

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. WC-2008-0079
v.)	
)	
Universal Utilities, Inc., and Nancy Carol Croasdell,)	
)	
Respondents.)	

**STAFF’S RESPONSE TO RESPONDENTS’ APPLICATION FOR REHEARING
AND MOTION TO DISMISS**

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

1. Staff filed its Amended Complaint against Respondents Universal Utilities, Inc. and Nancy Carol Croasdell on October 24, 2007, alleging, *inter alia*, that Respondents were operating as public utilities in Missouri without lawful authority from the Missouri Public Service Commission (Commission).

2. On November 1, 2007, the Commission granted Staff’s Motion to Compel responses to the data requests issued by Staff and ordered the Respondents to provide responses no later than November 8, 2007.

3. Respondents failed and refused to comply with the Commission’s Order of November 1, 2007.

4. On December 15, 2007, the Honorable Gary M. Oxenhandler of the Boone County Circuit Court found Respondents in contempt of the Commission's November 1, 2007 Order.

5. Judge Oxenhandler ordered Respondents to comply with the Commission's November 1, 2007 by providing responses to the data request issued in this case no later than 5:00 p.m. and December 24, 2007.

6. Judge Oxenhandler also ordered that Respondents be subject to a penalty of \$100 per day and that Respondents pay attorneys' fees related to Respondents' contempt.

7. As of the date of this filing, Respondents have failed and refused to comply with the contempt judgment entered against them by Judge Oxenhandler on December 15, 2007.

8. The Commission entered an Order Striking Answer and Entering Default Judgment as Sanction for Refusal to Comply with Discovery Order on December 13, 2007.

9. Respondents timely filed their Application for Rehearing and Motion to Dismiss on December 21, 2007.

10. Under the doctrine of primary jurisdiction, the Commission has the exclusive authority to determine in the first instance whether Respondents' activities in the state subject Respondents to the Public Service Commission law of this state. *See, MCI Metro Access Transmission Services, Inc. v. City of St. Louis*, 941 S.W.2d 634, 645-46 (Mo. App. E.D. 1997).

11. Respondents' failure and refusal to comply with the Commission's discovery order and the circuit court's judgment of contempt enforcing that order have so severely interfered with the administrative tribunal's authority such that a default judgment is an appropriate remedy for Respondents' deliberate disregard of the Commission's authority. *See, Karolat v. Karolat*, 151 S.W.3d 852, 857 (Mo. App. W.D. 2004).

12. Respondents Application for Rehearing and Motion to Dismiss should be denied.

WHEREFORE, Staff requests that the Commission deny Respondents' Application for Rehearing and Motion to Dismiss.

Respectfully submitted,

/s/ Jennifer Heintz

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Certificate of Service

I hereby certify that a true and accurate copy of the foregoing was mailed, via first-class mail, postage prepaid, or hand-delivered, or sent via electronic mail to all parties to this matter, on this 31st day of December 2007.

/s/ Jennifer Heintz_____