

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

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

**RESPONDENT GORDON BURNAM'S
MOTION TO QUASH PORTION OF STAFF'S SUBPOENA**

COMES NOW Gordon Burnam, Respondent in the matter of The Staff of the Public Service Commission, Complainant, against Suburban Water and Sewer Company and Gordon Burnam, Respondents, before the Public Service Commission of the State of Missouri, Case No. WC-2007-0542, having been served with a subpoena to appear personally and produce documentary evidence at an evidentiary hearing before the Commission on July 26th, 2007, comes and requests the Commission to quash the portion of the subpoena requesting the production of personal tax returns for Gordon Burnam and supporting tax records for 2000 to 2006.

Background.

1. The Staff of the Public Service Commission's ("Staff") Complaint calls for the Public Service Commission ("Commission") to determine whether Respondents have failed to comply with a June 16, 2005 disposition agreement, and requests the Commission to authorize the Office of the General Counsel to seek penalties in circuit court pursuant to Sections 386.570 and 386.580 RSMo for alleged violation of such agreement.

2. On or about July 17, 2007, the Staff served on Respondent Gordon Burnam (“Burnam”), and Secretary of Suburban Water and Sewer Company (“Suburban”) and wife of Burnam, Bonnie Burnam, and Manager of Suburban, Paula Belcher subpoenas *duces tecum* to appear and testify personally and produce several identified documents, business records and the like at an evidentiary hearing before the Commission on July 26, 2007 at 8:00am.

3. Staff’s subpoena commands Burnam’s appearance and testimony at the July 26, 2007 hearing as well as production of a total of ten (10) items and documents, one of such commands includes Burnam’s personal income tax returns and supporting tax records from 2000 to 2006.

4. Suburban, as a public utility, is the only party to the 2005 disposition agreement and as a water corporation, maintains separate corporate tax returns and supporting tax records which account for all revenue gained through its sale of water for public use and the all costs and liabilities incurred through its activities as a regulated public utility. Staff’s subpoena *duces tecum* commands production of these records by Paula Belcher on behalf of Suburban.

Motion to Quash

5. Respondent Burnam hereby incorporates by reference all of the statements contained in paragraphs 1 through 4 above.

6. Staff’s subpoena for production of Burnam’s personal tax returns and supporting tax records should be quashed because its command invades Burnam’s privacy rights, is unreasonable and oppressive, and fails to comply with the Commission’s Rules of Practice and Procedure.

7. Tax returns are confidential financial documents statutorily protected from unwarranted inspection. *See e.g.* Section 32.057 RSMo; 26 U.S.C.A. §§ 6103. Personal Tax Returns may only be required after good cause is shown and the inquiry is deemed proper. State

ex rel. Wohl v. Sprague, 711 S.W.2d 583, 585 (Mo. App. E.D. 1986) (holding that “the information in the return is protected from unnecessary prying, and, therefore, the detailed information in a tax return is protected with the sensible expectation the protective shield will not be lifted unless good cause is shown.”). Burnam’s personal tax return and supporting tax records are not probative as to the matter of Respondents’ compliance with the 2005 disposition order nor would they or do they include relevant finances pertinent to the water corporation’s operations. Any speculative evidentiary support would only be cumulative to the accounts contained in Suburban’s corporate tax returns and supporting tax records. Furthermore, Burnam is invested in several business ventures apart from Suburban and files joint tax returns with his wife Bonnie Burnam, who is not a party in this matter. Commanding Burnam to produce these confidential records without a showing of good cause or relevance infringes on Burnam, his wife, and his businesses’ privacy rights. *See State ex rel. Lichtor v. Clark*, 845 S.W.2d 55, 65(Mo. App. W.D.,1992) (stating that “The privacy of the [witness] as to personal finances, professional associations, and patients/clients should be respected and should be invaded only as necessary. . .”).

8. Staff’s subpoena with respect to Burnam’s personal tax returns is oppressive and unreasonable. Supreme Court Rule 57.09. As discussed *supra*, Burnam’s personal tax returns bear no relevance as to Respondents’ compliance with the 2005 disposition agreement and requiring the document’s production is intrusive and unnecessary. *Id.* at 65 (stating that “The trial court should, of course, restrict such discovery so that it is no more intrusive than necessary.”). The Commission has no power to assess penalties or damages. Undoubtedly, a subpoena requesting Burnam’s personal appearance, nine (9) additional items to be produced, ten (10) days notice before the scheduled hearing, and generally requesting irrelevant personal tax

returns and all supporting tax records for the last six (6) years – predating by four (4) years all other relevant facts in this matter – is blatantly oppressive and unreasonable.

9. Staff's subpoena fails to comply with the Commission's Rules of Practice and Procedure which require that "A request for a subpoena *duces tecum* shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant." 4 CSR 240-2.100(1). The subpoena omits any explanation as to materiality or relevance to any documents requested including Burnam's personal tax returns. The Commission's own rule not only implicitly requires that all documents subpoenaed be probative to the matter at bar, but also provides for a procedural requirement which the Staff's subpoena fails to adhere to.

WHEREFORE, Respondent moves for the Commission to quash Staff's subpoena pursuant to 4 CSR 240-2.100(3) with respect to personal tax returns for Gordon Burnam and supporting tax records for 2000 to 2006.

/s/ Thomas M. Harrison
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The undersigned certifies that a complete and conformed copy of the foregoing document was faxed and mailed to all counsel of record in this case, by U.S. Mail, postage prepaid in the proper amount, at said counsel's last known address.

/s/ Thomas M. Harrison
July 18, 2007