

Woodruff, Morris

From: Roberts, Dale
Sent: Friday, April 04, 2003 9:49 AM
To: Dippell, Nancy*; Hopkins, Bill*; Jones, Kennard; Mills, Lewis; Pridgin, Ron; Roberts, Dale; Ruth, Vicky; Thompson, Kevin; Woodruff, Morris
Subject: FW: Protective Order Rule

Dale Hardy Roberts, Chief Judge
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Missouri Public
Service Commission

-----Original Message-----

From: Hoyt, Mary [mailto:MHoyt@ameren.com]
Sent: Friday, April 04, 2003 9:45 AM
To: daleroberts@psc.state.mo.us
Cc: Byrne, Thomas M; Raybuck, Joseph H; Hennen, David B
Subject: Protective Order Rule

> To: Dale Hardy Roberts
From: Thomas M. Byrne

> Dale:

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> Pursuant to your request, I am providing comments on the suggested changes to the Commission's standard protective order on behalf of AmerenUE. From AmerenUE's point of view, the form of protective order currently being used by the Commission effectively balances the need to protect the confidential information of parties to Commission proceedings with the goal of providing as much information to the public as is reasonably possible. We do not think that it is necessary to change the protective order at this time, or to codify it in the Commission's rules. However, if the Commission does decide to proceed with a rulemaking, AmerenUE recommends that the rule to be proposed should be the order appearing on your web page that is entitled "Highly Confidential and Proprietary Information," since it seems to be closest to the Commission's current protective order.

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> AmerenUE is strongly opposed to the "Single Tier Option" order. This order would permit non-attorney employees of any party to view any confidential information provided by another party to a Commission proceeding. Businesspeople would be permitted to view the contract terms negotiated by their counterparts, and this would be extremely detrimental to the contracting process. For example, executives at one electric utility could see the terms of coal contracts or coal transportation contracts negotiated by their counterparts at another utility. Although the protective order instructs all parties not to use confidential information for any purpose outside of the pending Commission proceeding, it would be very difficult for such executives to "forget" the terms negotiated by other utilities when it came time to renegotiate similar contracts with the same or similar counterparties. Dissemination of such information would make coal producers and railroads less willing to offer discounts or other favorable contract terms to any electric utilities in Missouri. Comparable problems would exist for the gas industry. Under the "Single Tier Option" gas executives from one company would have access to the gas supply and pipeline transportation and storage contracts of other gas utilities in the state, to the detriment of all gas utilities' ability to negotiate contracts with such suppliers. Although the impact on utility contracting practices would probably be the worst effect of this protective order, additional problems would occur if the other categories of information that are currently treated as "Highly Confidential" were disseminated more widely. For example, market analyses, customer specific

information and employee specific information could all be used by competitors, consciously or unconsciously, to the detriment of the provider of that information. The bottom line is that because the "Single Tier Option" would remove the added protection currently afforded to "Highly Confidential" information, it would be extremely harmful to utilities, and potentially other parties to Commission proceedings.

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> AmerenUE is also opposed to the "HC Modification Option." Although this protective order would be less harmful to parties than the "Single Tier Option", it would create administrative burdens for the parties and the Commission that are both substantial and unwarranted. Specifically, any time any party sought to designate information as "Highly Confidential" during the course of discovery, the party would be required to file a pleading with the Commission explaining the harm that would result if the information was disclosed. Under the Commission's current procedures, a party asserting that information is "Highly Confidential" merely has to provide a written explanation to the party seeking discovery of the information. The Commission, much like Missouri courts, is not injected into the discovery process unless there is a dispute among the parties. In the context of a rate proceeding, the Staff and other parties typically submit many hundreds of data requests. In AmerenUE's recent electric complaint proceeding, Case No. EC-2002-1, the parties submitted well over 1,000 data requests. The Staff and Public Counsel, as well as other parties typically review scores of "Highly Confidential" documents in the course of their audits that may never appear in testimony and may never be referenced at the hearing. It is completely unnecessary to consume the resources of the parties and the Commission in filing pleadings and issuing orders related to such discovery matters, where there is no dispute among the parties.

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> For all of these reasons, AmerenUE recommends that the Commission continue to use its existing protective order, or, if a rulemaking is initiated, the "Highly Confidential and Proprietary Information" order should be proposed.

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> We appreciate having the opportunity to comment on this matter prior to the initiation of a formal rulemaking proceeding. If you have any questions about these comments, please do not hesitate to contact me at (314) 554-2514.

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Tom Byrne
Associate General Counsel
Ameren Services Company

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