

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day of
September, 2007.

The Staff of the Missouri Public Service
Commission,

Complainant,

v.

Suburban Water and Sewer Company,

Respondent.

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Case No. WC-2007-0452 et al.

**ORDER DENYING RESPONDENT’S MOTION FOR RECONSIDERATION
AND APPLICATION FOR REHEARING**

Issue Date: September 13, 2007

Effective Date: September 13, 2007

On August 28, 2007, the Commission issued a Report and Order regarding Staff’s complaint against Suburban Water and Sewer Company. That Report and Order became effective on Friday, September 7. Suburban filed a Motion for Reconsideration and Application for Rehearing in the Commission’s electronic filing system at 5:52 p.m. on Thursday, September 6.

On September 7, Staff filed a motion asking the Commission to strike Suburban’s motion for reconsideration or rehearing as untimely filed. Suburban filed a response to that motion on September 10.

Staff's motion explains that Section 386.500.2 RSMo (2000) provides:

[n]o cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, **before the effective date of such order or decision**, application to the commission for a rehearing. (emphasis added)

Staff also points out that Commission orders take effect at the very beginning of their effective date.¹ That means the Commission's report and order became effective at 12:00 a.m. on September 7. For Suburban's application for rehearing to be timely filed, it must have been filed before that time.

As previously indicated, Suburban filed its application for rehearing electronically at 5:52 p.m. on September 6, which is before the effective date of the report and order, and thus, seemingly timely. Staff, however, points to Commission Rule 4 CSR 240-2.080(11), which states:

The date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission. Pleadings or briefs received after 4:00 p.m. will be stamped filed the next day the commission is regularly open for business.

Staff argues that this rule means that Suburban's application for rehearing was not effectively filed until the next day, September 7, after the report and order went into effect, and is therefore untimely filed.

The rule cited by Staff is a holdover from the time before the Commission was able to accept electronic filings, when paper copies of filings had to be physically received and stamped by the Secretary of the Commission. Since 2003, the Commission has had an electronic filing system in place that allows outside parties to file pleadings directly into the system at any time, day or night, or weekend. Electronically filed pleadings are never

¹ *State ex rel. Alton R. Co. v. Pub. Serv. Comm'n*, 348 Mo 780, 155 S.W. 2d. 149 (Mo 1941).

physically date stamped.

In recognition of that change, the Commission created a separate rule, 4 CSR 240-2.045, to allow for the electronic filing of pleadings. Subsection (2) of that rule provides:

Any item or document filed electronically shall, if received during business hours of the commission's records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next business day.

That rule, specific to the electronic filing of documents, controls over the more general rule on the filing of documents cited by Staff. The business hours of the Commission's records room are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for state holidays. Therefore, when Suburban filed its application for rehearing at 5:52 p.m. it did so after the business hours of the Commission's records room and, by rule, that filing is considered filed on the following day.

Because Suburban's application for rehearing was not filed until the day the Commission's Report and Order became effective, that application was not timely filed and must be denied.

Although Suburban's application for rehearing must be denied as untimely filed, the Commission will also address the merits of that application.² On that basis as well, the application for rehearing must be denied.

Suburban's application for rehearing begins by challenging the constitutionality of Section 386.570, RSMo (2000). As Suburban points out, this Commission is not a court

² By addressing the merits of the application, the Commission does not affect the ability of Suburban to seek review of the Report and Order in circuit court. The Missouri Supreme Court, in the previously cited *Alton* case, indicated: "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 received and filed the motion for rehearing out of time, or that the commission may have ruled the motion upon its merits." 155 S.W. 2d., at 154.

and it clearly has no authority to decide the constitutionality of statute enacted by the legislature.

Next, Suburban argues that because the Commission is not a court, it lacks authority to interpret the terms of the Disposition Agreement to imply deadlines that are not contained within the language of the agreement. Suburban seems to believe that the Commission is attempting to enforce some sort of contract between Staff and Suburban. That is not the case. As the Commission indicated in its Report and Order, when the Commission approved the Disposition Agreement, that agreement became an order of the Commission. The Commission has the authority to interpret and enforce its own orders.

Suburban also argues that the remedies Staff could pursue in circuit court are barred by the applicable statute of limitations. That is an argument that Suburban is free to raise as a defense to any action Staff may take in circuit court, but it is not a basis for the Commission to rehear its decision.

Suburban also challenges the factual basis for the Commission's finding that Suburban has violated the terms of the Disposition Agreement. In particular, with regard to Counts III, IV, and VI, Suburban contends that Staff's complaint only alleges violations of the Disposition Agreement and not of Commission regulations. From that fact, Suburban argues that any evidence indicating that Suburban's attempts to comply with the Disposition Agreement do not meet the standards found in the Commission regulations is irrelevant. The Commission examined Suburban's compliance with applicable regulations only to determine whether the company had complied with the requirements of the Disposition Agreement. Suburban's failure to comply with the Disposition Agreement is the basis for Staff's complaint and the basis for the Commission's decision. Suburban's

concerns are not a basis for rehearing.

With regard to Counts VII and VIII, Suburban challenges the adequacy of Staff's evidence that the installation of additional flush valves and a higher inlet were truly necessary to provide safe and adequate service. However, the need for those system improvements was not an issue in this case. Suburban agreed to make those improvements when it signed the Disposition Agreement. The evidence established that it did not make the agreed upon improvements within a reasonable time, and that is the basis for the Commission's decision.

Finally, Suburban presents a notice of satisfaction that it has filed in a related case indicating that it has recently completed several of the improvements that it promised to make in the Disposition Agreement. The Commission is pleased that Suburban may finally be taking seriously its obligation to provide safe and adequate service to its customers. Suburban can certainly present that evidence to the circuit court when Staff brings an action in that venue. However, improvements allegedly made after the hearing do not provide a basis for rehearing of the Commission's decision.

Section 386.500.1, RSMo (2000), indicates the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." Suburban has failed to present sufficient reason to rehear or reconsider the Commission's Report and Order.

IT IS ORDERED THAT:

1. Suburban Water and Sewer Company's Motion for Reconsideration and Application for Rehearing is denied.
2. This order shall become effective on September 13, 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, Clayton and Appling, CC., concur.
Gaw, C., dissents

Woodruff, Deputy Chief Regulatory Law Judge