided.

11:44AM

12 Q. Okay. And DNR and the PSC, they have separate
13 duties, don't they? They have separate functions, they have
14 separate statutes that they're charged with and regulations
15 that they're charged with enforcing; is that correct?

11:44AM

16 A. That's correct.

17 Q. Okay. And DNR does not have the authority to
18 excuse Suburban's obligations to the PCS, do they?

19 A. No.

11:45AM

20 MR. HARRISON: Objection. That calls for a
21 legal conclusion.

22 THE COURT: Objection will be overruled.

23 BY MS. HEINTZ:

24 Q. I'm sorry. Your answer was "No"?

11:45AM

25 A. "No."

1 MS. HEINTZ: Thank you. That's all I have.

2 THE COURT: Ms. Baker?

3 MS. BAKER: Thank you.

4 * * *

11:45AM

5 CROSS-EXAMINATION

6 BY MS. BAKER:

7 Q. Good morning, Mr. Baker. Isn't it true that a
8 shut-off of water service can cause an unsafe drop in pressure
9 and health concerns for the customers?

11:45AM

10 A. That's true.

11 Q. And an unsafe drop in pressure would cause a
12 violation situation coming from the Department of Natural
13 Resources; isn't that true?

14 A. One of the reasons why we don't shut systems off.

11:45AM

15 Q. And from your inspection and review of the
16 inspection reports, is it your opinion that the Suburban Water
17 and Sewer -- water system has been allowed to deteriorate?

18 A. It is a system that is not in good condition.

19 There are many things that need to be done. And I don't have
20 a lengthy history to tell you what shape it was in at one

11:46AM

21 time. I can only talk from when we've had it, which is
22 roughly six or seven years. It is not -- It was in poor shape
23 when we got it, and there are some things that need to be done
24 that are major issues.

11:46AM

25 Q. And so from your inspection and the reports that

1 you've seen, it remains in poor condition?

2 A. That's correct.

3 MS. BAKER: No further questions.

4 THE COURT: Redirect.

11:46AM

5 MR. HARRISON: None.

6 THE COURT: May this witness be finally
7 excused?

8 MR. HARRISON: Yes.

9 THE COURT: Okay. You are finally excused.

11:46AM

10 You may step down.

11 Call your next witness.

12 MR. HARRISON: Re-call Paula Belcher.

13 THE COURT: Okay. Just a moment, please.
14 Fred.

11:46AM

15 (Sergeant Baer approached the bench.)

16 * * *

17 THE COURT: Call your witness.

18 MR. HARRISON: Paula Belcher.

19 THE COURT: Please retake the witness stand.

11:47AM

20 You'll recall that you're still under oath.

21 You may proceed.

22 * * *

23

24

25

1 PAULA BELCHER

2 being previously sworn, testified as follows:

3 * * *

4 **DIRECT EXAMINATION**

11:47AM 5 BY MR. HARRISON:

6 Q. Paula, I re-called you because I want to ask you
7 some questions about recent contacts between Suburban Water
8 and the Commission.

9 MR. HARRISON: Would you mark that, please?

10 (DEFENDANT'S EXHIBIT L WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 * * *

13 BY MR. HARRISON:

14 Q. I'm going to show you Exhibit L. Do you recognize
11:47AM 15 that as a letter written by Suburban to the Commission?

16 A. Yes.

17 Q. Do you recognize Gordon Burnam's signature on that
18 letter?

19 A. Yes, I do.

11:48AM 20 Q. Is that a document that is kept and maintained in
21 Suburban's file as a part of its business records?

22 A. Yes.

23 Q. Let me see that, please. Oh, by the way, the
24 letter is dated June 26th, or June 29th, 2006, just for the
11:48AM 25 record; is that correct?

1 A. That's correct.

2 MR. HARRISON: I'm going to offer Exhibit L?

3 THE COURT: Any objection?

4 MS. HEINTZ: No objection.

11:48AM 5 MS. BAKER: No objection, but I don't see a lot
6 of relevance.

7 THE COURT: L will be admitted.

8 (DEFENDANT'S EXHIBIT L WAS ADMITTED INTO
9 EVIDENCE.)

11:49AM 10 * * *

11 BY MR. HARRISON:

12 Q. Looking at Exhibit L, did, say, for the period from
13 when that letter was sent to January 1st of 2007, did the
14 Public Service Commission respond at all to that letter?

11:49AM 15 A. Not to the best of my knowledge, never.

16 Q. Okay. Do you recall when any response to that
17 letter was received, either in writing or verbally?

18 A. No.

19 Q. Would it have been first around March or April of
11:49AM 20 this year?

21 A. I'm sorry. Can you say that again, please?

22 Q. Would it have been March or April, roughly, of
23 2007?

24 MS. HEINTZ: Objection, your Honor. The
11:49AM 25 witness has answered the question "No." That's a leading

1 question.

2 THE COURT: Objection will be overruled.

3 BY MR. HARRISON:

4 Q. You can answer.

11:50AM 5 A. Oh, that's correct.

6 Q. All right. In other words, there was no response
7 from the PSC for a period of time; correct?

8 A. No.

9 MS. HEINTZ: Objection. Asked and answered.

11:50AM 10 THE COURT: Objection will be sustained.

11 (DEFENDANT'S EXHIBIT M WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 * * *

14 BY MR. HARRISON:

11:50AM 15 Q. I'm going to show you Exhibit M. Can you identify
16 that?

17 A. Yes.

18 Q. Could you tell the Court what that is, please?

19 A. Uh-huh. This is a letter to Irene Crawford with

11:50AM 20 the Regional Office of the DNR.

21 Q. Written by?

22 A. Written by Van Matre and Harrison.

23 Q. Matt Volkert?

24 A. Yes. That's correct.

1:51AM 25 Q. Were you involved in the discussions leading up to

1 when Matt was asked to send this letter?

2 A. Yes.

3 Q. And he did send this letter at the request of
4 the -- of Suburban?

11:51AM 5 A. That's correct.

6 Q. The letter is dated January 31st, 2007?

7 A. Yes.

8 Q. Addressed to both the DNR Dale Johansen at the
9 Public Service Commission?

11:51AM 10 A. That's correct.

11 MS. BAKER: Your Honor, I'm going to object. I
12 don't see where she has personal knowledge of this letter just
13 because it came from Suburban. Her name is not on it, from
14 what he has read. It's not from her.

11:51AM 15 THE COURT: Are you offering the exhibit?

16 MR. HARRISON: I'm offering the exhibit.

17 MS. HEINTZ: And it's from their own law firm.
18 It's not from them.

19 THE COURT: Lay a further foundation.

11:51AM 20 BY MR. HARRISON:

21 Q. At the time this letter was written, did my firm
22 represent Suburban Water?

23 A. Yes. That's correct.

24 Q. Was the letter sent at the request and direction of
25 Suburban Water?

1 A. Yes, it was.

2 MR. HARRISON: Offer the exhibit.

3 MS. BAKER: Judge, I'm going to renew my
4 objection.

11:52AM 5 MS. HEINTZ: I will join in the objection.

6 MS. BAKER: Because unless she authored or
7 requested it to be done, she cannot speak for what Suburban
8 Water asked their attorneys to do.

9 THE COURT: Okay. Any other objection to the
11:52AM 10 exhibit?

11 MS. BAKER: Excuse me?

12 THE COURT: Any other objection?

13 MS. HEINTZ: I join in that objection and I
14 also have a relevance objection.

11:52AM 15 THE COURT: Well, objection will be overruled.
16 M will be admitted.

17 (DEFENDANT'S EXHIBIT M WAS ADMITTED INTO
18 EVIDENCE.)

19 * * *

11:52AM 20 BY MR. HARRISON:

21 Q. Exhibit M provides, among other things, that
22 Suburban is -- was willing to reasonably cooperate with both
23 DNR and the PSC in good faith to the extent that they have any
24 input as to the manner in which the process referred to in the
11:53AM 25 letter should be carried out; correct? Did I read that

1 correctly?

2 A. That's correct.

3 Q. All right. To your knowledge, did Suburban receive
4 any response to the January 31st letter from either the DNR or
11:53AM 5 the PSC?

6 A. No, we did not.

7 (DEFENDANT'S EXHIBIT N WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9

* * *

11:53AM 10 BY MR. HARRISON:

11 Q. Can you identify Exhibit N? Those are corporate
12 minutes for Suburban Water. Do you recognize Gordon Burnam's
13 signature?

14 A. I do recognize Gordon's signature.

11:54AM 15 Q. Do you recognize Bonnie Burnam's signature?

16 A. Yes, I do.

17 Q. Is it correct that that document was kept and
18 maintained in the ordinary course of business in the books and
19 records of Suburban Water?

11:54AM 20 A. That's correct.

21 MR. HARRISON: Offer Exhibit N.

22 THE COURT: Any objection to N?

23 MS. HEINTZ: No objection.

24 THE COURT: I'm sorry?

11:55AM 25 MS. HEINTZ: No objection.

1 MS. BAKER: No objection.

2 THE COURT: N will be admitted.

3 (DEFENDANT'S EXHIBIT N WAS ADMITTED INTO
4 EVIDENCE.)

11:55AM

5 * * *
6 BY MR. HARRISON:

7 Q. Just for the record real quick, Exhibit N is a
8 resolution by the company's shareholders rescinding --
9 postponing the previously approved dissolution, rescinding
10 that previous action; is that correct?

