

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

Fred Sauer,)	
Complainant,)	
)	
vs.)	Case No: EC-2015-0164
)	
Missouri Public Service Commission,)	
and,)	
Union Electric Company, d/b/a)	
Ameren Missouri,)	
Respondents.)	

AMEREN MISSOURI’S ANSWER AND MOTION TO DISMISS

COMES NOW, Union Electric Company, d/b/a Ameren Missouri, and for its Answer and Motion to Dismiss, states as follows.

1. On January 13, 2015, Fred Sauer filed a complaint with the Missouri Public Service Commission (“Commission”) against the Commission and against “Ameren” (the “Complaint”).
2. On January 15, 2015, the Commission issued its Notice of Complaint and Order Establishing Time to Respond, ordering Ameren Missouri at paragraph 3 to, “file its answer to this complaint no later than February 17, 2015.”
3. On January 22, 2015, Staff of the Commission filed Staff’s Motion.
4. On January 22, 2015, the Commission issued its Order Directing Filing, ordering at paragraph 1, “[a]ny party wishing to respond or object to the motions described above shall do so no later than 9:00 a.m. on February 2, 2015.”
5. Contemporaneous herewith, Ameren Missouri has filed its Response to Staff’s Motion for Determination on the Pleadings.

ANSWER

6. Any allegation of the Complaint not specifically admitted herein by the Company should be considered denied.

7. In answer to paragraph 1 of the Complaint (all references hereinafter to paragraphs being references to numbered paragraphs of the Complaint), the Company admits that it provides electric utility service to 7800 Forsyth, Clayton, Missouri 63105, but denies that Fred Sauer is the customer of record at said street address, and denies that it has any account for service to Suite 820 at said street address. The Company admits it provides electric utility service to a Fred Sauer at another St. Louis, Missouri address. In further answer, the Company states that it is Union Electric Company d/b/a Ameren Missouri, not Ameren Corporation (its parent corporation), which provides electric utility service in Missouri.

8. In answer to paragraph 2, the Company admits that the Missouri Public Service Commission is an agency of the State of Missouri charged with regulating public utilities including Ameren Missouri.

9. In answer to paragraph 3, the Company admits that Ameren Missouri is a public utility regulated by the Missouri Public Service Commission.

10. The Company is without knowledge or information sufficient to form a belief about the allegations of paragraph 4, which concern alleged communications between Complainant and the Commission, and therefore denies the same.

11. The Company is without knowledge or information sufficient to form a belief about the allegations of paragraph 5, which concern alleged communications between Complainant and the Commission, and therefore denies the same.

12. The Company is without knowledge or information sufficient to form a belief about the allegations of paragraph 6, which concern alleged communications between Complainant and the Commission, and therefore denies the same.

13. Paragraph 7 of the Complaint states a legal conclusion to which no answer is required, but if an answer is required, Ameren Missouri states that Ameren Missouri, not the Commission, classified information as highly confidential, and denies that said classification is erroneous.

14. The Company admits that paragraph 8 of the Complaint is a citation to and quotation of subsection (1) of the Commission's rule on Confidential Information, 4 CSR 240-2.135.

15. The Company is without knowledge or information sufficient to form a belief about that portion of paragraph 10 relating to claims the Commission is alleged to have made or

not made, and therefore denies the same. The remainder of paragraph 10 states a legal conclusion to which no answer is required, but to the extent an answer is required, the Company denies it and states that if Complainant did request from the Commission the information set forth in paragraph 5 of the Complaint, then Complainant did request information that is highly confidential.

16. Ameren Missouri denies the allegations of paragraph 10. In further answer, the Company states that the information set forth in subparagraphs (b) and (c) of paragraph 5 of the Complaint is market-specific information because it relates directly to goods or services purchased or acquired for use by a company in providing services to customers.

17. Ameren Missouri denies the allegations of paragraph 11 as stated. In further answer, §393.1030.1 provides that “[t]he commission shall, in consultation with the department [of natural resources] prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated with renewable energy resources...[.]” The Legislature has also granted to the Commission, at §393.1030.2 RSMo, the authority to “make whatever rules are necessary to enforce the renewable energy standard. Such rules shall include:...(3) provisions for an annual report to be filed by each electric utility in a format sufficient to document its progress in meeting the targets[.]” At 4 CSR 240-20100(7) the Commission has set forth its rule regarding such annual RES compliance report. Neither the cited statute, nor the related Commission rule, provide that electric utility customers are “entitled to know what the true cost of renewable energy is.” (Complaint, ¶11). In fact, the Commission’s rule expressly contemplates that information the Company may be required to provide *to the Commission*, so that the *Commission* can determine the Company’s compliance with the state’s Renewable Energy Standards for electric utilities, may contain information that is highly confidential or proprietary. 4 CSR 240-20.100(7)(A)2 and 3. The rule further contemplates that only annual RES compliance reports that have had highly confidential and proprietary materials redacted will be made available for public viewing. *Id.*

18. The Company is without knowledge or information sufficient to form a belief about the allegations of paragraph 12, which concern alleged communications between Complainant and the Commission, and therefore denies the same.

