

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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

MEMORANDUM AND ORDER

This matter is before me on Plaintiff United States of America’s Motion to Consolidate [#67]. Plaintiff is acting on behalf of the United States Environmental Protection Agency (“EPA”). The EPA requests that this case be consolidated with Ameren Missouri v. United States Environmental Protection Agency, Case No. 4:11CV2051AGF, arguing the cases arise out of the same set of operative facts and present common issues of fact and law.

On January 12, 2011, the EPA filed a lawsuit alleging Ameren Missouri committed various violations of the Clean Air Act, Missouri State Implementation Plan, and Ameren’s Rush Island Plant Title V Permit when it undertook various major modifications at Ameren’s Rush Island Plant in Festus, Missouri (“CAA Case”).

On November 23, 2011, Ameren filed a lawsuit seeking compliance with the Freedom of Information Act for the EPA to produce factual emissions data and related calculations pertaining to allegations by the EPA in Notices of Violation it propounded on Ameren on January 26, 2012, October 14, 2010, and May 27, 2010 (“FOIA Case”). In its Complaint, Ameren argues it has a right to access the information requested through FOIA and seeks an Order directing the EPA to release the documents withheld. This matter is currently pending

before United States District Judge Audrey G. Fleissig.

Rule 42(a) of the Federal Rules of Civil Procedure provide that a court may consolidate actions involving common questions of law or fact.

The EPA argues the documents requested in the FOIA Case may also be discoverable in the CAA Case. However, the questions of fact and law raised by the two cases are strikingly different. The CAA Case raises the issue whether six construction projects Ameren undertook at the Rush Island Plant violated the Clean Air Act. Conversely, the FOIA Case raises the issue whether the EPA must produce requested records under FOIA regarding 28 projects at four power plants. Further, the EPA has already filed a motion for summary judgment in the FOIA case, arguing it is not required to disclose the requested information under two FOIA Exceptions. As a result, I find that the cases sought to be consolidated do not involve common questions of law or fact and I will deny Plaintiff's motion to consolidate.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion to Consolidate [#67] is **DENIED**.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 15th day of February, 2012.