

Trade Secret?

CAN ABC PROVE THE ALLEGED INFORMATION IS:

Confidential and proprietary to ABC?

A secret?

Not public information?

Not a matter of general knowledge in the industry?

Not a matter of special knowledge of those persons skilled in the industry?

Not a matter of general business methods?

CAN ABC PROVE THAT:

Its status as a secret creates independent economic value for ABC?

ABC took reasonable steps to preserve its secrecy?

Any use by Dr. Taylor actually caused money damages to ABC?

If money damages were caused, what are they?

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NO.

Not public information?

NO.

Not a matter of general knowledge in the industry?

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Not a matter of special knowledge of those persons skilled in the industry?

NO.

Not a matter of general business methods?

NO.

CAN ABC PROVE THAT:

Its status as a secret creates independent economic value for ABC?

NO.

ABC took reasonable steps to preserve its secrecy?

NO.

Any use by Dr. Taylor actually caused money damages to ABC?


NO.

If money damages were caused, what are they?

NO.


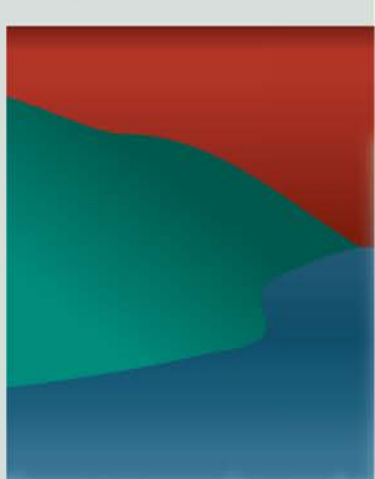




Trade Secrets

ABC Must Prove:

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	Information qualifies as a valid trade secret.	The information was improperly used.	The improper use caused ABC to lose the VIPO contract.	
	1	2	3	


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For Each Alleged Trade Secret As to Each Defendant, ABC Must Prove:

1. ABC owns a valid trade secret

- (a) a formula, pattern, compilation, device, method, technique, or other information
- (b) the information is not generally known to the public or others in the industry
- (c) ABC has taken reasonable steps to preserve the secrecy of the information
- (d) the information has economic value because ABC has kept it secret

2. ELCO or Dr. Taylor improperly used the trade secret

3. The use of the alleged trade secret caused damage to ABC

*To “**cause**” means that the use of the trade secret by ELCO or Dr. Taylor was a substantial factor in the resulting damage to ABC*

Elements of a Trade Secret

- The information is a formula, pattern, compilation, program, device, method, technique, process or some other form of information that was owned by ABC;
- The information is indeed secret, that is, not generally known to the public, and was not generally known to others, including ABC's business competitors, who could have profited by using or disclosing it;
- The information has independent economic value derived from the fact that it is secret, which confers a competitive advantage on ABC over its business rivals;
- ABC took efforts that were reasonable under the circumstances to maintain the secrecy of the information.

Reasonable Efforts to Maintain Trade Secrecy



Mark sensitive documents with confidentiality warning



Require non-disclosure agreements



Advise employees that the documents are trade secrets



Limit access to sensitive documents on a “need-to-know” basis



Maintain secret documents under lock

Unprotected Disclosure to BO Hydro



Unprotected Disclosure to BO Hydro



ABC's "Trade Secrets"

INDUSTRY CONFERENCE



ABC's "Trade Secrets"



