

**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>	)	

**SEPARATE ANSWER OF RESPONDENT  
SUBURBAN WATER AND SEWER COMPANY  
TO COMPLAINANT'S FIRST AMENDED COMPLAINT**

COMES NOW Respondent Suburban Water and Sewer Company ("Suburban") and for its answer to the Complainant's First Amended Complaint in this action states and alleges as follows:

1. Suburban admits the allegations of paragraphs 1 and 2 of the First Amended Complaint.

2. Suburban denies the allegations of paragraph 3 of the First Amended Complaint.

**Response to Allegations Common to All Counts**

3. Suburban admits the allegations of paragraph 4 of the First Amended Complaint.

4. In answer to paragraph 5 of the First Amended Complaint, Suburban admits that Suburban provides water service to approximately 151 residences and duplex and apartment units. The remaining allegations of paragraph 5 are denied.

5. In answer to paragraph 6, Suburban states that the orders granted in the case referenced therein speak for themselves. All other allegations of paragraph 6 are denied.

6. In answer to paragraph 7, Suburban admits that a unanimous agreement was entered into. Suburban affirmatively states that he was not a party to the unanimous agreement and was not a party to any previous case before the Commission. All other allegations of paragraph 7 are denied.

7. Suburban admits the allegations of paragraph 8 of the First Amended Complaint. With respect to the allegations of paragraphs 9 through 19 of the First Amended Complaint, inclusive, Suburban states that the provisions of the disposition agreement speak for themselves. All other allegations in paragraphs 9 through 19 of the First Amended Complaint inclusive are denied.

8. Suburban admits the allegations of paragraph 20 of the First Amended Complaint. Suburban affirmatively states that Suburban was not a party to the unanimous agreement nor was Suburban a party to any previous case before the Commission.

9. Suburban admits the allegations of paragraph 21.

10. Suburban admits the allegations of paragraph 22.

11. Suburban admits the allegations of paragraph 23.

12. Suburban denies the allegations of paragraph 24.

13. In response to paragraph 25, Suburban admits that a notice of dissolution was sent. Suburban further alleges that such notice was later rescinded. All other allegations of paragraph 25 are denied.

14. In answer to paragraph 26, Suburban states that the dissolution notice was later rescinded. All other allegations of paragraph 26 are denied.

15. In answer to paragraph 27, Suburban states that the dissolution notice was later rescinded and was rescinded prior to July 1, 2007. All other allegations of paragraph 27 are denied.

#### **Answer to Count I**

16. Suburban incorporates by reference its responses to paragraphs 1 through 27.

17. In answer to paragraph 29, Suburban states that the disposition agreement speaks for itself and specifically states that the disposition agreement contains no deadline for Suburban to determine whether any of its customers were entitled to refunds. All other allegations of paragraph 29 are denied.

18. Suburban admits the allegations of paragraphs 30 and 32.

19. In answer to paragraph 31, Suburban states that Suburban concluded that no refunds were due. All other allegations of paragraph 31 are denied.

20. Suburban denies the allegations of paragraphs 33 and 34. Suburban further states with respect to paragraph 34 that no refunds are required.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count I and deny the Complainant the relief sought in Count I.

#### **Answer to Count II**

21. Suburban incorporates by reference its answers to paragraphs 1 through 34 of the First Amended Complaint.

22. In answer to paragraphs 36, 37, 38, 39 and 40, Count II has been dismissed by Complainant, so no answer to Count II is necessary. To the extent an answer to Count II is necessary, all allegations of paragraphs 36, 37, 38, 39, and 40 are denied.

### **Answer to Count III**

23. Suburban incorporates by reference its answers to paragraphs 1 through 40 of the First Amended Complaint.

24. In answer to paragraph 42, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no deadline for Suburban to develop a brochure. The remaining allegations of paragraph 42 are denied.

25. Suburban admits the allegations of paragraphs 43 and 44.

26. Suburban denies the allegations of paragraph 45.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count III and deny the relief requested by Complainant in Count III.

### **Answer to Count IV**

27. Suburban incorporates by reference its answers to paragraphs 1 through 45 of the First Amended Complaint.

28. In answer to paragraph 47, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no deadline for Suburban to develop a continuous property record system. The remaining allegations of paragraph 47 are denied.

29. Suburban admits the allegations of paragraph 48 and 49.

30. Suburban denies the allegations of paragraph 50.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count IV and deny the relief requested by Complainant in Count IV.

### **Answer to Count V**

31. Suburban incorporates by reference its answers to paragraphs 1 through 50 of the First Amended Complaint.

32. Suburban denies the allegations of paragraphs 52 and 55.

33. Suburban admits the allegations of paragraphs 53 and 54.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count V and deny the relief requested by Complainant in Count V.

#### **Answer to Count VI**

34. Suburban incorporates by reference its answers to paragraphs 1 through 55 of the First Amended Complaint.

35. In answer to paragraph 57, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no deadline for Suburban to implement a ten year replacement program. All other allegations of paragraph 57 are denied.

36. Suburban admits the allegations of paragraph 58 and 59.

37. Suburban denies the allegations of paragraph 60.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count VI and deny the relief requested by Complainant in Count VI.

#### **Answer to Count VII**

38. Suburban incorporates by reference its answers to paragraphs 1 through 60 of the First Amended Complaint.

39. In answer to paragraph 62, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no deadline for Suburban to install flush valves. All other allegations of paragraph 62 are denied.