MOTION TO DISMISS

19. Since Complainant attached to the Complaint the Commission's December 17, 2014 letter that references §386.480 RSMo, the Complaint might plausibly be read as an allegation that Ameren Missouri somehow violated said section by refusing to consent to the disclosure of information it considers highly confidential. Such allegation should be dismissed for failure to state a claim, because even if some information that Ameren Missouri has classified as highly confidential fit within the §386.480 RSMo category of information "specifically required to be made open to public inspection by the provisions of this chapter, or chapter 610,"¹ §386.480 pertains only to *Commission* files and records, and imposes its disclosure and nondisclosure obligations on the Commission, the Office of Public Counsel, and their respective officers and employees, but not on Ameren Missouri:

"[n]o information furnished *to the commission*...except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, RSMo, 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." (emphasis added).

20. At paragraph 7, Complainant takes issue with, "Ameren and the Commission's decision to classify [Complainant's] requested information as highly confidential." (Complaint, ¶7). The Commission should dismiss the Complaint because Complainant lacks standing to challenge the Company's designation of the information as highly confidential. Although not apparent from the Complaint, the information the Commission declined to provide to Complainant was designated highly confidential by the Company when provided in the context of two proceedings relating to Company RES Compliance Report Filings: EO-2013-0462 and EO-2014-0291. The rules regarding annual RES Compliance Report Filings expressly contemplate that some of the information provided by the filer will be highly confidential or

¹ A contention which Ameren Missouri would vigorously dispute.

proprietary. 4 CSR 240-20.100(7)3 (“...the utility shall provide the commission with separate electronic copies of its annual RES compliance report including and excluding highly confidential and proprietary material.”). Those rules do not specifically address challenges to highly confidential designations. The Commission’s Practice and Procedure rules, do however. They provide that in a case before the Commission, a *party* seeking discovery from another party may challenge the other party’s designation of information as highly confidential. 4 CSR 240-2.135(3)(B). Complainant did not seek intervention in EO-2013-0462 or EO-2014-0291, and was not made a party to either of those proceedings.² These proceedings are both closed and Complainant could not now be made a party. Because Complainant was not a party to either proceeding, Complainant lacks standing to challenge Ameren Missouri’s designation of certain information provided in those proceedings as highly confidential.³

21. Finally, Complainant’s stated reasons for seeking the highly confidential information are, “[to] shed light on the cost and value of renewable energy and the price Ameren is paying for it...to know what the true cost of renewable energy is...so that [Complainant] and other utility customers will be in a more informed position to better analyze any need or the

² As to EO-2013-0462, the Company notes that on April 16, 2013, the Commission issued an order including the directive, “[n]o later than May 30, 2013, the Office of the Public Counsel and any other interested person or entity may file comments regarding Ameren Missouri’s Annual Renewable Energy Standard Compliance Plan.” *Order Directing Notice and Setting Filing Deadlines* File No. EO-2013-0462, ¶5. Two parties, Missouri Department of Natural Resources and Missouri Industrial Energy Consumers, applied and were granted intervention, *Order Granting Applications to Intervene*, EO-2013-0462, p.1. In addition, Earth Island Institute d/b/a Renew Missouri filed comments. *Comments of Renew Missouri on Ameren Missouri’s 2012 Renewable Energy Standard Compliance Report*, EO-2013-0462. As to EO-2014-0291, on April 17, 2014, the Commission issued “[n]o later than May 30, 2014, Staff shall file the Staff Report, and any interested person the Office of the Public Counsel and any other interested person may file comments, as described in the body of this Order” *Order Directing Notice and Setting Filing Deadline* File No. EO-2014-0291, ¶3. Similar to EO-2013-0462, a number of parties did intervene, and other parties filed comments. See, e.g., *Order Granting Intervention*, EO-2014-0291, granting limited intervention to Brightergy, LLC.

³ Even if a party challenges a highly confidential designation, the Commission may decline to reclassify such information. See, e.g. *Order Granting Motion to File Response Out of Time, and Denying Motion to Reclassify Information*, EO-2014-0291.

propriety of any future rate hike proposals.” (Complaint, ¶¶10, 11). This reasoning is virtually identical to that of Renew Missouri, a party to EO-2014-0291, where it sought reclassification of certain information in the Company’s 2014 RES Compliance Report from highly confidential to public, on the grounds that the public had an interest in how the Company proposed to comply with the renewable energy standards law and how the compliance would affect rates. The Commission noted that, “[h]ighly confidential information is available only to specified persons for specified purposes.”⁴ The Commission found that Renew Missouri’s argument did not support its request to reclassify the information, citing Staff’s reasoning that as to the public’s interest, the public was already a participant through its representative, the Office of the Public Counsel, and the Commission denied the request.⁵ Even if Complainant had standing to complain about Ameren Missouri’s classification of certain information in EO-2013-0462 and EO-2014-0291 as highly confidential, which it does not, the Complaint should be dismissed because a claim that the public is interested in highly confidential information fails to state a claim for reclassification of information designated highly confidential.

22. The following attorneys should be served with all pleadings in this case:

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⁴ Id. at p.3.

⁵ Id. at p.4.

WHEREFORE, Ameren Missouri respectfully requests that the Complaint be dismissed, or in the alternative, that the matter be set for hearing.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Ameren Missouri's Answer and Motion to Dismiss was served on the following parties via electronic mail (e-mail) on this 2nd day of February, 2015.

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