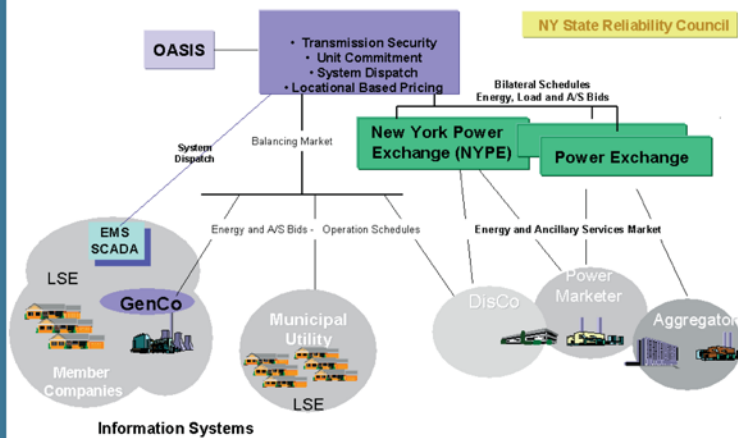
Dr. Taylor's home computer



ABC's Trade Secret List

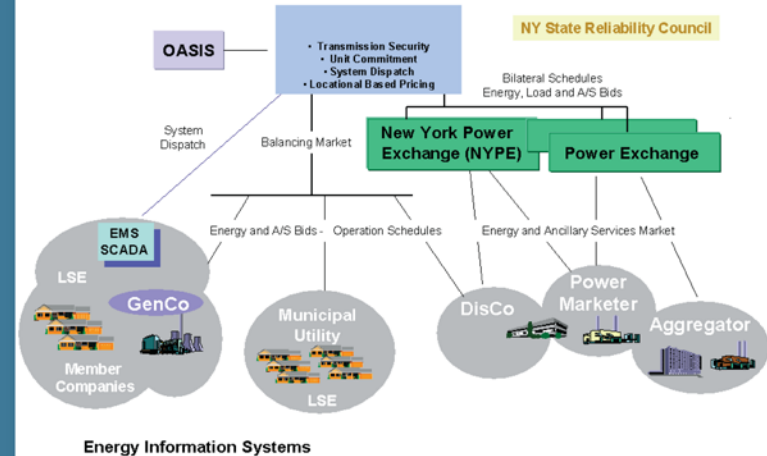
Public Presentation or ABC “Trade Secret”?

Proposed New York Market Structure



Publicly Presented by ABC
October 1998

Proposed New York Market Structure



Claimed as a “Trade Secret”
by ABC
April 2001

Content of “presentation.ppt”

Generation Schedule

Unit ID: _____ Market: DAY AHEAD Transaction Date: 1/1/2000

Schedule Class: FIRM Contract Ref: _____

Loss Compensation: NO Congestion Mgt: NO Priority: OTHER

Use Template Formula to populate values or input directly into the table: Table 1

Hour	R Rate(MW/min)	Output (MW)
1	(10, 3.22), (10, 3.44), (10, 3.5)	
2	(10, 3.22), (10, 3.44), (10, 3.5)	
3	(10, 3.33), (10, 3.24)	
4	(10, 3.33), (10, 3.24)	
5	(10, 3.33), (10, 3.24)	
6	(10, 3.33), (10, 3.24)	

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“presentation.ppt”

Dr. Taylor Did Not Know or Have Access to ABC's "Bid Price"

► **AUG 30, 1999** *ABC*

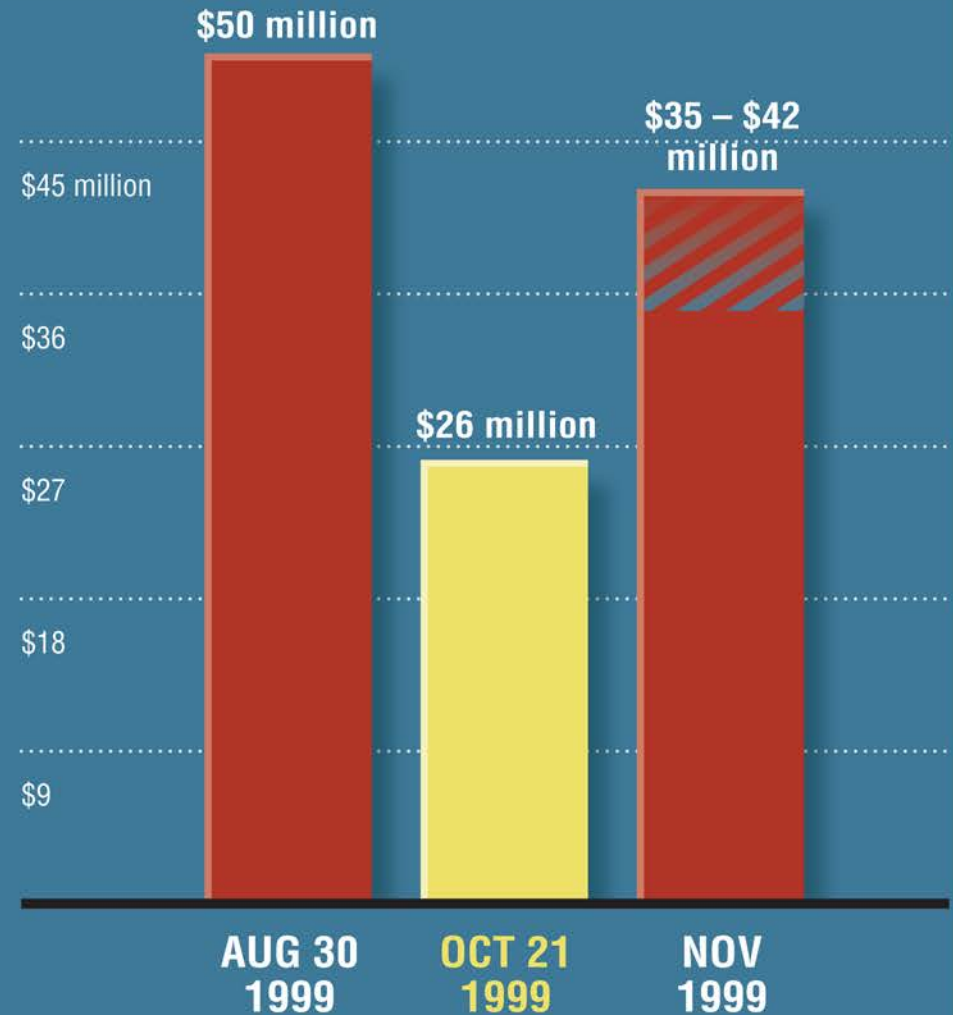
ABC believed its bid price would be **\$50 million**.

