

June 21, 2002



**VIA HAND DELIVERY**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
Jefferson City, MO 65101

Re: MPSC Case No. EC-2002-1

Dear Mr. Roberts:

Enclosed for filing on behalf of Union Electric Company, d/b/a AmerenUE, in the above matter, please find an original and eight (8) copies of its **Motion to Compel**.

Very truly yours,

*James J. Cook / sh*

James J. Cook  
Managing Associate General Counsel

JJC/vww

Enclosures

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

STAFF OF THE MISSOURI	)	
PUBLIC SERVICE COMMISSION,	)	
Complainant,	)	
	)	
vs.	)	Case No. EC-2002-1
	)	
UNION ELECTRIC COMPANY,	)	
d/b/a AmerenUE,	)	
Respondent.	)	

**UNION ELECTRIC COMPANY'S MOTION TO COMPEL**

COMES NOW Union Electric Company d/b/a AmerenUE ("The Company" or "UE"), pursuant to Commission rule 4 CSR 240-2.090, and for its Motion to Compel states as follows:

1. On March 14, 2002 Company submitted to the Office of the Public Counsel (Public Counsel), Data Request JJC-OPC-100 (Attachment 1) relating to the subjects of the rate complaint case EC-2002-1. Data Request JJC-OPC-100 asks for the identification of meetings and/or conversations between employees of the Office of Public Counsel and any other individuals other than employees of the Office of Public Counsel or Ameren concerning any of the subjects of the rate complaint case. In addition, Data Request JJC-OPC-100 asks for any written materials that were shown to the outside parties related to the subjects of the rate complaint case. On March 25, 2002, Public Counsel lodged a timely objection, claiming that the information requested is protected under "attorney/client and work product privileges, including but not limited to communications with other parties that are protected on the basis of the 'common

interest' doctrine." (Attachment 2) Furthermore, Public Counsel contends in its objection, that Data Request JJC-OPC-100 is "unduly burdensome, overly broad, and fails to state with sufficient particularity the information requested" thus hindering Public Counsel compliance. On June 20, 2002, Company discussed this discovery dispute with the Public Counsel and the Regulatory Law Judge pursuant to Commission rule 4 CSR 240-2.090(8)(B). Counsel had previously discussed this motion pursuant to 4 CSR 240-2.090(8)(A). Public Counsel has still provided no response to this data request.

2. Company believes that it has a substantial need for the information requested in JJC-OPC-100 and would suffer undue hardship should Company be made to obtain the information by other means or should the Company not be allowed the review of said information.

3. Furthermore, with regard to the Public Counsel's objection, the Company does not believe the retrieval of information requested in JJC-OPC-100 to be "unduly burdensome" as the documentation of meetings and case-related conversations is likely already in Public Counsel's written records, or the recollection of its employees. The Company does not believe the retrieval of information requested in JJC-OPC-100 to be "overly broad" or that Data Request JJC-OPC-100 "fails to state with sufficient particularity the information requested" as the Data Request specifically requests "identification" and documentation (including dates, names and topics discussed) of all meetings or conversations between employees of the Office of Public Counsel and any individuals other than employees of the Office of Public Counsel or Ameren as they directly related to "any of the subjects of the rate complaint case EC-2002-1". Additionally, UE requests that Public Counsel provide copies of any written materials

that were shown to the outside parties. (*emphasis added*) Unless there were very many such meetings or conversations, the material should be somewhat limited in volume.

In addition, if Public Counsel is concerned that it cannot recall every such conversation, this should not preclude providing the requested data for the meetings and conversations for which records do exist, or which can be recalled by Public Counsel's staff.

