STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 25th day of August, 2010.

In the Matter of an Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale and Transfer of Certain Assets of AmerenUE to St. James Municipal Utilities and Rolla Municipal Utilities	)))))	**File No. EO-2010-0263**

ORDER REGARDING MOTION FOR PROTECTIVE ORDER

Issue Date: August 25, 2010 Effective Date: September 4, 2010

On March 24[1], Union Electric Company, d/b/a AmerenUE ("AmerenUE"), submitted an Application to the Commission. AmerenUE wants to transfer certain of its assets to St. James Municipal Utilities ("St. James") and Rolla Municipal Utilities ("Rolla"), two wholesale customers of AmerenUE.

On August 2, Rolla filed a Motion for Protective Order and Request for Expedited Treatment ("Motion for Protective Order"). Rolla asserted that it gave Staff Highly Confidential information[2], and that Staff planned, in turn, to give that same Highly Confidential information to Donna Hawley, a pro se litigant, by August 6, 2010, unless the Commission intervened. Such a release of information, Rolla contended, could compromise the security of its electrical distribution system. Because Rolla requested a ruling from the Commission before August 6, it also filed a Motion for Expedited Treatment.

[1] All calendar references are to 2010 unless otherwise noted.

[2] Rolla refers to the Highly Confidential information as a 2007 Power Delivery Master Plan, an electrical engineering analysis and recommendations prepared for Rolla by R.W. Beck & Associates. Rolla states that it has given Ms. Hawley a redacted copy of the study.

Rolla argues that Commission Rule 4 CSR 240-2.135(4) permits only attorneys and outside experts to receive Highly Confidential information. Rolla further argues that Ms. Hawley is not an attorney or outside expert; therefore, she is not entitled to receive Highly Confidential information.

Staff replied on August 2, stating that it considers Ms. Hawley to be an "attorney" for purposes of the rule. However, Staff also states that it neither opposes nor supports Rolla's motion. The Office of the Public Counsel responded on August 3, stating that it takes no position on Rolla's motion and its corresponding motion for expedited treatment.

Ms. Hawley responded on August 3. She states that she needs the material, an engineering study which she claims is faulty, to fully develop her case. Ms. Hawley expresses doubt that Rolla has disclosed a true copy of the engineering study to her in response to her discovery requests. Further, Ms. Hawley states that Rolla's fear of her publishing highly confidential information is simply paranoia.

The Commission issued a temporary order on August 4, and ordered the parties to further explain their positions.

Responses to August 4 Order Directing Filing

On August 9, Staff stated that Ms. Hawley's position of the proposed transaction being fiscally irresponsible on behalf of Rolla would not appear to be bolstered by the Highly Confidential information. What is more, Staff states that Ms. Hawley is in the wrong forum; the Commission should review what is prudent for AmerenUE to do, not what is prudent for Rolla and St. James to do. On the other hand, Staff states that a pro se litigant has the same rights as a represented one, so that Ms. Hawley should be allowed access to

the Highly Confidential material. Finally, Staff opposed Staff counsel being shadow counsel for Ms. Hawley.

Rolla reiterated that the Commission's rule on Highly Confidential information mentions attorneys of record being allowed to see Highly Confidential information, but not pro se litigants. Further, Rolla states that regardless of the Commission's ruling, the Highly Confidential material is still a closed record pursuant to Section 610.021(19), and that the Commission has no jurisdiction over a city's decision to close information pursuant to that statute. Rolla also adds that Ms. Hawley is leading the Commission on a meaningless quest; namely, her political campaign to eliminate Rolla Municipal Utilities, which failed even when she was on the Rolla City Council.

Ms. Hawley states that due process applies to all parties, represented or not, and that a pro se party has the same rights as a represented party. She also states that the Commission's rule for Highly Confidential information cannot apply to Rolla, because it is not a public utility. Ms. Hawley notes that municipal utilities perhaps had no input on the Commission's rule because "the subject matter obviously has no relevance to their operations or legal status."[3] She further complained that being asked for what legal authorities support her position that she is entitled to the redacted information is like asking a blind man to draw an elephant. Ms. Hawley says that Rolla's vote to make a portion of the R.W. Beck engineering study a closed record was done illegally.

Discussion

Commission Rule 4 CSR 240-2.085(1) allows a party to seek a protective order by stating why it seeks protection, and what harm may occur if the information is made public.

[3] Motion to Respond to Order Directing Filing, p. 9 of 22 (filed August 10, 2010).

Rolla has done so by stating the information Ms. Hawley seeks would identify specific potential vulnerabilities in the power supply to Rolla and St. James.

