

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code	:	Docket Nos.	R-00973981
Application of Duquesne Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code	:	R-00974104	
Joint Application of DQE, Inc., Allegheny Power System, Inc., and AYP Sub, Inc. for approval of the transfer by merger of the property and rights of Duquesne Light Company to APS	:	A-110150F.0015	

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PROTECTIVE ORDER

1. This Protective Order is issued pursuant to Sections 5.362 and 5.423 of the Commission's Rules of Practice and Procedure, 52 PA. Code §§ 5.362 and 5.423, and shall govern the availability and use in these proceedings of all documents or information produced in response to any data or document request, interrogatory, subpoena, deposition, or order of the Presiding Administrative Law Judge ("Presiding Judge") or Commission that is designated in good faith as "Protected Material" by the producing party. It reflects the manner in which "Protected Materials," as that term is defined herein, are to be treated. This Protective Order is not intended to constitute a final resolution of the merits concerning the confidentiality of any of the Protected Materials, nor of any objection to the propriety or scope of a data request.

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2. All materials provided subject to the terms of this Protective Order shall be referred to as "Protected Materials." Protected Materials shall include all documents, portions of documents, and/or information that the Producing Party has determined in good faith must be protected from public disclosure to avoid the potential of commercial injury to the Producing Party. Protected Materials shall be deemed to include additional copies of, and notes and information derived from, Protected Materials. All Protected Materials shall be made available solely for the purpose of these proceedings. Protected Materials obtained pursuant to this Protective Order shall not be used for any purpose, including without limitation, claims, actions, proceedings other than the proceedings covered by this Protective Order, or negotiations, including the negotiation of power purchase, transmission or similar agreements.

Protected Materials shall not include any information or document contained in the public files of the Commission, any State or Federal agency, or any court, except for such information or document filed under seal. Protected Materials shall not include documents or information that becomes known to a party to this proceeding, other than through production pursuant to a protective order or agreement or through a violation of a protective order or agreement.

3. This Protective Order is intended to prevent disclosure of commercially sensitive information such as prices, production costs, terms of individual contracts, commercially sensitive marketing plans or strategies, employee

information, and any other commercially sensitive facts or data contained in Protected Materials. This Protective Order is not intended, however, to foreclose general statements or conclusions that, although based on such Protected Materials, do not reveal such details, facts, or data.

4. As used in this Protective Order the terms "Producing Party," "Reviewing Party," and "Authorized Representative" shall mean as follows:

(a) "Producing Party" shall indicate the party receiving the request, the response to which is deemed Protected Materials.

(b) "Reviewing Party" shall include the party propounding the request, the response to which is deemed Protected Materials, and such other party as the Presiding Judge by order makes a Reviewing Party for purposes of reviewing the Protected Materials and who shall be subject to the provisions of this Protective Order.

(c) "Authorized Representative" shall include the Reviewing Party's counsel of record in this proceeding and associated attorneys or paralegals, and outside experts as defined in 52 PA Code § 5.423(c), including economists, statisticians, accountants, consultants, or other persons employed or retained by a Reviewing Party and directly engaged in this proceeding; provided, however, that unless the Producing Party otherwise agrees, an Authorized Representative may not include any person whose duties include the marketing, sale, transmission or production of power, or the supervision of any person with such responsibilities. No

Authorized Representative shall make use of or disclose any information designated as Protected Material for any purpose other than as permitted by this Protective Order.

5. Access to Protected Materials by a Reviewing Party is permitted only through a Reviewing Party's Authorized Representatives. An Authorized Representative may not disclose Protected Materials to any other person other than another Authorized Representative, or a person who is qualified to be an Authorized Representative, provided that, if the person to whom disclosure is to be made has not previously executed and delivered a copy of the Certificate of Authorized Representative attached to this Protective Order, then such person shall promptly execute a copy of the Certificate of Authorized Representative attached to this Protective Order and cause it to be promptly delivered to counsel for the Producing Party.

6. Prior to receiving a copy of or inspecting any Protected Materials, each Authorized Representative shall first execute the "Certificate of Authorized Representative" attached to this Protective Order. Further, each executed certificate must be filed with the Presiding Judge, with a copy delivered to counsel for the Producing Party. Each executed certificate shall identify the Reviewing Party, Authorized Representative, his or her firm or affiliation, title, and the date of execution.

