

**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 RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

COMES NOW Counsel for Staff of the Missouri Public Service Commission (Staff) and for its Response In Opposition To Respondents' Motion To Dismiss respectfully states to the Missouri Public Service Commission (Commission) as follows:

Authority For The Commission's Order For Production Is Based On Statute

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 their Objection To Order, disputing the Commission's authority to issue its Order For Production.
3. Also, on July 3, 2008, Respondents filed their Motion To Dismiss in response to the Commission's Order For Production.
4. Respondents state "[i]n the present case, the Commission has an absolute duty to determine, on the merits of the question, whether it has subject matter jurisdiction over Universal

before reaching any substantive issue, including substantive discovery.” Resp’t Mot. To Dismiss ¶ 2.

5. The Commission’s authority to issue its Order For Production is statutorily derived from Section 386.450 RSMo (Supp. 2007). 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.

6. While Respondents’ 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 the default judgment in WC-2008-0079.

Respondents’ Argument Regarding Subject Matter Jurisdiction Is Misplaced

7. Respondents argue they are “not subject to the jurisdiction of the Commission because Respondents are not a public utility in that Respondents provide no service devoted to public use.” Resp’t Mot. To Dismiss ¶ 6.

8. However, Respondents’ continuously mischaracterize this Section 386.250 RSMo (Supp. 2007) argument for one of subject matter jurisdiction.

9. Subject matter jurisdiction consists of two components: 1) the power of the court to consider the matter before it; and 2) the ability of the court to grant the relief requested by the party seeking relief. *Green v. Penn-America Ins. Co.*, 242 S.W.3d 374, 379 (Mo. App. W.D. 2007).

10. Respondents' true argument is that they do not fall under Section 386.250, so they are not within the regulatory jurisdiction of the Commission. However, it is the Commission that is the *only* body that can decide that question in the first instance because it is the *only* body with subject matter jurisdiction to do so. *See, State ex. rel. Taylor v. Nangle*, 227 S.W.2d 655, 657 (Mo.banc 1950) (*cert. denied*, 71 S.Ct. 57, 340 U.S. 824, 95 L.Ed. 605) and *State v. Carroll*, 620 S.W.2d 22, 24 (Mo. App. S.D. 1981).

WHEREFORE, Counsel for Staff of the Missouri Public Service Commission respectfully requests the Commission to 1) deny Respondents' Motion to Dismiss; 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) find the Commission has subject matter jurisdiction over the contested case at hand; 4) order Respondents' obligation from the June 24, 2008 Order remains in effect and each day Respondents' fail to produce any books, accounts, papers or records regarding its operations in the State of Missouri to the General Counsel's Offices at Room 810, 200 Madison Street, Jefferson City, Missouri 65102, is a separate and distinct offense and is subject to penalty pursuant to Section 386.570 RSMo (Supp. 2007); and 5) any other relief the Commission deems just and appropriate.

Respectfully submitted,

/s/ 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 11th day of July, 2008.

/s/ Jennifer Hernandez