

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

The Staff of the Missouri Public)	
Service Commission,)	
Complainant,)	
)	
v.)	Case No. WC-2007-0452 et al.
)	
Suburban Water and Sewer Company,)	
Respondent.)	

**RESPONDENT'S RESPONSE AND SUGGESTIONS IN OPPOSITION TO
STAFF'S MOTION TO STRIKE ITS MOTION FOR RECONSIDERATION AND
APPLICATION FOR REHEARING BECAUSE IT WAS FILED OUT OF TIME**

COMES NOW Respondent Suburban Water and Sewer Co., by and through undersigned counsel, and for its Response and Suggestions in Opposition to Staff's Motion to Strike its Motion for Reconsideration and Application for Rehearing Because it Was Filed Out of Time states as follows:

1. On September 7, 2007, the staff ("Staff") for the Missouri Public Service Commission ("Commission") filed its Motion to Strike Respondent's Motion for Reconsideration and Application for Rehearing Because it Was Filed Out of Time ("Motion").
2. In its Motion, the Staff argues that Respondent's Motion for Reconsideration and Application for Rehearing ("Application") was untimely because it was filed at 5:52 p.m., rather than 3:59 p.m., on September 6, 2007.
3. The Staff admits that the Commission received the Application on September 6, 2007 and attaches the Commission's automatic notice of filing, which contains a file-stamped acknowledgment of filing dated that date. Thus, it is undisputed that the Commission actually received the Application on the date before the effective date of the subject order.

4. The Staff also admits that the relevant Missouri statute, as well as the Missouri Supreme Court case interpreting that statute, unequivocally require only that an application for rehearing must be received by the Commission “before the effective date” of an order to be timely. Section 386.500.2 RSMo.; State ex rel. Alton R. Co. v. Public Service Comm’n, 155 S.W.2d 149, 155 (Mo. 1941) (holding that an application for rehearing is “made” to the Commission when it “reache[s]” the Commission).

5. The Staff’s sole argument is that Commission Rule 2.080(11) applies such that the Application is “considered to be filed” the following day and, therefore, is untimely. See 4 CSR 240-2.080(11).

6. The Staff’s position is without merit. “When there is a direct conflict or inconsistency between a statute and a regulation, the statute which represents the true legislative intent must necessarily prevail.” Parmley v. Missouri Dental Bd., 719 S.W.2d 745, 755 (Mo. banc 1986). Therefore, to the extent that Commission Rule 2.080(11) requires receipt of an application for rehearing by a specific time on the date before the effective date of the subject order to be timely, even when the Commission (by its own records) acknowledges actual receipt of the application on such date, it is a nullity. See Id.

7. The Staff attempts to buttress its argument by claiming that Section 386.410 RSMo., which authorizes the Commission to adopt rules of procedure for its hearings, permits the Commission to adopt Commission Rule 2.080(11) and thereby vary the express terms Section 386.500. This argument is, of course, patently meritless. First, Section 386.410 permits only rules relating to the conduct of hearings, not rules for post-hearing proceedings established by Section 386.500. More importantly, however, the legislature did not, in enacting Section 386.410, intend to authorize the Commission to contradict and overrule Section 386.500.

WHEREFORE, Respondent respectfully requests this Commission to overrule the Motion, to consider the Application, and for such other and further relief as the Commission deems just and proper in the circumstances.

/s/ Matthew S. Volkert
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The undersigned certifies that a complete and conformed copy of the foregoing document was filed electronically and e-mailed to each attorney who represents any party to the foregoing action at said attorney's business e-mail address.

/s/ Matthew S. Volkert
Dated: September 8, 2007