

**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 MOTION TO STRIKE AND OVERRULE  
RESPONDENTS’ OBJECTION TO ORDER**

**COMES NOW** Counsel for Staff of the Missouri Public Service Commission and pursuant to 4 CSR 240-2.160 and Rule 55.27(e) of the Missouri Rules of Civil Procedure, respectfully request the Missouri Public Service Commission (Commission) strike and overrule Respondents’ Objection To Order. For this Motion, Counsel respectfully states as follows:

**Respondents’ Objection Is Improper  
And Must Be Overruled**

1. On June 24, 2008, the Commission issued its Order Granting Staff’s Motion For Production Of Books, Accounts, Papers Or Records Of Universal Utilities, Inc., And Nancy Carol Croasdell (Order For Production).
2. On July 3, 2008, Respondents filed the Objection To Order, disputing the Commission’s authority to issue its Order For Production.
3. 4 CSR 240-2.160(2) provides a procedural remedy for a party who wishes to challenge an interlocutory order; “[m]otions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered

by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.”

4. Thus, Respondents’ choice of remedy is improper and the Commission must overrule its Objection To Order.

**Authority For The Commission’s Order For Production Is Based On Statute  
And Respondents’ Objection Must Be Stricken**

5. Respondents’ Objection To Order argues the Commission lacks subject matter jurisdiction to issue its Order For Production, because “[t]he Commission’s legal authority to issue the Order arises directly from its determination, in Commission Case No. WC-2008-0079, that Respondents are a Public Utility subject to the jurisdiction and control of the Commission.” Resp’t Objection to Order ¶ 3.

6. Respondents’ argument fails because the Commission has independent statutory authority, pursuant to Section 386.450 RSMo (Supp. 2007), to issue its Order For Production. 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. While Respondents’ continue to deny 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 for its Order For Production, and the authority to issue the challenged order does not arise directly from WC-2008-0079.

8. Rule 55.27(e) of the Missouri Rules of Civil Procedure states the “....court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”

9. As Section 386.450 gives the Commission independent statutory authority for its Order For Production, Respondents' Objection To Order has stated an insufficient defense.

10. Thus, the Objection To Order pleading is insufficient and must be stricken in its entirety.

**The Commission's Order For Production Will Determine  
Jurisdictional Issues**

11. Respondents continue to deny Universal Utilities is a public utility subject to the Commission's jurisdiction under Section 386.250 RSMo (Supp. 2007).

12. Respondents' compliance with the Commission's Order For Production allowing the Commission access to books, accounts, papers or records would assist the Commission in determining whether Universal Utilities is a public utility subject to the Commission's Section 386.250 jurisdiction.

13. Respondents should not be allowed to usurp the Commission's authority and argue lack of jurisdiction, when they object to producing the very documents that may support a finding of jurisdiction.

**WHEREFORE**, Counsel for Staff of the Missouri Public Service Commission respectfully requests the Commission 1) strike and overrule Respondents' Objection To Order from the record; 2) find the Commission's authority for its Order Granting Staff's Motion For Production Of Books, Accounts, Papers Or Records Of Universal Utilities, Inc., And Nancy Carol Croasdell is independently derived from Section 386.450 RSMo (Supp. 2007); 3) order Respondents' obligation from the June 24, 2008 Order remains in effect and Respondents are to produce any books, accounts, papers or records regarding its operations in the State of Missouri at the General Counsel's Offices at Room 810, 200 Madison Street, Jefferson City, Missouri

65102 on July 10, 2008, at 10:00 a.m.; and 4) any other relief the Commission deems just and reasonable.

Respectfully submitted,

**/s/ Jennifer Hernandez**

Jennifer Hernandez

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 8<sup>th</sup> day of July, 2008.

**/s/ Jennifer Hernandez**