

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 27th
day of January, 1986.

CASE NO. ER-85-265

In the matter of Arkansas Power &
Light Company of Little Rock,
Arkansas, for authority to file
tariffs increasing rates for
electric service provided to
customers in the Missouri service
area of the Company.

ORDER GRANTING APPLICATION FOR REHEARING
AND PROTECTIVE ORDER

By its Order issued herein on January 2, 1986, the Commission made certain determinations concerning data requests tendered to Arkansas Power & Light Company (APL) by the Commission Staff and directed certain responses by the Staff and APL.

The Commission's Order of January 2, 1986, directed APL to respond to Data Request No. 55 by furnishing copies of exit interviews of former employees with any person specific information such as name and job title whited out. The Staff's response filed on January 8, 1986, does not indicate sufficient reason why APL's proposed tender of the interviews with person's specific information deleted is inadequate, and the Commission is of the opinion that APL's response in that fashion shall be deemed adequate for that data request.

The Staff's response of January 8, 1986, indicates that Data Request No. 1000 dealing with the Company's PROMOD III computer run has been satisfied, and the Commission deems it unnecessary to further address that data request herein.

Staff's Data Request No. 256 pertains to certain excluded pages from a document furnished by APL. APL's response of January 8, 1986, states that the

missing pages pertain to other Middle South utility subsidiary companies and were not furnished to APL by the parent. APL states that it has made a request of the other companies to release the material to APL for purpose of the data request but that the other companies have declined to provide the material. In the Commission's opinion it appears that it would not be productive to further order APL to respond to Data Request No. 256 at the present time because no party has demonstrated that there is a legal and enforceable mechanism for enforcement of such an order.

On January 6, 1986, the Company filed a response to the Commission's order concerning Staff's Data Request No. 65. Data Request No. 65 was dated October 10, 1985, and sought access to the workpapers of Deloitte, Haskins and Sells, APL's independent outside auditors for 1983 and 1984 annual audits of APL. APL's response objects to the Commission's order directing the furnishing of the information sought by Data Request No. 65 on the ground that APL is not aware of any statutory or regulatory requirement that it file formal objections to the data requests within any particular period of time. In the Commission's opinion APL has had ample time to either furnish the requested information or object to furnishing the information. The Commission is of the opinion that it is intolerable for the Company to completely ignore a data request and only make a response when the Staff is pressed to the filing of a formal motion seeking compliance. In the Commission's opinion the time is past for objecting to Data Request No. 65 and the Company is in violation of the Commission's order of January 2, 1986, for failure to supply the specified material.

On January 8, 1986, the Company filed its Application For Rehearing of that portion of the Commission's order of January 2, 1986, directing production of the Operations Manual for the PROMOD program. The Company reiterates that the proprietary rights in the Operations Manual are not those of the Company but is proprietary information of Energy Management Associates, Inc., and that the Company's compliance with the Commission's order may subject it to civil liability for conversion, breach of contract, or for disclosure of confidential trade secrets.

Company's Application For Rehearing offers to disclose the Operations Manual under a protective order similar to those issued in previous Commission cases. The Company contends that it will be adequately protected only if the protective order applies to all employees of the Commission and to any other person who may have access to the operations manual pursuant to such protective order. In the Commission's opinion the furnishing of the Operations Manual under a suitable protective order is reasonable and proper as hereinafter ordered.

On January 8, 1986, the Commission Staff filed a motion seeking an order directing the Company's compliance with Data Request No. 185 submitted on November 17, 1985, which seeks copies of or access to coal invoices which show the date that coal was delivered and the date that the invoice was paid, including vouchers showing freight costs for the period beginning August 1, 1984 to September 30, 1985. The Staff's motion indicates that no response has been made to the data request submitted November 17, 1985. The Company's response to the motion, filed on January 15, 1986, indicates that the rail transportation contracts on which the transportation costs are based contain provisions making the contract subject to termination for breach of confidentiality of the negotiated freight rates. Company indicates that it is willing to let the confidential materials be examined by the Staff under a confidentiality agreement. In lieu of that the Company is of the opinion that a proper protective order would achieve the same result.

In the Commission's opinion the Company's Application For Rehearing concerning the Operations Manual for the PROMOD program should be granted to the extent that the manual shall be furnished subject to the protection as hereinafter ordered. The Commission is also of the opinion that the same protective conditions shall apply to the furnishing of the transportation costs covered by Staff's Data Request No. 185. The Commission considers the PROMOD III Operations Manual and the Company's rail transportation contracts as being in the nature of a trade secret, privileged, proprietary or confidential. In the course of these proceedings the

Commission may designate other documents to be in those categories. Any further documents so designated will be subject to the same protections as hereinbelow described.

