

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

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

**PUBLIC COUNSEL’S MOTION TO MAKE PUBLIC CERTAIN DOCUMENTS
REGARDING AMEREN MISSOURI’S EARNINGS**

COMES NOW the Office of the Public Counsel and for its Motion to Make Public Certain Documents Regarding Ameren Missouri’s Earnings, states as follows:

1. On February 12, 2014, Noranda Aluminum, Inc. and thirty-seven individual customers (collectively, “Complainants”) of Union Electric Company d/b/a Ameren Missouri filed a complaint against Ameren Missouri, alleging that Ameren Missouri’s current rates are excessive by a significant margin. Complainants requested expedited review and relief against Ameren Missouri under sections 393.130.1, 386.390, 393.260 and Commission rules 4 CSR 240-2.070(4) and (5).

2. Portions of the complaint, and portions of the accompanying testimony of Complainants’ witness Greg Meyer, were designated as highly confidential. Those portions were so designated because they contained information from (or derived from) a Surveillance Monitoring Report filed by Union Electric Company d/b/a Ameren Missouri on November 22, 2013, which report was designated highly confidential by Ameren Missouri.

3. Ameren Missouri was required to file the Surveillance Monitoring Report by Commission rules 4 CSR 240-3.161(6) and 4 CSR 240-20.090(10). Those rules require all

electric utilities that have fuel adjustment clauses to file surveillance monitoring reports, and also provide that the reports are to be treated as highly confidential. However, each rule also provides that any portion of the rule may be waived upon a showing of good cause. *See* 4 CSR 240-3.161(16) and 4 CSR 240-20.090(15). This motion seeks a waiver of the rules' requirement that information derived from the November 22, 2013 Surveillance Monitoring Report be treated as highly confidential, and this motion demonstrates good cause for the Commission to grant such waiver.

4. "Highly confidential" is defined by 4 CSR 240-2.135(1)(B) as information concerning:

1. Material or documents that contain information relating directly to specific customers;
2. Employee-sensitive personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants;
6. Strategies employed, to be employed, or under consideration in contract negotiations; and
7. Information relating to the security of a company's facilities.

Although the information in the Surveillance Monitoring Report does not appear to qualify under any of these seven criteria, there is apparently an implicit eighth criteria: information specifically designated as highly confidential by other Commission rules.

5. As a consequence of the designation of the Surveillance Monitoring Report as highly confidential, the report and any information derived from it can only be seen by attorneys of record and outside experts that have been retained for the purpose of the case. (4 CSR-240-2.135(5)). For Surveillance Monitoring Reports, this includes attorneys of record for "all parties

from the prior related general rate proceeding and ... all parties from any subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM....” (4 CSR-240-3.161(10)(A)). As a result of these severe restrictions on the dissemination of information from the Surveillance Monitoring Report, the basis for – and even the amount of – the overearnings complaint has been kept secret from the public.

6. Although the Surveillance Monitoring Report itself and information from it are filed as highly confidential information, the Commission may make this information public for good cause shown pursuant to 4 CSR 240-3.161(16). Ample good cause exists to make the Surveillance Monitoring Report public, and therefore also make public the information filed in this case that is derived from that report. All Ameren Missouri electric customers have an interest in this case and could be significantly affected by the outcome of this case. The general public, including persons who could be affected by the outcome of this case, currently has no access to the information derived from the Surveillance Monitoring Report contained in the complaint and the associated testimony. The information designated as highly confidential is essential for affected persons to make informed decisions about this case, including their right to provide public comments.

7. The fact that certain parties to prior Commission proceedings have access to the information in the Surveillance Monitoring Report does not diminish the public interest in removing all restrictions on the information from that report. Ratepayers and the public in general should have access to this information in order to understand the basis for the overearnings alleged in the complaint.

8. Good cause exists to waive the highly confidential designation of the Report

because those persons not currently represented by attorneys and experts who have access to the Surveillance Monitoring Report will be entirely unable to understand the basis for this case if the waiver is not granted. Public Counsel is unable to communicate with the general public that it represents regarding key facts pertaining to this case. Indeed, no affected person is able to know the key facts underlying this case. While certain attorneys have access to the information, even their clients and potential clients do not have this access. As a result, potentially interested entities are unable to understand the impact of this proceeding because they are either severely hampered or completely unable to communicate with their counsel and experts regarding their interests.

9. Good cause exists for the Surveillance Monitoring Report to be publicly disclosed in this case because this case will impact customer rates and cannot be discovered by any other means. Ratepayers have no access to the information in the report and no ability to quantify or evaluate Ameren Missouri's electric earnings situation without the information contained in the Surveillance Monitoring Report, the complaint and the testimony in support of the complaint. This information is not included in Security and Exchange Commission filings or in any other publicly available filings and cannot be accurately or practically constructed from such filings.

10. Good cause also exists because Ameren Missouri will not be harmed by the release of the information in this case that is now designated as highly confidential. Each of the seven explicit categories of information set forth in the definition of "highly confidential" in Commission rule 4 CSR 240-2.135(1)(B) is specifically designed to avoid harm to a utility, its employees, or its ratepayers. In contrast, the information provided in the Surveillance Monitoring Report (which does not fit into any of the seven protected categories) is simply historical financial information. Good cause exists to make it public because Ameren Missouri

will not be harmed by its release, and the public will benefit from its release.

WHEREFORE, Public Counsel respectfully requests that the Commission re-designate as public information the entirety of the Complaint and the Direct Testimony of Greg Meyer, and re-designate as public information the Surveillance Monitoring Report filed on November 22, 2013.

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Lewis R. Mills

Lewis R. Mills (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was mailed, electronically, to the following this 12th day of March, 2014.

Thomas R. Schwarz
Blitz, Bardgett & Deutsch, L.C.
308 East High Street, Suite 301
Jefferson City, MO 65101
tschwarz@bbdlc.com

Lisa C. Langanekert
P.O. Box 411793
St. Louis, MO 63141
llanganekert@att.net

Marcos A Barbosa,
Baker Sterchi Cowden & Rice, LLC
2400 Pershing Road, Suite 500
Kansas City, MO 64108
barbosa@bscr-law.com

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 53rd Street, Suite 400
Oklahoma City, OK 73105
rchamberlain@okenergylaw.com

Leland B. Curtis
Curtis, Heinz, Garrett & O'Keefe, P.C.
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
lcurtis@lawfirmemail.com

John B. Coffman
John B. Coffman, LLC
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
john@johncoffman.net

L. Russell Mitten
Brydon, Swearngen & England, P.C.
312 East Capitol Avenue
P.O. Box 456

Jefferson City, MO 65102
rmitten@brydonlaw.com

Thomas M. Byrne
Wendy K. Tatro
1901 Chouteau Avenue
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
AmerenMOService@ameren.com

James B. Lowery
Smith Lewis, LLP
111 S. Ninth Street, Ste. 200
P.O. Box 918
Columbia, MO 65205
lowery@smithlewis.com

Diana M. Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
dmvuylsteke@bryancave.com

Kevin Thompson
Chief Staff Counsel
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-0360
kevin.thompson@psc.mo.gov

/s/ Lewis R. Mills