

**State of Missouri
Public Service Commission**

At a session of the Public Service
Commission held at its
Office in Jefferson City on
8th day of January, 2002.

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| Staff of the Missouri Public Service Commission, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. EC-2002-1</u> |
| |) | |
| Union Electric Company, doing business as AmerenUE, |) | |
| |) | |
| Respondent. |) | |

**ORDER GRANTING MOTION TO COMPEL
DATA REQUESTS 726 THROUGH 741**

This order grants the Office of Public Counsel's Motion to Compel Respondent UE to produce documents corresponding to Public Counsel's Data Request Nos. 726 through 741. The controlling rule is found at 4 CSR 240-2.090(2) and states, in pertinent part, that if a recipient objects to data requests, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within 10 days after receipt of the data request.

This discovery dispute began with Public Counsel's filing of its motion to compel on November 30, 2001. Prior to that date, Public Counsel had submitted Data Requests Nos. 726 through 741, concerning Optional Time-of-Day rates. UE made a timely objection to these data requests on the grounds that the information requested on Optional Time-of-Day rates is irrelevant to any matter in

97

this case and not likely to lead to relevant matter in the case. UE further argued "This is a rate complaint case—a case that has been initiated by the Staff, claiming that the company's rates are too high. The Staff's direct testimony contains very limited 'rate design' testimony." UE went on to argue that because Public Counsel did not file the complaint, their grounds for discovery on issues not broadly pleaded by the Staff should be limited.

The relevancy standard established by Missouri's Supreme Court rules requires that a matter be relevant to the subject matter of the action before it is discoverable. A conflict exists in determining if relevancy refers to the issues framed by the pleadings or if it is broad enough to permit discovery concerning matters which may (later) become relevant to the case. UE did file a timely objection to Public Counsel's request, and UE based its objection on the relevancy standard. However, UE failed to cite any authority for its proposed standard for testing "relevancy" nor did UE provide any citation to authority of any kind which would support UE's objection.

Public Counsel has cited Section 386.450 RSMo. 2000 for the proposition that Public Counsel has an ongoing statutory right to conduct discovery of regulated utilities even outside the context of any contested case. Public Counsel goes on to cite 386.710 and its language granting Public Counsel "all powers necessary to carry out" its duties as its authority to pursue this issue whether or not it is relevant. Public Counsel specifically argues that the information it seeks is relevant to: (a) the proper allocation of meter-reading expenses in the cost of service study it hopes to offer, and (b) to be helpful in

recommending optional time-of-day rates as part of Public Counsel's proposed rate design in this earnings complaint case.

The list of cases supporting both sides of the general relevancy argument is lengthy and the appellate courts have, for the most part, stated that the determination of the relevancy issue is primarily for the trial court. Absent any authority to the contrary, the Commission recognizes that the information sought by the Public Counsel in Data Requests Nos. 726 through 741, if not relevant, may well lead to other information which is relevant. This Commission will, therefore, grant Public Counsel's motion to compel UE to provide a response to Data Requests 726 through 741.

IT IS THEREFORE ORDERED:

1. That the Motion to Compel filed by the Office of the Public Counsel as to Data Requests Nos. 726 through 741 shall be granted, and AmerenUE shall provide a response to those data requests not later than January 18, 2002.
2. That this order shall become effective on January 18, 2002.

BY THE COMMISSION



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

(S E A L)

Murray, Lumpe, Gaw, Forbis,
CC., concur.
Simmons, Ch., absent.

Roberts, Chief Judge