11:55AM

11 A. That's correct.

12 Q. All right.

13 MR. HARRISON: No further questions of this
14 witness.

11:56AM

15 THE COURT: Cross-examination, Ms. Heintz.

16 MS. HEINTZ: No, your Honor.

17 MS. BAKER: No further questions.

18 THE COURT: Okay. May this witness now be
19 finally excused?

11:56AM

20 MR. HARRISON: Yes.

21 THE COURT: Okay. You are finally excused.
22 You may step down.

23 Call your next witness.

24 MR. HARRISON: Could I have one minute, Judge?
25 Defendants rest.

11:56AM

1 * * *

2 D E F E N D A N T S R E S T

3 * * *

4 THE COURT: Okay. Evidence by the intervenor.

11:56AM 5 MS. BAKER: No. No witnesses.

6 THE COURT: Any rebuttal?

7 MS. HEINTZ: No. No rebuttal evidence, your
8 Honor.

9 THE COURT: Okay. Plaintiff appears by Counsel
11:57AM 10 Jennifer Heintz and Peggy Whipple. Intervenors appear by
11 Counsel Christina Baker. Defendants appear by Counsel Tom
12 Harrison and Matthew Volkert.

13 Defendant's Motion to Dismiss overruled.

14 Plaintiff adduces evidence and rests.

11:57AM 15 Defendant moves for directed verdict. Said
16 motion overruled.

17 Defendant adduces evidence and rests.

18 Intervenor offers no evidence.

19 MR. HARRISON: Your Honor --

11:57AM 20 THE COURT: No rebuttal.

21 Yes?

22 MR. HARRISON: I don't know what your entry is
23 going to be, but if it please the Court, we'd like an
24 opportunity to submit a short brief on a couple of issues.

11:57AM 25 THE COURT: By when? Two o'clock this

1 afternoon?

2 MR. HARRISON: I doubt if I can get it done
3 that quickly, your Honor.

4 THE COURT: Well, I think that the water is to
11:57AM 5 be cut off by the 1st of July, and that's Sunday.

6 MR. HARRISON: Yeah, and we're not going to do
7 that. We're not going to do that. We're not going to --

8 THE COURT: Well, there are going to be various
9 reasons you're not going to do that, Mr. Harrison.

11:57AM 10 MR. HARRISON: Well, fair enough, Judge. If
11 you don't want -- If you don't --

12 THE COURT: I don't think there's time for a
13 brief is what I don't think.

14 MR. HARRISON: All right.

11:58AM 15 THE COURT: No rebuttal. Evidence closed.

16 Plaintiff's Request for Preliminary Injunction
17 sustained. Defendants to continue to provide safe and
18 adequate supply of water to -- What's the subdivision? Bon
19 Gor?

11:58AM 20 MS. HEINTZ: Bon Gor. Bon Gor Estates.

21 THE COURT: -- to Bon Gor Estates, pending
22 approval of any change by Missouri Public Service Commission.

23 Court waives posting of bond, since plaintiff
24 is acting on behalf of State of Missouri.

11:59AM 25 Okay. Anything else?

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MS. HEINTZ: I believe that's all, your Honor
thank you.


THE COURT: Okay. Is the grand jury ready?
(Hearing adjourned at 11:59 a.m.)

* * *

REPORTER'S CERTIFICATE

I, Ann K. Sprague, Certified Court Reporter for Division I of the Thirteenth Judicial Circuit Court of Missouri, at Columbia, do hereby certify that I was present on June 29, 2007, and reported all of the proceedings in the case of Missouri Public Service Commission, Plaintiff, vs. Suburban Water and Sewer Company, Inc., and Gordon Burnam, Defendants Case No. 07BA-CV02632. I further certify that the foregoing pages contain a true and accurate transcript of those proceedings.

Transcript completed this 13th of July, 2007.


Ann K. Sprague CCR 492, RPR, CSR
Official Court Reporter
Thirteenth Judicial Circuit
Division I

UNANIMOUS WRITTEN CONSENT OF
THE SHAREHOLDERS OF
SUBURBAN WATER AND SEWER COMPANY

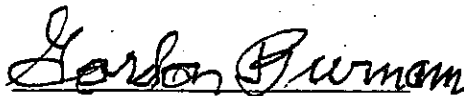
The undersigned, being all of the shareholders of Suburban Water and Sewer Company, a Missouri corporation (the "Corporation"), hereby consent to the actions set forth below, in accordance with Section 351.273 RSMo., with the same force and effect as if such actions were approved by unanimous vote at a duly held meeting of the shareholders of the Corporation, and hereby further waive notice of any such meeting.

WHEREAS, by corporate action dated January 31, 2007, the undersigned shareholders approved the dissolution and winding up of the Corporation; and

WHEREAS, since said date, the Missouri Public Service Commission has initiated legal actions against the Corporation, including a complaint for statutory penalties and a petition for injunction, and the Board of Directors of the Corporation believes that it is in the best interests of the Corporation and its shareholders to delay said dissolution and winding up of the Corporation in order to respond to said actions; and

NOW, THEREFORE, BE IT RESOLVED, that the Corporation shall postpone the previously-approved dissolution and winding up of its business and affairs and continue to conduct its business for the time being under the supervision of the Board of Directors.

IN WITNESS WHEREOF, the undersigned shareholders have executed and delivered this Unanimous Written Consent as of the dates set forth below

 Date: June 25, 2007
Gordon Burnam

 Date: June 25, 2007
Bonnie Burnam

Attachment C

1 BEFORE THE PUBLIC SERVICE COMMISSION
 2 STATE OF MISSOURI
 3 _____
 4
 5 THE STAFF OF MISSOURI)
 6 PUBLIC SERVICE COMMISSION,)
 7) Case No. WC-2007-0452
 8 Petitioner,)
 9)
 10 vs.)
 11)
 12 SUBURBAN WATER AND SEWER)
 13 COMPANY AND GORDON BURNAM,)
 14)
 15 Respondents.)

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DEPOSITION OF BONNIE BURNAM
 Taken on behalf of Petitioner
 July 17, 2007

□

2

1

I N D E X

Page 1

Attachment D

2 EXAMINATIONS

3 Direct Examination by Ms. Syler Brueggemann 6

4

5 EXHIBIT INSTRUCTIONS

6 Exhibits attached in a separate binder.

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1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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5 THE STAFF OF MISSOURI)
 6 PUBLIC SERVICE COMMISSION,)
 7) Case No. WC-2007-0452
 8 Petitioner,)
 9)
 10 vs.)
 11)
 12 SUBURBAN WATER AND SEWER)
 13 COMPANY AND GORDON BURNAM,)
 14)
 15 Respondent.)
 16

17 DEPOSITION OF WITNESS, BONNIE BURNAM,
 18 produced, sworn, and examined on July 17, 2007, between the
 19 hours of 8:00 a.m. and 6:00 p.m. of that day at the offices of
 20 Public Service Commission, Jefferson City, Missouri, before
 21 TRACY L. THORPE TAYLOR, CCR. No. 939, within the State of
 22 Missouri, in a certain cause now pending before the Missouri
 23 Public Service Commission, wherein Staff of Missouri Public
 24 Service Commission is Plaintiff and Suburban Water and Sewer
 25 Company and Gordon Burnam are Defendants.

□

4

1 A P P E A R A N C E S
 2 FOR THE PETITIONER:
 3 STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION
 4 200 Madison Street, Suite 800
 5 Jefferson City, Missouri 65102-0360
 6 573-526-7393
 7 by: Ms. Shelley Syler Brueggemann

8

9 FOR THE RESPONDENTS:

10 VAN MATRE, HARRISON, AND VOLKERT, P.C.

11 1103 East Broadway

12 Columbia, Missouri 65201

13 573-874-7777

14 by: Mr. Thomas M. Harrison

15

16 FOR OFFICE OF THE PUBLIC COUNSEL:

17 OFFICE OF THE PUBLIC COUNSEL

18 200 Madison Street, Suite 650

19 Jefferson City, Missouri 65102

20 573-751-5565

21 by: Ms. Christina Baker

22

23

24

25

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5

1 CERTIFIED COURT REPORTER:

2 TRACY L. THORPE TAYLOR, C.C.R. NO. 939

3 MIDWEST LITIGATION SERVICES

4 3610 Buttonwood

5 Columbia, Missouri 65201

6 573-442-3600

7

8 ALSO PRESENT: Ramon Gordon Burnam, Paula Belcher

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1 IT IS HEREBY STIPULATED AND AGREED by and
2 between Counsel for the Plaintiff and Counsel for the
3 Defendant that this deposition may be taken by TRACY L. THORPE
4 TAYLOR, a Certified Court Reporter, C.C.R. 939, thereafter
5 transcribed into typewriting, with the signature of the
6 witness being expressly requested.

7 BONNIE BURNAM,
8 of lawful age, having been produced, sworn, and examined on
9 the part of the Petitioner, testified as follows:

10 DIRECT EXAMINATION MS. SYLER BRUEGGEMANN:

11 Q. Could you state your name for the record,
12 please?

13 A. Bonnie Burnam.

14 Q. And are you familiar with Suburban Water and
15 Sewer Company?

16 A. Yes.

17 Q. And how are you familiar with that company?

18 A. I'm the secretary of the corporation and I'm a
19 stockholder.

20 Q. Okay. And as the secretary, what are your
21 duties?

22 A. Just the duties of any corporate secretary.

23 Q. Like?

24 A. It might be to keep the minutes, which I have
25 not done too well, but I have occasionally done them in years

□

7

1 past and just oversee things like the -- I have done some of
2 the bookkeeping in it, that sort of thing.

3 Q. Do you file any of the filings with the
4 Missouri Secretary of State?

5 A. I help an assistant prepare it and I sign it.

6 Q. Okay. Do you help or control the filing of
7 the annual reports to the PSC?

8 A. That's what I thought you meant before.

9 Q. Well, there's the Missouri Secretary of State
10 annual reports and then there's also the Public Service
11 Commission annual reports. Do you know which ones you're
12 familiar with?