In the event that any person to whom such Protected Materials are

disclosed ceases to be engaged in these proceedings, access to such materials by such person shall be terminated immediately and such person shall promptly return any Protected Materials in his or her possession or control to another Authorized Representative of the Reviewing Party, and if there is no such Authorized Representative, then such person shall treat such Protected Materials in the manner set forth in Section 18 hereof as if the proceedings covered by this Protective Order had been concluded. Any person who executes the certificate attached to this Protective Order shall continue to be bound by the provisions of this Protective Order even if no longer employed by a Reviewing Party.

7. An Authorized Representative of a Reviewing Party may make further copies of Protected Materials for use solely in the proceedings covered by this Protective Order; provided that such copies are stamped "**Protected Materials**" pursuant to this Protective Order. An Authorized Representative may make notes or derive other information from the Protected Materials, provided that any such notes or other information shall be treated as Protected Materials subject to this Protective Order.

8. Any document subject to this Protective Order may not be produced in a redacted or elided form, unless such redaction or elision is authorized by either: (i) an order of the Presiding Judge upholding a validly asserted claim in accordance with section 12 hereof, or (ii) an agreement between the Producing Party and the Reviewing Party in accordance with section 12 hereof.

9. Protected Materials may be reviewed only during the "Reviewing Period," which shall commence upon issuance of this Protective Order, and continue until the conclusion of these proceedings. As used in this paragraph, "conclusion of these proceedings" refers to the exhaustion of available judicial appeals, or the running of the time for making such appeals, as provided by applicable law.

10. All Protected Materials, as well as the Reviewing Party's and its Authorized Representatives' notes or other information regarding or derived therefrom, is to be treated confidentially by the Reviewing Party and its Authorized Representatives, except as permitted and provided by this Protective Order, and are to be made available to the Reviewing Party and its Authorized Representatives solely for the purposes described in this Protective Order. Protected Materials and information derived therefrom or describing the same shall not be placed in the public or general files of a Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all necessary precautions to ensure that Protected Materials (including handwritten notes and analyses made therefrom) are not viewed or taken by any person other than an Authorized Representative of the Reviewing Party.

11. If a Reviewing Party tenders for filing any written testimony, exhibit, brief or other submission that includes, incorporates, or refers to Protected Materials, all portions thereof referring to such materials shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are

sealed pursuant to this Protective Order. Such documents shall be marked **"CONTAINS PROTECTED MATERIAL -- DO NOT RELEASE"** and shall be filed under seal and served under seal only upon such counsel for Reviewing Parties as are authorized to examine and inspect such material. Counsel for the Producing Party shall provide to all parties who request the same a list of those counsel for Authorized Representatives who are entitled to receive such material. Counsel are admonished to take reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

12. If any Reviewing Party desires to include, utilize, or refer to any Protected Materials in such a manner that might require disclosure of such material, such party shall first notify counsel for the Producing Party of such desire, identifying with particularity each of the Protected Materials and the proposed manner of their use, and shall provide to counsel for the Producing Party, in a sealed envelope bearing the caption **"CONTAINS PROTECTED MATERIALS -- DO NOT RELEASE,"** copies of the Protected Materials in the form they are intended to be used. If the Producing Party is unwilling to waive objection to disclosure of such Protected Materials, the Producing Party shall provide to the Presiding Judge, not later than five (5) days after the receipt of the Reviewing Party's notification, affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials, and a Master Index of Protected Materials. The affidavit shall set forth facts delineating that the

information designated as Protected Materials has been maintained in a confidential manner and the precise nature and justification for the commercial injury that would result from the disclosure of such information. The affidavit shall specify the name and corporate position of the person or persons supplying or preparing or assisting in the preparation of the information designated as Protected Materials and the name and corporate position of the person or persons to whom such information has been communicated. The Producing Party shall provide copies of the affidavits and Master Index of Protected Materials to each Reviewing Party. All objections and arguments related to the Protected Materials shall be conducted in camera closed to all parties except the Producing Party and counsel for the Producing Party and such Reviewing Parties and counsel for Reviewing Parties as are authorized to review such Protected Materials. That portion of the hearing transcript which refers to such Protected Materials shall be sealed and subject to this Protective Order.

