

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of Union Electric            )  
Company d/b/a AmerenUE for Authori-        )  
ty to File Tariffs Increasing Rates         )       ER-2008-0318  
for Electric Service Provided to            )  
Customers in the Company's Missouri        )  
Service Area.                                 )

RESPONSE OF NORANDA ALUMINUM, INC  
TO STAFF MOTION TO REFILE REPORT

COMES NOW Intervenor Noranda Aluminum Inc. and responds to the Staff Motion to Refile Staff Revenue Requirements Cost of Service Report filed on September 8, 2008 and respectfully states the following:

1. This issue has arisen, according to Staff's Motion, because AmerenUE sought to have certain information in a portion of Staff's Report reclassified as "Highly Confidential." Based on what we have been told, continued public access to this information serves no useful purpose in the rate case and could well harm ratepayers' interest. Given that representation, we have no objection to Staff's Motion.

2. Our concern, however, relates more to the process by which the reclassification was accomplished and, more specifically, that distribution of the non-confidential version of

Staff's Report may have already been made to third persons and parties. One cannot "unring" a bell.<sup>1/</sup>

3. To be sure, Staff counsel was entirely circumspect in advising Noranda counsel about this problem shortly after it came to Staff's attention. Indeed, on September 8, Noranda counsel accompanied him to the office of the Chief Administrative Law Judge and Commission Secretary on a mission purportedly to inquire about the procedure that might be utilized to effect this reclassification. Staff counsel's recitation did not indicate that Noranda counsel stressed to the law judge that we were simply making a procedural inquiry and were not making a substantive request. Staff counsel is correct in noting that, without regard to those statements, the law judge simply implemented the substantive reclassification by a key click while we were observing, thereby revealing a recently "enhanced" capability of EFIS.

4. This "reclassification" capability is disturbing. It does not appear that any entry to the record is made, and demonstrably no motion is required to "adjust" the record of the case as regards reclassification of materials already filed and to limit public access to formerly public materials. Other undisclosed capabilities may exist. The administrative record of the case must be protected and its integrity upheld. Ultimately, the integrity of that record depends on the integrity of those controlling it. While records are "sealed" all the time, either that is the result of law (*i.e.*, juvenile cases) or a court order

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<sup>1/</sup> The analogy is that used by AmerenUE counsel.

(often domestic relations with the agreement of the parties). The role of judge and court clerk are not in conflict and are held by different persons. As this episode demonstrates, in certain cases, the responsibility of Commission Secretary as custodian of the Commission's record may not be fully aligned with the role of a hearing examiner whose decisions are evaluated by reviewing courts on the content of the same record. Here an action was taken without motion and without notice to other parties in the case.

5. In a telephone discussion with AmerenUE counsel after this had occurred, we were assured that no action would be contemplated by AmerenUE to attempt to "round up" earlier non-redacted copies of the report, again in simple recognition that the bell could not be "unrung." However, the potential of placing third parties at potential risk because they rely upon the classification of materials that are filed with the commission is disturbing, particularly where a classification can be adjusted, potentially well after the fact, and without notice, by a single keystroke.

6. To be clear, even though there are numerous warning "pop-ups" that challenge a filing party to confirm that their EFIS submission is public or confidential, mistakes will nonetheless occur. Clerical errors in failing to appropriately redact or classify information for protection from unnecessary detrimental public disclosure can certainly be corrected. But there should be a journalized process for it, and errors discov-

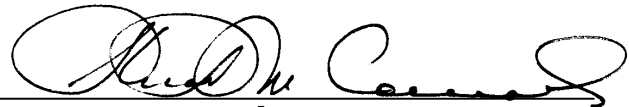
ered long after their occurrence need a different manner of address that notifies parties and, at least, offers an opportunity for comment or objection. At a minimum, third parties that may have received the originally public information in justifiable reliance upon its classification and distributed it or discussed it with others should have notice that a reclassification is proposed.

7. As regards EFIS enhancements, the **ability** to make a change to the record should not **authorize** that change. Shift to an electronic system has great benefits, but also entails significant risks. The commission should get control of its record and take steps to assure the integrity of the administrative record before public confidence in the integrity of that record is irretrievably eroded.

WHEREFORE, Noranda prays that its response be received and considered in this matter.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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ATTORNEY FOR NORANDA ALUMINUM, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by electronic means or by U.S. mail, postage prepaid, addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: September 16, 2008