13 A. Just the annual report. The Secretary of
14 State, you mean like the franchise?

15 Q. Like the certificate of good standing that the
16 company has with the state.

17 A. That we pay 40 bucks a year for?
 18 Q. I believe probably so.
 19 A. Yes. I'm familiar.
 20 Q. Okay. And then are you also familiar with the
 21 PSC annual reports?
 22 A. That's the one we file every year.
 23 Q. How about this? This has been marked as
 24 Petitioner's Exhibit No. 3.
 25 A. Yes.

8

1 Q. That is a Secretary of State --
 2 A. Yes.
 3 Q. -- filing?
 4 A. Yes.
 5 Q. Are you familiar with that?
 6 A. Yes.
 7 Q. Okay. And do you help prepare that?
 8 A. Yes. Or I am aware that it is being prepared.
 9 Q. Okay. Do you do that -- are you familiar with
 10 Vista Home Management Company also?
 11 A. Yes.
 12 Q. Do you help file or control the filing for
 13 Vista?
 14 A. Yes.
 15 Q. Okay. Do you actually --
 16 A. No. My -- our CPA filed it.
 17 Q. Okay. Do you know why Paula Belcher is listed
 18 as the vice president on --
 19 A. Because we needed --

32649bburnam071707
20 Q. -- Suburban --
21 A. -- to have an officer of the company when
22 we're out of town -- when both my husband and I are out of
23 town, the president and secretary. And she is left in charge
24 and we needed to have somebody in charge while we were gone.
25 Q. So Paula Belcher is the vice president

□

9

1 of --
2 A. Yes.
3 Q. Hold on. -- of Suburban Water and Sewer
4 Company?
5 A. Yes.
6 Q. Okay. And when was she appointed as vice
7 president?
8 A. Two or three years ago, a couple. We put her
9 in there so she could sign papers in our absence.
10 Q. Did you tell Paula she was the vice president?
11 A. I must have.
12 Q. Okay. But you don't exactly recall?
13 A. Don't recall.
14 Q. Okay. Okay. For other official reports to
15 DNR or to the Public Service Commission, do you oversee those
16 also?
17 A. I'm not aware of other reports we've done.
18 DNR, did we send samples in or something like that? Is that
19 what you mean?
20 Q. I think so.
21 A. I have not overseen them.
22 Q. Okay. Now, are you familiar with a

23 Disposition Agreement that came out of the rate case for
24 Suburban Water and Sewer in 2005?

25 A. I'm not -- have not particularly seen it.

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1 Q. Okay. You can look at this whole document.
2 This is Exhibit G, but I'm going to turn you to the page that
3 I'm going to be focusing on. If you want to look at that,
4 there are five pages to that Disposition Agreement in
5 Exhibit G. That is the third page, I believe. So if you want
6 to make sure that's what you're looking at, take your time.

7 A. What part of it would you like me to look at?

8 Q. Well, the -- I'm -- it's on the page that I'm
9 going to focus on.

10 A. All right.

11 Q. Okay. Are you aware of the Disposition
12 Agreement between Suburban Water, OPC, Office of Public
13 Counsel, and the Missouri Public Service Commission that
14 Suburban Water entered into?

15 A. I do not -- I do not know the details.

16 Q. Okay. Have you ever seen this document
17 before?

18 A. No.

19 Q. You haven't ever seen it?

20 A. Not to my knowledge.

21 Q. Okay. On item No. 6 on page 3 of the
22 dissolution -- or I'm sorry, of the Disposition Agreement it
23 states that, The company will review its customer records and
24 determine if any of its present customers paid a deposit that
25 should be refunded with appropriate interest.

1 Were you aware of that --
2 A. I --
3 Q. -- condition?
4 A. Yes. I heard of it.
5 Q. Okay. Do you know if that's been done or not?
6 A. I don't think we have a record of what the
7 customers had.
8 Q. Okay.
9 A. I think it's been lost in the past.
10 Q. You think it was just lost somewhere in your
11 papers?
12 A. And that -- the present -- it has not changed
13 since the first years we were practically in business.
14 Q. What do you mean? On deposits?
15 A. That's correct. They were only for the first
16 people there and they've been long gone. It was probably used
17 up in bad debts.
18 Q. Okay.
19 A. You know, people as they left, did not pay
20 their bills.
21 Q. Tenants you mean?
22 A. Exactly. Clients, whatever, customers.
23 Q. Okay.
24 A. It should have been off the books. I'm aware
25 it's not.

1 Q. Okay. If you'll look at No. 8, That the
2 company will develop and distribute to all customers a
3 brochure detailing the rights and responsibilities of the
4 utility and its customers.

5 Are you aware of that condition?

6 A. I have heard it discussed.

7 Q. And who discussed it?

8 A. Paula and Gordon.

9 Q. Okay. And what was said about that one?

10 A. That it has been done now is what I thought.

11 Q. Okay. And then on condition No. 9 -- well,
12 back up one second.

13 Did you see a copy of the brochure?

14 A. I don't think so.

15 Q. Okay. Condition No. 9 states that, The
16 company will develop a continuous property record system for
17 plant. And it goes in some -- into some of the details.

18 Are you aware of that condition?

19 A. Not -- I -- I don't -- I don't really -- I'm
20 not really aware of the condition, period.

21 Q. Do you know what a continuous property record
22 system is?

23 A. I would assume it's date of purchase and
24 depreciation thereafter.

25 Q. Okay. Do you know if there's something

□

13

1 that -- a document that's been compiled that has that
2 information?

3 A. I'm not aware of it.

4 Q. Okay. Now, there's no number on this next
5 one, but we've been calling it No. 10 because it's below
6 No. 9, and that talks about installing meters for all
7 buildings no later than August 31st of 2005. Have you been
8 made aware of that condition?

9 A. Not really.

10 Q. What's "not really"?

11 A. Not until this meeting came up.

12 Q. Okay. Did you know much about the meters
13 for Suburban Water and Sewer Company in the past?

14 A. I know they had to read them. That's about
15 it.

16 Q. For what purpose?

17 A. For billing.

18 Q. Okay. Do you know if they stopped reading
19 them?

20 A. I don't believe they ever have.

21 Q. Okay. Do you know if meters have been
22 installed for all buildings?

23 A. I do not know.

24 Q. Okay. Going down to the next one below that,
25 which is also blank so we've been -- but it's been called

□

14

1 No. 11, The company will implement a 10-year replacement
2 program.

3 Are you aware of that condition?

4 A. I'm not.

5 Q. Okay. Have you ever heard of a 10-year
6 replacement program for existing meters?

7 A. Not really. Not --

8 Q. what do you mean "not really"?

9 A. I've heard of it as -- after this meeting was
10 called.

11 Q. which meeting?

12 A. Today's and the last week's or whatever.

13 Q. Okay. So you learned of this condition in the
14 last few weeks?

15 A. Yes.

16 Q. Okay. And then the next one is 12. And we're
17 going through 15, just so you know when this will stop. The
18 company will install flush valves with the flushing
19 capability, blah, blah, blah.

20 Were you aware of that condition?

21 A. No.

22 Q. Do you know what -- are you generally involved
23 with the actual physical plant of the water system?

24 A. I am not.

25 Q. So are you familiar with the pumps and the

□

15

1 standpipe?

2 A. Only when we buy them.

3 Q. And why is that?

4 A. Because most things that cost over \$100 or not
5 an electric bill or bleach bill, I usually know about.

6 Q. Do you write the checks?

7 A. No, I do not.

8 Q. Do you review the bills?

9 A. I review the checks after they're written.

10 Q. For what purpose?
11 A. For accounting purposes.
12 Q. Do you do the accounting work for Suburban
13 Water and Sewer Company?
14 A. Yes.
15 Q. So do you balance the books?
16 A. Yes.
17 Q. Okay. And balancing the books in -- I was --
18 it was indicated to me that Suburban Water and Sewer
19 officially has no employees?
20 A. Correct.
21 Q. And that they contract -- that Vista Home
22 Management somehow gets the work done that is needed to be
23 done for the --
24 A. They do the labor.
25 Q. -- Suburban Water System? Okay.

□

16

1 And we may need to make sure we speak
2 separately so that the court reporter can correctly write down
3 what we each say.
4 A. Vista Home Management Company provides labor.
5 Q. Okay. How does Vista bill out for that labor?
6 A. All right. I control the billing on Vista
7 Home Management and I bill them periodically.
8 Q. Bill Suburban Water and Sewer Company?
9 A. Yes. For manhour labor.
10 Q. So everything's per hour?
11 A. Correct.
12 Q. Do you have a lot of Vista employees that do

13 work on the Suburban Water and Sewer System or for -- or for
14 Suburban?

15 A. Only one regular.

16 Q. Which one's that?

17 A. His name is James Baumann.

18 Q. Okay.

19 A. But others, when there is labor to be done,
20 have worked there.

21 Q. Do they fill in as necessary?

22 A. Where they worked is how I receive that
23 message. They fill out time sheets where they worked.

24 Q. So specific locations on the water/sewer
25 system?

17

1 A. No.

2 Q. What do you mean by "where they worked"?

3 A. Where they worked for the Vista properties.

4 Vista Home Management has other properties where these people
5 have worked and they fill out a time sheet. When they've
6 worked at the Bon Gor for water plant or lines or whatever,
7 they put down how many hours they worked there.

8 Q. Okay. So it's a tracking --

9 A. And so through Vista's payroll records, I
10 would know when to bill Suburban Water and Sewer.

11 Q. Okay. How are you involved otherwise with
12 Vista Home Management?

13 A. I am a stockholder and secretary of that
14 corporation.

15 Q. Okay. Now, when it comes to Suburban Water

16 System, who makes decisions on day-to-day operations?

17 A. I do not.

18 Q. who would you -- do you know who makes

19 day-to-day --

20 A. Paula takes care of most of the business.

21 Gordon takes care of a lot of it. If she has a problem, I --

22 she calls him.

