

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 5th day of March, 2014.

Noranda Aluminum, Inc., et al,)
)
Complainants,)
)
v.)
)
Union Electric Company, d/b/a)
Ameren Missouri)
)
Respondent.)

File No. EC-2014-0224

**ORDER REGARDING REQUESTED WAIVER OF CONFIDENTIAL
INFORMATION REGULATION**

Issue Date: March 5, 2014

Effective Date: March 5, 2014

On February 24, 2014, Union Electric Company, d/b/a Ameren Missouri filed a motion asking the Commission to reclassify certain information filed by Noranda Aluminum as part of that company's complaint against Ameren Missouri. Ameren Missouri asserts that the information in question is properly classified as proprietary rather than as highly confidential under the terms of 4 CSR 240.2.135, the Commission's confidential information regulation.

The distinction the regulation makes between proprietary information and highly confidential information is important. Both proprietary information and highly confidential are shielded from disclosure to the public. However, the regulation provides for an extra level of protection for information that is designated as highly confidential. Specifically,

both proprietary and highly confidential information may be disclosed to attorneys of record and to subject matter experts who are working on the case. For proprietary information, those subject matter experts can include internal employees of the party. But for highly confidential information, disclosure is limited to outside experts retained for purposes of the case; internal employees are not allowed to view the highly confidential information.

Ameren Missouri's motion explains that the financial information Noranda has designated a highly confidential in this case is very important to Ameren Missouri's ability to evaluate the basis of Noranda's claims. Ameren Missouri indicates it will have to retain outside experts to evaluate Noranda's claims, but it would also like to use its internal subject matter experts to efficiently address those claims.

Noranda responded to Ameren Missouri's motion on February 28. Noranda reports that it has discussed the motion with Ameren Missouri's counsel and that they have agreed to a resolution of that motion. Rather than reclassify the information as proprietary for all purposes, Noranda asks the Commission to instead grant a variance from the regulation to allow Ameren Missouri, and only Ameren Missouri, to treat the highly confidential information as if it were proprietary. Through that variance, Ameren Missouri would be allowed to share the information with its internal subject matter experts as it prepares its response to Noranda's complaint. Noranda represents that counsel for Staff, Public Counsel, and the Missouri Retailers Association have indicated they do not object to granting such a variance to Ameren Missouri.

The Commission is hesitant to grant a variance from its rule to treat one party differently than other parties. However, in the circumstances of this case, that special treatment is appropriate. The regulation's limitation on the sharing of highly confidential

information with internal subject matter experts is designed to limit disclosure of competitively sensitive information to internal experts of competing companies, particularly within the highly competitive telecommunications industry. Ameren Missouri is not competing with Noranda in the aluminum industry, so there is no need to restrict the disclosure of highly confidential information to Ameren Missouri's internal experts. However, the time for intervention is not yet past and it is conceivable that some entity that does compete with Noranda in the aluminum industry might yet become a party to this case. For that reason, it would not be appropriate to simply reclassify the highly confidential information as proprietary for all purposes. Under these circumstances, the solution proposed by Noranda is appropriate.

Commission rule 4 CSR 240-2.135(23) allows the Commission to grant a variance from any provision of that rule for good cause shown. The Commission finds that there is good cause to grant Ameren Missouri a variance to allow it to treat as proprietary highly confidential information designated by Noranda for purposes of this case. This variance applies only to Ameren Missouri, but does not preclude other parties from seeking a similar variance. Nor does the granting of this variance preclude the Commission from subsequently reclassifying the information as it deems appropriate.

THE COMMISSION ORDERS THAT:

1. Union Electric Company, d/b/a Ameren Missouri is granted a variance from the provisions of Commission rule 4 CSR 240-2.135 to allow it to treat as proprietary, for purposes of this case, all information designated by Noranda Aluminum, Inc. as highly confidential.

2. This order shall become effective upon issuance.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge