

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day of
July, 2008.

The Staff of the Missouri)	
Public Service Commission,)	
)	
Complainant,)	
)	
v.)	
)	
Universal Utilities, Inc., and)	
Nancy Carol Croasdell,)	
)	
Respondents.)	

Case No. WC-2008-0331

**ORDER DENYING OBJECTION TO ORDER AND MOTION TO DISMISS
OF UNIVERSAL UTILITIES, INC., AND NANCY CAROL CROASDELL**

Issue Date: July 15, 2008

Effective Date: July 15, 2008

On April 10, 2008, the Staff of the Commission filed a Complaint for Failure to Produce Books, Accounts, Papers or Records for Examination against the above-listed respondents. The gravamen of the complaint is that Respondents have failed to answer data requests the Commission previously ordered Respondents to answer.

The Commission gave Respondents notice of the complaint on April 15, which stated that Respondents had thirty days from the date of the notice to respond. Respondents failed to answer the complaint, and also failed to answer a subsequent motion filed by Staff, so, on June 24, the Commission granted the relief Staff requested.

On July 3, Respondents filed an Objection to Order and a Motion to Dismiss. The objection states that the Commission's order in this case relates back to, and arises from, a Commission order in Case No. WC-2008-0079. The Circuit Court of Cole County has issued an order stating that the Commission will take no action arising out of the underlying Report and Order in Case No. WC-2008-0079 between "this date "(which is July 2, the date the court entered the order) and the date the writ of review will be resolved following argument set for August 20.¹ Respondents further deny they are a public utility, so that the Commission has no jurisdiction over them. Further, Respondents claim *res judicata* bars the Commission from acting, as the Commission has already sanctioned Respondents in Case No. WC-2008-0079 for the same discovery issue.

Staff filed a Motion to Strike and Overrule Respondent's Objection to Order on July 8. Staff states that Respondent's choice of remedy is improper, as Commission Rule 4 CSR 240-2.160(2) allows for motions for rehearing, and Respondent's pleading fails to meet the standard elicited in the rule. Further, Staff claims that the Commission's authority arises not from Case No. WC-2008-0079, but instead from Section 386.450 RSMo. That statute allows the Commission to order any corporation, person or public utility to produce its books, accounts, papers or records so that the Commission may examine them.

On July 11, Staff filed a Response in Opposition to Respondent's Motion to Dismiss. That response largely repeated what Staff asserted in its July 8 pleading.

Section 386.500 allows the Commission to grant rehearing if, in the Commission's judgment, sufficient reason therefor be made to appear. The Commission concludes Respondents have failed to show sufficient reason, and will deny their motion and objection.

¹ *Universal Utilities, et. al. v. PSC*, Circuit Court of Cole County, Case No.08AC-CC00129, Order, July 2, 2008.

Respondents failed to plead why they failed to answer Staff's complaint and motion. Respondents, instead, apparently went to Cole County Circuit Court on July 2, and claims that the court's July 2 order that prevents the Commission from acting in Case No. WC-2008-0079 between July 2 and the court's decision on the pending writ of review somehow erases the Commission's June 24 order in this case.

What is more, the Commission's jurisdiction in this case comes not from another Commission case, but from Missouri statute; Section 386.450 RSMo allows the Commission to order **any corporation, person or public utility** to produce books, accounts, papers or records. Respondents claim they are not a public utility, overlooking the statute's language allowing the Commission to also order **any corporation or person** to provide those same items.

Finally, Respondents' *res judicata* argument is meritless. Respondents are deemed to have admitted the allegations in Staff's complaint and motion due to their failure to answer them, and Staff's complaint and motion sufficiently show the differences between Cases No. WC-2008-0079 and WC-2008-0331.

The Commission reminds the parties that Section 386.500.3 states that an application for rehearing does not excuse any corporation or person or public utility from complying with or obeying any order of the Commission, and does not stay or postpone the enforcement thereof.

IT IS ORDERED THAT:

1. Respondent's Universal Utilities, Inc., and Nancy Carol Croasdell Objection to Order and Motion to Dismiss are denied.

2. This order shall become effective on July 15, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Jarrett, and Gunn, CC., concur.

Pridgin, Senior Regulatory Law Judge