Commission Rule 4 CSR 240-2.135(1)(B)7 defines highly confidential information as "information relating to the security of a company's facilities". Thus, the information which Ms. Hawley seeks is Highly Confidential. Commission Rule 4 CSR 240-2.135(4) restricts highly confidential information's disclosure to "only the attorneys of record, or to outside experts that have been retained for the purpose of the case."

A decision on the complex legal issues surrounding the appropriate interpretation and legal implications of "attorney of record" in 4 CSR 240-2.135(4) is not necessary to a resolution of the discovery dispute at issue. As addressed below, even if the Commission determined Ms. Hawley, as a pro se litigant, is acting as her own "attorney of record" under that section, she would not be entitled to the information requested.

Section 4 CSR 240.0135(5) reads:

> (5) If any party believes that information must be protected from disclosure more rigorously than would be provided by a highly confidential designation, it may file a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.

As provided for under this section, Rolla's Motion for Protective Order advised the Commission that Rolla believes the requested information requires more vigorous protection than material generally given a highly confidential designation. Specifically, Rolla stated:

> A redacted copy of it has been provided to Ms. Hawley in this case. Essentially, Ms. Hawley now has access to everything in the Study except information that either identifies specific potential vulnerabilities in the power supply to Rolla and St. James, Missouri, or can be used to do so. Those portions remain a closed record in accordance with a determination by a governmental body under Section 610.021(19) RSMo ("disclosure would

impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records.).

Further, the information in question is not relevant to any issue before the Commission in this case. Specifically, Ms. Hawley's intervention and objection to the proposed asset sale are clearly due to her belief that the transaction would not be in the best interest of "the Rolla public."[4] But other than to order a change of electrical supplier upon proper application of a customer, the Commission has no jurisdiction over the service, rates, financing, accounting or management of any municipally owned or operated electrical system.[5] Thus, the Highly Confidential material would not appear to be "reasonably calculated to lead to the discovery of admissible evidence", which is the test for whether information is subject to discovery.[6]

Indeed, the Commission's rules for electrical utilities that seek approval to sell assets contemplate that the Commission may not have jurisdiction over the buyer.[7] Moreover, the Court of Appeals has held that "(t)he obvious purpose of this provision (Section 393.190 RSMo, the statute requiring AmerenUE to receive Commission approval to sell the assets in question) is **to ensure the continuation of adequate service to the public served by the utility**."[8] As Staff's response correctly states, the Commission's purview is whether it is prudent for AmerenUE to *sell* the assets, not whether it is prudent for the Cities to *buy*

---

[4] Donna D. Hawley's "Motion to Respond to Order Directing Filing" (sic), page 3 of 22 (August 10, 2010).

[5] Section 91.025.2 RSMo (2009). *See also Shepherd v. City of Wentzville,* 645 S.W.2d 130, 133 (Mo. App. E.D. 1982). For a discussion of the unconstitutionality of prior statutes giving the Commission the power to regulate municipally owned public utilities, *see Forest City v. City of Oregon*, 569 S.W.2d 330, 332-333 (Mo. App. 1978).

[6] *State ex. rel. Wright v. Campbell*, 938 S.W.2d 640, 643 (Mo. App. E.D. 1997); Mo.R.Civ.P. 56.01(b).

[7] *See* Commission Rule 4 CSR 240-3.110(1)(E): "**If** the purchaser is subject to the jurisdiction of the commission . . . ". Commission Rule 4 CSR 240-3.110(2): "**If** the purchaser is not subject to the jurisdiction of the commission . . . " (emphasis supplied).

[8] *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (emphasis added).

them.[9] Likewise, Ms. Hawley's claim that Rolla has closed the desired information illegally is also beyond the reach of the Commission, as circuit courts, not the Commission, may enforce Missouri's Sunshine Law.[10]

Therefore, the Commission will deny Rolla's motion for protective order as moot, and will deny Ms. Hawley access to the Highly Confidential information at issue for the above-stated reasons.

THE COMMISSION ORDERS THAT:

1. The Motion for Protective Order is denied.

2. All parties are prohibited from releasing to any entity or person, including Donna Hawley, the portions of the 2007 Power Delivery Master Plan, that were made a closed record under Section 610.021(19) RSMo, by vote of the Rolla Board of Public Works at its July 19, 2010 meeting.

3. This order shall become effective on September 4, 2010.

BY THE COMMISSION

Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, and
Gunn, C., concur;
Kenney, C., dissents.

Pridgin, Senior Regulatory Law Judge

[9] Staff's Response, p. 3, fn. 1 (dated August 9, 2010) (Staff further noting that Ms. Hawley appears to be in the wrong forum).
[10] See *id*; see also Section 610.030 RSMo.