23 Q. Okay.

24 A. I don't always even know it's happening.

25 Q. Okay. So small or large decisions, you're not

□

18

1 involved?

2 A. I am not involved.

3 Q. Okay. But you are involved in reviewing the

4 books and that --

5 A. Yes.

6 Q. -- sort of record keeping?

7 A. That's correct.

8 Q. Okay. So then if improvements or something

9 breaks on the system and something needs to be fixed happens,

10 you're not receiving those phone calls?

11 A. No.

12 Q. Okay. You may be there when someone's

13 receiving those phone calls?

14 A. That's right.

15 Q. But you're not taking them?

16 A. That's right.

17 Q. Okay. Now, are you aware of the rate case

18 that was filed in late 2004 to early 2005?

19 A. I'm aware -- I'm aware we had a rate increase.

20 Q. Okay. Were you aware of the actual rate case
21 going on -- the rate case filing for Suburban Water and Sewer
22 Company?

23 A. I was aware it was being done.

24 Q. Okay. Did you initiate, on behalf of Suburban
25 Water System, the proceeding with the PSC to increase rates?

19

1 A. I don't -- I don't think so.

2 Q. Okay. Do you know of who would have directed
3 Suburban Water and Sewer to file this case -- that case?

4 A. Perhaps one of the attorneys. I don't really
5 know.

6 Q. Okay. Who would have told the attorneys to go
7 ahead?

8 A. Probably Gordon. Gordon would have and Paula
9 would have made that -- and I would have been aware that they
10 were trying to get one, but I did not do it myself.

11 Q. Were you involved with the 1993 rate case at
12 all for Suburban Water System?

13 A. Probably, but I don't remember anything about
14 it.

15 Q. Okay.

16 A. I don't really remember it. Is that the only
17 one we ever had in the history? I'm not supposed --

18 Q. I'm not sure that I've gone back in further
19 records.

20 A. I think --

21 Q. '93 and 2005 are the ones I've been made aware

22 of.

23 A. Okay.

24 Q. For the last rate case, were you involved with

25 any of the meetings that went on --

□

20

1 A. You're talking about in 2005?

2 Q. -- for Suburban Water and Sewer System with
3 the Public Service Commission?

4 A. I was not present.

5 Q. Okay. Did you have anything to do with the --
6 let me strike that, start over.

7 In looking at item -- going back to Exhibit G
8 that is in front of you, looking at item No. 13, just so we
9 can go through each of these to make sure, it states, The
10 company will replace the standpipe with an inlet -- with some
11 more details.

12 Were you aware of that condition?

13 A. No.

14 Q. Number 14 states, The company, meaning
15 Suburban, will contract with a certified operator to maintain
16 the company's well and distribution system.

17 Were you aware of that condition?

18 A. I was. I know they were searching for one.

19 Q. And who is "they"?

20 A. Gordon and Paula.

21 Q. And do you know who they contacted?

22 A. No.

23 Q. Okay. Do you know if they came close to

24 getting one?

25 A. No.

21

1 Q. Okay. Do you know if they -- do you know if
2 they did go ahead and get one?

3 A. I know they have not.

4 Q. Okay. On item 15 it states, The company will
5 provide quarterly reports regarding monthly customer meter
6 usage and monthly master meter data.

7 were you aware of that condition?

8 A. No.

9 Q. So a quarterly report on meter usage data
10 wouldn't be something that you would handle?

11 A. No.

12 Q. Okay. who would handle that?

13 A. Paula.

14 Q. Okay.

15 A. Or -- I'm sorry.

16 Q. No, it's okay. Something else?

17 A. I don't know these things always.

18 Q. Okay.

19 A. I wouldn't have the -- I don't keep track of
20 the readings or --

21 Q. And how often does Suburban Water System have
22 board of directors meetings?

23 A. We could have one every week, we just don't
24 call it that.

25 Q. When do you have an official Suburban board of

1 directors meeting with minutes?

2 A. I don't -- I don't know.

3 Q. Infrequently?

4 A. Infrequently.

5 Q. Same for the shareholders meetings?

6 A. Same.

7 Q. Okay. When you have those meetings, is Paula
8 involved?

9 A. Yes. Or not. Sometimes. That's all I can
10 say.

11 Q. One thing I'm now confused on that I need to
12 ask you about, I'm handing you Petitioner's Exhibit No. 7
13 that -- in the resolution says, The corporation shall postpone
14 the previously approved dissolution. Whose signatures are on
15 that?

16 A. Gordon's and mine.

17 Q. Did Paula, as vice president, need to be a
18 part of that meeting?

19 A. I do not know.

20 Q. Was she a part of that --

21 A. I don't know.

22 Q. -- meeting?

23 A. I don't remember. When was this? Okay. This
24 was this year.

25 Q. What is the date on that?

0

1 A. June 25th.

2 Q. So --
3 A. She may have been present when we did this.
4 Q. Okay. But you're not sure.
5 A. Let me look at that date.
6 Q. Did you make those -- did you write those
7 minutes --
8 A. No, I did not.
9 Q. -- as the secretary?
10 who wrote those minutes?
11 A. I do not know. My husband may have written
12 them. It's almost a form letter.
13 Q. Okay.
14 (Petitioner's Exhibit No. 8 was marked for
15 identification.)
16 BY MS. SYLER BRUEGGEMANN:
17 Q. This is Petitioner's Exhibit No. 8, which is
18 the board of directors' written consent dated also
19 June 25th --
20 A. Yes.
21 Q. -- 2007?
22 A. Yes.
23 Q. Do you recall if you created this document?
24 A. I did not create it, but I was there.
25 Q. Okay. And who signed it?

□

24

1 A. Gordon and I.
2 Q. Okay. Was Paula there also?
3 A. I don't think so. I don't know. Yes, I
4 believe she was.

5 Q. where was this held at?

6 A. The attorney's office, I think maybe. I

7 don't --

8 Q. You don't know?

9 A. Not really.

10 Q. It was just last month. Do you remember what
11 the contents of the unanimous written consent of the board of
12 directors of Suburban Water and Sewer was about? Sorry. Let
13 me finish that.

14 MR. HARRISON: You mean what the meeting was
15 about?

16 MS. SYLER BRUEGGEMANN: Yes. I apologize.
17 That wasn't clear.

18 BY MS. SYLER BRUEGGEMANN:

19 Q. Do you recall what that meeting was about and
20 what you were signing off on?

21 A. About this action being proposed here today
22 and this last week is what it was about, the lawsuits and so
23 forth.

24 Q. But you don't remember exactly who was there
25 when you went -- when you had that meeting?

0

25

1 A. well, probably the attorneys. we had it in
2 the office.

3 Q. In their office or your office -- Vista Home's
4 office?

5 A. In their office probably. I -- I believe we
6 did.

7 Q. Okay.

8 A. Because I was getting ready to leave.
9 Q. To leave for?
10 A. A trip. And we met there and had these
11 discussions and signed the papers and so forth.
12 Q. Okay. Did you ever speak to anyone from the
13 PSC regarding the 2005 rate case?
14 A. No.
15 Q. Have you ever spoken with anybody from the PSC
16 in regards to Suburban Water and Sewer Company?
17 A. Since when?
18 Q. Why don't we say since 2005?
19 A. No.
20 Q. Have you spoken with anybody in regards --
21 with anyone from the PSC regarding Suburban Water and Sewer
22 Company before that?
23 A. Yes.
24 Q. Do you recall what that was -- what those
25 contacts were about?

0

26

1 A. Many times we had two or three audits in the
2 last 36 years, only two or three though. Very seldom did you
3 hear from them.
4 Q. Was there an audit for the 2005 rate case?
5 A. I would imagine. I was not present.
6 Q. Okay. Was there an audit for the '93 rate
7 case?
8 A. I believe there probably was.
9 Q. Do you think you were present for that one?
10 A. I'm pretty -- I probably was.

11 Q. Okay.
 12 A. But --
 13 Q. Have you, as a shareholder and -- or as
 14 secretary, directed Suburban's attorneys to --
 15 A. Prepare those statements?
 16 Q. Yes.
 17 A. Yes.
 18 Q. Do you share that authority with Gordon
 19 Burnam --
 20 A. Yes.
 21 Q. -- as president?
 22 Does Paula Belcher have the authority to
 23 advise the attorneys to take any actions?
 24 A. I don't think so.
 25 Q. Okay. So you and Gordon have the authority

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27

1 to?
 2 A. Yes.
 3 MS. SYLER BRUEGGEMANN: Okay. I think that's
 4 all I have.
 5 MS. BAKER: I have no questions.
 6 MR. HARRISON: Yeah, I don't have any
 7 questions.
 8 MS. SYLER BRUEGGEMANN: One last thing for the
 9 on-the-record before the signature question. This is a
 10 subpoena for the July 26th, next Thursday, evidentiary
 11 hearing. The subpoena states 8:30 is the time, but I'm
 12 correcting it to 8:00 a.m. for July 26th here in the
 13 Commission building. I'm sure you're aware -- very aware of

32649bburnam071707
14 the hearing that's going on next week.
15 THE WITNESS: I was hoping I wouldn't have to
16 be present.
17 MS. SYLER BRUEGGEMANN: I think you're not the
18 only one.
19 MR. HARRISON: Same deal. we'll waive
20 presentment, but not signature.
21 (PRESENTMENT WAIVED; SIGNATURE REQUESTED.)
22
23
24
25

□

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1 CERTIFICATE OF REPORTER
2
3 I, Tracy L. Thorpe Taylor, CCR, within the State of
4 Missouri, do hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly sworn by me; that
6 the testimony of said witness was taken by me to the best of
7 my ability and thereafter reduced to typewriting under my
8 direction; that I am neither counsel for, related to, nor
9 employed by any of the parties to the action in which this
10 deposition was taken, and further, that I am not a relative or
11 employee of any attorney or counsel employed by the parties
12 thereto, nor financially or otherwise interested in the
13 outcome of the action.
14
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16

Tracy L. Thorpe Taylor, CCR
Page 25

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Midwest Litigation Services
3610 Buttonwood
Columbia, Missouri
Phone 573-442-3600 * 573-636-7551

July 19, 2007

VAN MATRE, HARRISON, AND VOLKERT, P.C.
1103 East Broadway
Columbia, Missouri 65201
573-874-7777
Mr. Thomas M. Harrison
Mr. Matthew S. Volkert

In Re: Staff of Missouri PSC vs. Suburban

Dear Mr. Harrison and/or Mr. Volkert:

Please find enclosed your copy of the deposition of Bonnie Burnam taken on July 17, 2007 in the above-referenced case. Also enclosed is the original signature page and errata sheet.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheet, and sign the signature page before a Notary Public.

