

**Ruth, Vicky**

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**From:** Banks, Eric Kendall [ebanks@thompsoncoburn.com]  
**Sent:** Friday, October 18, 2002 5:02 PM  
**To:** 'DALEROBERTS@PSC.STATE.MO.US'; 'VICKYRUTH@PSC.STATE.MO.US'  
**Subject:** BEFORE THE PUBLIC SERVICE COMMISSION



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

In the Matter of the Application of	)	
the Empire District Electric Company	)	
of Joplin, Missouri, for Authority to	)	
File Tariffs Increasing Rates for	)	Case No. ER-2002-424
Electric Service Provided to Customers	)	
in the Missouri Service Area of the	)	
Company	)	

**TIMOTHY M. WINTER'S AND A.G. EDWARDS & SONS, INC.'S  
RESPONSE TO THE MOTION FOR ISSUANCE OF SUBPOENA DUCES TECUM  
FEWER THAN TWENTY DAYS BEFORE HEARING**

COMES NOW, Eric Kendall Banks of Thompson Coburn LLP who on behalf of Timothy M. Winter and A.G. Edwards & Sons, Inc. states:

1. On or about October 16, 2002, the Staff of the Missouri Public Service Commission (henceforth referred to as "Staff") filed its Motion for Issuance of Subpoena Duces Tecum Fewer than Twenty Days Before Hearing.

2. The undersigned received a copy of the aforementioned Motion on October 18, 2002.

3. The Motion requests that the Commission issue a subpoena duces tecum to A.G. Edwards & Sons, Inc. (henceforth referred to as "A.G. Edwards") employee Timothy M. Winter so that he can be deposed, and produce a number of A.G. Edwards' confidential and proprietary documents on October 23, 2002.

4. On October 17, 2002, Senior Regulatory Law Judge Vicky Ruth issued her Order Shortening Time In Which To Respond stating that any response to the Staff's Motion for Issuance of Subpoena Duces Tecum Fewer Than Twenty Days Before

Hearing (henceforth referred to as "Staff's Motion") be filed no later than October 18, 2002. The undersigned received a copy of this Order this morning.

5. Staff's Motion states that Empire District Electric Company of Joplin, Missouri (henceforth referred to as "Empire") filed its rebuttal testimony on September 24, 2002. Said rebuttal testimony included the testimony of David W. Gibson who is said to have cited and relied upon a research report prepared by Mr. Winters of A.G. Edwards. There was no good cause for granting the Staff's Motion. The Staff could have requested a Subpoena Duces Tecum last month, thirty days or more before the scheduled hearing date, allowing the parties to examine this issue in a reflective if not detached fashion.

6. Staff's Motion requests that a Subpoena Duces Tecum be produced so that with less than a week's notice, Mr. Winters be required to depose and produce a number of A.G. Edwards' documents which involve confidential and proprietary processes and procedures.

7. Staff's Motion is overly broad and fails to consider less burdensome methods to achieve its desired result, including cross-examining Mr. Gibson.

8. Mr. Winter's and A.G. Edwards' due process rights of notice and an opportunity to be heard are deprecated as a result of having only one day to prepare and file its Motion to Intervene and Response. The parties have been prejudiced and will suffer immeasurable and irreparable harm as a result of the Commission's failure to follow its own rules by not giving Mr. Winters and A.G. Edwards adequate time to respond.

WHEREFORE, for the aforementioned reasons, Mr. Winters and A.G. Edwards respectfully request that Staff's Motion be denied and that they be granted such additional relief as this honorable Commission deems just and proper.

Respectfully submitted,

**THOMPSON COBURN LLP**

***Original Signed By***

By: \_\_\_\_\_  
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**Attorney for Timothy M. Winter  
and A.G. Edwards & Sons, Inc.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Timothy M. Winter's and A.G. Edwards & Sons, Inc.'s Response to the Motion for Issuance of Subpoena Duces Tecum Fewer than Twenty Days Before Hearing was served on Keith R. Kruger, Deputy General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102; John Coffman, Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102 and James C. Swearengen, Brydon, Swearengen & England, P.O. Box 456, Jefferson City, Missouri 6502; Stuart W. Conrad, Finnegan, Conrad & Peterson, L.C. 3100 Broadway, Suite 1209, Kansas City, Missouri 64111 by sending a copy via first class mail, postage prepaid, this 18<sup>th</sup> day of October, 2002 and by faxing or E-Mailing them copies.

**Original Signed By**

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Eric Kendall Banks