

At a session of the Public Service Commission held at its office in Jefferson City on the 28th day of June, 2007.

Respondents.

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¹ All dates specified in this order refer to the calendar year 2007.

finding that Respondents have failed to file the company's 2006 annual report as required by Commission Rule 4 CSR 240-3.640, and further requested that the Commission authorize its General Counsel to seek monetary penalties for all the alleged violations in circuit court pursuant to Sections 386.570 and 386.580, RSMo 2000.²

The complaint also included Staff's Motion for Expedited Treatment, in which Staff requested priority treatment and consideration of its complaint under Commission Rule 4 CSR 240-2.080(16). In particular, Staff asked that the Commission hold an evidentiary hearing by no later than July 20, and that it issue its decision by no later than August 20. In support of that motion, Staff alleged, *inter alia*, that Suburban had already stated an intention to wind up its affairs and had sent notice to its customers that it intended to cease operations as of July 1, 2007; that Mr. Burnam is a Florida resident who will only be present in Missouri for a limited period of time; and that granting expedited treatment is appropriate since it would help ensure the continuation of water service to Suburban's customers and is in their best interest, as well as the best interest of all parties to the case.³

On June 4, the Commission ordered any party who wished to oppose Staff's Motion for Expedited Treatment to do so by filing an appropriate pleading no later than June 11. On June 6, OPC filed a pleading stating, in relevant part, that it agreed with Staff that the complaint should be adjudicated on an expedited basis and that any delay could be detrimental to Suburban's customers. On June 8, Respondents filed their Response and Suggestions in Opposition to Motion for Expedited Treatment. More than ten days have

² On June 8, Staff filed a first amended complaint against Respondents, which dropped Count XI pertaining to the annual report and contained other minor changes not relevant to the issue of whether the complaint should be adjudicated on an expedited basis.

³ These representations were repeated in the first amended complaint filed on June 8.

now passed since then and no one has filed an additional responsive pleading, so Staff's motion is now ripe for consideration by the Commission.⁴

Respondents claim that Staff has known since late June 2006 that the Missouri Department of Natural Resources issued a report citing deficiencies in Suburban's system and water supply, and that Suburban asked for a rate increase that would permit it to use water from the neighboring water district at the same rates the district was charging its customers. They also claim that even though Suburban gave written notice to Staff as early as January 31 that Suburban could no longer function at an operating loss and in violation of DNR requirements and that it intended to cease water utility operations on July 1, Staff did nothing until May 22, when two of the Commission's attorneys met with one of Suburban's attorneys and, for the first time, advised Suburban that it was in violation of the 2005 disposition agreement and would have to comply or a complaint would be filed. In short, Respondents contend that Staff "is now asking the Commission to rescue the [S]taff from the consequences of prolonged delays" by seeking expedited treatment at this time. Therefore, Respondents argue, Staff's motion should be denied since it does not comply with Commission Rule 4 CSR 240-2.080(16)(C), which requires any party seeking expedited treatment in any case to aver with particularity that "the pleading was filed as soon as it could have been," or to provide "an explanation why it was not."

The Commission disagrees with Respondents. Even assuming all the facts pled by them to be true, Staff's motion clearly and expressly states that Staff filed its complaint "as soon as practicable" given that it had received "no communication from Suburban since Staff counsel met with Suburban's counsel on May 22, 2007." Moreover, the Commission

⁴ According to Commission Rule 4 CSR 240-2.080(15), parties are "allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission."

will not fault its Staff for failing to explicitly state the obvious – which is that Staff needed time to develop, through its own inquiry and investigation of the facts and the law, a reasonable evidentiary and legal basis for its allegations that Respondents have violated many of the terms of the disposition agreement they entered into in 2005 and are subject to the imposition of financial penalties for doing so. Indeed, by filing the instant complaint with the Commission, the attorneys representing Staff have certified, to the best of their belief, formed after an inquiry reasonable under the circumstances, that: (1) the complaint is not being maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims and other legal contentions therein are warranted; and (3) the allegations and other factual contentions therein have evidentiary support.⁵ Therefore, the Commission rejects Respondents' claim that Staff's motion does not comply with Commission Rule 4 CSR 240-2.080(16)(C).

Respondents also argue that there is no need to expedite the hearing in this matter because even if Staff is granted all the relief it has requested, "that will have no effect whatsoever on Suburban's decision to cease operating on July 1, 2007." While this may well turn out to be true, Respondents' rather brazen assertion that they simply *do not care* whether the Commission finds they have violated the express terms of ten of the sixteen items contained in the 2005 disposition agreement and proceeds to authorize its General Counsel to seek monetary penalties for all those violations in circuit court is hardly persuasive proof that expedited treatment of Staff's complaint at the administrative level is unwarranted. To the contrary, the Commission finds that Staff's motion sets forth sufficient facts and circumstances to justify expedited treatment and consideration of its complaint,

⁵ See Commission Rule 4 CSR 240-2.080(7)(A)-(C).

and that it is in the best interest of both the parties and Suburban's customers alike to have this matter resolved as quickly as possible.

For all of these reasons, the Commission will grant Staff's Motion for Expedited Treatment.

IT IS ORDERED THAT:

1. The Motion for Expedited Treatment filed by Staff on May 29, 2007 and again on June 8, 2007 is granted.
2. This order shall become effective on June 28, 2007.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

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

Lane, Regulatory Law Judge