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

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

**ORDER DENYING MOTION TO MODIFY PROTECTIVE ORDER**

On January 5, 1995, The Empire District Electric Company (Empire) filed a Motion To Modify Protective Order. Empire states that it seeks a modification of the existing protective order so that five employees of Empire can be allowed to review material supplied by Ahlstrom Development Corporation and Cottonwood Energy Partners, L.P. (Ahlstrom) that has been designated as highly confidential. Empire states that the motion is required by Empire's need to be able to assure an adequate defense of its positions in this proceeding and because Ahlstrom was not willing to voluntarily provide the relief Empire is requesting.

Empire states that there are three categories of highly confidential (HC) material involved. One category is notes, memos and strategies that Ahlstrom employees made and discussed after meeting with Empire. Another category is material which Empire provided to Ahlstrom in the first place. The third category is material which Ahlstrom claims that it previously provided to Empire, but Empire has no record of receiving. Empire states that while the classification of HC is apparently appropriate in this instance in order to

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prevent other competitors of Ahlstrom from learning the information, it does not present any unreasonable risk to Ahlstrom for the five Empire employees to review it because Empire is not a competitor of Ahlstrom.

On January 17, 1995, Ahlstrom filed a response to Empire's Motion To Modify Protective Order. Ahlstrom disputes Empire's implication that Ahlstrom "can be viewed to have sacrificed" some of its concerns regarding highly confidential information because it filed a complaint under PURPA. Ahlstrom disputes Empire's contention that Empire is not a competitor with the proposed Jayhawk Plant. Ahlstrom requests that the Commission uphold the protective order and not allow the modification requested by Empire.

On January 27, 1995, Empire filed a reply to Ahlstrom's response to Empire's Motion To Modify Protective Order. Empire's reply states that it is not attempting to change the future content of protective orders issued by the Public Service Commission and that it is ridiculous to claim that Empire is in competition with Ahlstrom and that the highly confidential materials somehow affect competition.

On February 2, 1995, Ahlstrom filed a reply to Empire's reply to Ahlstrom's response to Empire's Motion To Modify Protective Order. In its reply, Ahlstrom agrees to allow Empire personnel access to the pricing proposals and power purchase agreement submitted to Empire by Ahlstrom and to the information previously supplied to Empire. However, Ahlstrom states that to the extent that Empire seeks a blanket exception to the protective order, that such motion should be denied.

The Commission has reviewed the pleadings that have been filed in this matter. The Commission finds that Empire's motion should be denied because Empire, just as any utility that has, or potentially has, an ownership interest in generation facilities, is, at least indirectly, in competition with other potential owners of electricity generation plant, such as Ahlstrom. The

Commission is of the opinion that Empire's substantive and procedural due process rights are not infringed as a result of Empire having to rely upon the independent recollection of its officers and employees to respond to evidence proffered by Ahlstrom.

The Commission is of the opinion that a party cannot make selective exceptions to the terms of a Commission protective order within a contested case proceeding. If certain material is in fact highly confidential, then in-house personnel other than in-house counsel may not review material designated as highly confidential. To the extent that Ahlstrom agrees to allow in-house personnel of other parties to review material within the context of this case, such material must be reclassified to the status of proprietary or nonproprietary under the protective order.

**IT IS THEREFORE ORDERED:**

1. That the motion to modify protective order filed by The Empire District Electric Company is hereby denied.
2. That this order shall become effective on the date hereof.

**BY THE COMMISSION**



**David L. Rauch**  
**Executive Secretary**

( S E A L )

Thomas H. Luckenbill, Deputy Chief  
Hearing Examiner, by delegation of  
authority under Commission Directive  
of January 3, 1995, pursuant to  
Section 386.240, R.S.Mo. 1994.

Dated at Jefferson City, Missouri,  
on this 21st day of February, 1995.