

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

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

MOTION FOR RECONSIDERATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Motion for Reconsideration pursuant to Commission rule 4 CSR 240-2.160 respectfully states as follows:

1. A hearing in this matter is scheduled for tomorrow and Friday, July 26 and 27, 2007.
2. Depositions of Staff, Gordon Burnam, Bonnie Burnam, and Paula Belcher were taken one week ago on July 16 and 17th, 2007. The transcripts of that testimony were provided by the end of the day last Friday, July 20th.
3. The Commission issued an Order granting in part and denying in part Respondent Gordon Burnam's motion to dismiss on July 24, 2007.
4. The Commission's Order granting Respondent Gordon Burnam's (Burnam's) Motion to Dismiss is unjust and unreasonable within the meaning of 4 CSR 240-2.160(2). Specifically, Staff states the following:

a. Since, the Motion to Dismiss was granted prior to hearing, Staff did not have the opportunity to present the Commission with evidence of Respondent's complete domination of Respondent Suburban Water and Sewer Co. (Suburban). This evidence was obtained through recent discovery and was not available to Staff when Staff filed its Opposition to Burnam's Motion to Dismiss. This *Motion for Reconsideration* highlights some of that information to demonstrate the foundation for Commission reconsideration. In light of this information, Staff should be allowed a reasonable opportunity to present its case against Gordon Burnam at the already-scheduled hearing.

b. At the hearing on the Commission's petition for preliminary injunction held in Boone County Circuit Court on June 29, 2007, Paula Belcher testified that to her knowledge she was not the Vice-President of Suburban (Tr., June 29, 2007, p. 86, ln. 15-17). At the deposition of Bonnie Burnam, one week ago, Ms. Burnam testified that Ms. Belcher was appointed vice president "[t]wo or three years ago, a couple." (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 9, ln. 6-9. Ms. Burnam testified that "We put her in there so she could sign papers in our absence." (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 9, ln. 8-9). Ms. Burnam also testified that she and her husband, Respondent Burnam, needed "to have an officer of the company when we're out of town—when both my husband and I are out of town, the president and the secretary. And she is left in charge and we needed somebody in charge while we are gone." (Depo. Tr. Bonnie Burnam, p. 8, ln. 21-24). At the deposition of Paula Belcher conducted on July 17, 2007, Ms. Belcher testified that she had not been aware that she was an officer

of Suburban but that she had become aware of it when she heard the deposition testimony of Bonnie Burnam. (Depo. Tr. Paula Belcher, July 17, 2007, p. 8, ln. 7-19; p. 9, ln. 1). Ms. Belcher was not even aware of her status as an officer of the company until July 17, 2007. Ms. Belcher also testified that she did not vote on the decision to dissolve the corporation. (Tr., June 29, 2007, p. 86, ln. 20-23). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

c. Ms. Belcher testified that she is not a shareholder of Suburban. (Tr., June 29, 2007, p. 86, ln. 19). The only shareholders of Suburban are Respondent Burnam and Bonnie Burnam, each of whom own 50% of Suburban's stock. (Tr., June 29, 2007, p. 26, ln. 23-25; p. 27, ln. 1-7). Further, at the preliminary injunction hearing, Ms. Belcher testified that she deferred all decisions with regard to Suburban's water system to Respondent Burnam and that Respondent Burnam made all of the financial decisions for Suburban. (Tr., June 29, 2007, p. 87, ln. 4-12). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

d. Respondent Gordon Burnam testified at the deposition taken by Staff counsel on July 17, 2007 that Suburban has no employees. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 14, ln. 15-18). All manual work for Suburban is performed by employees of Vista Home Management, Inc. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 15, ln. 17-24). Vista Home Management, Inc. then

bills Suburban for the hours worked on Suburban tasks by Vista Home Management employees. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 16, ln. 4-11). Vista Home Management, Inc. is a company whose stock is owned by Respondent Gordon Burnam and Bonnie Burnam. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 18, ln. 4-6). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban and to demonstrate that the only persons who perform work on behalf of Suburban are employees of another entity owned by the Burnams.

e. Bonnie Burnam, who is the only Suburban shareholder other than Gordon Burnam, testified at her deposition that she had never seen the disposition agreement for the 2005 rate case before. (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 10, ln. 11-20). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

f. Bonnie Burnam testified that official Suburban board of directors meetings with minutes and shareholders meetings are held only infrequently. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 22, ln. 1-6). Bonnie Burnam testified that Paula Belcher is sometimes involved in these meetings. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 22, ln. 7-10). The only signatures that appear on the resolution stating the company's intention to delay dissolution are those of Bonnie Burnam and Respondent Gordon Burnam. (Depo. Tr., Bonnie Burnam, July 17, 2007, p. 22, ln. 11-16). Staff should have a reasonable opportunity to

present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

g. Bonnie Burnam testified that she and her husband shared the authority to authorize attorneys to act on behalf of Suburban but that she did not believe Paula Belcher had such authority. (Depo. Tr. Bonnie Burnam, July 17, 2007, p. 26, ln. 13-25; p. 27, ln. 1-2). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

