

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 21st day of
August, 2013.

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

ORDER DENYING MOTION FOR WAIVER

Issue Date: August 21, 2013

Effective Date: September 20, 2013

On July 9, 2013, the Missouri Industrial Energy Consumers, the Office of Public Counsel, AARP, and the Consumers Council of Missouri (collectively, "Movants") filed with the Missouri Public Service Commission ("Commission") a *Motion to Make Certain Documents Public, Request for Waiver, and Motion for Expedited Treatment* ("Motion"). Movants allege that good cause exists for the Commission to grant a waiver from Commission Rule 4 CSR 240-3.161(6), designating a surveillance report filed by Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") as highly confidential. Movants state as the rationale for their request that "[r]atepayers in general, including Movants, have an interest in knowing how Ameren is performing financially Moreover, its financial well-being could bear on its ability to provide safe and adequate service."

Ameren Missouri and the Commission's Staff filed responses in opposition to the Motion, and Movants subsequently filed reply suggestions in support of the Motion. No party requested a hearing. The Commission denied the request for expedited treatment on July 10, 2013.

Ameren Missouri argues that: (1) granting the Motion would hamper the timely and transparent communication of information between utilities and the Commission; (2) the

contents of surveillance reports justify their protection as highly confidential in some instances; (3) the Commission, Staff, Movants, and other parties representing ratepayers already have full access to the surveillance reports; (4) the general public already has access to Ameren Missouri's financial information through quarterly Securities and Exchange Commission filings, conference calls, and annual reports; (5) Movants have demonstrated no legitimate purpose for the requested disclosure; and (6) granting the Motion under these circumstances would effectively rescind the provision in the Commission's rule requiring the surveillance reports to be highly confidential.

Staff concurs with Ameren Missouri's argument that granting the Motion would effectively amend Commission rules such that annual and quarterly surveillance reports would no longer be treated as highly confidential. Staff notes that the Commission previously considered this issue during the 2006 rulemaking process and concluded that surveillance reports should be declared highly confidential. Staff also states that the present circumstances are different than prior situations involving an ongoing rate case or legislative session, where Ameren Missouri voluntarily consented to disclosure of similar reports.

Movants argue in support of the Motion: (1) that Ameren Missouri has already disclosed similar reports in the past; (2) that nothing in the requested report is proprietary or confidential; (3) that release of the report would not be confusing to the public; and (4) that disclosure of the surveillance report to ratepayers is important to remove it "from the regulatory 'cloak of secrecy' so that it can see the light of day".

The Commission rule in question is 4 CSR 240-3.161(6), which states, in pertinent part:

Each electric utility with a RAM [rate adjustment mechanism] shall submit, with an affidavit attesting to the veracity of the information, a Surveillance

Monitoring Report, which shall be treated as highly confidential, as required in 4 CSR 240-20.090(10) to the manager of the auditing department of the commission, OPC and others as provided in sections (9) through (11) in this rule. (emphasis added)

Subsection 16 of that rule states that “[p]rovisions of this rule may be waived by the commission for good cause shown”. Good cause means a good faith request for reasonable relief.¹ Neither the governing statutes² nor any other law requires a hearing before ruling on the request for a waiver from the filing and submission requirements for electric utilities that have a rate adjustment mechanism.³ Because this is a non-contested case, the Commission acts on evidence that is not formally adduced and preserved.⁴ There is no evidentiary record.⁵ Consequently, the Commission bases its decision on the parties’ filings.

Any argument concerning whether the particular surveillance monitoring report at issue, or such reports in general, should or should not be considered highly confidential is irrelevant. The Commission previously considered this question during the 2006 rulemaking process and incorporated its policy decision into the final rule, which plainly declared such reports to be highly confidential. The Commission does not intend to revisit that prior policy decision.

The relevant question is whether Movants have demonstrated good cause for waiving the rule for the specific report at issue. Movants are requesting that the report be

¹ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. W.D. 1996).

² Sections 386.250 and 393.140, RSMo 2000, and 386.266 RSMo (Supp. 2012).

³ A contested case “means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing”. Section 536.010(4), RSMo 2000. See also, *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

⁴ *State ex rel. Public Counsel v. Public Service Comm’n*, 210 S.W.3d 344, 353-355 (Mo. App. 2006).

⁵ *Id.* The competent and substantial evidence standard of Article V, Section 18, does not apply to administrative cases in which a hearing is not required by law.” *Id.*

disclosed due to a general “interest in knowing how Ameren is performing financially”. Movants already have access to the report, so disclosure would not provide those parties with any additional benefit. The ratepayers already have access to Ameren Missouri’s financial information from Securities and Exchange Commission filings, and Movants have not specified any additional information contained in the surveillance report that would not be found in those SEC filings. In addition, Movants have not articulated a reason that disclosure would benefit the public at this particular time, such as on previous occasions when similar reports were disclosed during an ongoing rate case and legislative session. The Commission concludes that Movants have failed to provide sufficient justification for disclosure of the surveillance report and have not shown good cause to grant the Motion.

THE COMMISSION ORDERS THAT:

1. Movants’ Motion to Make Certain Documents Public, Request for Waiver, and Motion for Expedited Treatment is denied.
2. This order shall become effective on September 20, 2013.
3. This file shall be closed on September 21, 2013.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Jarrett, Stoll,
and W. Kenney, CC., concur.

Bushmann, Regulatory Law Judge