Please return the errata sheet and notarized signature page to Ms. Syler Brueggemann for filing prior to the trial date.

Thank you for your attention to this matter.

Sincerely,

Tracy L. Thorpe Taylor, Certified Court
Reporter

Enclosure

20 cc: Ms. Syler Brueggemann
 21 Ms. Baker
 22
 23
 24
 25

□

30

1 STATE OF _____)

2 COUNTY OF _____)

3 I, BONNIE BURNAM, do hereby certify:

4 That I have read the foregoing deposition;

5 That I have made such changes in form and/or
 6 substance within the deposition as might be necessary to
 7 render the same true and correct;

8 That having made such changes thereon, I hereby
 9 subscribe my name to the deposition.

10 I declare under penalty of perjury that the foregoing
 11 is true and correct.

12 Executed this _____ of _____, 2007, at ____

13 _____
 14 _____

15 Notary Public

16 My commission expires: _____

17 _____
 18 BONNIE BURNAM

19 Signature page to Mr. Harrison/Mr. Volkert
 20 TLT/BB, 07/19/07
 21 Staff of MO PSC vs. Suburban
 22

23

24

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1

WITNESS ERRATA SHEET

2

Witness Name: Bonnie Burnam

3

Case Name: Staff of MO PSC vs. Suburban

4

Date Taken: 7/17/07

5

Page: Line: Should read:
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Reporter: Tracy L. Thorpe Taylor, CCR

24

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1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 _____
4
5 THE STAFF OF MISSOURI)
6 PUBLIC SERVICE COMMISSION,)
7) Case No. WC-2007-0452
8 Petitioner,)
9)
10 vs.)
11)
12 SUBURBAN WATER AND SEWER)
13 COMPANY AND GORDON BURNAM,)
14)
15 Respondents.)

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DEPOSITION OF PAULA BELCHER
Taken on behalf of Petitioner
July 17, 2007

□

2 EXAMINATIONS

3 Direct Examination by Ms. Syler Brueggemann 6

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5 EXHIBIT INSTRUCTIONS

6 Exhibits attached in a separate binder.

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1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4

5 THE STAFF OF MISSOURI)
 6 PUBLIC SERVICE COMMISSION,)
 7) Case No. WC-2007-0452
 8 Petitioner,)
 9)
 10 vs.)
 11)
 12 SUBURBAN WATER AND SEWER)
 13 COMPANY AND GORDON BURNAM,)
 14)
 15 Respondent.)
 16

17 DEPOSITION OF WITNESS, PAULA BELCHER,
 18 produced, sworn, and examined on July 17, 2007, between the
 19 hours of 8:00 a.m. and 6:00 p.m. of that day at the offices of
 20 Public Service Commission, Jefferson City, Missouri, before
 21 TRACY L. THORPE TAYLOR, CCR. No. 939, within the State of
 22 Missouri, in a certain cause now pending before the Missouri
 23 Public Service Commission, wherein Staff of Missouri Public
 24 Service Commission is Plaintiff and Suburban Water and Sewer
 25 Company and Gordon Burnam are Defendants.

□

4

1 A P P E A R A N C E S
 2 FOR THE PETITIONER:
 3 STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION
 4 200 Madison Street, Suite 800
 5 Jefferson City, Missouri 65102-0360
 6 573-526-7393
 7 by: Ms. Shelley Syler Brueggemann

8

9 FOR THE RESPONDENTS:

10 VAN MATRE, HARRISON, AND VOLKERT, P.C.

11 1103 East Broadway

12 Columbia, Missouri 65201

13 573-874-7777

14 by: Mr. Thomas M. Harrison

15

16 FOR OFFICE OF THE PUBLIC COUNSEL:

17 OFFICE OF THE PUBLIC COUNSEL

18 200 Madison Street, Suite 650

19 Jefferson City, Missouri 65102

20 573-751-5565

21 by: Ms. Christina Baker

22

23

24

25

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5

1 CERTIFIED COURT REPORTER:

2 TRACY L. THORPE TAYLOR, C.C.R. NO. 939

3 MIDWEST LITIGATION SERVICES

4 3610 Buttonwood

5 Columbia, Missouri 65201

6 573-442-3600

7

8 ALSO PRESENT: Ramon Gordon Burnam, Bonnie Burnam

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1 IT IS HEREBY STIPULATED AND AGREED by and
2 between Counsel for the Plaintiff and Counsel for the
3 Defendant that this deposition may be taken by TRACY L. THORPE
4 TAYLOR, a Certified Court Reporter, C.C.R. 939, thereafter
5 transcribed into typewriting, with the signature of the
6 witness being expressly requested.

7 PAULA BELCHER,
8 of lawful age, having been produced, sworn, and examined on
9 the part of the Petitioner, testified as follows:

10 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

11 Q. Will you just state your name for the record,
12 please?

13 A. It's Paula Belcher.

14 Q. And have you been in the room and able to hear
15 the depositions of Gordon Burnam and Bonnie Burnam?

16 A. Yes.

17 Q. Now, Paula, what is your employment or your
18 occupation?

19 A. I'm an employed with Vista Home Management
20 Company as executive vice president.

21 Q. Okay. And how long have you been executive
22 vice president of Vista?

23 A. Almost five years.

24 Q. Okay. What is your primary -- what are your
25 primary duties at Vista?

□

7

1 A. Basically, I oversee the employees and keep
2 things going on a day-to-day basis.

3 Q. Now, are you familiar with Suburban Water and
4 Sewer Company?

5 A. Yes.

6 Q. And why are you familiar with Suburban?

7 A. I -- I oversee the day-to-day operations.

8 Q. For?

9 A. For Suburban Water and Sewer Company.

10 Q. Okay. Now, are you employed by Suburban?

11 A. No, I'm not.

12 Q. Are you contract help?

13 A. I'm -- I'm not sure. I'm not sure what the
14 definition is.

15 Q. Okay. Are you aware if any of your salary
16 comes from Suburban Water and Sewer Company?

17 A. I know -- let's see. Every so often if they
18 happen to have it, Suburban Water and Sewer would pay for my
19 labor.

20 Q. Okay. That's an interesting way to say that.
21 If they have it, every so often Suburban may pay for your
22 labor?

23 A. Can I change that? We -- Bonnie bills --

24 Q. For?

25 A. -- bills Suburban Water and Sewer for my

0

8

1 salary.

2 Q. Okay.

3 A. Okay? That's a better way.

4 Q. And is that for the hours that you work for
5 Suburban Water --

6 A. That -- that's correct.

7 Q. Okay. Are you an officer of Suburban Water
8 and Sewer Company?

9 A. I was not aware that I was an officer for
10 Suburban Water and Sewer Company.

11 Q. Have you become aware that you are an officer
12 for Suburban Water and Sewer Company?

13 A. I am aware now.

14 Q. Okay. And when did you become aware of that?

15 A. I became aware of that now, today.

16 Q. In Bonnie Burnam's deposition?

17 A. Correct.

18 Q. Okay. And do you know what officer you are
19 for Suburban now?

20 A. Executive vice president.
21 Q. Okay. Now, were you at all involved in the
22 2005 Suburban Water and Sewer Company rate case with the
23 Public Service Commission?
24 A. Yes.
25 Q. And how were you involved with that rate case?

0

9

1 A. Gathering facts.
2 Q. Did you initiate any of the rate -- did you
3 initiate any part of the rate case?
4 A. No.
5 Q. Do you know who did?
6 A. That would be -- that would be Gordon and
7 Bonnie Burnam as -- as shareholders in the company.
8 Q. Did they vote to initiate the rate case?
9 A. I don't know that.
10 Q. Okay. How do you know that Gordon and Bonnie
11 Burnam initiated the rate case in 2005 then?
12 A. I -- I -- because -- because it was from
13 Suburban Water. I mean --
14 Q. What was from Suburban Water?
15 A. I'm sorry. Can you repeat that question
16 again?
17 Q. How do you know that Gordon and Bonnie Burnam
18 initiated the Suburban Water 2005 rate case?
19 A. It is my impression that they talk things over
20 about Suburban Water if there's going to be any big changes
21 with Suburban Water. So that would -- that would have been my
22 assumption.

23 Q. Okay. Did you ever see any directives or any
24 other type of documentation that was initiating the rate case,
25 like a letter or memo or --

10

1 A. I saw a letter initiating the rate case to the
2 PSC.

3 Q. And who was that from?

4 A. That was from Gordon Burnam.

5 Q. Okay.

6 A. And we also had some information compiled by
7 an engineer, Mike Logston to the PSC.

8 Q. Okay. Now, why was Michael Logston hired?

9 A. He was hired to help with the rate increase.

10 Q. Did he do any sort of report?

11 A. Yes.

12 Q. And was there any sort of evaluation in that
13 report of Suburban Water and Sewer system?

14 A. Yes.

15 Q. Okay. Are you aware of what the
16 recommendation in that report for Suburban was?

17 A. I'm aware that -- that his suggestion was --
18 was to -- that it would be actually better if we would
19 purchase the water from Public Water District No. 1 at the
20 time.

