

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

In the Matter of Union Electric Company, d/b/a)	<u>File No. ER-2014-0258</u>
Ameren Missouri's Tariff to Increase Its Annual)	Tariff No. YE-2015-0003
Revenues for Electric Service.)	

**CONSUMERS COUNCIL OF MISSOURI'S
MOTION TO DECLASSIFY HISTORICAL SURVEILLANCE MONITORING REPORTS
AND CERTAIN DIRECT TESTIMONY DISCUSSING HISTORICAL EARNINGS**

COMES NOW the Consumers Council of Missouri ("CCM" or "Consumers Council"), pursuant to 4 CSR 240-2.135(23) and 4 CSR 240-3.161(16), and moves to declassify the surveillance monitoring reports that show earnings (and over-earnings) for Ameren Missouri from the historical period from 2012 through September 2014, along with certain portions of direct testimonies pre-filed in this case which discuss those earnings. In support, Consumers Council states as follows:

1. Commission Rule 4 CSR 240-3.161(16) contemplates that the Commission may, for good cause shown, waive the confidential designations given to surveillance monitoring reports that show actual utility earnings. As detailed herein, the Consumers Council asserts that substantial good cause exists to reveal the surveillance monitoring reports that show earnings (and *over-earnings*) for Ameren Missouri from the historical period from 2012 through September 2014, for the public to view in the context of this general rate case. Moreover, as explained herein, it is only fair and evenhanded that utility earnings information be made public in this rate case, because Ameren Missouri has publicly revealed similar earnings information in its past rate case testimonies (when, in fact, it showed past *under-earnings*).

2. The information contained in these surveillance monitoring reports is directly relevant to determining just and reasonable rates. The time period in question extends into the historical test year approved for this case. And the general public deserves to have access to this information in a timely enough fashion, in order to permit informed public comments to the Commission regarding the reasonableness of electric rates during the public hearing and comment phase of this general rate case.

3. The majority of the surveillance monitoring reports that are the subject of this motion were already designated as public information last year, in the context of the general rate case complaint, Case No. EC-2014-0223.¹

4. Despite the fact that most of the subject Ameren Missouri Surveillance Monitoring Reports are already public information, earnings information derived from those reports are redacted in certain pre-filed direct testimony filed in this rate case, specifically excerpts that are designated as highly confidential at these locations:

- Direct Testimony of **Greg R. Meyer**, pp. 8, 10, 12-15, 20-21, 24, 27-28, and Schedules GRM-3 and GRM-4.
- Direct Testimony of **Lena Mantle**, p. 21.

5. Commission Rule 4 CSR 240-2.135(23) permits that the Commission may, for good cause shown, waive confidential designations given to pre-filed witness testimony.

¹ On July 28, 2014, the Ameren Missouri Surveillance Monitoring Reports covering the periods from 2012 through March 2014 were previously made public during the evidentiary hearing in Case No. EC-2014-0223. See Transcript Volume 3, pp. 28-37.

Also, on July 15, 2014, based upon good cause shown, the Commission granted the joint motion of AARP and Consumers Council to make public certain redacted portions of pre-filed rebuttal and surrebuttal testimonies in that case that had been derived from Ameren Missouri Surveillance Monitoring Reports for the period ending December 31, 2013.

6. The historical earnings and over-earnings information contained in the Ameren Missouri Surveillance Monitoring Reports in question, along with the specified references to historical earnings contained in the testimonies of Mr. Meyer and Ms. Mantle, are likely to be the subject of further written testimony, cross-examination, and debate by other parties wishing to put such information into the context of this rate case. The general public, and especially the citizen ratepayers who have a direct financial stake in the outcome of this rate case, deserve to have access to this important information, and to the back and forth debate about its significance.

7. The undersigned attorney wishes to be able to discuss the historical information in question with his client, the members of the Board of the Consumers Council of Missouri, in order to advise and receive guidance regarding the positions to be taken on this matter. "Highly confidential" designations hinder full and open attorney client communication.

8. Representatives of the news media are following this rate case who may wish to publicly report on recent Ameren Missouri earnings. When news reporters are kept in the dark about essential rate case facts, and escorted out of the hearing room when such historical information is discussed in secret, it unnecessarily hinders the freedom of information and of the press. If this historical information continues to be treated with a shroud of secrecy, and the debate about this information is conducted "in camera", it will be a disservice to the democratic principle of open government that is the public policy preference enshrined in Missouri law.² Holding in camera sessions

² RSMo. 610.011.1 states, "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy."

during Commission proceedings should be limited as much as possible, since it is difficult for those members of the public attending (or watching online) to know when to return (or to tune back in). The more open and transparent that the record can be in this rate case, the greater the confidence that the public is likely to have in the ratemaking process.

9. Interestingly, at the onset of a previous Ameren Missouri rate case, Case No. ER-2012-0166, on February 4, 2012, the following was pre-filed as “Public” direct testimony on behalf of Ameren Missouri witness Gary S. Weiss:

For the fifty-four months from June 2007 through November 2011 (each a twelve month ending period) in which rates set in those cases were in effect, the Company’s earned return on equity (excluding the impact of the Taum Sauk Energy Center being out of service from December 2005 to April 2010) has consistently been below its authorized return on equity, as shown in the table below. During that period, the Company’s average earned return on equity was just 8.54 percent, or 166, 222, 156 and 166 basis points, respectively, below that authorized by the Commission in Case No. ER-2007-0002, Case No. ER-2008-0318, Case No. ER-2010-0036 and Case No. ER-2011-0028. In fact, in only eight of those fifty-four months did the Company’s return on equity equal or exceed the allowed return on equity in effect at that time, and in only seven other months was the Company’s return on equity within even 50 basis points of its authorized return on equity. These under-earnings have been significant. As a point of reference, each 100 basis points of under-earnings in a year equals under-earnings of approximately \$55.6 million for the Company.³

This testimony, and the referenced table, reference information that was the subject of historic earnings reports, but was not filed as “highly confidential” in Case No. ER-2012-0166. This past testimony is a remarkably similar flip-side to the earnings reports and direct testimony that are the subject of this motion. The main difference is that it referred to periods of *under-earnings* by the electric utility. This information was not treated as secret, and it should not have been; the general public deserves to have

³ ibid., p. 37.

access to this type of information, whether it shows under-earnings or over-earnings. Consumers Council asks only that the Commission apply the principle of openness and transparency in an evenhanded manner.

10. Consumers Council believes that no justifiable reason exists for months-old historical earnings information by a regulated monopoly to continue to be shielded from public view. In fact, for the reasons explained herein, good cause exists to designate this information as “Public”.

WHEREFORE, for the various good cause justifications discussed herein, Consumers Council respectfully requests that the Commission order the declassification of the following as public information:

- a. The historical Ameren Missouri Surveillance Reports showing actual utility earnings from 2012 through September 2014, and
- b. The portions of the pre-filed direct testimonies of Mr. Meyer and of Ms. Mantle as specified in Paragraph 4 above, which reference this earnings information.

Respectfully submitted,

/s/ John B. Coffman

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Dated: January 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list of this case at the Missouri Public Service Commission, on this 11th day of January, 2015.

/s/ John B. Coffman
