

FILED

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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.)	

MOTION TO DISMISS

COME NOW Respondents and state as follows:

The Commission Has a Duty to Determine Its Jurisdiction

1. A tribunal always has "a duty to determine the question of their jurisdiction before reaching substantive issues." *Davidson Ins. Agency, Ltd. v. West Plains R-7 School Dist.*, 235 S.W.3d 89, 91 (Mo.App. S.D. 2007); *see also Greenpoint Credit, L.L.C. v. Missouri Dept. of Revenue*, 98 S.W.3d 553, 554-55 (Mo. banc 2003). 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). "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 910 (

2. In 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.

3. In light of the present motion, Universal is entitled to receive either an affirmative determination of jurisdiction or a dismissal, and in the meantime, the Commission is "deprived of authority" to proceed on substantive issues or substantive discovery.

The Commission Has Acquired No Subject Matter Jurisdiction Over Respondents

4. To the extent that the Commission relies for its subject matter jurisdiction upon its default Order in Commission Case No. WC-2008-0079, the Commission's reliance is misplaced because subject matter jurisdiction cannot be acquired by default. *See, e.g., State ex rel. Nixon v. McGee*, 213 S.W.3d 730, 732 (Mo.App. W.D. 2007)(subject matter jurisdiction not determined by a default).

Collateral Attack

5. Furthermore, Respondents are entitled to raise a defense to subject matter jurisdiction at any stage of Commission Case No. WC-2008-0079, or in a collateral proceeding such as the present case. *See United Cemeteries Co. v. Strother*, 119 S.W.2d 762, 765 (Mo. 1938)(emphasis added).

6. Respondents 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. *See Khulusi v. Southwestern Bell Yellow Pages, Inc.*, 916 S.W.2d 227, 232 (Mo.App.1995), citing *State ex rel. M.O. Danciger & Co. v. Public Serv. Comm'n*, 275 Mo. 483, 205 S.W. 36, 40 (Mo. banc 1918).

7. Respondents are not subject to the jurisdiction of the Commission because Respondents are not a public utility in that Respondents are not impressed with a public interest and do not hold themselves out as serving or ready to serve all members of the

public who may require service, to the extent of their capacity. *See City of Englewood v. City & County of Denver*, 123 Colo. 290, 229 P.2d 667, 672-73 (Colo. banc 1951).

8. Respondents are not subject to the jurisdiction of the Commission because Respondents are not a public utility in that Respondents provide services only pursuant to private contracts between the company and its customers. *See State ex rel. M.O. Danciger and Company*, 205 S.W. at 40.

9. Respondents are not subject to the jurisdiction of the Commission because Respondents are not a public utility in that Universal provides only a billing and bill collection service and does not own, sell, or furnish any water or sewer service.

WHEREFORE, the Commission should dismiss the present case for lack of subject matter jurisdiction, and the Commission should stay all other activity in this case until the issue of its subject matter jurisdiction has been determined on the merits of said question.

Respectfully submitted,

LATHROP & GAGE, L.C.

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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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