

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

Motion to Declassify Surveillance Monitoring)
Report of Ameren Missouri for the Twelve Month) File No. EO-2014-0011
Period Ending December 31, 2012.)

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

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") and in response to the Motion to Make Certain Documents Public, Request for Waiver, and Motion for Expedited Treatment ("Motion") filed in this proceeding by the Missouri Industrial Energy Consumers ("MIEC"), the Office of the Public Counsel ("OPC"), AARP and the Consumers Council of Missouri (collectively "Movants"), hereby states as follows:

1. On July 9, 2013, Movants initiated this proceeding by filing their Motion requesting that Ameren Missouri's Surveillance Monitoring Report for the twelve-month period ending March 31, 2013 be "declassified" and made public, notwithstanding the fact that the Commission regulation which requires the filing of that report specifically provides that it shall be treated as Highly Confidential. (*See* 4 CSR 240-3.161(6)). Although Movants apparently concede this fact, they argue that the report does not meet the requirements for Highly Confidential information set forth in a different Commission rule that is applicable to the treatment of confidential information in different circumstances—in testimony, exhibits or pleadings in cases before the Commission. Movants also argue that ratepayers, including the Movants, have an interest in knowing how Ameren Missouri is performing financially because electric rates are increasing and the Company's financial well-being could bear on its ability to provide safe and adequate service. Although Movants only request that the March 31, 2013 Surveillance Report be declassified, if their logic were adopted it would dictate that all of

Ameren Missouri's quarterly surveillance monitoring reports, and indeed, the surveillance monitoring reports of every utility with a rate adjustment mechanism, be declassified despite the Commission's rule to the contrary.

2. Ameren Missouri opposes the declassification of its March 31, 2013 Surveillance Report and the declassification of utility surveillance monitoring reports generally. There are good reasons that the Commission's rule dictates the Highly Confidential treatment of these reports—to facilitate timely and transparent communication between regulated utilities and the Commission regarding the data being monitored. Moreover, in this case it is not just the Commission and its Staff that have access to the report, but the OPC and all parties to the case in which Ameren Missouri's fuel adjustment clause was approved—including MIEC and AARP/Consumers Council. In short, the Commission, its Staff, OPC, MIEC and numerous other parties representing ratepayers already have full and timely access to all of this information.

3. If the reports were made public, it would have a chilling effect on communication of this stream of information to the Commission. Movants already have the full ability to monitor Ameren Missouri's financial condition and to evaluate, for themselves, whether Ameren Missouri's ability to provide safe and adequate service is placed at issue based upon the results reported in the surveillance reports.¹ The purpose of the surveillance reports is to allow the Commission's Staff, OPC and other stakeholders such as MIEC, as a party to the Company's rate case where the rate adjustment mechanism was last approved, to monitor trends in the Company's earnings over multiple periods. This could show a pattern that suggests the Company might be over-earning, or it could suggest just the opposite. But no purpose, other than for parties such as Movants to use the out-of-context surveillance reports to support

¹ For example, persons such as OPC's economists and accountants and MIEC's consultants have access to these reports.

whatever public relations or legislative or other initiatives they might choose to pursue, is served by disregarding the Commission's rule that wisely treats the reports as Highly Confidential.

4. Ameren Missouri also disagrees with the Movants' contention that the surveillance reports would not be protected as Highly Confidential if they were introduced in testimony or pleadings in a Commission case under the definition of Highly Confidential cited by the Movants. Whether a particular report would be Highly Confidential would depend on what information was contained in the report and perhaps the timing of the proceeding in which a party proposed to introduce the report. Moreover, even if a particular surveillance report did not meet the definition of Highly Confidential in a particular proceeding, it could qualify for protection as Proprietary pursuant to 4 CSR 240-2.135(1)(A). Ameren Missouri acknowledges that it has voluntarily agreed to make public specific surveillance reports introduced in specific Commission proceedings. However, the Company's voluntary agreement to make certain reports public cannot be extrapolated into the generalization that all surveillance reports should be public. They should not.

5. Ameren Missouri is not opposed to providing information regarding its financial performance to the public. Indeed, because it is a subsidiary of a publicly-traded corporation, Ameren Missouri provides a large amount of financial data to the public through quarterly Securities and Exchange Commission ("SEC") filings and related conference calls, its annual reports and other documents. However, per SEC regulations, the financial information provided to the SEC is provided in accordance with Generally Accepted Accounting Principles ("GAAP"), so that investors and consumers can compare the financial results of corporations on an apples-to-apples basis. Publication of the non-GAAP financial information contained in quarterly

surveillance reports, which contains adjustments to meet the specified information requirements of the Commission and its Staff, would add a confusing apples-to-oranges set of data to the mix.

6. It is 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. Section 386.480 RSMo. (2000) provides:

No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo. shall be open to public inspection or made public except on order of the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of a provision of this section, divulges any such information shall be guilty of a misdemeanor.

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.

7. Finally, Movants' request is effectively a request to amend the Commission's rule regarding the confidential nature of these reports. If their Motion is approved, the same logic will support a policy of declassifying all monitoring reports of all Commission-regulated utilities that have rate adjustment mechanisms. If the Commission is seriously considering adopting such a change (and Ameren Missouri sincerely hopes it is not), it would be necessary that a proper rulemaking proceeding be conducted in accordance with the provisions of Chapter 536, RSMo.

(i.e., under the Missouri Administrative Procedures Act). Movants should not be allowed to in effect amend the rules without the rulemaking procedures and protections provided to all stakeholders under Chapter 536. There is no demonstrated need for any change to the rule, but it most certainly should not effectively occur via Movants' ad-hoc request to declassify a particular surveillance report for a particular utility.

WHEREFORE, for the reasons stated herein Ameren Missouri respectfully requests that the Commission deny the Motion to Make Certain Documents Public.

Respectfully Submitted,

/s/ Thomas M. Byrne

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

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record this 22nd day of July, 2013.

/s/ Thomas M. Byrne

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