

**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’ APPLICATION FOR REHEARING
AND MOTION TO DISMISS**

COMES NOW Counsel for the Staff of the Missouri Public Service Commission, and for its Response to Respondents’ Application for Rehearing and Motion to Dismiss respectfully states to the Missouri Public Service Commission (Commission) the following:

1. On July 15, 2008, the Commission issued its Order Denying Objection to Order and Motion to Dismiss of Universal Utilities, Inc., and Nancy Carol Croasdell.
2. On July 25, 2008, Respondents filed an Application for Rehearing and Motion to Dismiss. Respondents continue with the same argument that the Commission has no subject matter over them and is without authority to act while the Circuit Court of Cole County, Writ of Review Case No. 08AC-CC00129, is pending.

**The Commission Has Subject Matter Jurisdiction Over Respondents And
Its Jurisdiction Is Not Stayed By The Writ Of Review In 08AC-CC00129**

3. Respondents erroneously assert that the Commission relies on the default Order in Commission Case No. WC-2008-0079 for its subject matter jurisdiction over Respondents herein.

4. Further, Respondents erroneously argue “[b]ecause of the pending Writ of Review in Cole County, which concerns the issue of subject matter jurisdiction, the Commission lacks jurisdiction to make further orders against Universal or to further litigate the issue of subject matter jurisdiction.” Resp’ts Application for Rehearing and Mot. to Dismiss, pg 4.
5. In Respondents’ July 3, 2008 Motion to Dismiss, they attach as Exhibit A, a general docket entry from the Cole County Case No. 08AC-CC00129. The entry states “Petitioners Motion for Stay Denied. The Commission will take no action arising out of the underlying Report & Order in case no WC-2008-0079 between this date and the date this writ of review will be resolved following argument on August 20, 2008, at 4 p.m.”
6. However, as stated in Staff’s Response in Opposition to Respondents’ Motion to Dismiss, the Commission’s authority to issue its June 24, 2008 Order for production is not based on WC-2008-0079; rather, it is statutorily derived from Section 386.450 RSMo (Supp. 2007). Section 386.450 provides:

the commission may require by order served upon any corporation, person, or public utility.....the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state.
7. Again, while Respondents deny that Universal Utilities is a public utility, they would be hard pressed to argue it does not qualify as a person or a corporation. Therefore, the Commission has independent statutory authority, which does not arise from the default judgment in WC-2008-0079.
8. As the Commission is given authority pursuant to Section 386.450 to order the production of documents, Respondents’ argument that the Commission does not possess

the subject matter jurisdiction required to hear a Complaint or issue an Order based on that authority must fail.

Respondents' Argument Regarding Subject Matter Jurisdiction Is Misplaced

9. Again, Respondents argue they are not subject to the jurisdiction of the Commission because “Respondents are not a public utility because respondents provide no service devoted to public use.” Resp’ts Application for Rehearing and Mot. to Dismiss, pg 3.
10. However, Respondents continuously mischaracterize a Section 386.250 RSMo 2000 argument for one of subject matter jurisdiction.
11. Subject matter jurisdiction consists of two components: 1) the power of the court to consider the matter before it; and 2) the ability of the court to grant the relief requested by the party seeking relief. *Green v. Penn-America Ins. Co.*, 242 S.W.3d 374, 379 (Mo. App. W.D. 2007).
12. Respondents’ true argument is that they do not fall under Section 386.250, so they are not within the regulatory jurisdiction of the Commission. However, it is the Commission that is the *only* body that can decide that question in the first instance because it is the *only* body with subject matter jurisdiction to do so. *See, State ex. rel. Taylor v. Nangle*, 227 S.W.2d 655, 657 (Mo.banc 1950) (*cert. denied*, 71 S.Ct. 57, 340 U.S. 824, 95 L.Ed. 605) and *State v. Carroll*, 620 S.W.2d 22, 24 (Mo. App. S.D. 1981).
13. As Respondents have continually shown disdain for the Commission’s authority by refusing to comply with any of its orders, they should not be allowed to successfully argue lack of jurisdiction when they object to producing any document that may support their Section 386.250 argument.

Section 386.500 Rehearing Requirements

14. Section 386.500 RSMo 2000 provides for rehearing before the Commission. It states

[a]fter an order or decision has been made by the commission,....any....public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment *sufficient reason therefor be made to appear*.

(emphasis added).

15. In Case Number GA-2006-0561, In the Matter of the Application of Ozark Energy Partners, LLC, *sufficient reason* was explained by the Commission's March 13, 2008 Order Denying Application for Rehearing. In that case, the Commission stated the issues raised in the application for rehearing were before the Commission when it issued its order. As such, the Commission denied the application for rehearing.
16. As in this case, Respondents have failed to raise any new issues in support of its Application for Rehearing and Motion to Dismiss that were not before the Commission prior to its issuance of the July 15, 2008 Order. Therefore, Respondents' Application for Rehearing and Motion to Dismiss must be denied.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon all counsel of record via US mail, postage prepaid, electronic mail or facsimile on this 6th day of August, 2008.

/s/ Dawn M. Carafeno