4. Finally, UE does not believe that production of the documents requested under Data Request JJC-OPC-100 are protected under "attorney/client and work product privileges" or that compliance can be objected to on the basis of the "common interest" doctrine as stated in the Public Counsel's March 15, 2002, objection. Data Request JJC-OPC-100 is not intended to request the disclosure of confidential communication between Public Counsel and its client(s). Also Data Request JJC-OPC-100 does not request the disclosure of written impressions or witness recollections, qualifying as work product which the Public Counsel may have in its possession; only the documentation of meetings, discussions, and documents as they directly relate to the "subjects of the rate complaint case EC-2002-1". The "common interest doctrine is not an independent source of confidentiality<sup>1</sup>; rather, it extends the protection afforded by other doctrines, such as the attorney-client privilege and the work product rule."<sup>2</sup> As the information requested in Data Requested JJC-OPC-100 is not protected under either rule, the common interest doctrine is therefore not applicable.

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<sup>1</sup> See, e.g., *In re Federal Trade Comm'n*, 2001 U.S. Dist. Lexis 5059 (S.D.N.Y. April 19, 2001).

<sup>2</sup> See, e.g., *In re Grand Jury Subpoenas*, 89-3 and 89-4, John Doe 89-129, 902 F.2d 244 (4<sup>th</sup> Cir. 1990); *Griffith v. Davis*, 161 F.R.D. 687 (C.D. Cal. 1995).

WHEREFORE, The Company respectfully requests that the Commission compel Public Counsel to produce all documents within the scope of The Company's Data Request JJC-OPC-100.

Respectfully submitted,

UNION ELECTRIC COMPANY  
d/b/a AmerenUE

By: James J. Cook / sr  
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DATED: June 21, 2002

Data Information Request  
From Union Electric Company d/b/a AmerenUE  
MPSC Case No. EC-2002-1  
To The Office of Public Counsel

Requested From: John Coffman

Requested By: James J. Cook

Date of Request: 03/14/02

**Information Requested:**

Identify all meetings or conversations between employees of the Office of Public Counsel and any individuals other than employees of the Office of Public Counsel or Ameren concerning any of the subjects of the rate complaint case EC-2002-1. For each meeting or conversation, specify the date, the names of all of the individuals involved and the topics discussed. Provide copies of any written materials that were shown to the outside parties.

**Response:**

The attached information provided to Union Electric Company in response to the above Data Information Request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform Union Electric Company if, during the pendency of Case No. EC-2002-1 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location; (2) make arrangements with requestor to have documents available for inspection at a location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g., book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this Data Request, the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "you" or "your" refers to the person identified in the "Requested From" block above and all other employees, contractors, agents or others employed by or acting on behalf of the organization, group or governmental unit associated with that person. When used with respect to a natural person, "identify" means state his or her name, address, telephone number, current employer, job title, and current work telephone number.

Response Provided By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Please print)

Signed By: \_\_\_\_\_



John B. Coffman  
Acting Public Counsel

State of Missouri

FILE COPY

Bob Holden  
Governor

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March 25, 2002

James J Cook  
Associated General Counsel  
Union Electric Company d/b/a AmerenUE  
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Box 66149 (MC1310)  
St Louis MO 63166-6149

VIA Fax and U.S. Mail

RE: Case No. EC-2002-1  
AmerenUE Data Request No. JJC-OPC-100

Dear James:

The Office of the Public Counsel objects to this data request to the extent that it requests information regarding discussions and communication between employees of the Office of the Public Counsel and the consultants that the Office of the Public Counsel has hired in this case or discussions and communications with other parties to this case. This objection is based upon attorney/client and work product privileges, including but not limited to communications with other parties that are protected on the basis of the "common interest" doctrine.

Furthermore, the Office of the Public Counsel objects to this data request to the extent that it is unduly burdensome, overly broad, and fails to state with sufficient particularity the information requested so that compliance can be determined.

The Office of the Public Counsel will attempt to answer this data request to the best of its ability; however, no record of such meetings or conversations is kept in the normal course of business.

Sincerely,

  
John B Coffman  
Acting Public Counsel

JBC:jb

ATTACHMENT 2



### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via hand delivery, Federal Express or e-mail on this 24th day of June, 2002, on the following parties of record:

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