

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of July, 2007.

The Staff of the Missouri Public Service Commission,
Complainant,
v.
Suburban Water and Sewer Co. and Gordon Burnam,
Respondents.

Case No. WC-2007-0452 et al.

**ORDER DENYING STAFF'S MOTION FOR WAIVER OF COMMISSION RULE
4 CSR 240-2.117(1)(A)**

Issue Date: July 24, 2007

Effective Date: July 24, 2007

On May 29, 2007,¹ the Staff of the Missouri Public Service Commission filed an eleven-count complaint against Suburban Water and Sewer Co. ("Suburban") and its corporate President, Gordon Burnam (referred to collectively as "Respondents"). Staff seeks a Commission order finding that the Respondents violated many of the terms of a unanimous disposition agreement with Staff and the Office of the Public Counsel ("OPC") which was approved by the Commission in June 2005, shortly after it was executed by Mr. Burnam as President on behalf of Suburban on May 26, 2005. Staff also seeks an order authorizing the Commission's General Counsel to seek monetary penalties against

¹ Unless otherwise indicated, all dates specified in this order refer to the calendar year 2007.

Respondents for the alleged violations in circuit court pursuant to Sections 386.570 and 386.580, RSMo 2000.²

The Commission granted Staff's motion for expedited treatment of its complaint on June 28, and, in an order dated July 10, set the matter for an evidentiary hearing on July 26. On July 9, Staff filed a "Motion for Summary Determination, Motion for Waiver of the 60 Day Rule, and for Expedited Treatment," along with a supporting legal memorandum.³ On July 10, Suburban and Mr. Burnam filed a joint response to the Motion for Waiver of the 60 Day Rule and for Expedited Treatment, but reserved the right to respond to the Motion for Summary Determination depending on the Commission's ruling. Staff filed its rejoinder on July 11. Therefore, the issues raised in the motions are ripe for decision.

Commission Rule 4 CSR 240-2.117(1)(A) states that "a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission." As Staff filed its motion for summary determination only 17 days prior to the hearing, it is untimely unless the Commission waives 4 CSR 240-2.117(1)(A) – which, under Commission Rule 4 CSR 240-2.015(1), requires a showing of good cause.⁴

Although the term "good cause" is frequently used in the law,⁵ the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary

² On June 8, Staff filed a ten-count first amended complaint against Respondents which dropped one of the original eleven counts. Later, on July 11, Staff dismissed one of the remaining ten counts, leaving nine.

³ In its Motion for Summary Determination, Staff requests that five of the nine counts in Staff's complaint be summarily resolved in Staff's favor. Therefore, an evidentiary hearing would still be required even if the Commission granted the motion.

⁴ Commission Rule 4 CSR 240-2.015(1) provides that any rule in Chapter 2 "may be waived by the commission for good cause."

⁵ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

meaning.⁶ Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁷ Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁸

Staff first argues that the Commission’s June 28 order expediting this case constitutes a substantial reason to justify deviating from the express terms of 4 CSR 240-2.117(1)(A). However, as Respondents note, the discovery process is still ongoing and Mr. Burnam was scheduled to be out of the country until July 16. As a result, the Commission finds Respondents’ claim that they “cannot fully and adequately prepare a formal response to Staff’s Motion for Summary Determination within the requested period of time” to be convincing.⁹

Second, Staff contends there is good cause to waive 4 CSR 240-2.117(1)(A) because allowing the Motion for Summary Determination to be filed 17 days prior to the evidentiary hearing would “facilitat[e] a resolution of this case without the necessity of a hearing on issues on which there is no genuine question of material fact.” While this is true, Respondents correctly point out that “for administrative economy and fairness to all

⁶ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁷ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁸ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁹ In this regard, it bears noting that, in Staff’s Motion for Expedited Treatment of its Motion for Summary Determination, Staff asked that the Commission shorten the amount of time Respondents would be given to file their response to the Motion for Summary Determination from the thirty days allowed by Commission Rule 4 CSR 240-2.117(1)(C) to a mere five days. Staff further requested that the Commission decide its Motion for Summary Determination within six days after the response was filed.

the parties, it does not make sense to have an expedited summary determination just a few days in advance of the actual evidentiary hearing, [particularly a hearing] which has already been expedited.” Moreover, if the Commission were to accept Staff’s rationale as good cause for waiving 4 CSR 240-2.117(1)(A), the 60-day rule would likely be waived in every case where a motion for summary determination is filed, thereby essentially making it mere surplus verbiage.

Given the circumstances of this case, the Commission does not believe there is good cause to waive the 60-day rule set forth in 4 CSR 240-2.117(1)(A). Accordingly, Staff’s motion for waiver of that rule is denied and its motions for summary determination and for expedited treatment will not be decided, as they were untimely filed.¹⁰

IT IS ORDERED THAT:

1. Staff’s Motion for Waiver of the 60 Day Rule, which was filed on July 9, 2007, is denied.
2. Staff’s Motions for Summary Determination and for Expedited Treatment, which were filed on July 9, 2007, shall not be decided.

¹⁰ Of course, this does not mean that filing them was a useless act. This is because, in the Commission’s view, the Motion for Summary Determination and the accompanying legal memorandum have brought several important legal and factual issues in this case into much sharper focus, and have put the Respondents on ample advance notice of those issues.

3. This order shall become effective on July 24, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

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

Lane, Regulatory Law Judge