

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

Motion to Declassify Surveillance)
Monitoring Report of Ameren Missouri)
for the Twelve Month Period Ending)
December 31, 2012)

Case No. EO-2014-0011

**REPLY SUGGESTIONS IN SUPPORT OF MOTION TO MAKE CERTAIN
DOCUMENTS PUBLIC**

COME NOW the Missouri Industrial Energy Consumers (“MIEC”), the Office of Public Counsel, AARP, and the Consumers Council of Missouri (collectively “Movants”), and for their Reply Suggestions in Support of their Motion to Make Certain Documents Public, state as follows:

1. On May 24, 2013, Ameren Missouri (“Ameren”) filed with the Staff of the Commission and other parties, including the Movants, a Surveillance Monitoring Report for the twelve-month period ending March 31, 2013 (“Report”). Commission Regulations 4 CSR 240-3.161(6) and 4 CSR 240-20.090(10) require electric corporations like Ameren that have fuel adjustment clauses to file surveillance monitoring reports such as the Report. Those regulations provide that the Report is to be treated as highly confidential, subject to a waiver of that requirement for good cause shown. *See* 4 CSR 240-3.161(16) and 4 CSR 240-20.090(15).

2. Ameren designated the Report “Highly Confidential” (“HC”).

3. On July 9, 2013, Movants moved the Commission to decertify the Report. On July 22, 2013, Ameren Missouri responded by opposing decertification. On July 25, 2013, Staff filed its response concurring with Ameren Missouri’s opposition.

4. One argument is conspicuously absent from Ameren Missouri’s, and consequently the Staff’s, opposition. Ameren Missouri does not argue that anything in the Report is confidential or proprietary or that disclosure of the Report or its contents to ratepayers and the public will harm Ameren Missouri’s financial interests. Rather, Ameren Missouri’s bases for opposition, adopted by

Staff, are: (a) that Movants seek to amend the applicable rule 4 CSR 240.161(6) (Ameren Response ¶1); (b) that such rule provides that the Report is to be confidential whether or not any basis for confidentiality exists in 4 CSR 240-2.135(1)(B) (*id.*); (c) that the purpose of the rule providing for blanket confidentiality is supposedly to provide “timely and transparent” communication with the Commission (Ameren Response ¶2); (d) that Movants already have access to the Report (*id.*); and (e) that disclosure of the Report to the public will have a “chilling effect” (Ameren Response ¶3). As explained below, none of these arguments are compelling.

5. Movants do not seek to amend the regulation, but rather to follow it. While it is true that regulation 4 CSR 240.161(6) provides that the Report is to be confidential, subsection (16) of that rule provides that confidentiality may be waived for good cause shown.¹ Here, there is good cause. First, the exact report, only for different periods, was voluntarily decertified by Ameren Missouri in its last rate case and again when it became relevant to legislation the General Assembly was considering. Second, there is nothing in the Report that is proprietary or confidential, and that is why of course Ameren Missouri voluntarily decertified it in its last rate case and for consideration by the General Assembly last spring. Regulation 4 CSR 240-2.135(1)(B) is relevant because it sets out the criteria for confidential treatment of information, criteria that the Report does not meet:

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

¹ Similarly, section 386.480 empowers the Commission to authorize public inspection of otherwise closed information submitted by public utilities (“No information furnished to the commission ... shall be open to public inspection or made public except on order of the commission ... in the course of a hearing or proceeding”).

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.

6. It is not entirely clear why 4 CSR 240.161(6) designates the surveillance monitoring reports as highly confidential, but it is absurd to claim that it is for purposes of “transparen[cy,]” as Ameren Missouri does. The comment and response in order of rulemaking for support of 4 CSR 240.161(6) cited by the Staff (Response ¶3) provide no basis. Ameren Missouri implies that without confidential treatment there would be a “chilling effect” and that it would be reluctant to “timely” submit such reports (Ameren Response ¶2). To the extent that a report contains confidential information then Ameren Missouri’s concern would be founded. But currently, the Report no longer, if it ever did, contain confidential or proprietary information, or Ameren Missouri certainly would have objected on that basis. To the contrary, Ameren Missouri implies that such information is already publicly available, only that it is available under GAAP, which it contends allows the appropriate “apples-to-apples” analysis that the financial information in the Report would allegedly not allow (Ameren Response ¶5). However, Ameren Missouri has been reporting financial information to the Securities and Exchange Commission (and by extension to the public) on both a GAAP and a non-GAAP basis, with apparently no fatal “apples-to-oranges” conflicts.²

² Ameren Missouri included the following discussion at page 39 of its 2012 10K report to the SEC:

“The following table presents the favorable (unfavorable) variations by segment for electric and natural gas margins from the previous year. Electric margins are defined as electric revenues less fuel and purchased power costs. Natural gas margins are defined as gas revenues less gas purchased for resale. The table covers the years ended December 31, 2012, 2011, and 2010. We consider electric and natural gas margins useful measures to analyze the change in profitability of our electric and natural gas operations between periods. We have included the analysis below as a complement to the financial information we provide in accordance with GAAP. However, these margins may not be a

7. The Staff notes that when Ameren Missouri submitted a revised surveillance monitoring report in response to a similar Motion that Movants filed last spring, it voiced its concern that the reports do not have extensive disclosures accompanying them, in part, because “these reports are intended to be provided only to experts in public utility ratemaking ... who have a clear understanding of the proper (and improper), use of the information in the reports, and of the limitation of that information.” In fairness to Ameren Missouri, it did not cite this as a reason for denying decertification in this matter. And in fairness to the Staff, it did not directly argue that this allegation of fact is a basis for denying the Motion. However, to the extent that Staff is implying that ratepayers and the public are not intelligent enough to understand a surveillance monitoring report, and that the release of the same will only cause confusion, the Staff is off the mark. The Report is simply not that complicated or confusing. In fact it was designed to be, and is, straightforward.

8. Ameren Missouri notes that Movants, as parties to rate cases, already have access to the information in the Report. While true, that fact is irrelevant. The question the Motion presents is whether the information in the Report should be removed from the regulatory “cloak of secrecy” so that it can see the light of day. It is ratepayers in general, not only the ratepayers who can afford attorneys and experts, that should have access to information that will shed some light on how well their monopoly service provider is doing financially under existing utility rates.

9. As indicated in Movants’ Motion and above, Ameren Missouri releases the

presentation defined under GAAP, and may not be comparable to other companies’ presentations or more useful than the GAAP information we provide elsewhere in this report.”

That statement in Ameren Missouri’s 10K is followed by a lengthy table that illustrates non-GAAP earnings data. It is disingenuous for Ameren to claim that any non-GAAP reporting of financial data will cause confusion when it routinely reports non-GAAP data itself.

information in the Report when it deems it appropriate and in its interest.

WHEREFORE, Movants respectfully request that the Commission grant this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was mailed, electronically, to counsel for Ameren and counsel for the Commission this 29th day of July, 2013 as follows:

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