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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 19th  
day of April, 1995.

Ahlstrom Development Corporation, and	)	
Cottonwood Energy Partners, L.P. (Ahlstrom),	)	
	)	
Complainants,	)	
	)	
v.	)	<u>Case No. EC-95-28</u>
	)	
The Empire District Electric Company,	)	
a corporation (Empire),	)	
	)	
Respondent.	)	
	)	

**ORDER GRANTING REQUEST FOR CLARIFICATION**  
**OR MODIFICATION**

On March 15, 1995, the Commission issued an Order Granting In Part And Denying In Part Application For Rehearing, which allowed five Empire employees individual access to Highly Confidential material where: (1) the individual Empire employee had originated the Highly Confidential material; (2) the Highly Confidential material indicated that the individual Empire employee had been involved in a specific meeting or teleconference; or (3) the Highly Confidential material indicated that certain statements had been made by the individual Empire employee.

On April 7, 1995, the Commission issued an Order Granting Request For Modification Or Clarification, which allowed officers and management level employees individual access to Highly Confidential material where: (1) the individual Ahlstrom employee had originated the Highly Confidential material; (2) the Highly Confidential material indicated that the individual Ahlstrom employee had been involved in a specific meeting or teleconference; or (3) the

Highly Confidential material indicated that certain statements had been made by the individual Ahlstrom employee.

On April 3, 1995, KLT Power, Inc. (KLT) filed a Response to Ahlstrom's Request For Clarification Or Modification Of The Commission's March 15, 1995 Order. In its Response, KLT indicated its support for Ahlstrom's request for clarification provided that similar access is afforded to the employees of KLT under similar terms and conditions as provided to employees of Empire and Ahlstrom. KLT states that it has provided information to Empire which has been designated as "Highly Confidential" and has been provided to Ahlstrom in the discovery process. Some of that "Highly Confidential" material has been included in Ahlstrom's direct testimony. KLT further states that it is likely that other "Highly Confidential" information provided by KLT employees may be included in the testimony of Empire or other parties later in this proceeding.

KLT requests that the rehearing order be clarified or modified to allow KLT employees access to any Highly Confidential materials where: (1) the individual employee of KLT had originated the Highly Confidential material; (2) the Highly Confidential material indicated that the individual employee of KLT had been involved in a specific meeting or teleconference; or (3) the Highly Confidential material indicated that certain statements had been made by the individual employee of KLT. KLT states its belief that the Protective Order should be modified to provide equal access to "Highly Confidential" material to all participants under the same terms and conditions.

The Commission will grant KLT's request so long as the employees are officers or management level employees. To ensure clarity of the record, the Commission will order KLT to provide the names and titles of the employees for which access to certain Highly Confidential material is requested.

On April 10, 1995, The Empire District Electric Company (Empire) filed a Reply to KLT's Response. Empire indicates that material from KLT is

sometimes commingled in Empire's schedules with material from Southwest Public Service, Kenetech, Ahlstrom, and several other competitors for the power needs of Empire. Empire further states that there will be some Highly Confidential documents that contain only KLT material -- which KLT employees should be allowed to see -- and there will be other documents which contain Highly Confidential material of other parties -- which KLT employees should not be allowed to see. Empire states that if the Commission grants KLT's request for all of the intervenors, each attorney will have to painstakingly go through the Highly Confidential portions of the testimony and schedules and blank out portions of any page that contains Highly Confidential information that did not originate with the client before supplying it to an employee of the client. Empire states that this is a task that would take several days (full-time) to perform correctly, just on the material Empire filed. Empire is concerned whether it can be performed with 100 percent accuracy given the complexity of the material.

Empire requests that to the extent that KLT's request can be granted by limiting KLT employee access to only those Highly Confidential documents or portions of Highly Confidential testimony that contain information which that individual employee of KLT originated or that show that the individual KLT employee participated in a specific meeting or teleconference, Empire believes that KLT's request should be granted. However, Empire continues, KLT employees should not have access to Highly Confidential material where KLT information is commingled with Highly Confidential information from other suppliers unless there is some form of assurance in place that the non-KLT information is protected from disclosure as part of that process.

The Commission understands Empire's concerns. Nevertheless, the Commission is of the opinion that each party to this case should be treated equally with respect to this issue. The Commission finds that there is already

in place an assurance that non-KLT information is protected from disclosure as a part of this process in that it is the responsibility of KLT's legal counsel to prevent disclosure of Highly Confidential material to persons other than attorneys representing parties in this docket or outside consultants retained for purposes of this case. **IT IS THEREFORE ORDERED:**

1. That the relief requested in the Response of KLT Power, Inc., to Complainants' Request For Clarification Or Modification Of March 15, 1995 Order, which Response was filed on April 3, 1995, be, and is hereby, granted so long as the employees for which access to certain Highly Confidential information is sought are officers or management level employees of KLT Power, Inc.

2. That KLT Power, Inc. shall file, no later than May 1, 1995, a list of the names and positions of the individual employees for which access to certain Highly Confidential information is sought.

3. That this order shall become effective on the date hereof.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

( S E A L )

Mueller, Chm., Perkins and  
Crumpton, CC., concur.  
McClure, C., dissents, with  
opinion.  
Kincheloe, C., absent.

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

Ahlstrom Development Corporation, and	)	
Cottonwood Energy Partners, L.P.,	)	
	)	
Complainants,	)	
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v.	)	<u>Case No. EC-95-28</u>
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The Empire District Electric Company,	)	
a corporation,	)	
	)	
Respondent.	)	

**DISSENTING OPINION OF COMMISSIONER KENNETH MCCLURE**

The Commission has opened the proverbial Pandora's box. In an attempt to deal with what appeared to be an unusual case situation, the Commission, on March 15, 1995, granted a rehearing for Empire District which allowed selected Empire employees to have access to certain Highly Confidential material. Ahlstrom then asked for a "Modification or Clarification" seeking similar treatment. The Commission granted this request.

Not to be outdone, KLT Power, Inc. (KLT) now wants an exception. (It is interesting that Empire pointed out several practical difficulties with granting KLT's request.) Missouri Gas Energy is also seeking the same allowance in other cases before the Commission. It would seem as if the various parties are seeking to take advantage of the Commission's accommodation for a unique set of circumstances to achieve special inroads for themselves. While it is doubtless that I was shortsighted in not having anticipated the resulting actions, nevertheless, had I known what was to occur, I would have not supported the March 15 order.

It is difficult to imagine how the Commission could have gone through such a major proceeding as the one recently completed with Southwestern Bell without challenges being raised to the standard protective order (which is routinely approved) if such an order is flawed. However, if there are problems, I would encourage those parties who regularly appear before the Commission to suggest for the Commission's consideration what, if any, modifications need to be made. This approach is far preferable to where we seem to be headed now.

The KLT request should be denied. Therefore, I dissent.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth McClure".

Kenneth McClure  
Commissioner

Dated at Jefferson City, Missouri, on  
this 19th day of April, 1995.