

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

Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Union Electric Company,  
d/b/a AmerenUE,

Respondent.

**Case No. EC-2002-1**

**ORDER DIRECTING FILING  
RESPONSE REGARDING DISCOVERY**

This order will provide one last opportunity for Public Counsel and UE to meet their burden of convincing the Commission to rule favorably upon their respective motion(s). The Commission has considered the Motion to Compel filed by the Office of the Public Counsel regarding Data Requests Nos. 554 and 555 and has continued its decision until January 10 so that both Public Counsel and Union Electric may file additional support for their respective positions.

UE objected to these data requests on the basis of attorney-client privilege. In response, Public Counsel has suggested that if the Commission were to deny Public Counsel's Motion to Compel it should either require UE to provide the documents in a redacted format or appoint a special master. The special master would review the documents for which privilege has been asserted and make a determination as to whether that assertion of privilege is appropriate.

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As the matter now stands, UE has asserted the attorney-client privilege and, based upon its requests, Public Counsel suggests that the privilege is improperly asserted. Public Counsel has offered nothing to support a determination that UE is improperly shielding data behind the privilege. Similarly, UE has offered only the privilege log in support of its assertion. Neither of the parties cited legal authority which is controlling nor did either party demonstrate a compelling reason why the Commission should grant or deny the motion.

The Commission would not compel the production of redacted documents protected by the attorney-client privilege or appoint a special master absent compelling reasons to do so. If either party can provide a precedent for or against such action or if either party can provide binding legal authority in support of their position, they should do so forthwith. If any party can enunciate a proposed standard by which the Commission should review this matter, this too should be provided prior to the next agenda meeting.

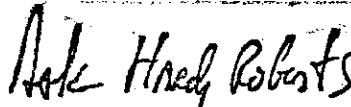
Any party, which wishes to file a pleading regarding this discovery issue, must do so not later than 4:00 p.m., January 9, 2002, in order for that pleading to be considered at the next Commission's Agenda meeting. Any party which files a response may simultaneously or subsequently provide an electronic copy of the filing to the presiding judge at [droberts@mail.state.mo.us](mailto:droberts@mail.state.mo.us), with copies to the other parties. The Commission is especially interested in any circumstance under which it has previously used a special master to resolve a discovery dispute. It may be that this information is more in the province of the General Counsel than any external party. Thus, the General Counsel is invited, but not ordered, to provide any such information at its disposal.

Lastly, *all* parties should note for future reference that motions which cite some precedence for their request as well as authority in support of their request are more likely to move expeditiously. The parties are also reminded that the duty of candor requires attorneys to reveal, to the forum before which they appear, adverse authority. Counsel may distinguish such citations but they must be cited.

**IT IS THEREFORE ORDERED:**

1. That any party who wishes to file a pleading regarding the pending discovery dispute shall do so not later than 4:00 p.m., Wednesday, January 9, 2002.
2. That this order shall be effective on January 8, 2002.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

(S E A L)

Dale Hardy Roberts, Chief Law  
Judge, by delegation of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 8th day of January, 2002.

