

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
General Telephone Company of Ohio)
for Authority to Increase and) Case No. 81-383-TP-AIR
Adjust its Rates and Charges and)
to Change Regulations and Practices)
Affecting the same.)

ENTRY

The Commission, coming now to consider the above-entitled matter, and specifically the January 29, 1982 motion for a protective order filed by General Telephone Company of Ohio, the February 9, 1982 memorandum contra opposing the motion filed by Consumers' Counsel, the attorney examiner's oral ruling at the February 12, 1982 hearing denying the motion for a protective order and the February 16, 1982 interlocutory appeal of the attorney examiner's ruling, finds:

- 1) On January 28, 1982, General Telephone Company of Ohio filed a motion for a protective order alleging that certain testimony was proprietary, trade secret, and confidential information.
- 2) On February 9, 1982, Consumers' Counsel filed a memorandum contra opposing the motion for a protective order. Consumers' Counsel cites Section 4901.12, Revised Code for the proposition that all Commission proceedings are to be public records and must remain open to the public.
- 3) At the February 12, 1982 hearing, the attorney examiner orally denied the motion for a protective order.
- 4) On February 16, 1982, General Telephone Company of Ohio filed an interlocutory appeal from the attorney examiner's ruling. This interlocutory appeal was certified to the Commission pursuant to Rule 4901-1-15(E) of the Ohio Administrative Code.
- 5) The Commission is of the opinion that the "public records" statute must also be read *in pari materia* with Section 1333.51, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information. Hence, the Commission is confronted with the dilemma of reconciling two statutes which at least appear to be inconsistent.
- 6) We have reviewed the narrative portion of the testimony in question, particularly the portions cited by General in its interlocutory appeal describing the company's computer simulation system program. While we find that such testimony appears to be proprietary in nature, we believe for the most part it to be written in such a general or non-specific way so as not to give rise to the need for a protective order. The exception to this pattern is found at page 2, line 16 through

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page 9, line 18 of the supplemental testimony of Theodore W. Kunkle. Such testimony is specific enough to warrant protection.

- 7) Additionally, with respect to Kunkle Exhibits 13 through 15, the Commission agrees with the applicant that the input into the model as well as the product of the computer model should be protected. In addition, inquiry into the specifics of the methodology in developing the input may also need to be protected. Therefore, the Commission will grant a protective order with respect to Kunkle Exhibits 13, 14 and 15.
- 8) The provisions of the protective order attached to this Entry shall be applicable to all parties who acknowledge acceptance of the terms. The Commission has intentionally deleted paragraphs 4, 5, 6, and 7 of the proposed protective order by General from its protective order. The attorney examiner will subsequently rule upon how cross-examination of any protected material will be conducted at the hearing.

It is, therefore,

ORDERED, That the interlocutory appeal of the applicant be sustained to the extent provided by this Entry and that the attorney examiner's oral ruling of February 12, 1982 which denied the request for a protective order be reversed in part and affirmed in part as provided by this Entry. It is, further,

ORDERED, That the terms of the protective order attached to this Entry be applicable to all parties who acknowledge acceptance in writing of its terms. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

[Signature]
(Chairman)

[Signature]

[Signature]
(Commissioners)

SMB/ksb

Entered in the Journal

FEB 17 1982

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David M. Polk
Secretary

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