

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
February, 2015.

Fred Sauer,)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2015-0164</u>
)	
Missouri Public Service Commission,)	
)	
and)	
)	
Union Electric Company d/b/a Ameren)	
Missouri,)	
)	
Respondents.)	

ORDER GRANTING MOTIONS TO DISMISS

Issue Date: February 25, 2015

Effective Date: March 27, 2015

On January 13, 2015, Fred Sauer filed a complaint with the Missouri Public Service Commission against Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and against the Missouri Public Service Commission. The complaint alleges that the Commission responded improperly to a request from Mr. Sauer for certain information under Missouri's "Sunshine Law" in Chapter 610, RSMo. The complaint also alleges that Ameren Missouri and the Commission's classification of this requested information as highly confidential under Commission Rule 4 CSR 240-2.135 was unlawful, unreasonable, and an abuse of discretion.

The Commission directed notice of the complaint to Ameren Missouri and to the Commission's Staff Counsel, requiring Staff to answer the complaint on behalf of the Commission. The Staff of the Commission responded on January 22, 2015, by filing a motion asking the Commission to dismiss the complaint against the Commission and Ameren Missouri. Ameren Missouri answered the complaint and also filed a motion to dismiss the complaint. The Commission provided an opportunity for other parties to respond to the motions to dismiss, but no parties objected or responded to those motions. On February 4, 2015, the Commission issued an order dismissing the complaint against the Commission. The Commission will now consider the motions to dismiss Ameren Missouri.

The standard for review for consideration of a motion to dismiss has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.¹

The Commission will assume that the facts alleged in the complaint are true for the purposes of considering the motions to dismiss the complaint against Ameren Missouri. Complainants are required to set forth in their complaint before the Commission "any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission."² Reading the complaint in the light most

¹ *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. banc 2001).

² Section 386.390.1, RSMo 2000.

favorable to Mr. Sauer, the Commission must assume, for purposes of consideration of the motions, that Ameren Missouri incorrectly classified certain information in renewable energy standard compliance reports provided to the Commission in File Nos. EO-2013-0462 and EO-2014-029 and this information was improperly withheld from Mr. Sauer in response to his request for disclosure under the Sunshine Law.

The complaint in general alleges a violation of the Sunshine Law, which applies only to public governmental bodies³, but there is no allegation that Ameren Missouri is such a public governmental body. Moreover, that law is limited by a statute that pertains specifically to the Commission, which states that:

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, shall be open to public inspection or made public except on order of the commission, or by 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 the provisions of this section, divulges any such information shall be guilty of a misdemeanor.⁴

This statute governs the release of information by the Commission, but imposes no duties upon regulated companies, such as Ameren Missouri. Even assuming for the sake of argument that the Commission failed to properly disclose the requested information in its possession, the complaint fails to state a valid claim against Ameren Missouri. With regard to any possible violations of the Sunshine Law or Section 386.480, Mr. Sauer's proper course of action is to seek judicial enforcement in circuit court, not by filing a complaint with the Commission.

³ Section 610.021, RSMo Supp. 2013.

⁴ Section 386.480, RSMo 2000.

Mr. Sauer also states that Ameren Missouri incorrectly designated as highly confidential certain information reported to the Commission regarding the amount and price of renewable energy purchased from a wind farm and the value of certain renewable energy credits Ameren Missouri received from renewable energy generation. This information was provided to the Commission by Ameren Missouri in the context of two proceedings involving renewable energy standard compliance, File Nos. EO-2013-0462 and EO-2014-0291.⁵ Commission Rule 4 CSR 240-2.135(12) provides a mechanism for such a designation to be challenged, stating, in part, as follows:

Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

Even assuming that the requested information was improperly classified in those previous proceedings, the Commission cannot grant Mr. Sauer the relief that he seeks. Mr. Sauer did not request to intervene in those proceedings, and Mr. Sauer did not timely challenge the classification under Commission rules. There is no alternate process by which Mr. Sauer can attack the classification of this information by way of a separate complaint proceeding. The Commission concludes that the complaint does not state claims upon which relief can be granted, and so must be dismissed.

THE COMMISSION ORDERS THAT:

1. Fred Sauer's complaint against Union Electric Company d/b/a Ameren Missouri is dismissed.

⁵ Sauer complaint, Exhibit 2.

2. This order shall be effective on March 27, 2015.
3. This file shall be closed on or after March 28, 2015.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, stylized "M" and "W".

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Bushmann, Senior Regulatory Law Judge