

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

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

COMPLAINT AND MOTION FOR EXPEDITED TREATMENT

First Amended Complaint

COMES NOW the Staff of the Missouri Public Service Commission (Staff) pursuant to Section 386.390, RSMo 2000, and for its First Amended 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).

Respondent

2. Respondent Suburban Water and Sewer Co. (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. Respondent Gordon Burnam is Suburban's sole shareholder and is the President of the company. Mr. Burnam's business address is 1501 Vandiver Dr. #88, Coulmbia, MO 65202.

Allegations Common to All Counts

4. 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.

5. 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.

6. In Case No. WR-2005-0455, Suburban was granted an increase of \$4,192.00 in its annual water system revenues.

7. During the course of negotiations in the rate case, Suburban entered into a Unanimous Agreement Regarding Disposition of Small Water Company Rate Increase Request (disposition agreement) with Staff and the Office of Public Counsel (OPC) regarding the increase in revenues.

8. This agreement was signed by Mr. Burnam as President on behalf of Suburban.

9. The disposition agreement outlines 16 agreements entered into by the parties to resolve the rate case.

10. Item (6) agreed to by the parties states “the Company will review its customer records and determine if any of its present customers paid a deposit that should be refunded with appropriate interest.”

11. Item (7) agreed to by the parties states “the Company will refund the overcharges that occurred from April 2004 through October 2004. Such refunds will consist of a credit placed on the customers’ bills and the refunds will be completed over a three month period starting with the first billing period after the effective date of revised tariff sheets that will be filed pursuant to this agreement.”

12. Item (8) agreed to by the parties states “the Company will develop and distribute to all customers a brochure detailing the rights and responsibilities of the utility and its customers.”

13. Item (9) agreed to by the parties states “the Company will develop a continuous property record system for a plant that at a minimum includes the date plant is placed in service, the purchase price of plant and the dates of retirement of property.”

14. Item (10) agreed to by the parties states “the Company will install meters for all buildings no later than August 31, 2005.”

15. Item (11) agreed to by the parties states “the Company will implement a ten year replacement program for existing meters.”

16. Item (12) agreed to by the parties states “the Company will install flush valves with the flushing capability of at least 3 feet per second in all mains.”

17. Item (13) agreed to by the parties states “the Company will replace the standpipe [inlet] with an inlet high enough to provide adequate circulation and detention time.”

18. Item (14) agreed to by the parties states that “the Company will contract with a certified operator to maintain the Company’s well and distribution system.”

19. Item (15) agreed to by the parties states “the Company will provide quarterly reports regarding monthly customer meter usage data and monthly master usage data to the Auditing Staff of the Commission for the period July 1, 2005 through December 31, 2006.”

20. In its June 16, 2005 Order Approving Small Company Rate Increase and Approving Tariff (Order), the Commission approved the disposition agreement reached by the parties.

21. In its June 16, 2005 Order, the Commission directed Suburban to comply with the terms of the disposition agreement.

22. On April 12, 2007, the Company requested a 30-day extension to file its 2006 annual report.

23. The Company’s request for a filing extension was granted on April 12, 2007. The Company was directed to file its 2006 annual report no later than May 15, 2007.

24. As of the date of this Complaint, Suburban has not filed its 2006 annual report.

25. On March 30, 2007 Suburban's attorney sent a document titled Notice of Dissolution of Suburban Water and Sewer Company (dissolution notice) to its customers. A copy of this letter was sent to the Commission and to the Missouri Department of Natural Resources (MDNR).

26. The dissolution notice stated that the Company intended to dissolve effective July 1, 2007.

27. The dissolution notice also stated that customers' water service would be shut off effective July 1, 2007.

Count I

Failure to Refund Deposits with Appropriate Interest as Required by the Disposition Agreement

28. Complainant hereby incorporates by reference and re-alleges the allegations set forth in paragraphs 1-27, above.

29. Item (6) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 requires the company to determine whether any of its customers are entitled to refunds for deposits.

30. The disposition agreement was signed by Mr. Burnam as President of the Company.

31. If the Company determines that any of its present customers are entitled to refunds for deposits, Item (6) of the disposition agreement requires the Company to refund the deposit collected plus appropriate interest.

32. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

33. The Company has not determined whether any of its present customers are entitled to refunds for deposits.

34. The Company has not provided refunds plus interest when appropriate according to the terms of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (6) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (6) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count II

Failure to Refund Overcharges Made to Customers from April 2004 through October 2004

35. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-34, above.

36. Item (7) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to provide customer refunds for overcharges occurring between April 2004 and October 2004.

37. The refunds required by Item (7) were to be accomplished over a three month period after the revised tariff sheets approved by the Commission in Case No. WR-2005-0455 went into effect. The refunds were to be in the form of customer credits.

38. The disposition agreement was signed by Mr. Burnam as President of the Company.

39. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

40. The Company has not provided customer refunds as required by Item (7) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (7) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (7) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count III

Failure to Develop and Distribute a Customer Brochure

41. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-40, above.

42. Item (8) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to develop a brochure detailing the rights and responsibilities of the utility and its customers and to distribute the brochure to its customers.

43. The disposition agreement was signed by Mr. Burnam as President of the Company.

44. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2006.

45. The Company did not develop and distribute the brochure as required by Item (8) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (8) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (8) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count IV

Failure to Develop a Continuous Property Record System

46. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-45, above.

