BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Noranda Aluminum, Inc., et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0223
	)	
Union Electric Company, d/b/a Ameren Missouri,	)	
	)	
	)	
Respondent.	)	

AMEREN MISSOURI'S RESPONSE TO COMPLAINANTS' MOTION TO MAKE CERTAIN DOCUMENTS PUBLIC

COMES NOW Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or the "Company") and for its response to the above-referenced motion, submitted pursuant to 4 CSR 240-2.080(13), states as follows:

1. Evidentiary hearings in this case were held on July 28 and 29, 2014. Those hearings followed the February 12, 2014 filing of the complaint that initiated this case, which was premised initially on Complainants' claimed "over-earnings" for the 12 month period ending September 30, 2013. Later, Complainants effectively abandoned their original case and alleged "over-earnings" for the 12 month period ending December 31, 2013. For each period, the underlying basis for Complainants' claims were Surveillance Monitoring Reports submitted by the Company on a quarterly basis pursuant to 4 CSR 240-3.161(6).

2. As required by that rule, on August 26, 2014, well after the evidentiary record in this case had closed, the Company submitted its quarterly Surveillance Monitoring Report covering the 12 month period ending June 30, 2014. As also required by that rule, the Surveillance Monitoring Report was served on counsel for all of the parties to the Company's last rate case (where the Company fuel adjustment clause ("FAC") was continued). Those counsel represent the interests of a vast array of the

Company's customers, including the Office of the Public Counsel ("OPC"), which represents the interests of the public generally, the Missouri Industrial Energy Consumers ("MIEC"), of which Complainant Noranda is a member, AARP, the Consumers Council of Missouri ("CCM"), the Missouri Retailers Association, and several other groups of customers.

3. Complainants concede that the Surveillance Monitoring Reports are, by rule, required to be treated as Highly Confidential ("HC"). Complainants, as some of them have done before, nevertheless assert that there exists good cause to waive the rule's requirement that the Reports be treated as HC, arguing that all Ameren Missouri customers will be affected by the Commission's decision in this case and that the information in the Report is essential for customers to make an "informed decision" about whether to exercise their legal rights to appeal the Commission's decision.

4. Complainants also claim that the "issues in this case have been widely reported by the press and are of interest to the general public as well as the General Assembly," and that the Report is "essential to provide the public and the General Assembly with a fair understanding of the facts of this case."[1]

5. In past Ameren Missouri rate cases, Surveillance Monitoring Reports submitted by the Company while the evidentiary record in the case remained open have been made public. In this case, the Presiding Officer ruled that one additional Surveillance Monitoring Report (for the 12 months ending March 2014) submitted by the Company more than two months before the evidentiary record in this case was closed was also to be made public, primarily "so that we can easily talk about this information without going back and forth between in-camera."[2] However, the Presiding Officer also

[1] Complainants' Motion ¶ 6.
[2] Tr. p. 36, l. 23-24.

indicated that he agreed with the concerns expressed by Ameren Missouri relating to declassifying such reports, and he was not in favor of changing the Commission's rule that deems such Reports to be HC.[3]

6. The Commission itself has made substantially the same rulings in past instances where a party (indeed essentially the same parties that seek declassification now) have attempted to have a Report declassified other than a Report submitted while the evidentiary record in a pending case involving rates remains open. In Case No. EO-2014-0011, MIEC, OPC, AARP and CCM claimed that good cause existed to declassify the Company's Surveillance Monitoring Report for the 12 months ending March 31, 2013. The Company's prior rate case was over (new rates had taken effect on January 2, 2013) and no rate proceeding was pending. The Commission denied the motion, indicating that the Commission previously considered the question of whether such reports should be HC and "incorporated its policy decision in the final [FAC] rule," and that the Commission "does not intend to revisit that prior policy decision."[4] The Commission then went on to conclude that there was no good cause to waive the rule because, among other reasons, ratepayers "already have access to Ameren Missouri's financial information from Securities and Exchange Commission filings."[5]

