

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION


UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) Case No. 4:11 CV 77 RWS
)
 AMEREN MISSOURI,)
)
 Defendant.)

MEMORANDUM AND ORDER

On December 19, 2013, I held a hearing on Defendant Ameren Missouri’s motions to compel [#93 and #100]. Following the hearing, I ordered the EPA to provide me the 24 emissions forecast documents identified in its Privilege Log for in camera review. After reviewing the emissions forecasts, I find the documents to be ordinary work product. Because Ameren has not demonstrated a substantial need for the emissions forecasts, they are not discoverable. See Baker v. General Motors Corp., 2090 F.3d 1051, 1054 (8th Cir. 2000) (“Ordinary work product is not discoverable unless the party seeking discovery has a substantial need for the materials and the party cannot obtain the substantial equivalent of the materials by other means.”). Of course, if at any time the EPA relies on these forecasts or waives its privilege by putting them at issue, I will revisit this issue of whether they are discoverable.

Accordingly,

IT IS HEREBY ORDERED that Ameren's motion to compel the 24 emissions forecast documents identified in EPA's Privilege Log is **DENIED**.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 15th day of February, 2013.