

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
v.)	Case Nos. WC-2007-0452 et. al
Suburban Water and Sewer Co.,)	
Respondent.)	

**MOTION TO STRIKE SUBURBAN'S
MOTION FOR RECONSIDERATION AND APPLICATION FOR REHEARING
BECAUSE IT WAS FILED OUT OF TIME**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, respectfully requests the Commission strike Respondent Suburban Water and Sewer Co.'s *Motion for Reconsideration and Application for Rehearing* (Application) filed out of time and in support of Staff's Motion¹ states as follows:

1. On August 28, 2007, the Commission's Report and Order was issued with an effective date of September 7, 2007.
2. At 5:52 p.m.² on September 6, 2007, Respondent filed its *Application*.
3. Applications for rehearing must be made, pursuant to Section 386.500 RSMo., before the effective date of a Commission Report and Order. Section 386.500.2 states:

No cause or action arising out of any order or decision of the commission shall accrue in any court...unless **that party shall** have made, **before the effective date of such order** or decision, application to the commission for a rehearing. (emphasis added).

The effective date establishes when a Commission Order becomes final and conclusive.

4. In 1941, the Missouri Supreme Court clearly established that the phrase "before the effective date", *id.*, means that "the filing of appellant's application for a rehearing **on the same date, was not in time** under the terms of the statute."³

¹ This is not Staff's response to Respondent's *Application*. Staff respectfully reserves that right to respond.

² See Exhibit A, the EFIS messenger electronic message sent with the date and time of Respondent's filing.

5. Respondent's 5:52 p.m. filing on September 6 is lawfully considered to be filed on September 7 or the "next day the commission is regularly open for business," pursuant to 4 CSR 240-2.080(11)⁴, because it was "received after 4:00 p.m."

If 4 CSR 240-2.080 was a rule that could be waived under 4 CSR 240-2.015 for good cause, Respondent did not request a waiver or leave to file late their *Application* (which would have to have been requested prior to the filing to be proper), nor has any good cause been shown as to why any allowable rule waiver would be granted by the Commission. However, the Commission is bound by 4 CSR 240-2.080(11) for another reason. It would abridge the rights of the Public Counsel, along with other party rights including Staff.

6. This procedural rule, 4 CSR 240-2.080(11), establishes the date and time a Commission order becomes final and unappealable. This rule, therefore, also fixes in time when Staff's due process rights vest to be free from defending an application for rehearing or, consequentially, the Commission's right to be free from defending any appeal to the circuit court. Further, other parties, including the Office of the Public Counsel, rights also vest at this established time. This Commission Rule cannot be waived because it establishes the parties' due process rights.

7. Respondent's filing was filed on the effective date of the Report and Order according to Section 386.500.2, 4 CSR 240-2.080(11), and *Alton*. Therefore, Respondent's filing cannot now be reviewed for reconsideration or rehearing by this Commission. The Missouri Supreme Court in *Alton*, at 348 Mo. *789, 155 S.W.2d **154, stated:

If the motion for rehearing was not timely filed, the order and **decision of the commission** became **final and conclusive** and was **not reviewable by the circuit court**. It was **immaterial** that the **secretary of the commission** may have

³ State ex rel. Alton R. Co. v. Public Service Com'n 348 Mo. 780, *788, 155 S.W.2d 149, **154 (Mo.1941). (emphasis added).

⁴ The Commission, under Section 386.410, has statutory authority to lawfully promulgate rules.

received and filed the motion for rehearing out of time, or that the commission may have ruled the motion upon its merits. (emphasis added).

WHEREFORE, Staff respectfully requests the Commission strike Suburban's *Motion for Reconsideration and Application for Rehearing* on the basis that it was filed out of time, specifically, on the effective date of the Report and Order and not **before** as the law requires for Commission consideration or, consequently, by any Circuit Court.

Respectfully submitted,

/s/ Shelley Syler Brueggemann

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 7th day of September 2007.

/s/ Shelley Syler Brueggemann_____

Brueggemann, Shelley

From: efis.messenger@psc.mo.gov
Sent: Thursday, September 06, 2007 5:53 PM
To: Thompson, Kevin; opcservice@ded.mo.gov; tom@vanmatre.com; Robyn, Angie; Lane, Benjamin; Dale, Cully; Johansen, Dale; Eaves, Dana; Bernsen, Debbie; Steck, Deborah; Merciel, James; Dodson, Jan; Russo, Jim; Finnell, Kay; Happy, Kim*; Oligschlaeger, Mark*; Hummel, Martin; Anderson, Melissa*; Woodruff, Morris; Moore, Richard; Robinson, Rosemary; Brueggemann, Shelley; Reed, Steven; Mankin, Suzie; Vieth, Tammy; Schwarz, Tim; tom@vanmatre.com; vistahomes@socket.net
Subject: Notification For Case: WC-2007-0452

***** This is a computer generated e-mail; please do not respond to EFIS messenger. *****

Notice a submission in WC-2007-0452

Title of Submission : RESPONDENT'S MOTION FOR RECONSIDERATION AND APPLICATION FOR REHEARING

Style of Case : The Staff of the Missouri Public Service Commission, Complainant, v. Suburban Water and Sewer Co. and Gordon Burnam, Respondents.

Company Name(s) : Suburban Water and Sewer Company, Inc.-(Water)

Type of Filing : Motion External

Date Filed : 9/6/2007 Time : 5:52:37 PM

Exhibit A

9/7/2007