40. Suburban admits the allegations of paragraphs 63 and 64.

41. Suburban admits that it has not installed flush valves but affirmatively states that there was no time deadline imposed upon Suburban to install the flush valves. All other allegations of paragraph 65 are denied.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count VII and deny the relief requested by Complainant in Count VII.

#### **Answer to Count VIII**

42. Suburban incorporates by reference its answers to paragraphs 1 through 65 of the First Amended Complaint.

43. In answer to paragraph 67, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no deadline for Suburban to replace the water system's existing stand pipe inlet. All other allegations of paragraph 67 are denied.

44. Suburban admits the allegations of paragraph 68 and 69.

45. Suburban admits that Suburban has not replaced the stand pipe inlet but affirmatively states that there is not any deadline by which Suburban was required to do so. All other allegations of paragraph 70 are denied.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count VIII and deny the relief requested by Complainant in Count VIII.

#### **Answer to Count IX**

46. Suburban incorporates by reference its answers to paragraphs 1 through 70 of the First Amended Complaint.

47. In answer to paragraph 72, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no time deadline for Suburban to contract with a certified water operator. All other allegations of paragraph 72 are denied.

48. Suburban admits the allegations of paragraphs 73 and 74.

49. Suburban admits that it has not contracted with a certified operator but affirmatively states that there was no time deadline for Suburban to contract with a certified operator. All other allegations of paragraph 75 are denied.

WHEREFORE, Suburban prays that the commission find in favor of Respondents on Count IX and deny the relief requested by Complainant in Count IX.

#### **Answer to Count X**

50. Suburban incorporates by reference its answers to paragraphs 1 through 76 of the First Amended Complaint.

51. In answer to paragraph 77, Suburban states that the disposition agreement speaks for itself and affirmatively states that it contains no deadline for Suburban to provide the quarterly reports. All other allegations of paragraph 77 are denied.

52. Suburban admits the allegations of paragraphs 78 and 79.

53. Suburban denies the allegations of paragraph 80.

WHEREFORE, Suburban prays that the Commission find in favor of Respondents on Count X and deny the relief requested by Complainant in Count X.

#### **Response to Motion for Expedited Treatment**

Suburban has already responded to the Motion for Expedited Treatment, so that portion of the First Amended Complaint is not addressed herein.

### **Affirmative Defenses**

By way of further answer and defense, Suburban raises and pleads the following affirmative defenses:

1. Suburban reserves the right to raise additional affirmative defenses that come to light during discovery or through Suburban's inspection and due diligence.
2. Suburban incorporates by reference the Respondents' Notice of Satisfaction filed herein.
3. Suburban incorporates by reference the Motion to Dismiss previously filed in this action by Suburban and Gordon Burnam ("Burnam"). Specifically, Suburban incorporates by reference all statements and arguments therein as affirmative defenses in this pleading.
4. Section 386.570 and 386.580 are unconstitutional and void in that they violate Article I, Section 31 of the Missouri Constitution. Both of those statutory sections violate this provision of the Constitution in that both purport to delegate blanket authority to the Commission to adopt rules and issue orders and requirements, the violation of which automatically result in fines and/or imprisonment.
5. To the extent that the Commission is being requested to adjudicate any issues or make any findings relating to the Complaint or allegations contained therein the Commission is without jurisdiction or authority to do so because its exercise of any such function would constitute an invalid delegation of powers and a violation of due process and the doctrine of separation of powers under the United States and Missouri Constitutions as well as constitutional and statutory rights enjoyed by an accused in criminal prosecutions, which have not been waived by Suburban. The Commission



cannot engage in any judicial or other fact finding function for purposes of Section 386.570, which is penal in nature, or Section 386.580 which would result in a misdemeanor.

6. Sections 393.140, 386.570 and 386.580 and the order described in the First Amended Complaint are unconstitutional and void as applied in this case because they are vague and contrary to due process and do not convey to a person of ordinary intelligence a sufficiently definite warning that they may result in penalties in an individual capacity or for acts or omissions which are impossible due to financial inability or otherwise. Further, the order is unconstitutional and void because it does not afford an adequate rate of return and thus constitutes a taking of private property without just compensation and due process in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 26 of the Missouri Constitution.

7. The Commission's prior ruling in this case and its hearing of this case violate due process, and the imposition of penalties here would be unduly punitive in violation of due process.

8. All claims made and penalties sought for violations of the order are barred by the applicable statute of limitations. Without limiting the generality of the foregoing, Section 516.390 provides for a two year statute of limitations, and Section 556.036 provides for a one-year statute of limitations for all misdemeanors and any alleged offenses by Suburban would predate this period of time.

9. The Complaint fails to state a claim upon which relief may be granted because it fails to allege all necessary elements of each claimed violation. With respect to Section 386.570, the Complaint omits to state any cause of action or any elements thereof or other allegations supporting the imposition of personal liability on Suburban. With respect to Section 386.580 the Complainant acknowledges that the order was agreed to by and applied only to Suburban.

WHEREFORE, Suburban prays for the relief described herein and for such other and further orders as the Commission deems just and proper.

/s/ Thomas M. Harrison

Thomas M. Harrison, 36617

Matthew S. Volkert

**Van Matre, Harrison and Volkert, P.C.**

1103 E. Broadway, Suite 101

P.O. Box 1017

Columbia, MO 65205

(573) 874-7777

Telecopier: (573) 875-0017

E-mail: [tom@vanmatre.com](mailto:tom@vanmatre.com)

[matt@vanmatre.com](mailto:matt@vanmatre.com)

Attorneys for Burnam and Suburban