

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of June, 2007.

Respondents.

Case No. WO-2007-0444

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

In its original eleven-count complaint, which was filed on May 29 and was assigned Case No. WC-2007-0452, the Staff of the Missouri Public Service Commission (“Staff”) sought a Commission order finding that Suburban and its sole shareholder and president, Gordon Burnam (referred to collectively as “Respondents”), have violated the terms of ten of the sixteen items contained in a disposition agreement with Staff and the Office of the Public Counsel (“OPC”) which was approved by the Commission and executed by Mr. Burnam as President on behalf of Suburban in 2005. Staff also sought an order of the Commission 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 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 in Case No. WC-2007-0452 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, which will be ruled in a separate order, Staff alleged several probative facts, including, *inter alia*, that Suburban “has stated an intention to wind up its affairs and has sent notice to its customers that it intends to cease operations as of July 1, 2007,” that granting expedited treatment “will avoid harm to Suburban’s customers by ensuring continuation of water service,” and that it had not heard from Suburban since May 22.

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 consolidation issue.

On May 21, OPC filed its Application to Open a Case for Investigation and Request for Local Public Hearing, which was assigned Case No. WO-2007-0444. In this pleading, OPC asked the Commission to open a case in order to facilitate an investigation of Suburban “to ensure that [its] customers are not deprived of safe and adequate [water] service,” inasmuch as the customers had “received a letter stating that on or about July 1, 2007 water service would end because Suburban was going out of business.” OPC also requested that the Commission promptly schedule a local public hearing in the Columbia, Missouri area after giving sufficient notice so the Commission could “gather information regarding customers’ concerns and preferences” for resolving the matter.

On June 5, the Commission ordered that Case Nos. WC-2007-0452 and WO-2007-0444 be consolidated pursuant to Commission Rules 4 CSR 240-2.110(3)³ and 4 CSR 240-2.070(12),⁴ finding that they clearly involved related questions of both law *and* fact and that consolidating them “would conserve scarce investigative and administrative resources, avoid unnecessary delay in adjudication, and promote uniformity and efficiency without impairing the substantive or procedural rights of any party.”⁵ The same day, Staff filed an objection to the order and requested that it be rescinded. On June 6, OPC filed its response to Staff’s objection, and on June 8, Respondents filed their response and suggestions in support of the Commission’s order consolidating the two matters.

Staff makes three major arguments in support of its objection. First, it argues that because its complaint focuses on Respondents’ alleged past and continuing violations of

³ This rule states that “[w]hen pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all of the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.”

⁴ This rule permits all matters upon which a complaint may be founded to be joined in a single hearing.

⁵ Case No. WC-2007-0452 was designated as the lead case.

the 2005 disposition agreement and OPC seeks an investigation to uncover possible solutions to the problems created by the proposed dissolution of Suburban, cases WC-2007-0452 and WO-2007-0444 do not involve common questions of law or fact. Staff further claims that a public hearing would not result in any evidence having “any bearing on the material facts in Staff’s Complaint.” Staff is incorrect. As clearly demonstrated by the summary provided above and pointed out by Respondents, throughout its complaint and Motion for Expedited Treatment, which was incorporated into the complaint, Staff alleged that prompt action by the Commission was imperative since Suburban planned to discontinue providing water service to its customers on July 1 – which is the *very reason* OPC asked the Commission to open Case No. WO-2007-0444 in the first place. Moreover, contrary to Staff’s assertion, a local public hearing could clearly result in evidence bearing *directly* on the allegations in Staff’s complaint, because many of the counts in the complaint *directly* involve the customers themselves.⁶ Therefore, the two cases do indeed involve common questions of law and fact.

Second, Staff argues that consolidation would not avoid unnecessary costs or delay since the two cases “seek substantially different relief” and “cannot be resolved in a single hearing.” In its response, OPC denies this, arguing that consolidation *will* avoid unnecessary costs for both the Commission and Suburban’s customers since “it will eliminate the need for duplicating efforts to come to a resolution in this matter.” Indeed, OPC’s June 6 prayer for relief merely asks that the Commission “schedule a local public hearing . . . on an expedited basis” after notice is given to Suburban’s customers.

⁶ At a bare minimum, Counts I (Failure to Refund Deposits With Appropriate Interest), II (Failure to Refund Overcharges Made to Customers), III (Failure to Develop and Distribute a Customer Brochure), and IV (Failure to Install Meters for All Buildings) fall into this category.

Moreover, Respondents correctly note that “these matters are inextricably entwined, and it is necessary and advisable, for economy and to insure a full and fair hearing for all interested parties, to consolidate both cases.” Accordingly, the Commission finds that the relief actually sought by OPC is *not* substantially different than that sought by Staff and that the cases can both be resolved together without impairing the substantive or procedural rights of any party.

Third and finally, Staff contends that because it is attempting to minimize the immediate risk of harm to Suburban’s customers, consolidating the two cases “may result in delay due to the need for the investigation requested by OPC in Case No. WO-2007-0444 to be completed.” This contention lacks merit, however, because OPC’s response makes it crystal-clear that OPC: (1) agrees with Staff’s position as stated in the complaint; (2) agrees with Staff that the complaint should be adjudicated on an expedited basis and that any delay could be detrimental to Suburban’s customers; and (3) is not proposing to conduct a full-blown independent investigation of its own, but merely seeks to have the Commission promptly schedule and conduct a local public hearing in Columbia “*so as to not delay* Staff’s request that the Commission hold a hearing in this matter no later than July 20, 2007 and that it issue its decision no later than August 20, 2007.”

For all these reasons, Staff’s objection is overruled and the cases shall remain consolidated pursuant to the Commission’s order of June 5.

IT IS ORDERED THAT:

1. Staff’s objection to the Commission’s June 5, 2007 order consolidating Case No. Case No. WO-2007-0444 with Case No. WC-2007-0452 for all adjudicative purposes,

including investigation, hearing, and disposition, is overruled. Case No. WC-2007-0452 shall remain the lead case.

2. This order shall become effective on June 26, 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

Lane, Regulatory Law Judge