h. Respondent Gordon Burnam testified that he no longer owns any land in Bon-Gor, the subdivision that is served by Suburban. (Depo. Tr. Gordon Burnam, July 17, 2007, p. 40, ln. 20-21). However, at the local public hearing on July 23, 2007¹, an attorney testifying on behalf of his client stated that his client purchased property from an entity owned by the Burnam family in 2004, that was switched to another Burnam family entity within a few weeks of closing. Staff should be allowed a reasonable opportunity to present this evidence at hearing in support of its claim that Gordon Burnam is properly a party to this action because he kept Suburban's water rates unreasonably low while he or his family members owned or shared an interest in property in the subdivision. Staff's position is that this conflict of interest influenced Gordon Burnam's decision to keep water rates low to his own benefit, while to the detriment of Suburban, and that it rendered Suburban unable to make necessary improvements to its water system.

¹ A transcript of this hearing is not yet available.

i. Respondent Gordon Burnam testified that Suburban has notes outstanding “to—it could be one of our other companies, but Gordon and Bonnie Burnam.” (Depo. Tr., Gordon Burnam, July 17, 2007, p. 23, ln. 18-20).

Respondent Burnam testified that he believed there were notes outstanding totaling approximately \$26,000. (Depo. Tr., July 17, 2007, p. 23, ln. 25). Staff should have a reasonable opportunity to present this evidence at hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because the conflict created by being a personal creditor and officer of Suburban may lead or may have lead him to make decisions as President of Suburban that favor him personally rather than decisions that are in the best interests of Suburban as a corporation.

j. Respondent Gordon Burnam testified that, following the 2005 rate case, he made the decision to stop reading the water meters. (Depo. Tr. Gordon Burnam, p. 49, ln. 49; p. 50, ln. 1). Respondent Gordon Burnam testified that he “[t]old Paula [Belcher] to quit reading the meters, having somebody read them.” (Depo. Tr., Gordon Burnam, p. 50, ln. 4-5). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban. For example, this testimony demonstrates that Mr. Burnam made a decision following the 2005 rate case about whether or not the company would comply with the condition in the 2005 rate case disposition agreement. Gordon Burnam’s decision blocked the company from filing the required quarterly reports regarding monthly customer meter usage data to the

Staff's auditing department. Mr. Burnam made this decision without referring to Suburban's only other officer² and shareholder.

k. Respondent Gordon Burnam testified that Suburban had not installed flush valves as required by a condition in the 2005 rate case disposition agreement because Suburban lacked money. "Suburban was not making a profit. I either had to loan it money or it wasn't done." (Depo. Tr. Gordon Burnam, July 17, 2007, p. 58, ln. 4-5). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

l. With regard to the condition in the 2005 rate case disposition agreement requiring the company to install a standpipe inlet high enough to provide adequate circulation and detention time, Respondent Gordon Burnam testified, "Just didn't do it. Never thought about it, didn't do it." (Depo. Tr., Gordon Burnam, July 17, 2007, p. 60, ln. 6-7). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

m. Respondent Gordon Burnam testified with regard to the letter that was dated January 31, 2007, and was addressed to the DNR and the PSC, that the letter was written by Mr. Volkert at his request and that the reason for the letter was to "[g]et me out of the water business." (Depo. Tr., Gordon Burnam, July 17, 2007, p. 74, ln. 7). However, Respondent Gordon Burnam testified 6 months later that it was Suburban that was getting out of the water business and that he

² The period referred to in this testimony predates the naming of Paula Belcher as an officer of Suburban.

personally “has never been in the water business.” (Depo. Tr., Gordon Burnum, July 17, 2007, p. 74, ln. 11-14). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

n. Respondent Gordon Burnam testified that he authorized the dissolution of Suburban. (Depo. Tr., Gordon Burnam, July 17, 2007, p. 79, ln. 16-20). Staff should have a reasonable opportunity to present this evidence at the hearing in support of its claim that Respondent Gordon Burnam is properly a party to this action because of his dominance of Suburban.

WHEREFORE, Staff respectfully submits this Motion for Reconsideration pursuant to rule 4 CSR 240-2.160 and in light of the overwhelming evidence in this case that this troubled small water system has been deliberately allowed to deteriorate at the hands of the controlling person who planned to benefit personally to the detriment of the ratepayers. Staff earnestly requests that the Commission rescind its Order Granting in Part and Denying in Part Gordon Burnam’s Motion to Dismiss in order that this one troubled water system might be brought into compliance with its statutory obligation to provide safe and adequate service for its customers.

Respectfully Submitted,

/s/ **Shelley Syler Brueggemann**

Shelley Syler Brueggemann

Senior Counsel

Missouri Bar No. 52173

Attorney for the Staff of the
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-7393 (telephone)

(573) 751-9285 (facsimile)

shelley.brueggemann@psc.mo.gov

Certificate of Service

I hereby certify that a true and correct copy of this Motion 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 25th day of July 2007.

/s/ **Shelley Syler Brueggemann**