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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 13th  
day of December, 1994.

Tesson Heights Enterprises )  
12335 W. Bend Drive, )  
St. Louis, Missouri 63128 )  
 )  
Complainant, )  
 )  
v. )  
 )  
Union Electric Company, )  
1901 Chouteau Avenue )  
St. Louis, Missouri 63103 )  
 )  
Respondent. )

Case No. EC-95-58

**ORDER REGARDING COMPLAINANT'S MOTION TO COMPEL**

On October 5, 1994, complainant, Tesson Heights Enterprises, submitted to Union Electric Company, respondent, a series of data requests pursuant to informal discovery in this case. On November 10, 1994, respondent filed its responses to those data requests, including objections to various requests. On November 28, 1994, complainant filed its motion to compel answers to data requests Nos. 2, 7, 9, 10, and 11. The data requests in issue and respondent's answers are as follows:

Request No. 2: Please identify each person employed by Union Electric with responsibilities for the Tesson Heights facility pertaining to rate and/or service classifications from January 1, 1985 to the present.

Union Electric objects to data request no. 2 to the extent it is overly broad and vague with respect to its request to identify each person "with responsibilities" pertaining to the rate classification of Tesson Heights. Without waiving said objection, Union Electric states that Joseph Powell, Frank Manley, Richard Kovach and Daryl

Hughes all had input into the rate classification of Tesson Heights.

Request No. 7: Please provide the "study" of facilities which share the rate classification of Tesson Heights referenced in the letter from Daryl Hughes to Ed Heigl dated January 7, 1994 or any other study of the rate classification of retirement facilities.

No such "study" has been completed. Union Electric states that some information has been compiled from its residential care/nursing home customers dealing with size, layout of the facility, services provided by the facility and similar information. Union Electric objects to providing these documents since they contain information which is proprietary to its customers. Moreover, the information sought by this data request is not relevant to the issues raised in this proceeding.

Request No. 9: Please identify all facilities reviewed, including the name and address of each such facility, that shared the rate classification of Tesson Heights as referenced in the letter from Daryl Hughes to Ed Heigl dated March 21, 1994.

Union Electric incorporates, by reference, its objection to data request no. 7 as its response to this data request.

Request No. 10: Please provide each document examined in the course of the "review" of Tesson Heights "as well as other customers that share" the "rate classification" of Tesson Heights referenced in the letter of Daryl Hughes to Ed Heigl dated March 21, 1994.

Union Electric incorporates, by reference, its objection to data request no. 7 as its response to this data request.

Request No. 11: For each facility reviewed as referenced in data requests 9 and 10, please identify: (a) the number of meters at each such facility; (b) the rate or service classification currently applied to each such facility; (c) any changes to the rate or service classification applied to each such facility including the date such change(s) to that classification occurred; and (d) the reason(s) for any such change in rate or service classification at each such facility.

Union Electric incorporates, by reference, its objection to data request no. 7 as its response to this data request.

On December 5, 1994, respondent UE filed its reply to complainant's motion to compel. On December 7, Complainant filed its response to UE's reply. The Commission has considered all arguments and positions and makes its determination as follows.

In regard to data request no. 2, the respondent objects to both the language "with responsibilities," and, as correspondence indicates, to furnishing the private addresses of two individuals, Powell and Manley, who are retired. In regard to the two retired individuals, the Respondent may not be required to furnish the private addresses of retired individuals. It also appears from the correspondence that the respondent has made those individuals reasonably available for deposition, thereby rendering this issue moot. In regard to the remainder of request no. 2, the Commission agrees that the term "with responsibilities" is vague and overly broad. However, as the respondent has furnished four individuals for deposition, all of whom "had input" in setting the rate classification of the complainant, the Commission finds that, by allowing the depositions of these four individuals, the complainant will be afforded ample opportunity to ascertain whether any other person has knowledge relevant to this matter. To this extent, the motion to compel is denied in regard to request no. 2.

In regard to data request no. 7, the Commission would first note that the term "study" is one used by the respondent itself regarding the rate classification of retirement facilities. The respondent admits in its answer that a "study" was not completed but refers to "information" in its possession concerning the same issue. Respondent

then maintains that the "information" is irrelevant to the issues raised in this case. In addition, the respondent states that the information is proprietary to its customers.

The Commission finds that, while a "study" was apparently never done, the term was used in attached correspondence by the respondent. Respondent admits that some "information" was gathered. The Commission finds that because the issue in this case appears to generally involve the correct rate classification of the complainant (apparently a retirement community), the "information" gathered by respondent is, at least for purposes of discovery, relevant to this case, regardless of which terminology is applied to this data.

In addition, the Commission is in agreement with the complainant in that there is no showing as to the nature of any proprietary information contained in the requested information. Regardless, the Commission has a procedure for the protection of proprietary information that respondent can seek to employ. To date, the respondent has made no such request. Therefore, for the above reasons, the complainant's motion to compel is granted in regard to data request no. 7.

In regard to data request nos. 9, 10, and 11, the respondent relies on its objection to data request no. 7. The Commission has found the requested information to be relevant and not protected by any "proprietary" privilege. The Commission has also advised the respondent that, should some concern exist in regard to the proprietary nature of any of the requested information the Commission is not aware of, the respondent may protect that information by means of a protective order.

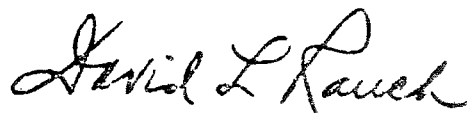
Therefore, for the above reasons, the complainant's motion to compel answers to data request nos. 9, 10, and 11 is granted.

IT IS THEREFORE ORDERED:

1. That the motion to compel made by the complainant, Tesson Heights Enterprises, is hereby granted in part and denied in part as set out above, and the respondent, Union Electric Company, is ordered to comply with those portions of the motion to compel granted to the complainant within a reasonable amount of time.

2. That this order shall become effective on December 20, 1994.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

McClure, Perkins, Kincheloe  
and Crumpton, CC., Concur.  
Mueller, Chm., Absent.