

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

In the Matter of Noranda Aluminum, Inc.'s Request)
For Revisions to Union Electric Company d/b/a) File No. EC-2014-0224
Ameren Missouri's Large Transmission Service)
Tariff to Decrease its Rate for Electric Service.)

**MOTION TO RECLASSIFY CONFIDENTIAL INFORMATION OR, IN THE
ALTERNATIVE, FOR A WAIVER OF 4 CSR 240-2.135(1)(B)**

COMES NOW Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri” or the "Company") and for its Motion to Reclassify Confidential Information or, in the Alternative, For a Waiver of 4 CSR 240-2.135(1)(B), states as follows:

1. In its Complaint and supporting direct testimony submitted in this proceeding, Noranda Aluminum, Inc. ("Noranda") designated as "Highly Confidential" certain information related to Noranda, its upstream and downstream affiliates and other aluminum smelting businesses. The information includes a date by which Noranda claims the New Madrid smelter is “subject to closure”¹ if the rate relief it is seeking in this proceeding is not granted, claimed minimum and target aggregate liquidity levels Noranda and its affiliates’ combined businesses need to maintain, and the cost of electricity Noranda claims is paid by other smelters operating in the United States.

2. Although Ameren Missouri agrees that some of the information Noranda has claimed is Highly Confidential is confidential or private financial or business information that should be protected from public disclosure in Commission proceedings, the information Noranda has designated is more appropriately classified as "Proprietary" rather than "Highly Confidential." This is an important distinction in this case because Noranda's financial condition, and its threat that the New Madrid smelter is subject to closure, are the primary

¹ Complaint, ¶ 9.

justifications it has provided in support of its request to shift hundreds of millions of dollars in costs from Noranda to Ameren Missouri's other customers. If Noranda's designation of this information as Highly Confidential is allowed to stand, only attorneys and outside experts will have access to the information; neither the business people from Ameren Missouri, who are responsible for operating the utility whose rates would be materially affected, nor other customers participating in this case who Noranda expects to bear this enormous costs shift would be able to view and evaluate the basis for Noranda's claims, or the basis for the Commission's decision if the Commission relies on that information to grant the relief Noranda is requesting. It is not appropriate to prevent parties who will be so significantly impacted by the relief that Noranda is requesting from viewing the information that is the very basis for Noranda's unprecedented request that the Commission subsidize its operations by transferring funds from Ameren Missouri's approximately 1.2 million other customers to a single customer -- Noranda.²

3. As noted above, the Commission's rules provide two categories of confidential information that are afforded two separate levels of protection. "Highly Confidential" information, which is only available to attorneys and outside experts, consists of the following:

1. Material or documents that contain information relating directly to specific customers;
2. Employee-sensitive personnel information;
3. Marketing analysis or other market-specific information relating to services offered in competition with others;
4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;
5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants;

² While Noranda's theory of its case may be that there is no subsidy, in point of fact that is a *key, untested theory or contention at best*, at this stage of this case. To deprive the Company's internal business people and experts of the ability to participate in the testing of Noranda's contentions so that they can ensure that the Company's rates are just and reasonable and do not reflect an unreasonable preference for Noranda or disadvantage to their other customers is inappropriate, as we discuss further below.

6. Strategies employed, or to be employed, or under consideration in contract negotiations; and
7. Information related to the security of a company's facilities.

4 CSR 240-2.135(1)(B)

The second category of confidential information, "Proprietary" information, which is still protected from disclosure but which is viewable by a broader group including employees of a party who are working as subject-matter experts for attorneys or who intend to file testimony in the case in which the Proprietary information is provided, is broadly defined to encompass "...trade secrets as well as confidential or private technical, financial, and business information."

4 CSR 240-2.135(1)(A). There is an overlap in these definitions, and the definition of Proprietary information appears to be a catch-all for confidential information that does not fit into the specific categories of Highly Confidential information.

4. The information that Noranda is seeking to protect obviously does not fall into several of the categories included in the definition of Highly Confidential information which are inapplicable, on their face, to the information Noranda seeks to protect. It is not employee-sensitive information (Category 2). It does not include strategies employed or under consideration in contract negotiations (Category 6). And it is not information related to the security of a company's facilities (Category 7).

5. Although it might at first blush appear that the parameters of some of the other categories could be strained to encompass the information Noranda has designated, such a broad interpretation would be incorrect, would not be consistent with the underlying purpose of the rule and would be completely inappropriate in this case.

6. For example, Category 1, "material or documents that contain information relating directly to specific customers" literally read is so broad that it would allow the complaint

and every piece of testimony to qualify as Highly Confidential because they all contain some information relating to Noranda, a specific customer of Ameren Missouri. But the purpose of that category is clearly to allow utilities to protect customer information that *the utility* holds—names, addresses, usage characteristics—from disclosure. Noranda’s testimony clearly recognizes that just because the information relates to it – a “specific customer” (Noranda) – does not make the information “Highly Confidential.” For example, Mr. Smith’s public testimony is full of customer specific information about Noranda, including, among other information: the various segments of its integrated businesses; its production of aluminum at the New Madrid smelter;³ its claimed economic impact of the smelter;⁴ its claimed expected workforce reductions;⁵ expected operational improvements and the dollars of savings they are expected to generate;⁶ Noranda’s claims regarding how its electricity costs compare to averages in the United States;⁷ and its claimed capital needs.⁸

7. Similarly, Category 5, which protects "reports, work papers, or other documentation related to work produced by internal or external auditors or consultants" literally read would apply to every word of testimony and every workpaper of Noranda's witness-consultants (and those retained by other parties). Again, this is clearly not the intent of the rule nor has the Commission construed this provision in that manner. Noranda clearly recognizes this. For example, Noranda witness Joseph Haslag, a consultant, has filed 20 pages of testimony reflecting the results of his economic study, and has filed his report, none of which Noranda has claimed to be confidential.⁹ The bottom line is that Category 5 is designed to protect internal or

³ Smith Direct Testimony, page 2, line 16.