Because the time for the filing of the Staff's direct testimony is past, the Staff may find it necessary to file supplemental or additional testimony as a result of the receipt of the answers to the data requests covered by this Order. In the event that necessity arises, the Commission will deem it proper to grant exception to the previously established filing date.

It is, therefore,

ORDERED: 1. That all documents, data, information, studies and other materials furnished pursuant to any request for information, subpoenas, or other modes of discovery, including depositions, that are claimed by the Company to be a trade secret, privileged, proprietary or confidential (hereinafter referred to as "Confidential Information") shall be furnished or conducted pursuant to the terms of this order, and shall be treated by all persons and parties accorded access thereto pursuant to this order as constituting trade secrets, confidential or privileged commercial and financial information, and shall neither be used nor disclosed except for the purposes of this proceeding, and solely in accordance with this order. Access to and review of confidential information by parties other than the Commission's Staff shall be had at the Commission's offices in Jefferson City, Missouri, all such access and review shall be only by prearranged appointment with the counsel for the Commission Staff. Requested and agreed-upon documents will be made available at the office of the Commission during the hearings herein.

ORDERED: 2. That all Confidential Information produced pursuant to this order shall be made available solely to counsel for the parties, and shall not be used or disclosed except for purposes of this proceedings; provided, however, that access to any specified Confidential Information shall be authorized by said counsel, solely for the purposes of this proceeding and subject to the limitations and

conditions set forth below, to those persons indicated by the parties as experts in this matter. Unless the Commission otherwise orders, any such expert may not be an officer, director, or employee of any party to this case, or a member of an association or corporation of which any party is a member, subsidiary or affiliate, nor shall such expert be an officer, director, employee, or a stockholder of a competitor of Arkansas Power & Light Company or of Energy Management Associates, Inc. This exclusion shall not apply to Arkansas Power and Light Company or to legal counsel for the parties. Furthermore, in the event that there be more than one counsel for the parties, a lead counsel shall be designated, and he or she shall be personally responsible for his or her co-counsel's complying with the terms hereof. Also, in the event that it becomes necessary to engage the services of a court reporter, typist, or court reporting firm, the counsel securing or causing the need for such services shall be personally responsible for the protection and nondisclosure of the information disclosed to said court reporter, typist or court reporting firm.

ORDERED: 3. That prior to giving access to Confidential Information as contemplated in Ordered: 2 above to any expert, or any other person authorized to be given access pursuant to this order, including by attendance at depositions, counsel for the party seeking review of the Confidential Information shall notify Arkansas Power and Light Company of the intent to make such disclosure, stating with particularity the name of the person to whom disclosure will be made and the purpose of such disclosure. In addition, said counsel shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in a written "Nondisclosure Agreement" that he has reviewed same and consented to be bound by its terms. The Nondisclosure Agreement so executed shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for Arkansas Power & Light Company before disclosure is made and, if no objection thereto is

registered to counsel requesting same, then disclosure shall follow. Attached hereto as Exhibit "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.

ORDERED: 4. That counsel for the party seeking review of the Confidential Information shall keep a complete and current record of all persons to whom any Confidential Information has been disclosed, together with a list of the items of Confidential Information made available to such persons under the terms of this Protective Order.

ORDERED: 5. That no copies of any Confidential Information shall be made; provided, however, that counsel of record who have agreed in writing to be bound by this order and expert witnesses who have agreed in writing to be bound by this order and to whom disclosure has been permitted, may take limited notes regarding such Confidential Information as may be necessary in connection with this proceeding when required solely for the purpose of this proceeding. Such notes shall be treated in the same manner as the Confidential Information from which the notes were taken and shall be returned to counsel for Arkansas Power & Light Company within ninety (90) days after the final settlement or conclusion of this action. Any notes or materials retained by counsel under this paragraph shall not be disclosed to any other person or party who has not signed a Nondisclosure Agreement pursuant to this Protective Order.

ORDERED: 6. That those parts of any Confidential Documents, depositions reduced to writing, written examination, requests for information and answers thereto or other written references, including notes, to Confidential Information obtained by any party in the course of discovery in this proceeding, shall not be considered to be "documents and records in the Commission's possession" under Section 386.380(1), RSMo 1978.