21 Q. Do you know why that was -- why he stated --
22 or why his report summarized that was?

23 A. Because -- because of the age of the
24 equipment.

25 Q. Because the water/sewer system, many of the --

1 much of the plant had been put in in 1973?

2 A. Just because there were -- because of the
3 requirements, you know -- the age of the equipment and because
4 of the -- the -- you know, the DNR requirements have changed
5 over the years on what they want.

6 Q. Now, when it comes to the day-to-day
7 operations for Suburban, if there's a leak in the standpipe,
8 what do you do?

9 A. If there's a leak in the standpipe, I notify
10 Gordon.

11 Q. Okay. And why do you notify Gordon?

12 A. Because that's not a normal day-to-day
13 operation. That's -- that's something that would leak -- need
14 to let him be aware of.

15 Q. Are you letting him -- are you letting him be
16 aware of it to get authority to fix it or why are you letting
17 him know about it?

18 A. On -- well, on a leak in the standpipe, if
19 there's just one leak or two leaks, that -- I would have the
20 authority to get that fixed. I would have the authority to
21 take care of that.

22 Q. What do you not have the authority to fix or
23 to go ahead with?

24 A. I don't have the authority to spend -- I don't
25 have the authority to spend a large sum of money from Suburban

1 water and Sewer because --

2 Q. Go ahead.

3 A. Because we don't have the money and I would
4 have to call Bonnie.

5 Q. Okay. So then on major decisions, do you call
6 Gordon Burnam to let him know about the situation and then get
7 permission to do whatever you need to do?

8 A. That's correct.

9 Q. Okay. And maybe you two will discuss it in
10 detail to decide the best path to take next?

11 A. That's correct.

12 Q. Okay. Now, did you have any contact with PSC
13 Staff in the 2005 Suburban rate case?

14 A. They came to the office and did an audit in
15 the office --

16 Q. Okay.

17 A. -- of what we had, the files and things we had
18 then.

19 Q. Okay. Was that the only contact you had with
20 PSC Staff?

21 A. I went to the meeting with Gordon that they
22 had in Jeff City, the one where he met with several people.

23 Q. And what was discussed at the Jeff City
24 meeting?

25 A. There was -- the thing I remember being

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1 discussed at the Jeff City meeting was -- was the need to get
2 a certified water operator and we did discuss that.

3 Q. Okay. Were meters discussed at that meeting?

4 A. And I don't remember specifics on it.

5 Q. Do you remember if the system condition in
6 general was discussed at that meeting?

7 A. I do. I remember that the condition was
8 discussed, the standpipe condition.

9 Q. The standpipe?

10 A. Correct.

11 Q. Do you remember what about the standpipe
12 condition was discussed?

13 A. I just -- what I remember on that was that
14 the -- the age of the standpipe was a concern and that's what
15 I remember.

16 Q. Okay. Now, why don't we take this
17 opportunity -- have you seen the Disposition Agreement that
18 you've heard referred to in the prior depositions from that
19 2005 rate case? Are you familiar with that Disposition
20 Agreement?

21 A. Yes. I've seen that.

22 Q. And when was the first time that you saw that?

23 A. When something comes in the mail from the PSC,
24 I see that and make copies of it and lay it on Gordon's desk.

25 Q. Okay. Now, do you see the date that it was

14

1 signed two pages further back? Wrong way, sorry. Page 5 of
2 the agreement. Do you see the signatures there?

3 A. Yes.

4 Q. Do you see the date that Gordon signed it?

5 A. 5/26.

6 Q. Do you know if you gave that agreement to

7 Gordon Burnam to sign?

8 A. I know I laid a copy on his desk. I don't
9 know if this is -- I don't know if this is the same. I would
10 assume it's the same agreement, but I don't know. I mean, I
11 don't know that.

12 Q. Okay. Did you mail that agreement back?

13 A. And I don't -- I don't remember that. I don't
14 remember if I was the person that mailed it back.

15 Q. Okay. Did you see that -- did you read the
16 agreement at that time?

17 A. I did. I glanced through it, uh-huh.

18 Q. Did you read it after it had been signed or a
19 final agreement had been reached since you're unsure as to
20 whether or not it's been -- it had been changed?

21 A. I'm sorry. Can you repeat that again?

22 Q. Basically you said it may have been changed
23 from the agreement that you glanced through before he signed
24 it, you're not sure if the agreement had changed. Did you
25 read the Final Disposition Agreement that he signed off on?

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1 A. I remember seeing a copy of this agreement
2 after it was signed with these items on there.

3 Q. Okay. That's it. Thank you.

4 A. All right.

5 Q. So were you ever given any direction by anyone
6 as to the conditions in this Disposition Agreement?

7 A. I know -- yes.

8 Q. And what was that?

9 A. Okay. On No. 6, we did look for the deposits
Page 13

10 to see if there was a way we could refund them.

11 Q. And did you provide that information to
12 anyone?

13 A. The information that I looked for in our
14 office, because we've had -- there's been several managers
15 at -- working for Suburban Water and Sewer. I looked to see
16 if I could find any old paperwork in the office on this and I
17 couldn't. So they've got -- you know, it had got thrown away
18 over the years. I couldn't find anything that had a deposit
19 on it.

20 Q. Did you tell anybody at the PSC that
21 information?

22 A. And I don't know if I did or not.

23 Q. Okay. And then was that -- were you directed
24 to do that by Gordon or Bonnie or did you take that initiative
25 yourself?

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1 A. I think I just took that initiative myself.

2 Q. Okay.

3 A. I knew I should do that.

4 Q. Then on item No. 8, are you familiar with that
5 condition referring to brochures?

6 A. I am familiar with that.

7 Q. And do you know if a brochure was developed
8 and distributed?

9 A. I did develop a brochure and it was
10 distributed.

11 Q. And when was it developed and distributed?

12 A. That was distributed in June.

13 Q. Okay. And were you ever directed after
14 June of 2005 as to this condition by anyone?

15 A. I -- I knew that that was my responsibility
16 and that I would need to do that, but I wasn't actually aware
17 that there was a time frame that I needed to do it in.

18 Q. So why did it take two years?

19 A. It was labor and time.

20 Q. At any point -- since you said earlier that
21 Bonnie will bill out your hours to Suburban and you get paid,
22 if it's available, from Suburban, was that part of the reason
23 that the brochure didn't get developed?

24 A. No.

25 Q. Okay. On item No. 9, which is referring to a

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1 continuous property record system, are you aware of that
2 condition?

3 A. I -- I -- I -- I remember reading that.

4 Q. When do you remember reading that?

5 A. I remember reading it when this first came in.

6 Q. After the rate case was -- or the rate
7 increase was approved or before that?

8 A. I'm not sure which, whether it was before or
9 after.

10 Q. Was it around that time?

11 A. Correct.

12 Q. Okay. So did you develop a continuous
13 property record system around June of 2005?

14 A. No.

15 Q. Would that have been your responsibility?

16 A. It -- it may have been my responsibility, but
17 I -- but because it was concerning things like wells and --
18 and pumps and things like that, I did not do that. I mean,
19 it's not --

20 Q. Who typically deals with wells and things like
21 that?

22 A. Well, I would deal with new ones that we would
23 purchase. I mean, new chlorinator pumps, which would be
24 smaller pumps, but not the larger well itself.

25 Q. Who would deal with that larger well?

18

1 A. Well, it may have been my responsibility. I
2 wasn't sure whose it was.

3 Q. Okay. And I'll ask this two ways. Did you
4 and Gordon Burnam have any discussions about the conditions
5 listed here, any of the conditions listed here?

6 A. We may have discussed the conditions listed
7 here, but I don't remember -- I mean, I'm not sure what -- you
8 know, if it was divided up as to who would do what. I think
9 it was a general discussion about them.

10 Q. Did the general discussion include that they
11 needed to be completed?

12 A. Yes.

13 Q. Okay. Now, did you have that discussion with
14 Bonnie Burnam?

15 A. I don't remember having a discussion with
16 Bonnie Burnam.

17 Q. Okay. Now, back to the continuation property
18 records system. Has one of those been developed?

19 A. I have a form and we have listed some items on
20 that. I believe -- I think Matt gave you that.

21 Q. Yes. I have been provided a copy of what's
22 called a property record system on a sheet of paper. Now, did
23 you put that together?

24 A. No.

25 Q. Who put that together?

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1 A. The attorney's office.

2 Q. Okay. Do you have all the information that
3 was contained in that property record system for the different
4 items? Let me pull out -- this was labeled Exhibit J -- and
5 I'll give you the official one -- in the earlier depositions
6 that Mr. Volkert conducted. Is that the property record
7 system you're referring to?

8 A. Yes, it is.

9 Q. Okay. On the plant description in the first
10 column --

11 A. Uh-huh.

12 Q. -- is that information that you have for
13 Suburban?

14 A. Are you asking me if this form is the --

15 Q. The information in the form, the actual
16 information. Like this -- the first line it says, Standpipe,
17 it says, Date placed in service, 1973, it lists a purchase
18 price and what looks to be a proposed date of retirement since
19 it says 2023. Is that information that you had?

