

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
October, 2007.

The Staff of the Missouri Public Service
Commission,

Complainant,

v.

Suburban Water and Sewer Company,
Inc., and Gordon Burnam,

Respondents.

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Case No. WC-2008-0030

**ORDER DENYING RESPONDENT GORDON BURNAM'S MOTION TO
STRIKE**

Issue Date: October 4, 2007

Effective Date: October 4, 2007

In this complaint, which was filed on July 27, 2007,¹ the Staff of the Missouri Public Service Commission sought Commission orders: (1) directing Staff to investigate the quality of water supplied by Suburban Water and Sewer Company, Inc. ("Suburban") and Gordon Burnam and the methods employed by them in supplying and distributing water for any purpose; (2) directing Staff to file a recommendation concerning that investigation; (3) setting this matter for a full evidentiary hearing; and (4) requiring Suburban and Mr. Burnam to make reasonable improvements to the water system to promote the public interest, preserve the public health, and protect Suburban's customers. On August 6, the Commission issued an order directing its Staff to promptly commence the specified

¹ All dates specified in this order refer to the calendar year 2007.

investigation, and to file a report concerning the results of that investigation no later than September 20. Staff did so, leaving only the last two items for the Commission's consideration.

On Thursday, September 6, Respondent Gordon Burnam filed a Motion to Dismiss, in which he argued that he was not subject to the Commission's jurisdiction in his individual capacity. On Monday, September 17, Staff filed its Opposition to Mr. Burnam's motion to dismiss, and on September 27, Mr. Burnam filed a Motion to Strike that pleading on the ground that it was filed out of time. Finally, on September 28, Staff filed its Response Requesting the Commission Deny Respondent Gordon Burnam's Motion to Strike. The matter has been fully addressed by the parties and is ripe for consideration.

In his Motion to Strike, Mr. Burnam argues that Staff's Opposition was filed late and should be struck and disregarded since "the deadline for a response to his Motion to Dismiss was 4:00 p.m. on September 16, 2007." The Commission finds this claim to be meritless. Under the Commission's rules, Staff would normally have a maximum of ten calendar days to respond to Mr. Burnam's motion to dismiss,² not including the day the motion was filed.³ If, however, the last day of the period so computed falls on a Saturday, Sunday or legal holiday, "the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday."⁴ Counting ten days from Thursday, September 6th results in a filing date of Sunday, September 16th. Therefore, Staff's Opposition was filed

² Commission Rule 4 CSR 240-2.080(15) provides that, unless otherwise ordered by the Commission, "[p]arties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading."

³ See 4 CSR 240-2.050(1), which provides, in relevant part, that "[i]n computing any period of time prescribed or allowed by the commission, the day of the act, event, or default shall not be included."

⁴ 4 CSR 240-2.050(1).

within the prescribed ten day filing period allowed by 4 CSR 240-2.080(15) and 4 CSR 240-2.050(1) as long as it was filed by the end of the day on Monday, September 17th.⁵

As evidenced by the EFIS timestamp, Staff filed its Opposition electronically at 4:50:39 p.m. on September 17. Citing Commission Rule 4 CSR 240-2.080(11),⁶ Mr. Burnam argues that was nearly an hour too late, contending that the filing deadline was 4:00 p.m. Relying on Commission Rule 4 CSR 240-2.045(2),⁷ however, Staff claims that the pleading was timely filed since the deadline was not 4:00 p.m., but 5:00 p.m.

The Commission agrees with Staff, who correctly points out that the Commission very recently rejected the 4:00 p.m. deadline argument now being advanced by Mr. Burnam when it explained that 4 CSR 240-2.080(11) “is a holdover from the time before the Commission was able to accept electronic filings, when paper copies of filings had to be physically received and stamped by the Secretary of the Commission.”⁸ The Commission specifically identified 4 CSR 240-2.045(2) as a “rule, specific to the electronic filing of documents, [that] controls over [4 CSR 240-2.080(11),] the more general rule on the filing of documents[.]”⁹ Since the business hours of the Commission’s records room are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for state holidays,¹⁰ when Staff

⁵ Monday, September 17, 2007 was not a legal holiday.

⁶ That rule provides: “The date of filing shall be the date the pleading or brief is stamped by the secretary of the commission. Pleadings or briefs received after 4:00 p.m. will be stamped filed the next day the commission is regularly open for business.”

⁷ That rule states: “Any item or document filed electronically shall, if received during business hours of the commission’s records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next following business day.”

⁸ Order Denying Respondent’s Motion for Reconsideration and Application for Rehearing, *Staff v. Suburban Water and Sewer Company*, Case No. WC-2007-0452 (Sept. 13, 2007) at 2.

⁹ *Id.* at 3.

¹⁰ *Id.*

electronically filed its Opposition to Mr. Burnam's motion to dismiss in EFIS at 4:50:39 p.m. on September 17, it did so during the business hours of the Commission's records room. Accordingly, by virtue of 4 CSR 240-2.045(2), that pleading is considered filed as of September 17, which was within the prescribed ten day filing period allowed by 4 CSR 240-2.080(15) and 4 CSR 240-2.050(1).

For these reasons, Mr. Burnam's Motion to Strike will be denied.

IT IS ORDERED THAT:

1. Respondent Gordon Burnam's Motion to Strike, which was filed on September 27, 2007, is denied.
2. This order shall become effective on October 4, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Appling,
and Jarrett, CC., concur.

Lane, Regulatory Law Judge