

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	Case No. WC-2008-0331
v.)	
)	
Universal Utilities, Inc., and Nancy Carol Croasdell,)	
)	
Respondents.)	

**STAFF’S RESPONSE TO RESPONDENTS’ JULY 18, 2008 APPLICATION
FOR REHEARING AND MOTION TO DISMISS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through Counsel, and respectfully requests the Missouri Public Service Commission (Commission) deny Respondents’ Application for Rehearing and Motion to Dismiss. For this Response, Counsel respectfully states as follows:

Relevant Procedural History

1. On August 7, 2008¹, the Commission issued its Order Denying Respondents’ Application for Rehearing and Motion to Dismiss. The Commission concluded that Respondents failed to show sufficient reason under Section 386.500 RSMo (2000) for the Commission to grant rehearing.
2. The August 7th Order had an effective date of the same, and also stated “[t]his case shall be closed on August 8, 2008.”
3. Later the same day, Counsel for Staff filed a Motion For Clarification. Counsel’s Motion asserted Respondents’ July 25th Application for Rehearing and Motion to Dismiss

¹ Dates within refer to the calendar year 2008, unless otherwise noted.

centered around the Commission's July 15th Order Denying Objection to Order and Motion to Dismiss of Universal Utilities, Inc., and Nancy Carol Croasdell, not the case as a whole. Therefore, the Commission's August 7th order only resolved issues surrounding the July 15th Order. Issues in the underlying Complaint remain for resolution.

4. Also on August 7th, the Commission issued its Notice of Correction Nunc Pro Tunc, stating it inadvertently closed the case, and that the case remains open.
5. On August 18th, Respondents filed an Application for Rehearing and Motion to Dismiss. The Application asserted the Commission acted unlawfully, unjustly, and unreasonably when it issued its August 7th nunc pro tunc correction, the Commission affirmatively closed the case, and as such, Respondents claimed the Commission lost jurisdiction to modify the Order.

Section 386.490.3 Allows the Commission to Change the Order

6. Section 386.490.3 RSMo (2000) states “[e]very order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission[.]”
7. Section 386.490.3 allows the Commission to change any order it issues at any time. Therefore, a case is always before the Commission unless jurisdiction has been removed by a court.
8. Even before the case was “closed” on August 8, 2008, the Commission affirmatively stated on August 7, 2008, that it would remain open. The Commission's action complies with 386.490.3

The Commission's Use of "Open" and "Closed" is Purely Administrative

9. Even if the Commission were to accept Respondents' nunc pro tunc arguments, the Commission may allow the case at hand to remain open.
10. Whether the Commission classifies a case as "open" or "closed" is purely for administrative purposes, and does not terminate a case. The classification has no legal effect, but simply categorizes the case for the Commission's Electronic Filing and Information System.
11. For comparison, the only procedural relief that has been requested by Respondents, and that has the effect of terminating the case, is a motion to dismiss for lack of jurisdiction, which the Commission has previously denied.
12. Neither state law nor Commission rule describes a procedure for the Commission to use when opening a case. As such, the only process that is required is notice of the opening, which the Commission issued to Respondents on August 7, 2008.

WHEREFORE, Counsel for Staff respectfully requests the Missouri Public Service Commission deny Respondents' Application for Rehearing and Motion to Dismiss.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was hand-delivered, electronically mailed or mailed to counsel of all parties to this cause on this 27th day of August, 2008.

/s/ Dawn M. Carafeno