ORDERED: 7. That all parties obtaining Confidential Information pursuant to the terms of this order agree to give advance notice to Arkansas Power and Light

Company of their intent to seek Commission approval to use or present such information on the record of this case. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by the hearing examiner and/or the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matters shall be present and, under appropriate circumstances, attendance may be limited to counsel for the respective parties who have agreed to be bound by the terms hereof. The record of this in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN MO P.S.C. CASE NO. ER-85-265." It shall be transcribed only upon order of the Commission and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this order, unless and until released from the restrictions of this order either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission and/or a court of competent jurisdiction. Disclosure of Confidential Information at the public hearings or in the filed testimony in this case shall be made only under the conditions specified herein and in a manner designed to protect the confidentiality of such information. Counsel for the parties and experts to whom disclosure has been made are hereby prohibited, in the absence of a Commission or Court order to the contrary, from making any reference to the specifics of such information and shall state any such reference in general and conclusory form.

ORDERED: 8. That all persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the Confidential Information secure and in accordance with the purposes and intent of this order.

ORDERED: 9. That the parties hereto affected by the terms of the Protective Order retain the right to question, challenge and object to the production, admissibility and introduction of any and all data, information, studies and other matters furnished under the terms of the Protective Order or in response to interrogatories, requests for information, other modes of discovery, or cross-examination on grounds of the form of the discovery and the irrelevancy or immateriality of such information to this case.

ORDERED: 10. That this order shall in no way constitute a waiver of the rights of any party herein at any time to contest any assertion or to appeal any finding that specific information is Confidential Information or should be subject to the protective requirements of this order. Any information designated by Arkansas Power & Light Company as privileged or proprietary may be referred to the examiner and/or the Commission for ruling, after hearing, on whether said material should not be so classified in accordance with the terms of Ordered: 7 above.

ORDERED: 11. That upon completion of this proceeding, including administrative or judicial review thereof, all Confidential Information, including any notes taken with regard to such information, furnished under the terms of this Protective Order shall be returned promptly, but in no event later than ninety (90) days, to Arkansas Power & Light Company. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this order, and shall be returned to Arkansas Power & Light Company at the conclusion of this proceeding. While in the custody of the Commission, these materials shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN MO P.S.C. CASE NO. ER-85-265," and they shall not be considered as records in the possession of or retained by the Commission within the meaning of Section 386.380(1), RSMo 1978, or the Missouri open meetings or public records statutes.

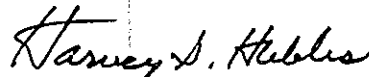
ORDERED: 12. That the provisions of this order are specifically intended to apply to data or information which is supplied by Arkansas Power & Light Company to any party under the claim that such data or information is trade secret, proprietary, confidential, or privileged commercial and financial information.

ORDERED: 13. Subject to the terms of this order Arkansas Power & Light Company shall, within five (5) days of the date of this order, answer Staff's Data Request No. 103 and Staff Data Request No. 185.

ORDERED: 14. That the Commission may modify this order on motion of a party or on its motion upon reasonable prior notice to the parties and an opportunity for hearing. Nothing contained herein shall limit any party's rights to judicial review of this order or any decision rendered hereunder.

ORDERED: 15. That this Order shall become effective on the date hereof.

BY THE COMMISSION



Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller,
Hendren and Fischer, CC., Concur.

EXHIBIT "A"

NONDISCLOSURE AGREEMENT

Pursuant to ORDERED: 3 of the Protective Order issued in Mo. P.S.C. Case No. ER-85-265 on January 27, 1986, the undersigned certifies under oath that (s)he has received a copy of said Protective Order, has read and understands the same, and agrees to comply with and be bound by the terms thereof. This certification is given for the purpose of obtaining access to certain documents, information and material, in general nature of which is described below:

I understand that all such information furnished is classified by Arkansas Power & Light Company as confidential or proprietary in nature, and that said information is furnished solely for use in connection with Missouri PSC Case No. ER-85-265 and that the use thereof is governed by the Protective Order in that case.

Signature and Title _____

Representing: _____

Address: _____

Date: _____

STATE OF MISSOURI)

) SS.

COUNTY OF)

I Subscribed and sworn to before me, a notary public in and for the State and County aforesaid, this _____ day of _____, 1986.

Notary Public

My Commission expires: _____