20 A. This is not information that I had. This is
21 information that Bonnie had.

22 Q. Okay.
23 A. Is that what you're asking?
24 Q. Thank you. That was my next question.
25 Now, we are up to what should be item No. 10,

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1 which is the next one after item No. 9 without a number,
2 talking about installing meters. Were you involved in any
3 discussions with Gordon Burnam as to meter installation for
4 Suburban Water Company?
5 A. I know that I was involved to the extent of I
6 know that some meters -- some meters were installed.
7 Q. How many do you think were installed?
8 A. Not -- I'm not sure. I think Matt gave you a
9 list. I'm not sure. I don't remember the number off the top
10 of my head.
11 Q. Now, who would have developed the list of
12 meters already installed? Who would have put together that
13 list of meters? Would you have put that together?
14 A. No. That particular list -- that -- a list of
15 meters installed, that would have come from maintenance.
16 Q. Okay. Any idea who in maintenance would have
17 put that list together?
18 A. It would have either come from someone that we
19 subcontracted out to -- we have one person we subcontract out
20 to.
21 Q. And what's that name?
22 A. That would be Fred Bradley.
23 Q. Okay. Or who else?
24 A. Or it would have been one of our maintenance

25 people that was working for us at the time.

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1 Q. Okay. Are you aware that there are meters
2 that need to be installed?

3 A. I'm -- I'm aware that there's not -- may not
4 be meters in every -- in every one.

5 Q. Okay. Is that part of your job duty, to
6 direct people to put in or install meters?

7 A. To put in would be like a new build or --
8 or --

9 Q. Yes.

10 A. So that would be a discussion that I would
11 have with Gordon and I assume Gordon would have with Bonnie
12 because that's not day-to-day operations.

13 Q. Okay. Are you aware of any reason why meters
14 weren't installed in all of the buildings?

15 A. I have -- I don't know. I don't know the
16 reason for that.

17 Q. Okay. Moving to what should be item No. 11
18 and it's talking about an implementation of a 10-year
19 replacement program for existing meters, are you aware if one
20 of those had been implemented?

21 A. We have set up a form, but I don't have
22 anything currently.

23 Q. What's on the form?

24 A. The form would be where you would have all
25 your -- you would -- your -- you basically have your home --

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1 you'd have the addresses listed and you would just change out
2 the meters as needed.

3 Q. Okay. Are you aware of whether or not meters
4 have been replaced in the last 10 years?

5 A. We have replaced meters if they have needed to
6 be replaced if they were broken or if they were unable to be
7 read. But, again, unfortunately, if you have different
8 maintenance people, what they do is they go out into the field
9 and so they'll write beside their paperwork, you know, meters
10 replaced or whatever, but unfortunately, the meters -- you
11 know, the paperwork hasn't always been kept.

12 Q. Okay. When was the last time that -- or let
13 me back up. Do you oversee the staff that reads the meters on
14 a day-to-day basis?

15 A. I oversee the maintenance staff that -- that
16 goes out once a month and reads the meters.

17 Q. Okay. Are you referring to the master meter
18 then or are you referring to customer meters?

19 A. I'm referring to customer meters.

20 Q. Okay. So the customer meters are read once a
21 month?

22 A. Customer meters are read -- are read whenever
23 possible they're read. You're talking to -- to the regular
24 addresses?

25 Q. Yes.

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1 A. Correct.

2 Q. Okay. Do you have records of those readings?

3 A. In -- those are records that we've given you
4 all.

5 Q. I'm not sure I have that one with me. There
6 were -- there was a document that was provided that had
7 readings on it, but it didn't have a meter serial number or
8 address beside it to indicate that those were all different
9 meters. So are you trying to tell me that those were all
10 different meters in the document you provided?

11 A. No. I think you're talking about -- we're
12 talking about two different meters, but --

13 Q. Yes.

14 A. -- we have the master meter and then we have
15 the meter at the addresses that we read for the customer
16 billings.

17 Q. And let me clarify this way. How many
18 customer meters are you talking about?

19 A. I'm talking about customer meters that if they
20 went to read at an address --

21 Q. And how many?

22 A. -- to do the customer billing, if that
23 meter -- the customer's -- the meter that was in that
24 particular well -- meter well was broken, we would replace it.

25 Q. And how many addresses have meters?

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1 A. I -- I don't know off the top of my head, but
2 I thought we'd given you that. Is that --

3 Q. I don't believe we have that.

4 A. Okay.

5 Q. Or not anything that correlates with an
6 address, so I would like to have that information. We did
7 actually request the information but haven't received it yet
8 so --

9 A. Well, we have 37 meters that we read at
10 customers' addresses that are single-family dwellings.

11 Q. Do you know if the serial number for the
12 meters is also connected with that address or that person's
13 name?

14 A. I don't have a list of serial numbers for the
15 meters. They've always just been kept by one, two, three,
16 four.

17 Q. Okay. All right. I think that's good. How
18 about we move to item 12 talking about flush valves. Do you
19 know if any -- if flush valves have been installed?

20 A. No.

21 Q. Not since you've worked there?

22 A. Not since I've worked there.

23 Q. And were you aware of this condition?

24 A. Number 12 still?

25 Q. Yeah.

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1 A. Yes.

2 Q. Did you have any discussions about the flush
3 valves or the 10-year replacement program with either Gordon
4 or Bonnie?

5 A. Not that I remember.

6 Q. Okay. And I'm not sure if I asked you this so
7 if I'm repeating myself, I apologize. Did you have

8 discussions with Gordon or Bonnie as to the installation of
9 meters?

10 A. You did ask me that.

11 Q. Okay. And your answer?

12 A. My answer was yes, I think we just -- I think
13 we discussed that, but I can't remember.

14 Q. Thanks.

15 A. Okay.

16 Q. Item 13 on the standpipe replacement of
17 what -- with an inlet, are you aware of whether or not that
18 has occurred?

19 A. I don't believe that has occurred.

20 Q. Okay. Do you know why?

21 A. No, I don't.

22 Q. Has it been discussed with anyone associated
23 with Suburban?

24 A. I know that -- I know that Bill Marshall's
25 been contacted to find the cost on doing that.

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1 Q. Any other discussions you're aware of?

2 A. No.

3 Q. Okay. On item No. 14, contracting with a
4 certified operator, are you aware of steps taken to contract
5 with anyone by Suburban?

6 A. Yes, I am.

7 Q. Okay. And what are those steps?

8 A. I was the -- I was the person that took the
9 certified water operator test and didn't pass. And I've tried
10 desperately to find someone to be the certified water

11 operator.

12 Q. Okay. Who have you contacted?

13 A. We've contacted -- I believe we provided you
14 with a list of the companies that we contacted --

15 Q. I haven't received it.

16 A. -- back in 2005.

17 Q. I have not received that list yet, so
18 hopefully that's forthcoming.

19 A. It was --

20 Q. And do you remember off the top of your head
21 who that included?

22 A. It was Aqua Source.

23 Q. Okay.

24 A. There was a company in Columbia, and I'm
25 sorry, I don't remember their name.

□

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1 Q. And who else?

2 A. And then there was a company down at Osage
3 Beach.

4 Q. And how recently did you contact those
5 companies?

6 A. We contacted those people back in 2005.

7 Q. And what happened?

8 A. They were unwilling to go -- they're -- most
9 of their business is south of Jeff City and so they're
10 unwilling to go north for just the one system is a problem we
11 ran into.

12 And then Gordon did try to give the system
13 away, he even offered a couple -- you know, if they would just

14 take the system. We couldn't find anybody. When I went to
15 the water certification class that I attended, there was
16 probably 15 people there in the class with me. They were
17 people that were local around in the area in Columbia and
18 nobody was interested.

19 Q. And so, unfortunately, no contract with a
20 certified operator has been executed?

21 A. No.

22 Q. Let's see. We're up to No. 15, quarterly
23 reports regarding monthly customer meter usage and monthly
24 master meter usage. We kind of went through this a minute
25 ago. Have you provided the quarterly reports for both of

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1 these sets of data?

2 A. We provided the one for the monthly master
3 meter usage.

4 Q. Okay. And why hasn't the monthly customer
5 meter usage data been provided?

6 A. It -- it was not --

7 Q. Was it read?

8 A. It --

9 Q. Or was part of it read?

10 A. A part of it was read, but it was -- I -- I
11 just was unable to do that.

12 Q. Okay. Do you not have the data?

13 A. I don't have some of the data, no.

14 Q. So I thought a minute ago you said you had
15 compiled customer readings for the 37 residential meters of
16 when they're -- whenever they're read, that you had provided

17 that information already?

18 A. On the -- on the monthly customer meter usage,
19 that would be -- what that would be would be like in the
20 winter if it was bad weather, you'd have to estimate that
21 meter. So you'd be unable to provide every month a customer
22 meter reading. I guess you would be able to do it from like
23 here to here (indicating), but I don't -- I have not done
24 that.

25 Q. And you said before that your -- that the

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1 staff, the maintenance staff doesn't necessarily read every
2 month --

3 A. That's correct.

4 Q. -- those meters?

5 So you don't necessarily even have some of the
6 months' data. Right?

7 A. Right. I wouldn't have it month by month, no.

8 Q. Okay. Okay. One last question that I'm still
9 just not clear on. And, again, you were in the depositions of
10 Bonnie Burnam and Gordon Burnam, correct, for the whole time?

11 A. Yes.

12 Q. Okay. When it comes to the 2005 rate case
13 that was filed, there's statements that Gordon and Paula
14 handled it, there's statements that Paula and Bonnie handled
15 it. Who handled the -- or who dealt with primarily the 2005
16 rate case?

17 A. What I would handle -- what I would handle
18 would be the day-to-day things like gathering of information,
19 contacting, you know -- going to the Public Water District

20 meetings. It depends on what you're asking what person did
21 what type of thing, I think.

22 Q. Who was the primary person talking to PSC
23 staff on a regular basis also?

24 A. On a regular basis talking to the PSC would be
25 Gordon Burnam.

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1 Q. Okay.

