

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	Case Nos. WC-2007-0452
v.)	WO-2007-0444
)	WC-2008-0030
Suburban Water and Sewer Co. and Gordon Burnam,)	
)	
Respondents.)	

**STAFF’S OBJECTION AND MOTION TO STRIKE SUBURBAN’S IMPROPER
UNILATERAL SETTLEMENT OFFER**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, objects to Respondent Suburban Water and Sewer Company’s (“Suburban”) *Motion for Nonunanimous Stipulation and Agreement and Motion for Expedited Treatment* and attached *Stipulation and Agreement*. Further, Staff respectfully requests the Commission strike Suburban’s improper filing and offer of settlement to the Commission as adjudicators in all three listed cases, or in the alternative completely deny Respondent’s Motion. In support of Staff’s Motion Staff respectfully states as follows:

1. Respondent’s Motion offering a unilateral settlement agreement¹ to the Commissioners as judges in a still pending case rather than Staff and the Office of the Public Counsel (“OPC”), the other parties, was filed on August 30, 2007, at 4:42 p.m.² OPC filed its *Objection and Motion to Strike* the next day.

2. Respondent’s attempt to bypass Staff and OPC in filing Respondent’s Motion and settlement offer has placed Staff in a tenuous predicament to effectively object without addressing and opposing the merits of that offer. Such specific arguments opposing

¹ No other parties have stipulated any facts, nor has any agreement been reached amongst any of the parties, therefore Respondent’s title to the motion of Nonunanimous Stipulation and Agreement is deliberately misleading.

² Respondent waited to serve Staff of this filing until 5:29 p.m. on Friday, August 31, 2007, while requesting an expedited response by the next work day at 1:00 p.m.

Respondent's settlement offer could be taken as a counteroffer placed in front of the Commission. This type of response by Staff that argues the merits, or the lack of merits, of the settlement offer (and why that offer is beneficial only to Suburban and not to the Commission, Suburban's customers, or OPC, along with unlawfully limiting all future actions of the Commission against Suburban) would necessitate Staff outlining detailed facts revealing the very same confidential negotiations and possible Staff settlement offer that Staff argues as now improperly before the Commissioners. Therefore, Staff must limit this objection to respond to the Respondent's motion only as to that motion being improperly before the Commission at this time. Staff requests the right to respond to the merits of Respondent's improperly titled and filed Stipulation and Agreement if the Commission does not sustain Staff's and OPC's objections.

3. The Commission's Report and Order, deciding the issues after a two day hearing on July 26 and 27, 2007, in cases WC-2007-0452 et al, was issued on August 28, 2007. This Report and Order has an effective date of September 7, 2007. Suburban has not filed an Application for Rehearing or a Motion for Reconsideration pursuant to 4 CSR 240-2.160, or a Motion for Clarification. Those are the proper formats for information to be presented to the Commission to decide any issues that have arisen after the fact, or issues that a party feels were determined in an unlawful, unjust, unreasonable, or unclear manner. Suburban has not filed a motion fitting any of those categories, even though it has until the 7th of September to do so, and thereby Respondent's Motion should be stricken from the record, or denied.

4. Respondent's Motion contains false assertions that Staff has refused to negotiate with Suburban throughout the collective cases.³ Respondent attempts to gain sympathy and improperly sway the Commission through its untrue statements. Staff has continuously and vigilantly, through counsel, pursued negotiations with Suburban's counsel. Staff was still

³ Respondent's Motion at pg 3, para. 12 and 13.

pursuing negotiation discussions when Respondent's counsel decided to file this motion, rather than calling and speaking with counsel as was discussed and expected.

5. Further, Suburban twists the facts by stating that "Burnam offered to turn over Respondent and all of its assets and operations to a receiver satisfactory to the General Counsel, Staff, and Commission, for no compensation or other consideration."⁴ Such an offer after Suburban and Gordon Burnam had deliberately not maintained the water system and let it degrade to a point where money must be invested to get the system back to a barely acceptable level for its customers depending on water service is simply unreasonable. Suburban has a responsibility to its customers to provide safe and adequate water. Suburban has the responsibility to maintain its system. An offer to Staff or a receiver of a degraded system with no one available to repair what should have already been repaired is not an offer.

6. Also, Respondent ignores § 393.140(7) and incorrectly implies that Staff must receive permission to inspect a utility's facility and assets.⁵ Staff, pursuant to this statute and on behalf of the Commission, has the right and the "power...through its...inspectors or employees duly authorized by it, to enter in or upon and to inspect the property, buildings, plants, factories, powerhouses...and offices of any such corporations or persons."

WHEREFORE, Staff respectfully requests the Commission strike Suburban's improper motion and *Stipulation and Agreement* as an offer of settlement to the Commission as adjudicators in all three listed cases, or in the alternative completely deny Respondent's Motion; allow Staff to reserve the right to respond to the merits of the stipulation and agreement if the Commission decides to rule on the stipulation and agreement, as this response constitutes only an

⁴ Respondent's Motion at pg 3, para. 12.

⁵ "Staff...requested authorization to conduct an investigation and file a report detailing proposed work to be done by Respondent. Prior to any ruling on said motion, Respondent cooperated and voluntarily permitted an inspection." Respondent's Motion, pg 2, para. 7.

objection on the appropriateness of the filing, not the substance of the settlement offer itself; and requests any other relief as the Commission deems just and proper.

Respectfully submitted,

/s/ **Shelley Syler Brueggemann**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4th day of September 2007.

/s/ **Shelley Syler Brueggemann**