13. All Protected Materials filed with the Commission, the Presiding Judge, any court of Pennsylvania, the United States, or any other judicial or administrative body in support of or as part of a motion, pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Nothing in this Protective Order prohibits the presiding Administrative Law Judges in this proceeding, the Commissioners or the Commissioners' staff members from reviewing Protected Materials subject to this

Protective Order.

14. Materials designated as Protected Materials shall continue to be protected pursuant to this Protective Order unless and until, and only to the extent that, the Presiding Judge or the Commission finds that they are not properly subject to protection within the terms of this Protective Order, and the Producing Party has exhausted its opportunities to appeal such determination. If the Presiding Judge denies protected status to any materials designated as Protected Materials, those materials shall nonetheless be subject to the protection afforded by this Protective Order for 10 days from the date of issuance of such decision by the Presiding Judge. If the Producing Party files an interlocutory appeal or requests that the issue be certified to the Commission, the subject materials shall remain protected until the appeal or certification is concluded. Nothing herein waives the rights of any party to seek additional administrative or judicial remedies after the Presiding Judge's decision or Commission action on appeal thereof.

15. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge, the Commission, or the courts. In addition, the Presiding Judge may change this order upon determination that the change is appropriate in the interests of justice or necessary for the orderly conduct of the proceeding.

16. In the event that the Presiding Judge at any time in the course of these proceedings finds sua sponte that all or part of any document or information

does not constitute Protected Materials, such materials shall nevertheless be subject to the terms of this Protective Order for 10 days from the date of issuance of the Presiding Judge's decision or the date of issuance of the first Commission order denying an objection filed within 10 days of the date of the Presiding Judge's order. Neither the Producing Party nor the Reviewing Party waives its rights to seek additional judicial or administrative remedies in the event of the Commission's denial of any objection.

17. All notices, applications, responses or other correspondence shall be made in a manner that protects the materials in issue from unauthorized disclosure.

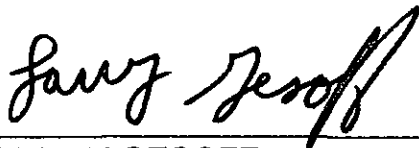
18. Following the conclusion of these proceedings, as that term is defined in section 9 hereof, all Protected Materials provided by any Producing Party pursuant to this Protective Order and any copies reproduced by any Reviewing Party must be returned to counsel for the appropriate Producing Party or destroyed no later than thirty (30) days following receipt by counsel for the Reviewing Party of a written request from the Producing Party. Counsel for the Reviewing Party must provide to counsel for the Producing Party a verified certification that, to the best of his or her knowledge, information, and belief, all Protected Materials, copies of Protected Materials and originals and copies of notes, memoranda, and other documents regarding or derived from the Protected Materials have been disposed of in accordance with the terms of this Protective Order.

Nothing in this section shall prohibit counsel for each Reviewing Party from retaining copies of any briefs, application for rehearing, motion, or other document filed with the Presiding Judge, the Commission, or a court, that refers to Protected Materials, or any internal memoranda that refer to Protected Materials; provided that any such materials retained by counsel shall remain subject to the provisions of this Protective Order.

Date: October 1, 1997



JOHN H. CORBETT, JR.
Administrative Law Judge



LARRY GESOFF
Administrative Law Judges

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code	:	Docket Nos.
	:	R-00973981
Application of Duquesne Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code	:	R-00974104
Joint Application of DQE, Inc., Allegheny Power System, Inc., and AYP Sub, Inc. for approval of the transfer by merger of the property and rights of Duquesne Light Company to APS	:	A-110150F.0015

CERTIFICATE OF AUTHORIZED REPRESENTATIVE

I certify my understanding that Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in the above-captioned proceedings, that I have been given a copy of and have read the Protective Order issued in those proceedings, and that I agree to be bound by its terms. I understand that the contents of Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purposes of the proceedings in Docket Nos. R-00973981, R-00974104 and A-110150. I acknowledge that a violation of this certificate constitutes a violation of an order of the Pennsylvania Public Utility Commission.

By: _____

Date: _____

Name: _____

Title: _____

Reviewing Party: _____

Address: _____

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