

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

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

**SEPARATE ANSWER OF RESPONDENT
GORDON BURNAM TO COMPLAINANT'S
FIRST AMENDED COMPLAINT**

COMES NOW Respondent Gordon Burnam ("Burnam") and for his answer to the Complainant's First Amended Complaint in this action states and alleges as follows:

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

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

Response to Allegations Common to All Counts

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

4. In answer to paragraph 5 of the First Amended Complaint, Burnam 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, Burnam 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, Burnam admits that a unanimous agreement was entered into. Burnam 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. Burnam 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, Burnam 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. Burnam admits the allegations of paragraph 20 of the First Amended Complaint. Burnam affirmatively states that Burnam was not a party to the unanimous agreement nor was Burnam a party to any previous case before the Commission.

9. Burnam admits the allegations of paragraph 21.

10. Burnam admits the allegations of paragraph 22.

11. Burnam admits the allegations of paragraph 23.

12. Burnam denies the allegations of paragraph 24.

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 Burnam further alleges that such notice was later rescinded.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

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 In answer to paragraph 26, Burnam states that the dissolution notice was later rescinded.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

15. In answer to paragraph 27, Burnam 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. Burnam incorporates by reference his responses to paragraphs 1 through 27.

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

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

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

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

WHEREFORE, Burnam 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. Burnam incorporates by reference his 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. Burnam incorporates by reference his answers to paragraphs 1 through 40 of the First Amended Complaint.

24. In answer to paragraph 42, Burnam states that the 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. Burnam admits the allegations of paragraphs 43 and 44.

26. Burnam denies the allegations of paragraph 45.

WHEREFORE, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 45 of the First Amended Complaint.

28. In answer to paragraph 47, Burnam 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. Burnam admits the allegations of paragraph 48 and 49.

30. Burnam denies the allegations of paragraph 50.

WHEREFORE, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 50 of the First Amended Complaint.

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

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

WHEREFORE, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 55 of the First Amended Complaint.

35. In answer to paragraph 57, Burnam 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. Burnam admits the allegations of paragraph 58 and 59.

37. Burnam denies the allegations of paragraph 60.

WHEREFORE, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 60 of the First Amended Complaint.

39. In answer to paragraph 62, Burnam 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. Burnam admits the allegations of paragraphs 63 and 64.

41. Burnam admits that Suburban 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, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 65 of the First Amended Complaint.

43. In answer to paragraph 67, Burnam 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. Burnam admits the allegations of paragraph 68 and 69.

45. Burnam 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, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 70 of the First Amended Complaint.

47. In answer to paragraph 72, Burnam 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. Burnam admits the allegations of paragraphs 73 and 74.

49. Burnam admits that Suburban 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, Burnam 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. Burnam incorporates by reference his answers to paragraphs 1 through 75 of the First Amended Complaint.

51. In answer to paragraph 77, Burnam 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. Burnam admits the allegations of paragraphs 78 and 79.

53. Burnam denies the allegations of paragraph 80.

WHEREFORE, Burnam 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

Burnam and Suburban have 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, Burnam raises and pleads the following affirmative defenses:

1. Burnam reserves the right to raise additional affirmative defenses that come to light during discovery or through Burnam's inspection and due diligence.

2. Burnam incorporates by reference the Respondents' Notice of Satisfaction filed herein.

3. Burnam incorporates by reference the Motion to Dismiss previously filed in this action by Burnam. Specifically, Burnam incorporates by reference all statements and arguments therein as affirmative defenses in this pleading.

4. The Commission lacks personal and subject matter jurisdiction over Burnam.

5. There is no constitutional, statutory or other valid authority or delegation giving the Commission or its general counsel the jurisdiction, power or authority to request or obtain relief against Burnam in his individual capacity, including to make any findings or impose any penalties against Burnam. Accordingly, the First Amended Complaint should be dismissed as to Burnam.

6. Burnam is not and never has been a public utility and is not subject to or otherwise bound by the jurisdiction of the Commission or any orders previously entered by the Commission. Further, the First Amended Complaint contains no allegations that Burnam is or ever has been a public utility. The Commission cannot make any findings or impose any penalties on or with respect to Burnam in his individual capacity.

7. Sections 393.140 and 386.570 cannot be expanded to apply to Burnam and Section 386.580 cannot be applied to Burnam for any failure to contribute his own funds or in any other respect relative to the alleged violations because doing so would constitute 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.

8. 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.

9. 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 Burnam. 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. Further, 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.

10. 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.

11. 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 Burnam would predate this period of time.

12. 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 Burnam. With respect to Section 386.580 the Complainant acknowledges that the order was agreed to by and applied only to Suburban.

WHEREFORE, Burnam 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

matt@vanmatre.com

Attorneys for Suburban and Burnam