7. In previously denying a similar motion, the Commission also made specific note of the fact that there was no ongoing rate case or even a pending legislative session (where, presumably at least in theory, such information might be relevant to pending legislation).[6]

8. The logic behind Complainants' motion, if accepted, would indeed apply to all of the Surveillance Monitoring Reports filed by every Missouri electric utility and would effectively swallow

[3] *Id.* p. 36, l. 11-12.
[4] *Order Denying Motion for Waiver*, Case No. EO-2014-0011, at 3.
[5] *Id*. at 4.
[6] The Company does not agree that just because the political process of considering legislation is underway at the General Assembly that this necessarily means that exceptions to the policy reflected in the Commission's rule requiring Surveillance Monitoring Reports to be treated as HC should be made. However, that issue is not before the Commission with respect to the motion currently before it.

the Commission's rule. What Complainants are saying is that it is not sufficient that the experienced regulatory attorneys and consultants, and the public's representative, OPC, has access to the Reports. Apparently, they claim, every individual ratepayer must have access or decisions cannot be made respecting proceedings involving a public utility's rates. But of course such a contention is patently false. When the Commission adopted its rule requiring that Surveillance Monitoring Reports be submitted, and that they be served on counsel to the parties to the rate case establishing (or continuing) an FAC, the Commission obviously knew that by requiring the Reports to be classified as HC it would necessarily be the case that only counsel and outside consultants could see them. The Commission of course knew that there is an entire office – OPC – whose job it is to represent the interests of the public and who employs experts that can make the necessary judgments regarding whether to bring a case, take a position on a given issue or appeal a result OPC does not believe is appropriate, just or reasonable. The Commission knew that those who regularly participate in Commission cases (like Noranda) have capable consultants who can make the same judgments. Complainants' motion and their allies support of it is in fact an attempt to change the policy decision the Commission already made and that it indicated, only about one year ago, it did not intend to revisit.

9. There are very good reasons for the Commission's policy. As Staff witness John Cassidy's testimony in this case strongly indicates, these Surveillance Monitoring Reports can be misleading and thus misused, in the hands of those without expertise in ratemaking. Mr. Cassidy testified as follows:

> **Q. Mr. Cassidy, you report the surveillance results for the last several quarters in your rebuttal testimony, do you not, that we've had a lot of discussion about today?**
>
> *A. Yes.*

Q. And, in fact, as we also discussed today, back during the last rate case there were surveillance report reporting a 10.53 percent ROE, which was above the company's authorized return at that time; is that not correct?

A. Yes. June of -- June 30th of 2012.

Q. And, in fact, it was certainly above Staff's recommendation as to what the ROE should be in that case; is that correct?

A. Yes.

Q**. And it was above the ROE the Commission ultimately determined to be appropriate for use in setting rates, correct?**

A. Yes.

Q. Mr. Cassidy, I've handed you what's been marked for identification as Exhibit 24. Do you recognize that document?

A. Yes, I do.

Q. And am I correct in describing that document as the reconciliation that the Staff filed in our last rate case that showed the differences between the request that the company had made for a rate increase and the recommendations of at least really three parties who have revenue requirement testimony in the case; is that right?

A. That's correct.

Q. And despite there being a surveillance report that indicated that we were earning more than our last authorized ROE and, in fact, more than Staff was recommending in the case, the Staff nevertheless was recommending a rate increase of approximately $202 million, correct?

A. Yes.

Q. And the Commission ultimately ordered a rate increase of approximately $260 million, right?

A. That's correct.

Q. And the Staff receives these surveillance reports every quarter, do they not?

A. They do.

Q. And you most certainly look at them, do you not?

A. Yes, I do.

Q. Is it fair to characterize your role over the last several years with respect to Ameren Missouri as lead auditor?

A. Lead auditor or case coordinator.

Q**. Okay. And I take it, Mr. Cassidy, that as you've received these surveillance reports over the last few quarters, if as the case coordinator or the lead auditor you felt that those surveillance reports indicated that the company's rates had become unjust and unreasonable, that you would be recommending to your superiors that some action be taken, would you not?**

A. Certainly.

Q. And you have not done that; isn't that true?

A. We have not done that.

Q. Because you don't believe

A. We have not done that.

Q. Because you don't believe that those surveillance reports -- you have not believed that those surveillance reports show that the rates have become unjust and unreasonable, do you?

