

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
September, 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 RESPONDENTS' APPLICATION
FOR REHEARING AND MOTION TO DISMISS**

Issue Date: September 3, 2008

Effective Date: September 3, 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 on May 20, so, on June 24, the Commission granted the relief Staff requested. That relief was

not for a default judgment, but was only for an order that the Respondents produce books, accounts, papers and records.

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. Respondents further denied they are a public utility, so that the Commission has no jurisdiction over them. Further, Respondents claimed *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. The Commission rejected those arguments, and denied Respondents' objection and motion on July 15.

Then, on July 25, Respondents filed their Application for Rehearing and Motion to Dismiss. The Commission denied the application and motion on August 7. In that order, the Commission inadvertently ordered the case closed effective August 8 when, in fact, the Commission intended for the case to remain open, as Staff, in its May 20 motion, did not ask for a final order, and the Commission did not issue a final order. The Commission corrected this error *nunc pro tunc* later on August 7, and ordered that the case remain open.

On August 18, Respondents filed another Application for Rehearing and Motion to Dismiss, stating that the Commission could not stop closing the case via its *nunc pro tunc* order, and restating previous arguments they have already made. Staff responded on August 27, claiming that Section 386.490.3 allows the Commission to change its orders before they become effective, which the Commission did with its *nunc pro tunc* notice of August 7.

Section 386.500 allows the Commission to grant rehearing if, in the Commission's judgment, sufficient reason therefor be made to appear. Because the Commission never intended for this case to be closed, and, indeed, issued a *nunc pro tunc* correction before the case would have inadvertently closed, the case remains open.

Respondents otherwise, again, merely repeat their previous arguments, which the Commission has considered and denied. The Commission concludes Respondents have failed to show sufficient reason for the Commission to grant rehearing, and will deny their application and motion.

IT IS ORDERED THAT:

1. Respondents' Application for Rehearing and Motion to Dismiss filed on August 18, 2008 are denied.
2. This order shall become effective on September 3, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is 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