47. Item (9) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to develop a continuous property record system for plant that at a minimum includes the date plant is placed in service, the purchase price of plant and the dates of retirement of property.

48. The disposition agreement was signed by Mr. Burnam as President of the Company.

49. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

50. The Company has not developed a continuous property record system as required by Item (9) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (9) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (9) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count V

Failure to Install Meters for All Buildings

51. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-50, above.

52. Item (10) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to install meters for all buildings no later than August 31, 2005.

53. The disposition agreement was signed by Mr. Burnam as President of the Company.

54. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

55. The Company has not installed meters on all buildings as required by Item (10) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (10) of the agreement as ordered by the Commission. The Commission had the authority to order

Respondents to comply with Item (10) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count VI

Failure to Implement a Ten-year Replacement Plan for Existing Meters

56. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-55, above.

57. Item (11) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to implement a ten-year replacement program for existing meters.

58. The disposition agreement was signed by Mr. Burnam as President of the Company.

59. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

60. The Company has not implemented a ten-year replacement program for existing meters as required by Item (11) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (11) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (11) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General

Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count VII

Failure to Install Flush Valves

61. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-60, above.

62. Item (12) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to install flush valves with the flushing capability of at least three feet per second in all mains.

63. The disposition agreement was signed by Mr. Burnam as President of the Company.

64. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

65. The Company has not installed flush valves with the flushing capability of at least three feet per second in all mains as required by Item (12) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (12) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (12) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count VIII

Failure to Replace Standpipe Inlet

66. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-65, above.

67. Item (13) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 requires the Company to replace the water system's existing standpipe inlet with an inlet high enough to provide adequate circulation and detention time.

68. The disposition agreement was signed by Mr. Burnam as President of the Company.

69. The Commission directed the Company to comply with the terms of the disposition agreement in its Order dated June 16, 2005.

70. The Company has not replaced the standpipe inlet as required by Item (13) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (13) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (13) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Count IX

Failure to Contract with a Certified Operator

71. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-70, above.

72. Item (14) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to contract with a certified operator to maintain the Company's well and distribution system.

73. The disposition agreement was signed by Mr. Burnam as President of the Company.

74. The Commission ordered the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

75. The Company has not contracted with a certified operator to maintain the Company's well and distribution system as required by Item (14) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (14) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (14) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 398.580 RSMo.

Count X

Failure to Provide Quarterly Reports to Auditing Staff

76. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs 1-75, above.

77. Item (15) of the disposition agreement entered into by the parties to resolve Case No. WR-2005-0455 required the Company to provide quarterly reports regarding monthly customer meter usage data and monthly master meter usage data to the Auditing Staff of the Commission for the period July 1, 2005 through December 31, 2006.

78. The disposition agreement was signed by Mr. Burnam as President of the Company.

79. The Commission directed the Company to comply with the terms of the disposition agreement in its Order of June 16, 2005.

80. The Company has not provided quarterly reports regarding monthly customer meter usage data and monthly master meter usage data to the Auditing staff of the Commission for the period July 1, 2005 through December 31, 2006 as required by Item (15) of the disposition agreement.

WHEREFORE, Staff prays that the Commission will find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (15) of the agreement as ordered by the Commission. The Commission had the authority to order Respondents to comply with Item (15) of the disposition agreement pursuant to Section 393.140(2). Staff requests that the Commission authorize its Office of the General

Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

Motion for Expedited Treatment

81. Complainant hereby adopts by reference and re-alleges the allegations set forth in paragraphs 1-80, above.

82. Suburban has stated an intention to wind up its affairs and has sent notice to its customers that it intends to cease operations as of July 1, 2007. Mr. Burnam is a resident of Florida, and is in Missouri only for a limited period of time.

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

84. Staff requests that the Commission hold a hearing in this matter no later than July 20, 2007. Staff requests that the Commission issue its decision no later than August 20, 2007.

85. Expedited treatment will avoid harm to Suburban's customers by ensuring continuation of water service.

86. This pleading was filed as soon as practicable. Staff and Suburban have been working together to come to a resolution of this matter. However, there has been no communication from Suburban since Staff counsel met with Suburban's counsel on May 22, 2007. Staff believes that it is in the best interest of all parties and Suburban's customers to resolve this matter as quickly as possible.

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

Conclusion

WHEREFORE, Staff requests that the Commission:

- a. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (6) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- b. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (7) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- c. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (8) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- d. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (9) of the agreement as ordered by the Commission as the Commission is authorized to do

by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

- e. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (10) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- f. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (11) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- g. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (12) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- h. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (13) of the agreement as

ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.

- i. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (14) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- j. find that Respondents have violated the terms of the disposition agreement by failing to comply with Item (15) of the agreement as ordered by the Commission as the Commission is authorized to do by Section 393.140(2). Staff requests that the Commission authorize its Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo.
- k. 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 July 20, 2007 and that it issue its decision no later than August 20, 2007.

Respectfully submitted,

/s/ Jennifer Heintz

Jennifer Heintz

Assistant General Counsel

Missouri Bar No. 57128

Peggy A. Whipple
Chief Litigation Counsel
Missouri Bar No. 54758
Attorneys for the Staff of the
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
jennifer.heintz@psc.mo.gov
peggy.whipple@psc.mo.gov