A. Well, the surveillance reports have limited use. They require substantial adjustment in order to get a meaningful assessment.[7]

Complainants' expert in this case, Mr. Meyer, also conceded that raw surveillance data is not sufficient to set rates.[8]

10. A fair reading of Complainants' motion – indeed its reference in paragraph 6 to the wide reporting of this case in the press and the "interest" of the public and the General Assembly (or so it is claimed by Complainants) – together with AARP and CCM's candid statements, lays bare the real motivation behind the present motion: to attempt to drum-up public support for their claim that Ameren

[7] Tr. p. 319, l. 5 to p. 323, l. 6 (Emphasis in underline).
[8] Tr. p. 242, l. 7-10.

Missouri's rates should be lowered. But as Mr. Cassidy testified, these reports have limited usefulness when it comes to setting rates. What Complainants' counsel and consultants need to do, or what OPC needs to do respecting the general public, is to apply their collective expertise and make reasoned judgments regarding whether they should appeal the Commission's expected decision in this case.[9] Surveillance Monitoring Reports do not need to be made public in order for those judgments to be made, and indeed given that the Report's raw results require substantial adjustment in order to be meaningful with respect to ratemaking at all, disclosing those results publicly has the significant potential to mislead, as does disclosing such raw results to the General Assembly.

11. Not only does public disclosure of such Reports create a risk of misuse, but it also serves to chill communication between utilities and the Commission. The purpose of these reports is to allow those with expertise in ratemaking – those who understand what the raw data in them does and does not show and who understand adjustments that must be accounted for – to monitor trends in a utility's earnings. These trends might show a need for a rate decrease, or just the opposite. But if every time one is submitted utilities are faced with these repeated arguments that they should be disclosed, despite the assurance of the Commission's rule in effect when the Reports are filed which provides that they will be treated as HC, then utilities understandably will have great concerns about relying on Commission rules respecting confidentiality.

12. Ameren Missouri provides significant information to the public regarding its financial results. Every quarter Ameren Missouri makes Securities and Exchange Commission ("SEC") filings that disclose its operating and net income, and provides information about its balance sheet and the composition of its capital structure. This information is not precisely the same as that contained in the

[9] Given the Commission's unanimous expression at its September 10 Agenda session that Complainants have failed to meet their burden of proof to establish that continuation of Ameren Missouri's current rates is unjust and unreasonable.

Surveillance Monitoring Report, because the information provided to the SEC must be presented in accordance with Generally Accepted Accounting Principles ("GAAP"), but the information provided to the SEC does provide significant, apples-to-apples information (as compared to other companies) that does provide information necessary to determine actual GAAP-determined returns on equity.

13. It is also noteworthy that the Missouri General Assembly has specifically recognized that information provided to the Commission by public utilities ought not to be disclosed to the public unless there is a specific statutory requirement that it be kept as an open record or unless the Commission specifically orders publication of the record. *See* Section 386.480 RSMo. The reason for this statutory prohibition is to encourage timely and transparent communications from public utilities to the Commission—goals that are served by retaining the existing protections for quarterly surveillance monitoring reports. There is no current requirement in Chapter 386 or Chapter 610 that this information be open to the public, and the Commission should not order publication of these reports.

15. As earlier noted, the record in this case is closed and the Commission has indicated the decision that it will make respecting the complaint. No legitimate purpose is served by declassifying the Report. In fact, for the reasons outlined above, there are many good reasons that it should not be declassified.

WHEREFORE, the Company prays that the Commission issue its order denying Complainants' September 9, 2014 *Motion to Make Certain Documents Public*.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a Ameren Missouri

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on counsel for all parties of record in File Nos. EC-2014-0223 via electronic mail this 19th day of September, 2014

/s/ James B. Lowery