

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

**The Staff of the Missouri Public
Service Commission,
Complainant,**

v.

**Suburban Water and Sewer Company
and
Gordon Burnam,
Respondents.**

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Case No. WC-2007-0452

**RESPONSE AND SUGGESTIONS IN OPPOSITION
TO MOTION FOR EXPEDITED TREATMENT**

Respondents submit this Response and Suggestions in Opposition to the Motion for Expedited Treatment in this cause:

1. Respondent Gordon Burnam has entered his appearance specially for the purpose of contesting this tribunal's subject matter and personal jurisdiction. Nothing contained herein is a waiver of those rights to object or a submission to this tribunal's personal jurisdiction or subject matter jurisdiction over him.

2. Respondent Suburban Water and Sewer Company ("Suburban") has been in existence supplying water to its customers for over thirty (30) years, but the facts relevant to this action are recent.

3. The last rate increase which was authorized for Suburban was in 1993.

4. Because of continued operating losses and restrictions imposed on Suburban by the Department of Natural Resources ("DNR"), Suburban requested a rate increase in late 2004. Suburban requested at that time an authorization to provide water from the neighboring public water supply district to Suburban's customers at the same rate as was being charged to the district's

customers. The commission staff refused this request but offered a smaller rate increase and stated that the lesser rate was the most that they would be willing to give and that Suburban should either negotiate lower rates with the neighboring district or arrange to sell its system to a new operator. There was no other viable choice for Suburban, so Suburban accepted this lesser rate in 2005.

5. Suburban has been operating at substantial losses for several years and has had to rely on shareholder loans to remain in operation.

6. In June 2006, the DNR issued a report citing deficiencies in Suburban's system and water supply. By letter dated June 29, 2006, Suburban advised the Commission of these inadequacies and reiterated its request for a rate increase that would permit it to use water from the neighboring district at the same rates as were being charged to its customers. No response was received by Suburban to that letter.

7. After waiting several months with no response, Suburban, by letter dated January 31, 2007, gave notice to the Commission that it could no longer continue to operate in violation of DNR requirements and at an operating loss. Suburban requested advice as to what should be done. That letter further set a deadline of July 1, 2007. Suburban received no response to the January 31, 2007 letter. Further, Commission staff claimed that that letter was never received; however, attached to this motion are copies of the signed return receipts indicating that the letter was received.

8. After waiting two (2) more months with no response whatsoever from the Commission or from its staff, Suburban, by letters dated March 30, 2007, and April 2, 2007, gave notices to the Commission, DNR and Suburban's customers, that Suburban would cease doing business effective July 1, 2007. At that point, Commission staff responded for the first time in nine (9) months. The Commission staff indicated at that time that they would arrange for a solution to

the problem, probably via a transfer or receivership, and supposedly began working toward that end at that time.

9. Six (6) weeks later, on or about May 22, 2007, two Commission attorneys held a meeting with one of Suburban's attorneys and, for the first time, stated that Suburban was in violation of the subject order and agreement and that Suburban had to comply or that a complaint would be initiated.

10. One week later, on or about May 29, 2007, the Complaint was filed, together with the Motion to Expedite, ironically (and outrageously) citing Suburban's supposed unresponsiveness.

11. The Commission staff has disingenuously filed a Motion for Expedited Treatment and appears to be arguing that it is perfectly acceptable for Commission staff to delay this process nearly eleven (11) months but then complain about Suburban's response time of one (1) week.

12. Respondents deny that any expedited treatment is necessary. To the extent that the Commission staff believes that expedited treatment is necessary, it is because of the staff's own unresponsiveness.

13. The Commission's procedural rules at 4 CSR 240-2.080(16)(C) require the staff to state in its motion that the complaint was filed as soon as practicable. The complaint states that staff and Suburban have been "working together to come to a resolution of this matter" and then blames Suburban for a delay of *one week* in responding to staff's latest communication. The Commission staff is taking no responsibility for its own delays of several *months*. The staff is now asking the Commission to rescue the staff from the consequences of its prolonged delays.

14. Most important, perhaps, is the fact that even if the relief requested by the Commission staff in the Complaint filed in this action is granted in full, that will have no effect

whatsoever on Suburban's decision to cease operating on July 1, 2007. Commission staff has not asked for any relief whatsoever in its Complaint which would restrict, prohibit or impede Suburban from ceasing to operate on July 1, 2007. Thus, as a practical matter there is no need to expedite the hearing in this matter.

WHEREFORE, Respondents request that the Motion for Expedited Treatment be denied and for such other and further relief as the Commission deems just and proper.

/s/ Thomas M. Harrison

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The undersigned certifies that a complete and conformed copy of the foregoing document was 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/ Thomas M. Harrison

Dated: June 8, 2007

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