

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
v.)	<u>Case No. WC-2007-0452</u>
Suburban Water and Sewer Co. and Gordon)	<u>and WO-2007-0444</u>
Burnam,)	
Respondents.)	

STAFF'S MOTION REQUESTING THE COMMISSION TO:

- 1. Address any Statute of Limitations issue;**
 - 2. Fix Specific Dates within which Suburban's Performance was reasonably due;**
 - 3. Bifurcate the Commission's Report and Order; and**
 - 4. Expedite Suburban's Response to this Motion.**
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COMES NOW the Staff of the Missouri Public Service Commission, by counsel, and moves the Commission to address any Statute of Limitations issue present in this case. Staff also respectfully requests that the Commission fix reasonable dates for Suburban to have performed its obligations under the disposition agreement and the Commission's June 16, 2005 Order approving same. Staff also moves the Commission to bifurcate its report and order into two separate orders: one establishing Findings of Fact and Conclusions of Law that Suburban violated the Commission's June 16, 2005 Order; and the second authorizing the General Counsel's Office to pursue penalties and incorporating the findings of first Report and Order. Finally, Staff moves that Suburban's response to this motion be filed by Monday, August 27, 2007 at 1:00pm. In support of this Motion Staff states as follows:

1. In yesterday's open agenda, a question arose among the Commissioners as to whether the Statute of Limitations (SoL) would hinder any penalty action brought on the basis of violations found in this case. Section 516.390 says:

If the penalty is given in whole or in part to the state ... or to the treasury thereof, a suit therefor may be commenced, by or in behalf of the state, county or city, at any time **within two years after the commission of the offense, and not after.**

(emphasis added). The SoL begins to run from the date of the violation. Therefore, for each item in the disposition agreement that the Commission finds was violated by not being completed on the date required, the deadline or date that Suburban failed to complete the action is the date of the first violation or “commission of the offense.”

Specifically, as to Count III, Failure to Install Meters for All Buildings, the disposition agreement stated that the installation was to occur “no later than August 31, 2005.” This establishes August 31, 2007, as the two year deadline to pursue penalties for the failure to install meters by August 31, 2005. Each day after August 31, 2005, is a separate and distinct offense. If a report and order finding a violation of this count, with authorization to the General Counsel’s office to pursue penalties, is not issued in time for a penalty action to be initiated in circuit court by August 31, 2007, then the opportunity to pursue all penalties on this matter is lost. For example, if the report and order is effective September 10, 2007, the Staff can pursue penalties only back to September 10, 2005.

Staff sought a Commission report and order in this case by no later than August 20, 2007. On June 28th the Commission granted Staff’s request to issue an order by that date. Then, at the conclusion of the hearing on July 27th the Commission reaffirmed the commitment to the August 20th date. (tr. vol 3, 783-784). An order issued by August 28 would allow the General Counsel’s office to pursue the maximum amount of penalties.

2. At the agenda, the Commission discussed due dates for Suburban’s performance of its obligations under the disposition agreement. Staff stresses the importance of a Commission decision fixing a reasonable period of time after the June

15, 2005 Order for Suburban to have completed its performance. There is ample evidence in the record to make these determinations. As discussed above, the due dates for Suburban's performance establishes the date on which the statute of limitations begins to run. For example, if the Commission determines that December 31, 2005, allowed a reasonable period of time after June 16, 2005, for Suburban to have installed flush valves, then the statute of limitations begins to run on December 31, 2005.

3. Because of §516.103 RSMo., the Commission should bifurcate its report and order into two orders. Specifically, the Commission should issue one report and order establishing the Findings of Fact and Conclusions of Law finding that Suburban has violated the June 16, 2005 Order. The second order would isolate any Commission authorization to the General Counsel's Office to pursue penalties and incorporate by reference the first report and order findings and conclusions. Section 516.103 RSMo states:

The time for commencement of any suit provided for in [§§] 516.380, 516.390 and 516.400, shall not be tolled by the filing or pendency of any administrative complaint or action and no such suit may be brought or maintained unless commenced within the time prescribed by said sections. An **administrative order authorizing the commencement of any such suit shall not be considered as evidence of the violations alleged in any such suit.**

(emphasis added). Besides establishing that a suit for penalties is not tolled while a Complaint case is actively before the Commission, this statute also shows that the report and order that authorizes pursuit of a penalty action "shall not be considered as evidence of the violations alleged." Therefore, for the purpose of preserving the opportunity to place the first report and order with Findings of Fact and Conclusions of Law before the

circuit court, two separate orders must be issued: one making findings and a separate order authorizing the GCO to seek penalties.

4. Staff requests the Commission to order that Suburban's response to this motion be expedited and due Monday, August 27, 2007 by 1:00pm to allow for consideration of any opposition prior to the issuance of orders by August 28, 2007.

WHEREFORE, Staff respectfully requests that the Commission: fix reasonable deadlines for Suburban's performance; bifurcate its Report and Order into two orders, one establishing Findings of Fact and Conclusions of Law, and the second, authorizing the pursuit of penalties by the General Counsel's Office while incorporating by reference the first report and order; set Suburban's response to this motion for Monday, August 27, 2007 by 1:00pm.

Respectfully Submitted,

/s/ **Steven C. Reed**

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Certificate of Service

I hereby certify that copies of the foregoing have been served via electronic mail to Christina Baker, Office of the Public Counsel, at Christina.Baker@ded.mo.gov; and to Thomas M. Harrison and Matthew S. Volkert, Attorneys for Respondent Suburban Water and Sewer Company, and for Respondent Gordon Burnam, at tom@vanmatre.com and matt@vanmatre.com on this 24th day of August, 2007.

/s/ Steven C. Reed