

**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 et al.</u>
)	
Suburban Water and Sewer Co. and)	
Gordon Burnam,)	
Respondents.)	

RESPONSE TO RESPONDENTS' NOTICE OF SATISFACTION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Response to Respondents' Notice of Satisfaction* ("Response") states the following:

1. On June 28, 2007, the Respondents filed *Respondents' Notice of Satisfaction* ("Respondents' Notice") asserting that "Suburban has satisfied the matters complained of in Plaintiff's First Amended Complaint." *Respondents' Notice* at pg 3, paragraph 2. Staff strongly disagrees with that assertion.

2. Respondents completely ignore Staff's repeated prayer, in the Complaint, that if the Commission finds the Respondents have violated the terms of the disposition agreement by failure to comply as ordered, then authorize the General Counsel's Office to seek penalties in circuit court pursuant to §§ 386.570 and 580 RSMo., respectively. Specifically, §386.570.2 states:

[e]very violation of...any order, decision...or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

For example, if Respondents did not install the meters until September 1, 2006, Staff asserts that this is still a violation of the Order. This is because, under the terms of the Agreement Respondents were

required to install meters in all buildings no later than August 31, 2005. As of September 1, 2005, and every day after that, is a continuing violation under §386.570.2, until one year later when the meters were hypothetically installed. This is, hypothetically, 365 separate and distinct offenses in which penalties could be assessed. Here, Respondents have not shown that the terms of the Agreement ¹ were satisfied by: (1) completing the terms of the agreement, and (2) within the timeframe allotted.

3. Staff specifically disputes points a. through j. of Respondents' Notice, matching each of Respondents' points by alphabetical letter, below. Staff would note that Respondents have not provided any documentary support for the Complaint counts they assert are satisfied.

a. Respondents assert that customer records have been reviewed and that "none of its present customers paid a deposit that should be refunded with appropriate interest." *Respondents' Notice* at 1. This statement is not adequate information to determine whether Count I of the Complaint has been satisfied. A significant amount of time has passed since the Commission approved the Agreement on June 16, 2005. Therefore, the "present customers" in 2005 that should have been paid a refund with appropriate interest may not be the same "present customers" due a refund in 2007. Further, at this late date, Staff believes it is reasonable to request documentation from the Respondents that show the customer deposits that were refunded, or Respondents' efforts taken to review customer records that determined no refunds were owed.

b. The Respondents' Notice sets out that Suburban refunded overcharges due as alleged in Count II. However, the Agreement stipulated that "such refunds will consist of a credit place on the customers' bills and the refunds will be completed over a three month period starting with the first billing period after the effective date of revised tariff sheets...filed...." There is no

¹ See "Agreement Regarding Disposition of Small Company Rate Increase Request between Suburban Water & Sewer Company, the Staff of the Commission, and the Office of the Public Counsel" in its *Order Approving Small*

information in front of the Commission at this time that demonstrates refunds were provided as written in the Agreement, through the end of the third billing cycle.

c. As to Count III, Respondents' Notice alleges that it has "developed and distributed the subject brochure." However, no brochure has been provided or attached to show that this brochure detailed the rights and responsibilities of the utility and its customers as stated in the Agreement. It is also unknown to Staff if this brochure was distributed to all customers, and at what point said brochure was distributed.

d. Regarding Count IV, Respondents assertion that a continuous property record system was developed as agreed fails to state that this record includes "the date plant is placed in service, the purchase price of plant and the dates of retirement of property." Furthermore, no document identified as a continuous property record copy has been supplied as of this date to support the brochure's existence.

e. Respondents' assertion, regarding Count V, as to the installation of meters is confusing at best. The Respondents' Notice claims that they were "neither able nor required to install [sic] meters and meter wells due to inadequate operating revenues, but otherwise [have] installed meters at all buildings." This is not proof that this term of the agreement is satisfied. Further, Respondents have not provided records of meter installation to demonstrate they put in meters. The terms of the agreement set out the completion date as August 31, 2005. No information has been provided showing any meter installations by that date.

f. Respondents' Notice states that a ten-year meter replacement program has been adopted and implemented, as to Count VI. Again, at this late date Staff has not been provided any documentation supporting this assertion, in any respect, to show the term was met.

g. As to the agreed term of installing flush valves within Count VII, the Respondents' Notice states that "it is neither able nor required to install flush valves." This is a clear assertion that Respondents' have violated, not satisfied, the terms of the Agreement. As to Respondents' ability to install flush valves, Staff has not been provided any documentation to support any such an assertion.

h. Again Respondents' Notice states that another term of the agreement was not completed because "it is neither able nor required to install an inlet due to inadequate operating revenues and due to the condition of the standpipe", regarding Count VIII. This Agreement term, that the Commission directed the Respondents to comply with, is clear: that Respondents' "will replace the standpipe with an inlet high enough to provide adequate circulation and detention time." Obviously, this term has not been satisfied.

i. As to Count IX, Respondents' Notice again asserts that "it is neither able nor required to contract with a certified operator due to inadequate operating revenues," even though the Agreement states that Respondents' "will contract with a certified operator." This is not satisfactory to show anything.

j. Respondents' final claim, as to Count X, that quarterly reports regarding monthly usage data have been provided cannot be supported by Staff information at this time. The Staff is not aware of the subject reports having been provided to the Audit Department, or to any other Staff. As a result, the Respondents should submit copies of the subject reports, along with details of any prior production, including date and the person(s) submitted to.

WHEREFORE, the Staff respectfully submits this Response for the Commission's consideration in this case.

Respectfully Submitted,

/s/ **Shelley Syler Brueggemann**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Response has been provided, either by first-class mail, by electronic mail, by facsimile transmission or by hand-delivery, to each attorney and/or party of record for this case on this 6th day of July 2007.

/s/ **Shelley Syler Brueggemann**