

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

<b>The Staff of the Missouri Public</b>	)	
<b>Service Commission,</b>	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. WC-2007-0452</b>
	)	
<b>Suburban Water and Sewer Company</b>	)	
<b>and</b>	)	
<b>Gordon Burnam,</b>	)	
<b>Respondents.</b>	)	

**RESPONDENTS' OBJECTION AND MOTION TO STRIKE AND  
OPPOSITION TO THE STAFF'S MOTION FOR RECONSIDERATION**

COME NOW Respondents Suburban Water and Sewer Co. ("Suburban") and Gordon Burnam ("Burnam"), by and through undersigned counsel, and for their Objections and Motion to Strike and Opposition to the Staff's Motion for Reconsideration, state as follows:

1. Burnam previously entered his appearance specially for the purpose of contesting this tribunal's jurisdiction over him. Nothing contained herein is a waiver of those rights to object or a submission to this tribunal's jurisdiction.

2. Yesterday, the Missouri Public Service Commission ("Commission") entered its Order Granting in Part and Denying in Part Respondent Gordon Burnam's Motion to Dismiss, dismissing Burnam from the First Amended Complaint in this case ("Order").

3. Today, the staff for the Commission ("Staff"), and specifically the general counsel to the Commission ("General Counsel"), has submitted its Motion for Reconsideration of the Order ("Motion"). Tomorrow, the hearing is scheduled in this case.

4. For the reasons set forth below, Respondents object to and oppose the Motion and believe it should be struck in its entirety. Although he has been dismissed as a party to this action, Burnam is joining in this filing solely because the Motion affects him personally.

5. First, the General Counsel quotes from deposition testimony that is irrelevant and inadmissible:

- a. Respondents may have objections to some or all of this testimony.
- b. The General Counsel cannot unilaterally submit extrajudicial testimony and evidence without complying with the evidentiary and other rules of the Commission and without giving Respondents the opportunity to point to contrary evidence such as upon cross-examination.
- c. This blatant attempt by the General Counsel to circumvent due process and other legal requirements applicable to the hearing, to jump the gun and preempt the hearing, and, ultimately, to improperly influence the Commission in advance of the hearing, is shocking and outrageous.

6. Second, the submission of additional evidence is not a proper basis for reconsideration of the Order, because it was issued on the basis of the First Amended Complaint and related pleadings in this case and as a matter of law and did not rest on a particular state of facts.

7. Third, even if this evidence were found to be relevant and admissible (and without waiving any such objections), the General Counsel is not asserting any material facts that merit reconsideration.

- a. Virtually all of the evidence submitted by the General Counsel in the Motion revolves around allegations of "dominance" or control by Burnam. Other evidence relates to allegations that Burnam has dealings with Suburban, as its past customer, creditor, and/or officer, director, and shareholder, which apparently are intended to support the allegations of involvement and control in its operations.

The General Counsel previously made similar allegations in the Staff's Opposition to Respondent Gordon Burnam's Motion to Dismiss and Alternative Motion for More Definite Statement, which were before the Commission when it entered the Order. Respondents have already admitted, in prior filings, that Burnam is the President and a shareholder of Suburban; as such (and as noted in the Order), Burnam necessarily makes various decisions on behalf of Suburban and is involved in its operations, and the mere assertion of control and involvement in its operations does not affect the nature of these proceedings or the jurisdiction of the Commission in this case. Further, the fact that Burnam may have been a customer, creditor, officer, director, or shareholder of Suburban does not provide a basis to assert such jurisdiction. In sum, none of this evidence materially alters the nature of the previous allegations or otherwise affects the obligations under the 2005 unanimous disposition agreement, which is the subject of this case and which was entered into by Suburban, or lends any support to the claim that Burnam is personally subject to said agreement, Chapter 386, or the jurisdiction of the Commission.

- b. In addition, as noted in the Order, the sole relief requested in the First Amended Complaint in this case is for the Commission to enter an order authorizing the General Counsel to seek penalties in circuit court; therefore, any evidence concerning control or otherwise relating to the "piercing the corporate veil" theory is irrelevant to the relief requested in the First Amended Complaint in this case and, accordingly, is irrelevant to the hearing. This theory and related evidence may be relevant, if at all, only in any subsequent proceedings in circuit court.

8. Fourth, as noted above, all of this evidence apparently relates to the piercing the corporate veil theory advanced by the General Counsel, and the Commission should not and cannot consider this theory as a general legal matter.

a. Allegations or evidence of Burnam's business and personal dealings is insufficient to create jurisdiction not authorized by statute. "[T]he Public Service Commission is purely a creature of statute, its powers are limited to those conferred by statute...". Utilicorp United Inc. v. Platte-Clay Elec. Co-op., Inc., 799 S.W.2d 108, 109 (Mo. App. W.D. 1990). "[T]he Public Service Commission's powers are limited to those conferred by . . . statute[] . . . [and] 'neither convenience, expediency or necessity are proper matters for consideration in the determination of' whether or not an act of the commission is authorized by the statute." State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. banc 1979). The Commission has correctly determined that Burnam is not subject to Sections 386.570 and 386.580 and that it has no jurisdiction over him in this matter. Since the Commission lacks statutory jurisdiction over Burnam, arguments to boot-strap and extend its jurisdiction over someone based on a common law equitable theory such as piercing the corporate veil are wrong.

b. The Commission also lacks the authority to adjudicate or make factual or other findings relating to equitable doctrines. Board of Public Works of Rolla v. Sho-Me Power Corp., 244 S.W.2d 55, 59 (Mo. 1951) (holding that "[t]he Public Service Commission is not a court and has no power to declare or enforce any principle of law or equity."). The Staff's attempt to keep Burnam as a party to this action based on allegations relating to the equitable doctrine of piercing the corporate veil is misplaced in

this case because the Commission has not been asked nor has the authority to address this issue.

WHEREFORE, Respondents object to the Motion and respectfully request the Commission to deny and strike the Motion in its entirety and for such other and further relief as is just and proper in the circumstances.

/s/ Matthew S. Volkert  
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CERTIFICATE OF SERVICE

The undersigned certifies that a complete and conformed copy of the foregoing document was filed electronically and mailed to each attorney who represents any party to the foregoing action, by U.S. Mail, postage prepaid in the proper amount, at said attorney's business address.

/s/ Matthew S. Volkert  
Dated: July 25, 2007