

FILED

JUL 3 2008

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

Missouri Public  
Service Commission

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

**OBJECTION TO ORDER**

COME NOW Respondents and object, as follows, to the Commission's Order Granting Staff's Motion for Production of Books, Accounts, Papers or Records of Universal Utilities, Inc., and Nancy Carol Croasdell (the "Order").

**The Commission May Not Enforce Its Order At This Time**

1. By its own explicit terms, the Order relates back to, and arises from, Commission Case No. WC-2008-0079.
2. The 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.
3. On July 2, 2008, the Circuit Court of Cole County issued its order (the "Cole County Order"), attached hereto as Exhibit A, that "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."

### **Respondents Are Entitled To Stand On Their Motion To Dismiss**

4. Where the question of subject matter jurisdiction is raised, "[u]nless this question is resolved in favor of jurisdiction, the trial court is deprived of authority to do anything but dismiss the case." *Arrow Financial Services, L.L.C. v. Bichsel*, 207 S.W.3d 203, 208 (Mo.App. W.D. 2006); *see also Davidson Ins. Agency, Ltd. v. West Plains R-7 School Dist.*, 235 S.W.3d 89, 91 (Mo.App. S.D. 2007). This rule applies to all forms of adjudication, including cases initiated before an administrative tribunal such as the PSC. *See Peerless Fixture Co. v. Keitel*, 195 S.W.2d 449, 451 (Mo. 1946).

5. A defendant is entitled to raise a defense to subject matter jurisdiction at any stage of a proceeding or in a collateral proceeding. *United Cemeteries Co. v. Strother*, 119 S.W.2d 762, 765 (Mo. 1938)(emphasis added).

6. In the present case (WC-2008-0331), by filing a Motion to Dismiss, Respondents have both (A) directly challenged the subject matter jurisdiction of the Commission in the present case and (B) made a collateral attack upon the Commission's prior determination of subject matter jurisdiction, made by default in Case No. WC-2008-0079.

7. Respondents are legally entitled to a determination on the merits of their Motion to Dismiss and, specifically, on the question of the Commission's subject matter jurisdiction to proceed in this case, before the Commission attempts any further exercise of its challenged jurisdiction over Respondents.

8. Because the issue of subject matter jurisdiction over Respondents is presently pending before the Circuit Court of Cole County on Writ of Review of

Commission Case No. WC-2008-0079, the Commission has no jurisdiction or authority to revisit the issue of its subject matter jurisdiction over Respondents at this time.

**The Commission Has Elected Its Remedy**

9. The Commission previously sanctioned Respondents for this same discovery issue in Commission Case No. WC-2008-0079.

10. The Commission previously sanctioned Respondents for this same discovery issue in Boone County Case No. 07BA-CV05808.

11. Because of Commission Case No. WC-2008-0079 and Boone County Case No. 07BA-CV05808, the present case is res judicata, and the Commission may not obtain additional, multiple judgments and multiple sanctions against Respondents.

WHEREFORE, the Respondents object to the Commission's Order Granting Staff's Motion for Production of Books, Accounts, Papers or Records of Universal Utilities, Inc., and Nancy Carol Croasdell, and the Commission should stay said order pending a determination on the merits of the question whether the Commission has lawfully obtained subject matter jurisdiction over Respondents and over the present case, and pending final a determination of the Writ of Review currently pending in Cole County.

Respectfully submitted,

LATHROP & GAGE, L.C.

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*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing has been transmitted by telefacsimile and U.S. mail, First Class, postage prepaid, July 3, 2008, to the following:

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