⁴ *Id.*, page 4.

⁵ *Id.*, page 5, l. 14-16.

⁶ *Id.*, page 6, l. 1-3

⁷ *Id.*, page 9, l. 5-11

⁸ *Id.*, pages 10-11.

external audits from disclosure, but it does not permit all consultant reports to be deemed "Highly Confidential.

8. Category 3 by its terms does not apply to Noranda since it applies only to marketing analyses or market-specific information of companies offering services to others. First of all, the information Noranda has designated as "Highly Confidential" is not marketing analyses or market-specific information. Even more to the point, Noranda sells *goods* – bauxite, alumina, rolled products, billet, rod, foundry products and primary ingots, and foil. Category 3 applies only to *services*.

9. Finally, with respect to Category 4 there is no information claimed by Noranda to be "Highly Confidential" that constitutes marketing analysis or other market-specific information relating to goods or services acquired by Noranda in providing services to customers.¹⁰ Again, Noranda is a provider of goods, not services. In addition, Noranda's liquidity needs and its claimed date that the smelter is "subject to closure" are not goods or services that it acquires, nor are those claimed facts marketing analyses or market-specific information. Nor is the cost for power paid by other smelters marketing analyses or market-specific information. Indeed, it's not clear why that information is confidential at all.¹¹ As an example, what the Hawesville smelter in Kentucky allegedly pays for power or how much aluminum it produces is not confidential information of Noranda.

10. As outlined above, the information Noranda claims is "Highly Confidential" simply does not fit the definition of that phrase in 4 CSR 240-2.135(1)(B). Moreover, as

⁹ The only part of Mr. Haslag's testimony that Noranda has claimed to be confidential are dates that, apparently, Noranda believes would reveal the date that it claims the New Madrid smelter is "subject to closure" if it doesn't get the relief it seeks. As discussed above, that information is Proprietary, not Highly Confidential.

¹⁰ Noranda would acquire alumina, parts for its plant, supplies, etc. It acquires power, but not from a market since it is a regulated customer of Ameren Missouri.

¹¹ See Exhibit HWF-1 to Noranda witness Henry Fayne's direct testimony.

mentioned above there are also important policy considerations that support reclassification of this information even if some or all of it did fall within the definition of “Highly Confidential” in the rule. Noranda is proposing a massive cost shift to other customers and a substantial change to Ameren Missouri's rate tariffs. If the underlying basis for their request can only be viewed by lawyers and outside consultants, and not by internal business people at Ameren Missouri or the other participating customers who will be forced to bear the costs Noranda proposes to shift, Ameren Missouri and the other parties will be hampered in their efforts to examine the veracity of Noranda's claims, and effectively participate in this case.

11. To be clear, Ameren Missouri will no doubt have to engage outside consultants to evaluate Noranda's claims in this case.¹² For example, we will need one or more outside consultants to help evaluate Noranda's claims about the state of the aluminum market and its competitive position in that market. We will also need one or more outside experts perform financial analyses on Noranda to test, at a minimum, whether: (1) Noranda's claims that it the New Madrid smelter is “subject to” being closed as of a certain date are accurate, (2) Noranda’s claims about its liquidity position and cash needs; (3) how the claims it has made in this proceeding can be reconciled with the information Noranda is providing the financial community, and (4) what Noranda has done with all the money it has earned since 2005, when aluminum prices were higher and the rates it paid for electricity were more favorable compared to market rates. Even though Ameren Missouri expects to utilize outside experts to address these issues, Ameren Missouri's handling of this case will be far less efficient if internal business

¹² The Company is in the process of working to locate and engage appropriate consultants. Given the breadth of Noranda’s claims about its finances and competitive position, and the fact that Noranda has obviously been preparing its case for months (its workpapers indicate that Noranda began preparing this case at least as early as October 2013), it will take time to engage consultants, to engage in necessary discovery, and for them to complete their work. The inability to share the claimed “Highly Confidential” information with the Company’s own employees hampers those efforts insofar as the Company’s attorneys are not subject matter experts.

people who are familiar with Noranda's operations cannot interact with these outside consultants in addressing these issues. For this reason as well the confidential information should be reclassified.¹³

12. Finally, while for the reasons discussed above the claimed “Highly Confidential” information is in fact “Proprietary” and should be re-classified as such, if for some reason the Commission were to determine that some or all of the information is properly classified as “Highly Confidential” it should waive the provisions of 4 CSR 240-2.135(1)(B) and via such a waiver instead classify the information as “Proprietary” under 4 CSR 240-2.135(A). For the reasons discussed herein, the Company has established good cause for a waiver, and the Commission is authorized to grant such a waiver if it determines it is necessary under 4 CSR 240-2.015.

Respectfully submitted,

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**ATTORNEYS FOR UNION ELECTRIC
COMPANY d/b/a AMEREN MISSOURI**

¹³ Ameren Missouri acknowledges that, if this relief is granted, the Company would, prior to sharing any Proprietary information with an employee, be required to provide Noranda the names of all employees who would view the Proprietary information by name, title and job classification and file with the Commission a certification as is required by 4 CSR 240-2.135(7).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of February, 2014, served the foregoing either by electronic means, or by U. S. Mail, postage prepaid addressed to counsel for all parties of record.

James B. Lowery

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