► **OCT 21, 1999** *Dr. Taylor*

Dr. Taylor estimates winning bid will be **UNDER \$26 million**.

► **NOV 1999** *ABC*

ACTUAL BID PRICE NOT IDENTIFIED. ABC believes it was between **\$35 and \$42 million**.



ABC Trade Secret Allegations That Have ***NO ACTUAL OR ALLEGED CAUSAL CONNECTION*** to ABC's Damages Claims

ALLEGED TRADE SECRET	VALID TRADE SECRET?	IMPROPER USE?	VIPO OR BO HYDRO DAMAGES?
1. Market Volume Study (a) Econometric Methodology	<ul style="list-style-type: none"> • <i>DISCLOSED</i> to third parties <i>WITHOUT NONDISCLOSURE AGREEMENTS</i> • <i>NO RESTRICTIONS</i> on access • <i>NO CONFIDENTIALITY</i> legend 	<ul style="list-style-type: none"> • ABC and ELCO market volume estimates are <i>SUBSTANTIALLY DIFFERENT</i> 	<i>No</i>
(b) Deregulation Database	<ul style="list-style-type: none"> • <i>GENERALLY KNOWN</i> to the public or others in the industry (DOE Website) 	<ul style="list-style-type: none"> • ABC and ELCO market volume estimates are <i>SUBSTANTIALLY DIFFERENT</i> 	<i>No</i>
(c) Conclusions	<ul style="list-style-type: none"> • <i>NO</i> reasonable steps to <i>PRESERVE SECRECY</i> 	<ul style="list-style-type: none"> • ABC and ELCO market volume estimates are <i>SUBSTANTIALLY DIFFERENT</i> 	<i>No</i>

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ALLEGED TRADE SECRET	VALID TRADE SECRET?	IMPROPER USE?	VIPO OR BO HYDRO DAMAGES?
2. 1999 – 2000 Draft Business Plan	<ul style="list-style-type: none"> Allegedly copied headings <i>ARE NOT SECRET</i> Headings in <i>COMMERCIALY AVAILABLE</i> software program Business Plan Pro 	<ul style="list-style-type: none"> <i>NO EVIDENCE</i> of any use 	<i>No</i>
3. TRACE “Modeling Data”	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> <i>NO ALLEGATION</i> of use 	<i>No</i>
7. Isplus Data Model	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> ABC isplus and ELCO eterraschedule are <i>SUBSTANTIALLY DIFFERENT</i> Alleged similarities are <i>INSUFFICIENT TO ESTABLISH COPYING</i> 	<i>No</i>

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ALLEGED TRADE SECRET	VALID TRADE SECRET?	IMPROPER USE?	VIPO OR BO HYDRO DAMAGES?
11. 1997 California Power Exchange Proposal	<ul style="list-style-type: none">• Not applicable	<i>No</i>	<i>No</i>
12. Dealings with CAISO (a) Proposal	<ul style="list-style-type: none">• Not applicable	<i>No</i>	<i>No</i>
(f) CAISO Presentations	<ul style="list-style-type: none">• <i>PUBLICLY PRESENTED</i> by ABC• <i>NO CONFIDENTIALITY</i> legend• <i>NO CONFIDENTIALITY</i> agreements	<i>No</i>	<i>No</i>