

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In Re: Union Electric Company's 2005)	
Utility Resource Filing Pursuant to)	Case No. EO-2006-0240
4 CSR 240—Chapter 22)	

**MOTION TO COMPEL DISCLOSURE FILED BY INTERVENORS SIERRA
CLUB, MISSOURI COALITION FOR THE ENVIRONMENT, MID-MISSOURI
PEACEWORKS AND ASSOCIATION OF COMMUNITY ORGANIZATIONS
FOR REFORM NOW (ACORN)**

Come now Sierra Club, Missouri Coalition for the Environment, Mid-Missouri
peaceworks and ACORN (the Association of Community Organizations for Reform
Now), and for their motion state:

1. On January 3, 2006, movants were granted leave to intervene.
2. On December 5, 2005, AmerenUE filed its Integrated Resource Plan and a
Motion to Establish Docket and for Protective Order. As justification for a protective
order Ameren asserted that “The IRP is replete with trade secrets and confidential or
private technical, financial or business information” and “examples of highly confidential
or proprietary information contained throughout the entire IRP that are too numerous to
list here” (Motion p.2, paragraph 5). On December 6 the Commission issued its “Order
Establishing Protective Order.”
3. According to PSC regulation 4 CSR 240-2.010(9), highly confidential
information includes “[1] material or documents that contain information relating directly
to specific customers; [2] employee-sensitive information; [3] marketing analyses or
other market-specific information relating to services offered in competition with others;

[4] reports, work papers or other documentation related to work produced by internal or external auditors or consultants; [5] strategies employed, to be employed, or under consideration in contract negotiations.” These are specific categories conferring no general license to classify information. Ameren made no attempt to identify any such privileged information. Ameren incorporated the definition of “Proprietary” in 4 CSR 2-240.010(17) but again made no attempt to identify such information.

4. To be entitled to a protective order Ameren must “state with particularity” why it is entitled to protection. 4 CSR 240-2.085(1). Under the standard Protective Order granted in this case, ¶ B, Ameren must designate information as confidential or proprietary and provide the ground(s) therefor, allowing for challenge of the designation. This puts the burden on Ameren to justify its classification and does not allow blanket claims of confidentiality.

5. Under ¶¶ C and D of the protective order, counsel is allowed to share confidential or proprietary information only with outside experts and employee-consultants. This makes it well-nigh impossible for counsel to represent clients who cannot be told anything about the proceeding in which they have been given leave to intervene. The goal of the IRP process is “to ensure that the public interest is adequately served.” 4 CSR 240-22.010(1). Movants intervened in the belief that their participation would serve the public interest.

A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence

in a way that forecloses an opportunity to offer a contrary presentation.

Bowman Transportation Co. v. Arkansas-Best Freight System, 419 U.S. 281, 288 fn. 4, 95 S.Ct. 438, 42 L.Ed.2d 447 (1974). Interested members of the public are likewise entitled to a reasonable opportunity to know and meet the claims of adverse parties. *North Alabama Express v. U.S.*, 585 F.2d 783, 786 (5th Cir. 1978).

6. From the nature of the IRP process, movants believe that the IRP contains much information that is in the public domain, e.g. the historical data required by 4 CSR 240-22.030(1), the identification of supply-side resources of 22.040(1), and the menu of demand-side measures of 22.050(1), to state only the most obvious. Ameren can make no credible claim of confidentiality for these matters.

7. Complete confidentiality would effectively close the Commission's proceedings on the IRP in violation of the Sunshine Law, secs. 610.010 *et seq.*, RSMo; *Missouri Cable Telecommunications Association v. PSC*, 929 S.W.2d 768, 771 fn.1 (Mo.App. WD 1996).

8. Ameren's claim of confidentiality would effectively require the Commission's final order, and any substantive filings by the parties, to be wholly confidential or heavily redacted, in violation of the statutory policy that Commission records be public. Sec. 386.380.1, RSMo.

9. Meetings of the parties to review the contents of the IRP are currently scheduled for Jan. 11, 20 and 27 and Feb. 1, 2006. Movants therefore request an expedited ruling on this motion.

10. At a hearing on the record on January 3, 2006, Ameren continued to insist

that it would not specifically designate parts of the Plan as confidential or proprietary due at least in part to reasons of convenience.

11. Ameren asserts that its competitors will take advantage, adverse to its interest, of the contents of the Plan. But in Missouri AmerenUE is a publicly regulated monopoly and cannot rely on the exigencies of a deregulated market that does not exist in Missouri.

WHEREFORE, Movants respectfully request the Public Service Commission to deny Ameren's Motion for Protective Order, revoke the Protective Order previously issued, and compel Ameren to designate specifically what portions, if any, of its Integrated Resource Plan are entitled to confidential treatment..

/s/Henry B. Robertson
Henry B. Robertson (Mo. Bar No. 29502)
Kathleen G. Henry (Mo. Bar No. 39504)
Bruce A. Morrison (Mo. Bar No. 38359)
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, Missouri 63101
(314) 231-4181
(314) 231-4184
khenry@greatriverslaw.org
hrobertson@greatriverslaw.org

Attorneys for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was sent by email on this 5th day of January, 2006, to the parties listed currently on the Service List for this case according to the Public Service Commission web site's service list.

/s/Henry B. Robertson
Henry B. Robertson