2 A. But if it was someone talking to the PSC about
3 setting up a time for like an audit, then that would be me. I
4 would talk to Dana or somebody.

5 Q. And I think this was already stated, but you
6 don't have the authority to agree to or not agree to a rate
7 increase for Suburban Water and Sewer system. Correct?

8 A. Correct. I would just -- I would just be
9 facilitating everyone viewing the records.

10 Q. Okay. And then do you sign checks?

11 A. I sign checks.

12 Q. For Suburban also?

13 A. That's correct, for Suburban.

14 Q. I'm assuming you sign checks for Vista, if
15 necessary?

16 A. If necessary.

17 Q. Okay. Did you get any responses to the notice
18 of dissolution to customers to shut off the water on July 1st?

19 A. We had -- we had some people contact the
20 office and they had asked who would -- you know, was there
21 anything we could tell them or who they would need to contact.
22 And we directed those calls to our attorney and they -- the

23 questions that they asked that we could answer, which would be
24 like where they would continue to pay their water bill, it
25 would be there at our office.

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1 Q. What other type of questions did they ask?

2 A. I think they just wanted to know if -- you
3 know, if the water was going to be shut off, what was the
4 problem. And I just directed them to the attorney's office.

5 Q. You tried not to answer anything?

6 A. That's correct.

7 Q. Did you know what those answers were?

8 A. We just felt it was best just to turn those
9 questions over to the attorney.

10 Q. Had it been discussed where those customers --
11 had it been discussed with Gordon or Bonnie where those
12 customers were going to get water from after the shut-off date
13 on July 1st?

14 A. I did not discuss that with them.

15 Q. Okay. Did you overhear any discussions they
16 may have had?

17 A. I -- I went to some meetings with Public Water
18 District No. 1 and I -- because of that, I guess I just
19 assumed that that would be where they would be getting water.

20 Q. So you never discussed with anybody associated
21 with Suburban where people were going to get their water from
22 once the water was shut off on July 1st?

23 A. Can you repeat that again? Because I'm not
24 sure how I should answer this.

25 Q. Did you discuss with anyone associated with

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1 Suburban where the customers would get water from after the
2 shut-off date on July 1st?

3 A. I as -- did I discuss that with anyone in
4 Suburban water?

5 Q. Or did anyone discuss it with you, vice-versa?

6 A. I don't remember anyone specifically
7 discussing that with me as to where they would get water. I
8 know that there was some discussion as to where and --

9 Q. And what was that discussion?

10 A. That discussion was Public Water District
11 No. 1 or -- or --

12 Q. Okay.

13 A. -- a receivership.

14 Q. What was the receivership discussion?

15 A. That was a discussion that was -- that was had
16 at the Public Water District meeting that I was at and that
17 was with the PSC there.

18 Q. Are you talking about Consolidated District
19 No. 1, just for the record?

20 A. Yes. Yes.

21 Q. And who else from Suburban was at that
22 meeting?

23 A. The first meeting I went to by myself and then
24 the next meeting -- meeting, Gordon Burnam was there.

25 Q. And so what discussions went on about sources

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1 of water after the July 1st shut-off?

2 A. With Public Water District No. 1 --

3 Q. Yes.

4 A. -- is that what you're asking?

5 Q. Yes.

6 A. There was some question about Public water
7 District No. 1 taking -- taking over the system or taking it
8 as a receivership.

9 Q. Okay. Did that sound likely?

10 A. It -- it did sound likely.

11 Q. Okay.

12 A. But I -- but I didn't pass that information on
13 to the Suburban -- you know, to Suburban water customers.

14 Q. Okay. Because it wasn't a certainty yet?

15 A. That's correct.

16 Q. And are you familiar at all with Boone County
17 Regional Sewer Company?

18 A. I am.

19 Q. And how are you familiar with them?

20 A. I know that they're the lagoon company. And
21 also I attended the meeting with Gordon when he went and
22 discussed that with them.

23 Q. Okay. And what was discussed there?

24 A. There was some discussion there about would
25 they be interested in taking over the water company, Suburban.

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1 Q. Okay. And were they?

2 A. I think there's some interest. I don't know a
3 definite yet.

4 MS. SYLER BRUEGGEMANN: Okay. I think that's
5 all I have.

6 CROSS-EXAMINATION BY MS. BAKER:

7 Q. Okay. I have some questions about the meter
8 readings. Okay? You were the person who takes the meter
9 reading data and prepares the bills from that?

10 A. I'm the person that takes the meter
11 readings -- I send the person out into the field to take the
12 meter readings and then when the meter readings come back into
13 the office and there's another person that works in the office
14 that actually does the -- that does the billing. I don't do
15 the day-to-day billing. I don't do the monthly billing.

16 Q. Okay. Are you aware of how many people are
17 paying the unmetered rate at this time?

18 A. That would be the apartment people would be
19 paying the unmetered rate.

20 Q. Okay. And that is the duplexes and the
21 four-plexes is that --

22 MR. BURNAM: If I could answer that --

23 MR. HARRISON: No, you can't answer that.

24 THE WITNESS: I'm sorry. Can you repeat that?

25 BY MS. BAKER:

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1 Q. When you say "the apartments," are you talking
2 about the duplexes and the four-plexes?

3 A. That's correct.

4 Q. Okay. And has the number of people paying
5 unmetered rates increased since 2005?

6 A. I would -- paying the unmetered rate
Page 31

7 increased?

8 Q. Yes.

9 A. Yes, it has.

10 Q. Okay. And why do you say that?

11 A. Because Mr. Burnam just explained he -- that
12 they were not reading the meters.

13 Q. How many meters have been -- have there
14 been -- how many meters have they ceased to read?

15 A. I would say that there's probably not over
16 five or six that they have ceased to read.

17 Q. Okay.

18 A. And that's just a guess, but I would say
19 probably not over five or six.

20 Q. And ceasing to read that is based on a
21 directive of Gordon Burnam. Is that your understanding?

22 A. Yes.

23 Q. Do you know what the average bill for one of
24 those would be if they read the meter?

25 A. I'm sorry, I don't know.

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1 Q. Do you know what the average bill would be if
2 they did not read the meter?

3 A. If they did not read the meter, it would be
4 the unit rate of 12.30.

5 Q. And if they did read the meter, it would be
6 based on how much water was used?

7 A. That's correct.

8 Q. Okay. And you're saying five or six of
9 those --

10 A. That's correct.
11 Q. -- a directive came not to read anymore?
12 A. I said -- I said that there were five or six
13 that we used to read that we no longer read.
14 MS. BAKER: That's what I wanted. That's all
15 the questions I have.
16 MR. HARRISON: No questions.
17 MS. SYLER BRUEGGEMANN: And for the record one
18 last time, an eight o'clock subpoena also to bring certain
19 records for the 26th of July, 20007, 8:00 a.m.
20 THE COURT REPORTER: Signature?
21 MR. HARRISON: Same drill.
22 (PRESENTMENT WAIVED; SIGNATURE REQUESTED.)
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1 CERTIFICATE OF REPORTER

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3 I, Tracy L. Thorpe Taylor, CCR, within the State of
4 Missouri, do hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly sworn by me; that
6 the testimony of said witness was taken by me to the best of
7 my ability and thereafter reduced to typewriting under my
8 direction; that I am neither counsel for, related to, nor
9 employed by any of the parties to the action in which this
10 deposition was taken, and further, that I am not a relative or
11 employee of any attorney or counsel employed by the parties
12 thereto, nor financially or otherwise interested in the

13 outcome of the action.

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Tracy L. Thorpe Taylor, CCR

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Midwest Litigation Services
3610 Buttonwood
Columbia, Missouri
Phone 573-442-3600 * 573-636-7551

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July 19, 2007

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VAN MATRE, HARRISON, AND VOLKERT, P.C.
1103 East Broadway
Columbia, Missouri 65201
573-874-7777

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Mr. Thomas M. Harrison
Mr. Matthew S. Volkert

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In Re: Staff of Missouri PSC vs. Suburban

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Dear Mr. Harrison and/or Mr. Volkert:

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Please find enclosed your copy of the deposition of Paula
Belcher taken on July 17, 2007 in the above-referenced case.
Also enclosed is the original signature page and errata sheet.

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13

Please have the witness read your copy of the transcript,
indicate any changes and/or corrections desired on the errata
sheet, and sign the signature page before a Notary Public.

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15

Please return the errata sheet and notarized signature page to
Ms. Syler Brueggemann for filing prior to the trial date.

Thank you for your attention to this matter.

Sincerely,

Tracy L. Thorpe Taylor, Certified Court
Reporter

Enclosure

cc: Ms. Syler Brueggemann
Ms. Baker

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1 STATE OF _____)

2 COUNTY OF _____)

3 I, PAULA BELCHER, do hereby certify:

4 That I have read the foregoing deposition;

5 That I have made such changes in form and/or
6 substance within the deposition as might be necessary to
7 render the same true and correct;

8 That having made such changes thereon, I hereby
9 subscribe my name to the deposition.

10 I declare under penalty of perjury that the foregoing
11 is true and correct.

12 Executed this _____ of _____, 2007, at ____

13 _____

14 _____

15 Notary Public

16 My commission expires: _____

17 _____

18 PAULA BELCHER

19 Signature page to Mr. Harrison/Mr. Volkert
TLT/PB, 07/19/07
20 Staff of MO PSC vs. Suburban
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1 WITNESS ERRATA SHEET
2 Witness Name: Paula Belcher
Case Name: Staff of MO PSC vs. Suburban
3 Date Taken: 7/17/07
4 Page: Line: Should read:
Reason for change:
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32649pbelcher071707

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24 Reporter: Tracy L. Thorpe Taylor, CCR
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