

At a session of the Public Service Commission held at its office in Jefferson City on the 6th day of September, 2007.

Respondent.

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¹ Suburban filed the same motion in Case No. WC-2008-0030, a separate complaint case brought by Staff. The Commission will address Suburban's motion in that case in a separate order.

and filed solely by the attorneys for Suburban. The other two parties in this case (Staff and the Office of the Public Counsel), neither signed nor jointly filed these documents.

In its motion, Suburban indicates: “This motion and all attachments constitute a settlement offer.” Suburban’s motion also states: “Respondent hereby proposes the stipulation and agreement attached as Exhibit A hereto, and incorporated by reference herein, which has not been approved by the OPC, the Staff, or the Commission, but which it believes will effect a fair and full settlement and resolution of the Cases.” In its prayer for relief, Suburban asked the Commission to “approve the attached stipulation and agreement and for such other and further relief as the Commission deems just and proper in the circumstances.”

On August 31, Public Counsel filed its Objection and Motion to Strike, in which it requested that the Commission strike Suburban’s August 30 filings in their entirety since they are “inappropriate communications with the Commission containing confidential settlement negotiation information between the parties” and represent “an inappropriate unilateral attempt to communicate *ex parte* with the Commission as well as to bypass the other parties in these cases and open settlement negotiations directly with the Commission.” A few days later, on September 4, Staff filed a pleading titled “Staff’s Objection and Motion to Strike Suburban’s Improper Unilateral Settlement Offer,” in which it raised similar concerns and also requested that the Commission strike Suburban’s “improper motion and Stipulation and Agreement as an offer of settlement to the Commission,” which is not a party but a neutral adjudicator.

While the Commission certainly encourages compromise and settlement of contested claims in general, the Commission finds that both objections are well taken. As correctly noted by Public Counsel and Staff, at present there is no completed, multilaterally-

negotiated “stipulation” or “agreement” for the Commission to approve – instead, there is only an offer from Suburban. Furthermore, while portions of Exhibit A have evidently been used by the parties in an attempt to settle Case No. WC-2008-0030, it clearly does not constitute a completed negotiated settlement involving two or more parties; the confidential settlement negotiation information it contains was not intended to be revealed to the Commission or to the public; neither Public Counsel nor Staff agreed to the disclosure of any such information to either the Commission or the public; and Suburban’s pleadings contain certain factual assertions that are vigorously contested by Public Counsel and Staff. Instead, Suburban filed the documents with the Commission as if they had been mutually agreed on without first obtaining permission from or even notifying Public Counsel or Staff.

For all these reasons, the Commission will grant Public Counsel’s August 31 Motion to Strike, as well as Staff’s September 4 Motion to Strike Suburban’s Improper Unilateral Settlement Offer. If it is the Respondent’s intention to negotiate with the Commission, such negotiations and discussions can take place at the conclusion of the case or before the Circuit Court.

IT IS ORDERED THAT:

1. The Motion to Strike filed by the Office of the Public Counsel on August 31, 2007 is granted, as is Staff’s Motion to Strike Suburban’s Improper Unilateral Settlement Offer, which was filed on September 4, 2007.

2. This order shall become effective on September 16, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton
and Appling, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge