

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Co-Mo                    )  
Electric Cooperative for Approval of                        )  
Designated Service Boundaries Within                    )  
Portions of Cooper County, Missouri.                    )            File No. EO-2022-0190

**AMEREN MISSOURI'S RESPONSE TO CO-MO MOTION FOR  
PROTECTIVE ORDER**

**COMES NOW** Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and for its response to Co-Mo Electric Cooperative’s (“Co-MO”) *Motion for Protective Order* (“Motion”) filed February 16, 2022, states as follows:

1. Co-Mo filed its Application in this case on January 18, 2022. The Application purports to invoke Commission jurisdiction under §386.800.3, RSMo. (Cum. Supp. 2022). If the statute applies, which the Company disputes, Co-Mo was required to comply with the Commission’s certificate of convenience or necessity rule, 20 CSR 4240-20.045, including several items that Co-Mo’s Motion indicates it has not yet filed.

2. Co-Mo’s Motion indicates that it will file an “Appendix H” alleging that it will contain “highly confidential financial and business information.” Applicant further alleges that the information constitutes “private and confidential financial and business information,” claiming that this makes it “highly confidential” under 20 CSR 4240-2.135.

3. Co-Mo’s Motion appears to be deficient in several respects.

4. First, the Commission’s rule affords confidential status to a variety of information. Pertinent to this docket, information is confidential if it constitutes “[m]arketing analysis or other market-specific information relating to services offered in competition with others. 20 CSR 4240-2.135(2)(A)2. Trade secrets, as defined in section 417.453 are also confidential. 20 CSR 4240-2.135(2)(A)8. By definition Co-Mo will presumably be providing information about its electric service and its effort to compete with Ameren Missouri in the provision of electric service. And

given the relatively broad application of the trade secrets law generally given by the courts, it seems likely some or all of the information would also constitute a trade secret. A further protective order appears completely unnecessary.

5. Second, the rule already provides substantial protection for confidential information. Under the rule, Co-Mo can mark the information “confidential” and submit so that it is not available to the public, in EFIS or otherwise. In that case, it will only be accessible to attorneys for the parties and only those employees of a party “working as subject-matter experts for those attorneys or who intend to file testimony” in the case, or to outside experts. 20 CSR 4240-20.045(6). Before disclosure to such an employee or expert can be made, the party must identify the person by name, title, and job classification and the certification requirements of the rule must be satisfied. 20 CSR 4240-20.045(6)(7). That certification requires the person’s agreement to abide by the rule. Moreover, the rule prohibits the use or disclosure of such information for any purpose “other than the preparation for and conduct of the proceeding for which the information was provided.” 20 CSR 4240-20.045(13). Co-Mo has made no showing whatsoever that these significant protections built-into the subject rule do not provide sufficient and appropriate confidentiality protection for Co-Mo’s information.

6. Third, Co-Mo has made no showing that a heightened level of protection is needed in any event. To gain some heightened level of protection, the movant must [1] explain what information must be protected, [2] explain the harm to the disclosing entity or the public that might result from disclosure (i.e., beyond submission of the information as “confidential” under the rule), and [3] explain how the information may be disclosed [with the heightened protection movant seeks] while protecting the interests of the disclosing entity and the public. 20 CSR 4240-2.135(4). Co-Mo’s Motion makes no attempt to comply with these requirements.

7. Finally, Co-Mo's Motion fails to provide the Commission (or the parties) with any information on what additional protection – beyond that afforded by the rule already – Co-Mo seeks. Put another way, if Co-Mo submits information marked as “highly confidential” pursuant to the protective order it seeks, what does that mean with respect to access to and use of the information by the parties to this case? Co-Mo has simply not told the Commission what protection it is asking the Commission to grant.

8. Putting aside that the Company's position is that the statute Co-Mo invokes does not apply to this docket at all, since the Commission has already made the public convenience and necessity determination as to the land in question and designated that area as within the Company's service territory, if the Commission finds the statute does apply, then Co-Mo bears the burden to provide substantial and competent evidence on the seven factors set forth in § 386.800.2. The Company and other parties, including its subject matter experts and witnesses, will obviously need access to the information Co-Mo presumably will provide to evaluate and rebut, as appropriate, whatever Co-Mo contends as to those seven factors (and as to other evidence Co-Mo must produce to comply with 20 CSR 4240-20.045). The rule, as noted earlier, restricts the use of the information to that purpose, as well as its further disclosure. No reasons have been offered to justify restrictions beyond those contained in the rule.

9. Consequently, Co-Mo has not sustained its burden, as movant, for issuance of a protective order, nor does it appear one is necessary in any event. Consequently, Co-Mo's Motion should be denied.

**WHEREFORE**, for the reasons outlined herein, the Company prays that the Commission enter its order denying Co-Mo's Motion for Protective Order,

Respectfully submitted,

/s/ James B. Lowery

James B. Lowery, MO Bar #40503  
JBL Law, LLC  
3406 Whitney Ct.  
Columbia, MO 65203  
Telephone: (573) 476-0050

**Wendy K. Tatro**, MO Bar #60261  
Director and Assistant General Counsel  
1901 Chouteau Avenue, MC-1310  
St. Louis, Missouri 63103  
Telephone: (314) 554-3484  
Facsimile: (314) 554-4014  
[AmerenMOService@ameren.com](mailto:AmerenMOService@ameren.com)

**ATTORNEYS FOR UNION ELECTRIC  
COMPANY d/b/a AMEREN MISSOURI**

Dated: February 25, 2022

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 25th day of February 2022, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to all parties of record.

*/s/James B. Lowery*  
James B. Lowery