

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|----------------------------|---|----------------------------|
| FEDERAL TRADE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 4:20-cv-00317-SEP |
| |) | |
| PEABODY ENERGY CORPORATION |) | |
| |) | |
| and |) | |
| |) | |
| ARCH COAL, INC., |) | |
| |) | |
| Defendants. |) | |

This case is before the Court on Defendants’ Unopposed Motion to Modify the Protective order (Doc. [52]) and the Parties’ Joint Memorandum Request for a Telephone Conference (Doc. [64]). The Court has set a telephonic conference for consideration of these submissions on Tuesday, March 24, 2020, at 1:30 PM Central. Given the fact-intensive nature of the issues to be considered at that conference, *see U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 (Fed. Cir. 1984), the Court requests that each Defendant submit by 5:00 PM Central on Monday, March 23, 2020, briefs responding—as specifically and concretely as possible—to the questions below. These briefs should be supported by detailed affidavits from each member of in-house counsel seeking access to the documents. The briefs, excluding any supporting affidavits, caption pages, or signature pages, shall not exceed five (5) pages from each Defendant.

For each employee a Defendant asks the Court to grant access to confidential information subject to the protective order in this case, that Defendant should describe with specificity:

- that individual's role within the company and the precise nature of his or her interactions with strategic decision-makers;
- the particular capabilities and knowledge he or she possesses that (1) outside counsel will need in order to litigate this case and (2) he or she cannot provide without having access to confidential information; and
- how that individual will contribute in a distinctive way (i.e., in a manner that is not interchangeable with either of the other two proposed in-house experts or with outside counsel) to Defendants' preparations for the preliminary injunction hearing.

IT IS SO ORDERED.

Dated this 20th day of March, 2020.



SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE