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April 7, 1999

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty
Secretary
Office of the Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 17105-3265

Re: Duquesne Light Company Restructuring Case,
Docket No. R-00974104

Dear Secretary McNulty:

On March 25, 1999, Duquesne Light Company executed definitive agreements with the operating subsidiaries of FirstEnergy Corp. to exchange Duquesne's interest in the Beaver Valley, Perry, Sammis, Mansfield and Eastlake generating plants for FirstEnergy's wholly owned Avon Lake, Niles and Newcastle plants. The execution of these agreements has allowed Duquesne to commence its generation auction pursuant to the Commission's December 18, 1998 order on the Generation Auction Plan.

To provide the parties an update on the generation swap and the auction, Duquesne will host a technical conference on April 13, 1999 in the Commission's Executive Chambers. The conference will commence at 11:00 a.m. and is expected to conclude by 12:30 p.m. The purpose of the conference will be to provide the parties an overview of the exchange agreements and the auction in advance of a formal filing later this month of the definitive exchange agreements, as required by the December 18 Order. Following that formal filing, Duquesne will convene

DOCKETED

APR 14 1999

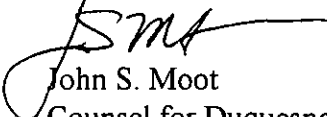
BTL

James J. McNulty
April 7, 1999
Page 2

another technical conference, in advance of the time for filing comments on the agreements, to answer questions from interested parties. Therefore, any party that cannot attend the April 13, 1999 technical conference will not forego an opportunity to discuss these matters with Duquesne on an informal basis. In addition, any handouts that are circulated to the attendees on April 13 will be filed and served on all parties to this proceeding.

Representatives of Pennsylvania Power Company also will be in attendance to discuss regulatory filings to be made by Penn Power that are associated with the generation exchange.

Respectfully submitted,



John S. Moot

Counsel for Duquesne Light Company

cc: All persons on official service list (via facsimile)
Robert Bennett

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April 15, 1999

By Overnight Delivery

ORIGINAL

James J. McNulty
Secretary
Office of the Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 17105-3265

Re: Duquesne Light Company Restructuring Case,
Docket No. R-00974104

Dear Secretary McNulty:

Enclosed are copies of the materials that were circulated at the technical conference regarding Duquesne's generation auction on April 13, 1999.

Respectfully submitted,



John S. Moot
Counsel for Duquesne Light Company

cc: All persons on official service list (w/enclosure)

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**Overview of
Duquesne-FirstEnergy
Generation Swap and
Status of
Duquesne Generation Auction**

April 13, 1999

Execution of Definitive Swap Agreements

- ◆ DLC and FE executed definitive agreements on March 25, 1999
- ◆ Swap continues to provide for exchange of DLC partial interests in CAPCO units for FE wholly owned interest in Avon Lake, Niles and New Castle plants

Overview of Principal Agreements

Agreement

Function

Generation Exchange Agreement

Transfer DLC interest in CAPCO fossil units for FE interest in Avon Lake, Niles and New Castle

Nuclear Conveyance Agreement

Transfer DLC interest in Beaver Valley and Perry to FE, including all decommissioning obligations.

Electrical Facilities Agreement

Transfer certain DLC transmission facilities to FE to provide for continuity of operations at CAPCO plants.

CAPCO Settlement Agreement

Transfer all DLC CAPCO obligations to FE and settlement of all CAPCO disputes.

Ancillary Services Agreement

DLC option to purchase reserves and load following services from FE for two years after closing of auction.

Due Diligence Report

- ◆ All due diligence completed prior to execution of agreements
- ◆ Dames and Moore conducted Phase I and Phase II environmental site assessments at the FE plants and found no material environmental conditions.
- ◆ R.W. Beck reviewed the quality and condition of the FE plants and determined that they are well maintained in comparison to assets of similar technology and vintage.

Material Changes Since Letter of Intent

◆ Nuclear Decommissioning

- DLC financial commitment capped at full amount of future costs (\$57.4 million), rather than reduced amount in restructuring order (\$43 million).
- Both parties will use best efforts to secure tax-advantaged transfer of decommissioning funds. If necessary IRS rulings are not obtained, DLC will be responsible to ensure FE receives same after-tax funding amount as if DLC had retained funding and liability.
- Minimum commitment increased to cover any increase in costs due to decommissioning treatment referenced above.

Material Changes Since Letter of Intent, cont'd.

◆ Increase in Capacity

- FE has added a 30 MW combustion turbine (“Niles A”) to the swap that will be auctioned by DLC with the other FE and DLC assets.

◆ Ancillary Services Agreement

- Agreement covers generation “capacity” services (load following and operating reserves)
- DLC has right to purchase up to its full requirements of each service for two years following the divestiture.
- Prices fixed at current FE rates (which are *lower* than DLC rates)
- Agreement protects against price volatility in nascent ancillary service markets (e.g., California experience)
- Winning bidder(s) can still compete to provide such services if it can beat the FE price

Material Changes Since Letter of Intent , cont'd.

◆ Resolution of labor issues

- IBEW ratified agreement with company, which provides for early retirement package and enhanced severance for any displaced employees. The company agreed to curtail its contracting out of certain work, which could provide potential opportunities for DLC union workforce.
- FE has agreed to accept IBEW contract with job protection and salary protection for selected work level.
- DLC will incur the cost of the early retirement and any severance costs associated with the Beaver Valley power plant.

Status Report on DLC Auction

- ◆ Execution of swap agreements has allowed DLC to commence the auction.
- ◆ As a result of the swap with FE, the Auction will include all fossil assets over which the buyer will have full operating control. Recent auctions have shown that such an auction is more attractive than an auction of nuclear assets or of non-operating interests in fossil assets.
- ◆ Auction includes DLC wholly-owned plants, FE plants, and the POLR service. Bidders may submit any combination of bids for some or all of the plants and/or POLR service.

Status Report on DLC Auction, cont'd.

- ◆ Preliminary auction information has now been circulated to a wide range of bidders.
- ◆ Upon execution of a confidentiality agreement, bidders will receive extensive information on DLC and FE plants.
- ◆ Nonbinding bids are due in late May or early June 1999.
- ◆ Target date for closing swap and auction remains year end 1999.

Regulatory Update

◆ PaPUC

- Filing of definitive agreements expected by end of April 1999.
- DLC will request approval of “Option B” Accounting Protocols at the same time
- No formal approvals regarding POLR will be sought at this time

◆ FERC – filing expected by end of April 1999

◆ NRC – filing expected by end of April 1999

Preliminary Information Materials Regarding:



The Sale of a Competitive Integrated Energy Supply Business

April 1999

LEHMAN BROTHERS

The Opportunity

The DLC Auction is a “first of its kind” opportunity to acquire a Competitive Integrated Energy Supply Business comprised of high quality generating assets and attractive retail customer load

- DQE, Inc. is a multi-utility delivery and services company and DLC is its largest wholly-owned subsidiary
- DLC is divesting all of its generating assets and its retail electric supply business as part of a process to redefine the company’s core business strategy
 - On March 25, 1999, DLC entered into a Generation Swap with FEC pursuant to which DLC will exchange its interests in five electric generating stations for three of FEC’s wholly-owned generating stations
 - DLC is conducting a two-phase auction for its Competitive Integrated Energy Supply Business with the Asset Portfolio (including the three FEC Plants) and the Retail Supply Business. The purchaser of the Retail Supply Business will be granted the opportunity to supply electricity for DLC’s Provider of Last Resort (POLR) retail customer load
 - Separate proposals must be submitted for the Asset Portfolio and the Retail Supply Business and bids also will be accepted for any one or a group of the individual Assets, Support Functions or Power Contracts
- DLC’s divestiture represents several major milestones within the evolution of competitive electricity markets:
 - ✓ The first ever opportunity to buy a competitive integrated energy supply business from a U.S. utility
 - ✓ The first full utility generating asset divestiture within ECAR, a region with favorable supply/demand fundamentals and the largest reliability region in the U.S.
 - ✓ The first ever divestiture of a retail supply business outside of New England – in one of the largest retail market transactions ever and at attractive rates

Please note that capitalized terms utilized herein incorporate references to the Lehman Brothers cover letter accompanying this document

Investment Highlights

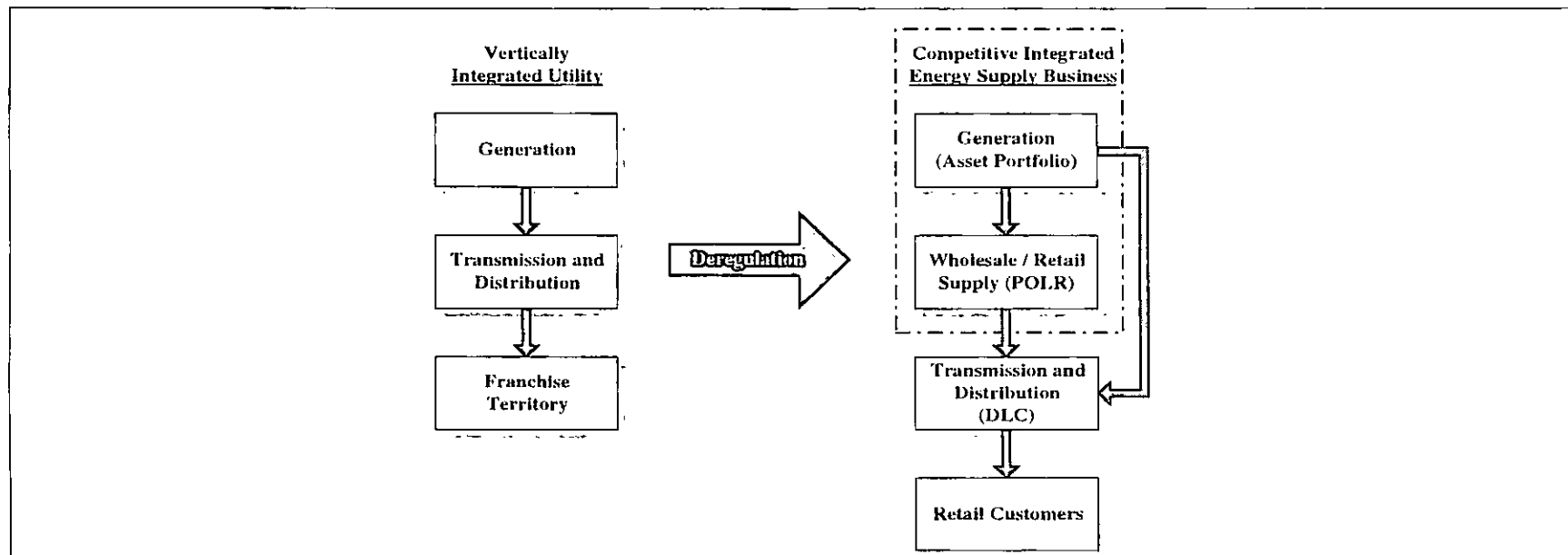
The DLC Auction is a high quality investment opportunity with several unique and attractive benefits

- The Asset Portfolio consists of over 2,600 MW of competitive, strategically-located, predominantly coal-fired baseload generation
- The Retail Supply Business provides a unique opportunity to aggregate attractive retail customer load without incurring marketing or customer acquisition expenses
- Bidders can realize additional value by acquiring the first Competitive Integrated Energy Supply Business

Competitive Integrated Energy Supply Business	
	<ul style="list-style-type: none"> ✓ “First-of-its-Kind Opportunity” ✓ Vertical Integration ✓ Cash Flow Certainty ✓ Hedged Position
Asset Portfolio	Retail Supply Business
<ul style="list-style-type: none"> ✓ Generating Asset Platform with Critical Mass ✓ Attractive Power Market Fundamentals ✓ High Quality Assets ✓ Site Development Opportunities 	<ul style="list-style-type: none"> ✓ Retail Platform in Large Deregulated Market ✓ Price Certainty ✓ High Quality Customer Load ✓ Cross-Selling Opportunities

Competitive Integrated Energy Supply Business

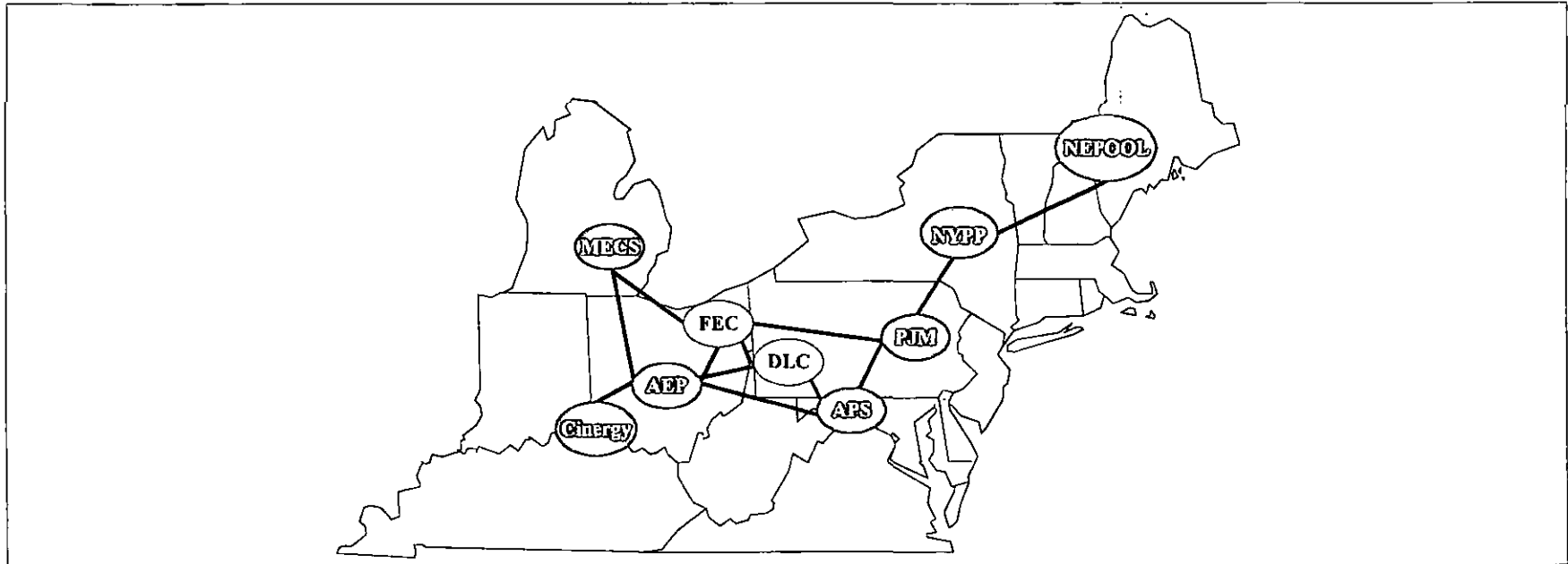
The integration of competitive generation with the retail electric supply business is the next logical step in the evolution of the electric supply market



- The winning bidder immediately will become the premier “one-stop” provider of electricity in Pittsburgh and the surrounding markets
- The Asset Portfolio ensures the availability of low cost power for the POLR load and the Retail Supply Business provides an attractive end-market for the Asset Portfolio’s output
- Additional value may be created through the elimination of intermediate cost layers in the energy supply chain, the minimization of transmission wheeling costs and the optimization of ancillary service products
- The structure of the Retail Supply Business will allow a generating asset owner to qualify for exempt wholesale generator status

Power Market Overview

The Asset Portfolio benefits from strategic access to fuel supplies and transmission interconnections in a region with favorable supply / demand fundamentals



The wholesale markets within ECAR provide several attractive benefits to owners of generating assets:

- ✓ Shrinking capacity margins, projected to fall as low as 7.8% in the summer of 1999, have contributed to very high peak energy prices in the Midwest
- ✓ Flexible access to some of the most inexpensive and plentiful coal supplies in the Northeastern U.S.
- ✓ Full retail choice in Pennsylvania by January 2000 enabling access to 127,000 GWh of retail demand
- ✓ Extensive transmission network with ample interconnection capability into PJM, MAIN and SERC
- ✓ Access to key financial energy markets at Western PJM and Cinergy

The Asset Portfolio

The Asset Portfolio is an integrated portfolio of strategically-located, fossil-fired generation

- The Plants are predominantly low cost producers due to their access to inexpensive fuel supplies, lean staffing and efficient operating cost management
- The Asset Portfolio provides load profile and fuel source diversity as well as significant site development and expansion opportunities

Asset Locations		Asset Overview																																																														
<p>★ Major Load Centers ○ DLC Plants △ FEC Plants</p>		<table border="1"> <thead> <tr> <th>Plant</th> <th>Location</th> <th>Net Capacity (MW)</th> <th>Load Profile</th> <th>Ownership History</th> </tr> </thead> <tbody> <tr> <td colspan="5">Coal-Fired⁽¹⁾:</td> </tr> <tr> <td>Cheswick</td> <td>Springdale, PA</td> <td>570</td> <td>Baseload</td> <td>DLC</td> </tr> <tr> <td>Avon Lake</td> <td>Avon Lake, OH</td> <td>739</td> <td>Baseload</td> <td>FEC</td> </tr> <tr> <td>Elrama</td> <td>Elrama, PA</td> <td>487</td> <td>Baseload</td> <td>DLC</td> </tr> <tr> <td>Niles</td> <td>Niles, OH</td> <td>246</td> <td>Baseload</td> <td>FEC</td> </tr> <tr> <td>New Castle</td> <td>West Pittsburgh, PA</td> <td>338</td> <td>Cycling</td> <td>FEC</td> </tr> <tr> <td colspan="5">Oil-Fired:</td> </tr> <tr> <td>Brunot Island</td> <td>Pittsburgh, PA</td> <td>234</td> <td>Peaking</td> <td>DLC</td> </tr> <tr> <td colspan="5">Reactivation/Repowering Site:</td> </tr> <tr> <td>Phillips⁽²⁾</td> <td>Crescent Twp., PA</td> <td>-</td> <td>Cold Reserve</td> <td>DLC</td> </tr> <tr> <td colspan="2">Total</td> <td>2,614</td> <td></td> <td></td> </tr> </tbody> </table>			Plant	Location	Net Capacity (MW)	Load Profile	Ownership History	Coal-Fired⁽¹⁾:					Cheswick	Springdale, PA	570	Baseload	DLC	Avon Lake	Avon Lake, OH	739	Baseload	FEC	Elrama	Elrama, PA	487	Baseload	DLC	Niles	Niles, OH	246	Baseload	FEC	New Castle	West Pittsburgh, PA	338	Cycling	FEC	Oil-Fired:					Brunot Island	Pittsburgh, PA	234	Peaking	DLC	Reactivation/Repowering Site:					Phillips ⁽²⁾	Crescent Twp., PA	-	Cold Reserve	DLC	Total		2,614		
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DLC also is including all of its generating asset Support Functions and its Power Contracts (100 MW power sale agreement and up to 12 MW of purchase power agreements) as part of its Asset Portfolio.

Source: Duquesne Light Company

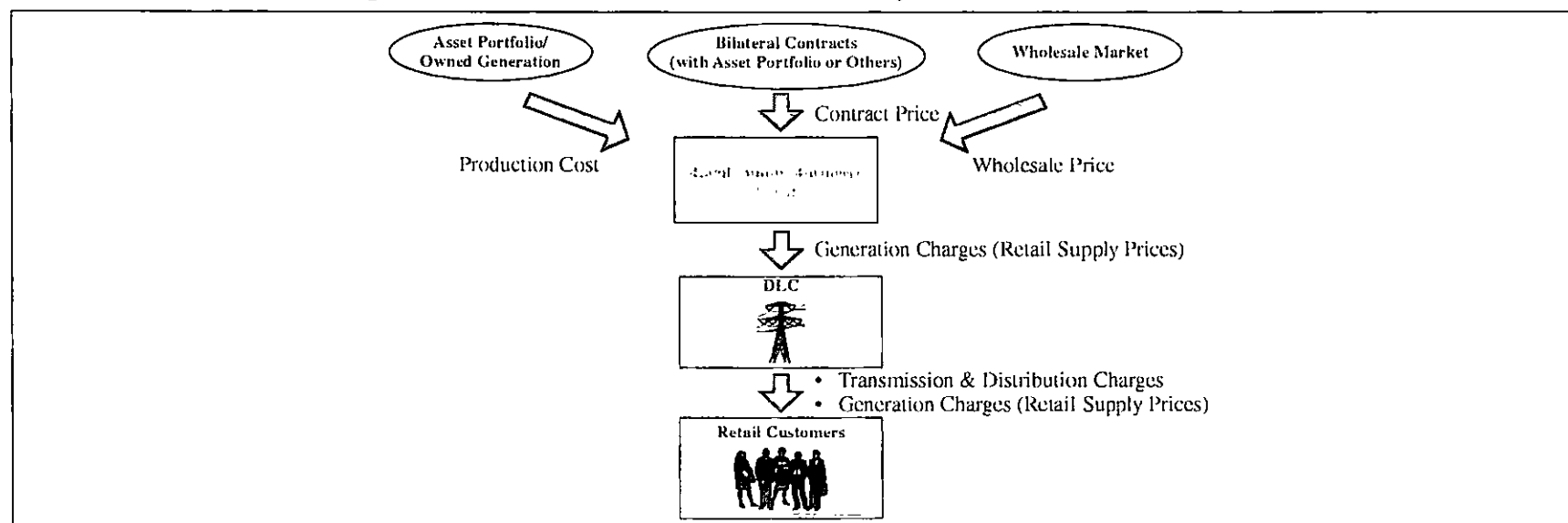
(1) Oil-fired units include: 30 MW combustion turbine at Niles, 29 MW combustion turbine at Avon Lake and 5 MW of diesel capability at New Castle.

(2) 308 MW coal-fired baseload facility currently in cold reserve

The Retail Supply Business

The Retail Supply Business provides efficient access to attractive retail customer load with relative price certainty

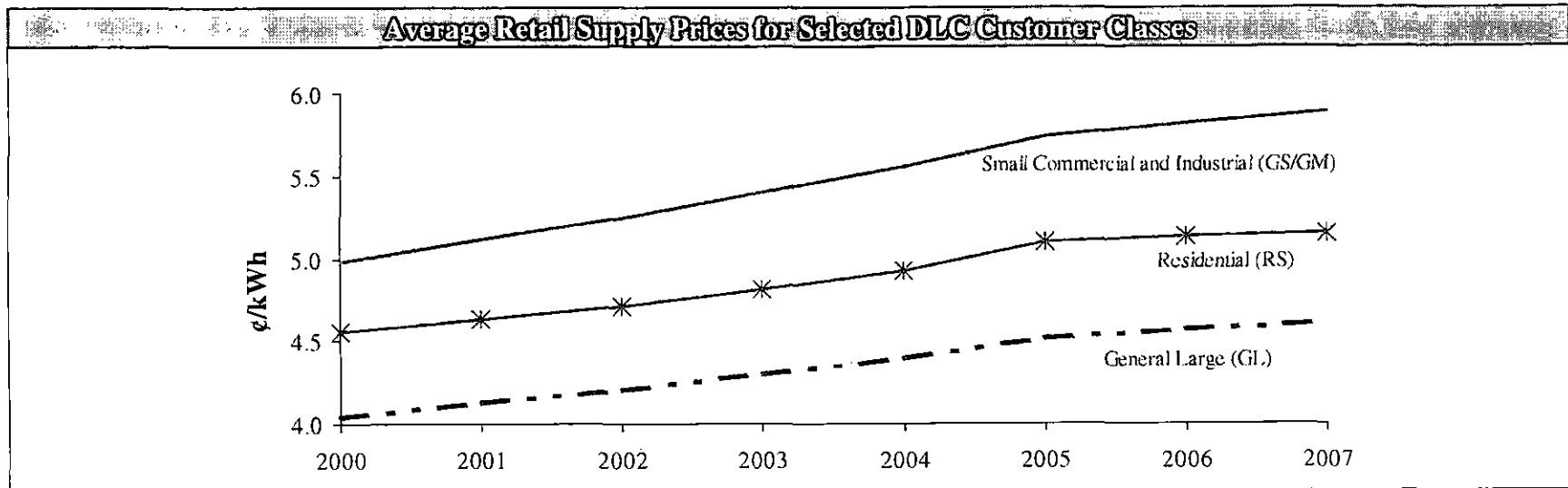
- As part of the Pennsylvania restructuring, each local distribution utility becomes a Provider of Last Resort and is granted the opportunity to continue supplying electricity to all of its retail customers who do not choose an alternative supplier at any point during the term of the utility's Transition Period. As of March 10, 1999 the OCA reported that 87.5% of DLC's retail customers had chosen to remain with the Retail Supply Business
- DLC has elected to auction its rights as the Provider of Last Resort by offering for sale 100% of its Retail Supply Business concurrently with the sale of its Asset Portfolio as a part of the company's effort to redefine its core business strategy by exiting the generation and retail electric supply business
- The PaPUC has approved a schedule of retail supply prices which effectively sets the price for POLR service during the remainder of DLC's Transition Period (estimated to be 5 – 8 years). DLC's retail supply prices are attractive at an average rate of 4.2¢/kWh in 2000 with steady escalation thereafter



The Retail Supply Business

The auction of DLC's Retail Supply Business presents one of the largest opportunities to supply power for retail customers in the U.S. at attractive rates

- ✓ DLC's POLR auction is the first opportunity to become a Provider of Last Resort outside of New England and will represent about 75% of the POLR load available in Pennsylvania in 2000
- ✓ The POLR provider can supply power for retail customers without expending any upfront marketing or load aggregation costs and without competing against the incumbent utility
- ✓ DLC's POLR supplier can display its name, logo and message information on customer bills in order to build brand name recognition
- ✓ The deregulated Pennsylvania retail access market is the second largest in the Eastern U.S., and Pennsylvania currently has some of the highest retail supply prices within the U.S.



Auction Process

DLC intends to complete the sale of its Asset Portfolio and Retail Supply Business by December 31, 1999

- DLC will be conducting a two phase, sealed-bid Auction beginning in April 1999
- Indications of Interest regarding participation in the Auction should be directed to one of the following Lehman Brothers representatives. All contact with DLC management, employees or affiliates is strictly prohibited

Lehman Brothers Inc.

3 World Financial Center, 16th Floor
New York, NY 10285-1600

Fax: (212) 526-4827 (20 pages or less)
(212) 526-3738 (more than 20 pages)

Joseph Sauvage
Managing Director
(212) 526-3334

James Metcalfe
Senior Vice President
(212) 526-2525

Frank Napolitano
Vice President
(212) 526-4940

Scott Pearl
Associate
(212) 526-2725

- Once the attached Confidentiality Agreement has been executed, Prospective Bidders will receive a Descriptive Memorandum and supplementary information materials
- Phase I non-binding bids will be due in late May / early June 1999
- DLC, in its sole discretion, reserves the right to modify or cancel the Auction and to exclude Prospective Bidders from participation

This material is summary in nature and does not constitute an offer to sell the Competitive Integrated Energy Supply Business. Prospective Bidders may, subject to the delivery of the Confidentiality Agreement, receive a Descriptive Memorandum setting forth certain additional information and the process for the sale of the Competitive Integrated Energy Supply Business. DLC and Lehman Brothers do not make any representation or warranty as to, and disclaim all liability in connection with, the information set forth in this material and DLC reserves the right to cancel the Auction at any time without notice or liability.

Overview of the Asset Portfolio

Cheswick Plant

Plant Site



Description

Cheswick is a single-unit coal-fired generation station located on a 82-acre site in the borough of Springdale, Pennsylvania, approximately 18 miles northeast of Pittsburgh. Cheswick, which began commercial operation in 1970, operates as a baseload facility and has a net demonstrated capacity of 570 MW.

Cheswick is the largest and most efficient coal-fired unit serving DLC's Pittsburgh load center. Cheswick's attractive cost structure, excellent access to fuel and importance to local transmission will serve as competitive advantages in a deregulated environment.

Investment Highlights

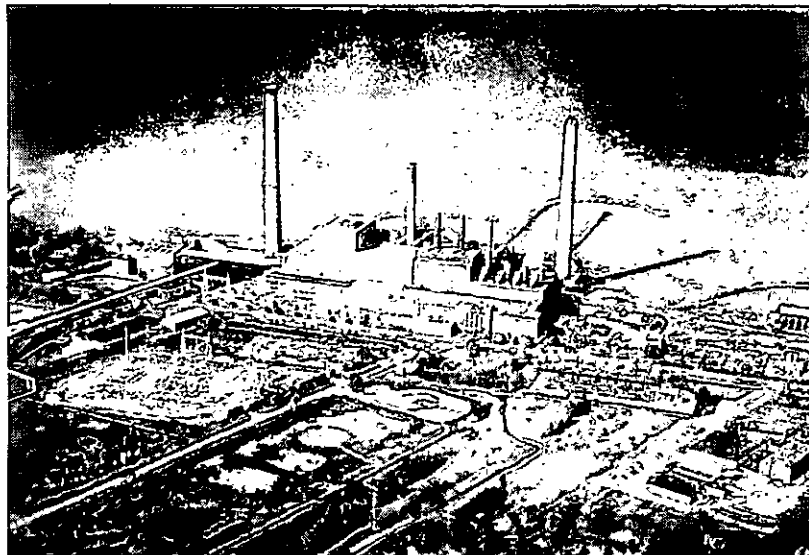
- ✓ Lowest production costs in the Asset Portfolio
- ✓ Location within the Pittsburgh load center
- ✓ Market-based fuel supply contracts
- ✓ High historical equivalent availability factor
- ✓ Flexible fuel transportation alternatives and multiple fuel options

Profile

Unit	Load Profile	Commercial Date	Net Capacity (MW)	Primary Fuel	Technology of Operation
1	Base	1970	570	Coal	Pulverized Coal
			<u>570</u>		

Avon Lake Plant

Plant Site



Description

Avon Lake has a net demonstrated capacity of 739 MW and is situated on 107 acres along the southern shores of Lake Erie, approximately 20 miles west of downtown Cleveland.

Avon Lake Unit 9 is one of the most competitive units within the FEC system and has a net demonstrated capacity of 596 MW. Units 6 and 10 and the package boilers provide peaking capability.

Avon Lake benefits from significant transmission capability, increasingly competitive fuel supplies and access to large industrial customers.

Investment Highlights

- ✓ Largest single plant within the Asset Portfolio
- ✓ Serves the Cleveland “load pocket”
- ✓ Ability to burn a blend of up to 30% of low-sulfur PRB coal reducing SO₂ allowance requirements
- ✓ Peaking units and package boilers help capture increasing peak demand in the region
- ✓ Proximity to large industrial electrical consumers such as Ford, Kobe Steel and B.F. Goodrich

Profile

Unit	Load Profile	Commercial Date	Net Capacity (MW)	Primary Fuel	Technology of Operation
6	Peaking	1949	18 ⁽¹⁾	Coal	Pulverized Coal
7	Base	1949	96	Coal	Pulverized Coal
9	Base	1970	596	Coal	Pulverized Coal
10	Peaking	1971	29 ⁽²⁾	Fuel Oil	Comb. Turbine
Package Boilers	Peaking	1998	350,000 lbs/hr ⁽³⁾	Natural Gas/Fuel Oil	Gas or Oil-Fired
			739		

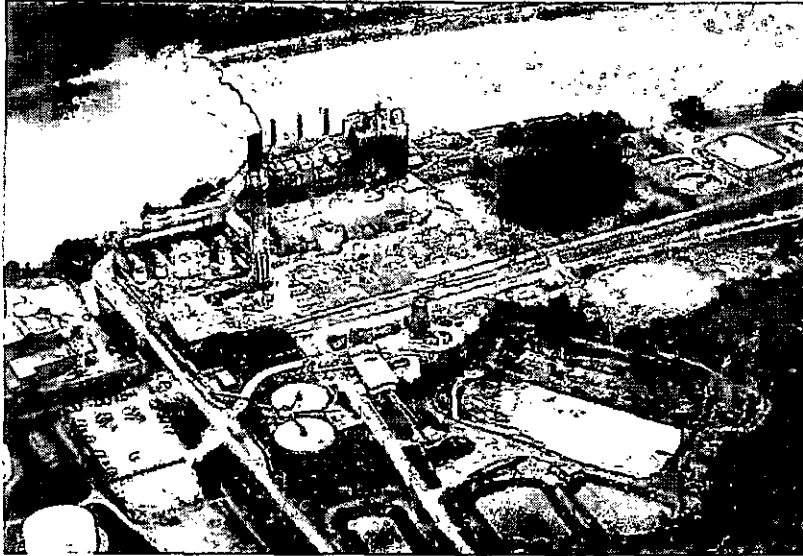
(1) Unit 6 boiler was decommissioned in 1997 while the turbine generator was kept available for voltage support; No.6 turbine generator delivers up to 18 MW, with steam supplied by the package boilers

(2) Denoted winter capacity

(3) Total flow for two identical package boilers

Elrama Plant

Plant Site



Description

Elrama is a fully scrubbed, four-unit, coal-fired generating station located on a 44-acre site along the Monongahela River in Elrama, Pennsylvania, approximately 25 miles southwest of Pittsburgh. Elrama operates as a baseload facility and has a net demonstrated capacity of 487 MW. Elrama's Unit 4, the largest unit at the facility, began commercial operation in 1960.

Elrama is one of only two baseload coal facilities located in DLC's service area. The plant will be well-prepared for competition due to its strategic location, access to low cost fuel supplies and its utilization of pollution control technology.

Investment Highlights

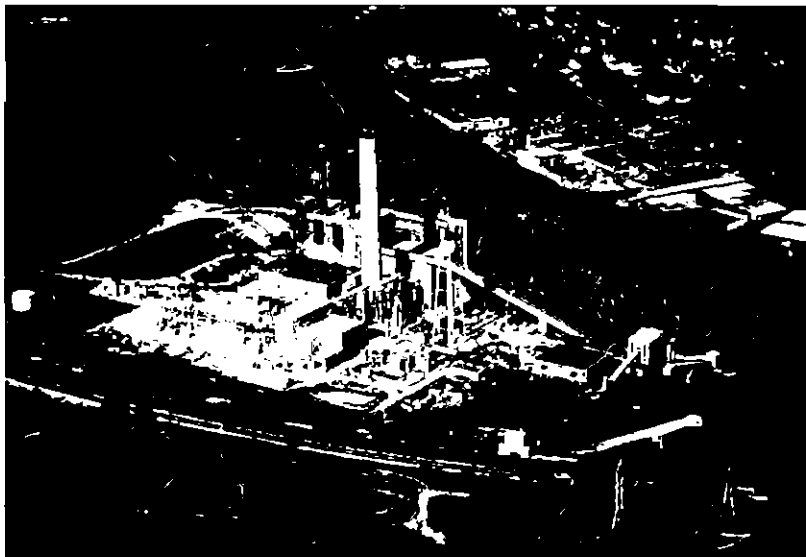
- ✓ Located within Pittsburgh "load pocket"
- ✓ FGD Scrubber enables facility to burn inexpensive coal
- ✓ No long-term fuel contracts
- ✓ Lean, multi-skilled workforce
- ✓ River location enables barge deliveries of fuel

Profile

Unit	Load Profile	Commercial Date	Net Capacity (MW)	Primary Fuel	Technology of Operation
1	Base	1952	100	Coal	Pulverized Coal
2	Base	1953	100	Coal	Pulverized Coal
3	Base	1954	112	Coal	Pulverized Coal
4	Base	1960	175	Coal	Pulverized Coal
			487		

Niles Plant

Plant Site



Description

The Niles facility includes two baseload, coal-fired units and a combustion turbine with peaking capability. Niles is located approximately 15 miles northwest of Youngstown, Ohio, on a 100-acre site along the Mahoning River in Niles, Ohio. The two coal-fired units began commercial operation in 1954 and have a net demonstrated capacity of 216 MW. The oil-fired combustion turbine has a net demonstrated capacity of 30 MW.

The application of innovative technology has enabled the plant to utilize cost-efficient fuel supplies as well as to convert the disposal of scrubber and bottom ash waste into revenue streams.

Investment Highlights

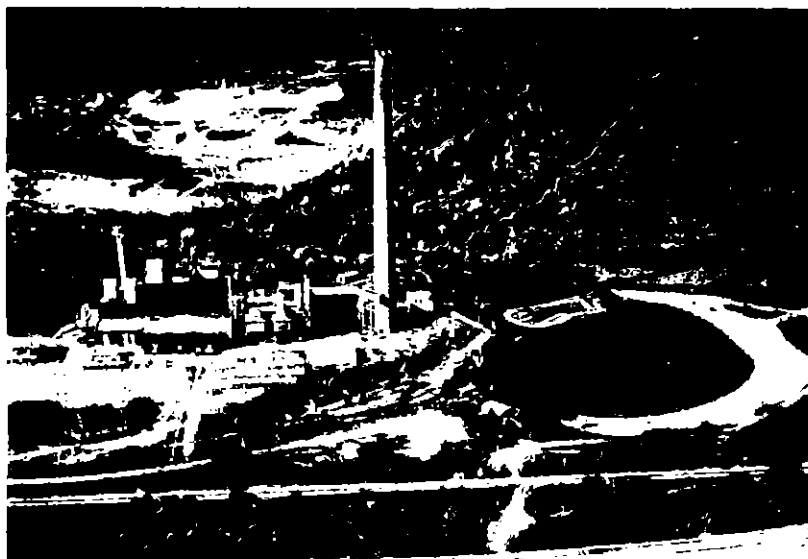
- ✓ Lowest fuel cost in the Asset Portfolio
- ✓ Strategically-located within the Youngstown load center
- ✓ LS-2 scrubber which reduces SO₂ allowance purchases
- ✓ Efficient, non-union workforce
- ✓ Combustion turbine with black-start capability

Profile

Unit	Load Profile	Commercial Date	Net Capacity (MW)	Primary Fuel	Technology of Operation
1	Base	1954	108	Coal	Cyclone
2	Base	1954	108	Coal	Cyclone
CT-A	Peak	1972	30	Fuel Oil	Combustion Turbine
			246		

New Castle Plant

Plant Site



Description

New Castle is a five-unit, predominantly coal-fired generating station located on a 270 acre site along the east bank of the Beaver River at West Pittsburgh, Pennsylvania, approximately four miles south of New Castle. The plant has a net demonstrated capacity of 338 MW which includes 5 MW of oil-fired diesel capability. Unit 5, New Castle's largest unit, began commercial operation in 1964.

New Castle is an efficient, well-run facility which is configured for load following capability. The plant's unique operating characteristics, high reliability and competitive fuel supply arrangement position the plant to succeed in a competitive environment.

Investment Highlights

- ✓ Strategic, cost-efficient fuel procurement arrangement
- ✓ Low variable production costs which have been further enhanced by recent capital projects
- ✓ Cycling capability
- ✓ High historical equivalent availability factor
- ✓ Black-start capability

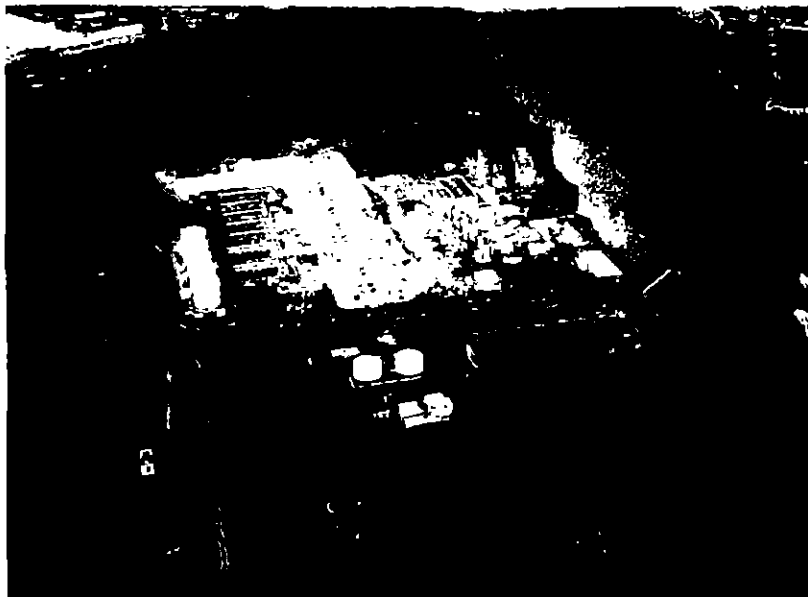
Profile

Unit	Load Profile	Commercial Date	Net Capacity (MW)	Primary Fuel	Technology of Operation
3	Cycling	1952	98	Coal	Pulverized Coal
4	Cycling	1958	98	Coal	Pulverized Coal
5	Cycling	1964	137	Coal	Pulverized Coal
A-EMD	Peaking	1972	3	No.2 Oil	Diesel
B-EMD	Peaking	1972	3	No.2 Oil	Diesel
			338⁽¹⁾		

(1) The total does not add due to rounding.

Brunot Island Plant

Plant Site



Description

Brunot Island is a six-unit, oil-fired, simple cycle peaking facility located on a 129-acre site on Brunot Island, Pennsylvania. Brunot Island is situated on the Ohio River, approximately two miles downriver from downtown Pittsburgh. The facility, which began operation in 1972, has a net demonstrated capacity of 234 MW. Brunot Island Units 1A, 1B, 1C, 2A, 2B, and 3 are currently operating; Unit 4, a combined cycle steam unit, was placed in cold reserve in 1986 and is currently in dry lay-up.

Brunot Island's urban location and peaking capability have caused the facility to play an increasingly important role within the DLC system. Brunot Island's flexibility is particularly valuable during volatile peak summer periods.

Investment Highlights

- ✓ Provides quick start reserves for ECAR
- ✓ "In-city" location
- ✓ Black-start capability
- ✓ Minimal maintenance and labor expenditures
- ✓ Facility upgrade capability and site development opportunities

Profile

Unit	Load Profile	Commercial Date	Net Capacity (MW)	Primary Fuel	Technology of Operation
1A	Peak	1972	22	Oil	Combustion Turbine
1B	Peak	1972	22	Oil	Combustion Turbine
1C	Peak	1972	22	Oil	Combustion Turbine
2A	Peak	1973	56	Oil	Combustion Turbine
2B	Peak	1973	56	Oil	Combustion Turbine
3	Peak	1973	56	Oil	Combustion Turbine
			234⁽¹⁾		

(1) Includes only simple cycle units. Excludes Unit 4.

Phillips Plant

Plant Site



Description

Phillips is a four-unit, fully scrubbed, coal-fired station located on approximately 58 acres along the Ohio River in Pennsylvania, approximately 15 miles northwest of Pittsburgh. Unit 4 began commercial operation in 1956 and the entire facility was placed in cold reserve in 1987 during regional economic difficulty.

Phillips presents an attractive opportunity for reactivation or repowering due to its proximity to Pittsburgh, its transmission capability, its access to low cost fuel supplies, its pollution control equipment, the availability of tax relief incentives and shrinking reserve margins within the region.

Investment Highlights

- ✓ Close proximity to inexpensive fuel supplies with flexible transportation alternatives
- ✓ Existing fuel and transmission infrastructure and plant equipment
- ✓ Tax relief incentives
- ✓ FGD scrubber
- ✓ Site reactivation, expansion and development opportunities

Profile

<u>Unit</u>	<u>Load Profile</u>	<u>Commercial Date</u>	<u>Net Capacity (MW)</u>	<u>Primary Fuel</u>
1	Cold reserve	1943	75	Coal
2	Cold reserve	1949	78	Coal
3	Cold reserve	1950	78	Coal
4	Cold reserve	1956	134	Coal
			<u>308⁽¹⁾</u>	

(1) Although the individual turbines can generate at the capacity levels cited above, the plant's combined actual total net capacity is limited to 308 MW due to the retirement of boilers 1 and 2.

LOCAL 270

UTILITY WORKERS UNION OF AMERICA

AFFILIATED WITH THE AFL-CIO

ORIGINAL

LIGHT-HEAT



POWER-WATER

4206 CHESTER AVENUE

CLEVELAND, OHIO 44103-3615

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99 APR -7 AM 9:32

OFFICE OF EXECUTIVE DIRECTOR

DOCKET

TELEPHONE: (216) 881-0004

FAX: (216) 881-1333

APR 14 1999

April 5, 1999

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Ms. Barbara Bruin, Executive Director
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

APR 08 1999

DOCUMENT FOLDER

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Case No. R-00974104

Certified Mail Z 196 285 295

Dear Ms. Bruins:

The intent of this letter is to keep you informed of the continued events concerning the transfer of generation assets between the Duquesne Light Company and FirstEnergy.

In the filing with the Securities and Exchange Commission, on October 14, 1998, we understand that in regard to labor, the parties will co-operate to resolve labor related matters including, with respect to Union contracts, workforce levels, severance and employee benefits, in a matter that treats employees fairly and equitably apportions any related costs between the parties.

This has not been done. As indicated by FirstEnergy's press release, they are moving forward with the transfer of assets. (Attachment #1)

There has been no negotiated settlement between FirstEnergy and Local 270 pertaining to the generation asset swap. We are continuing our attempt to resolve this issue as indicated by our latest letter to FirstEnergy dated March 31, 1999. (Attachment #2)

We have filed suit in Federal Court in an attempt to resolve this issue. We are awaiting a ruling on the summary judgement motion. (Attachment #3)

The National Labor Relations Board has issued a complaint against FirstEnergy pertaining to their conduct and alleged unlawful acts. (Attachment #4)

BTL

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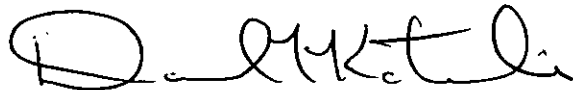
Ms. Barbara Bruin

April 5, 1999

Surely these issues will have an affect on the Company's ability to render adequate, safe and reliable electric service necessary to accomplish the objectives of their rate plans.

We hope that you will consider these issues before granting regulatory approval.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Kotecki".

David T. Kotecki
President/Local 270
U.W.U.A.

DTK/asq opeiu 1794

Enclosure

FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308
www.firstenergycorp.com

For Release: March 26, 1999

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APR 08 1999

News Media Contact:
Ralph J. DiNicola
330-384-5939

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

FIRSTENERGY COMPLETES ASSET TRANSFER AGREEMENTS WITH DUQUESNE LIGHT

FirstEnergy Corp. reported today that it has completed its previously announced agreements to exchange certain generating assets with Duquesne Light Company. Upon receipt of regulatory approvals, Duquesne Light will transfer 1,436 megawatts (MW) it owns at eight generating units to FirstEnergy in exchange for 1,328 MW at three power plants owned by FirstEnergy's electric utility operating companies.

Under the agreements, FirstEnergy's utility companies will acquire Duquesne Light's 187 MW of the 600-MW Unit 7 at the W. H. Sammis Plant in Stratton, Ohio; 186 MW of the 597-MW Unit 5 of the Eastlake Plant in Eastlake, Ohio; 401 MW of the 2,360 MW at Units 1, 2 & 3 of the Bruce Mansfield Plant in Shippingport, Pennsylvania; 498 MW of the 1,630 MW at Units 1 & 2 of the Beaver Valley Power Station in Shippingport, Pennsylvania; and 164 MW of the 1,194 MW at the Perry Nuclear Power Plant in Perry, Ohio.

In exchange, FirstEnergy will transfer ownership of three of its electric utility operating companies' coal-fired plants to Duquesne Light. They are the 739-MW Avon Lake Plant in Avon Lake, Ohio; the 338-MW New Castle Plant in New Castle, Pennsylvania; and the 251-MW Niles Plant in Niles, Ohio.

The Avon Lake, New Castle and Niles plants will be included in Duquesne Light's planned auction of its generating assets. The auction is expected to begin within the next month. FirstEnergy will operate the plants until the assets are transferred to the new owner. The transfer could take place later this year.

(more)

Regulatory reviews of the agreement, including those by the Nuclear Regulatory Commission and the Pennsylvania Public Utility Commission, should be complete by the end of the year.

FirstEnergy, headquartered in Akron, Ohio, is a diversified energy services company with more than \$18 billion in assets and nearly \$6 billion in annual revenues. Its electric utility operating companies – Ohio Edison and its Pennsylvania Power subsidiary, The Illuminating Company and Toledo Edison – comprise the nation's 12th largest electric system, serving 2.2 million customers within 13,200 square miles of northern and central Ohio and western Pennsylvania.

(032699)

LOCAL 270

UTILITY WORKERS UNION OF AMERICA

AFFILIATED WITH THE AFL-CIO

LIGHT-HEAT
4205 CHESTER AVENUE



POWER-WATER
CLEVELAND, OHIO 44103-3615

TELEPHONE: (216) 881-0004

FAX: (216) 881-1333

March 31, 1999

RECEIVED

Mr. H. Douglas Jahn, Manager
Industrial Relations Department
FirstEnergy
76 South Main Street
Akron, Ohio 44308

APR 08 1999

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Certified Mail Z 196 285 290

Dear Mr. Jahn:

In a Company press release dated March 26, 1999 (copy enclosed) you have indicated that FirstEnergy has executed a definitive agreement pertaining to the sale of the Avon Lake Plant. We are requesting a copy of this agreement.

As indicated in our letter to the Company dated October 20, 1998, we demand to bargain over all transfer of assets.

Please provide the above information within (15) days from the date of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "David T. Kotecki".

David T. Kotecki
President/Local 270
U.W.U.A.

DTK/asq opeiu 1794

cc: H. Peter Burg
Willard Holland

Enclosure

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Friday March 26, 10:00 am Eastern Time

Company Press Release

SOURCE: Duquesne Light Company

Duquesne Light, FirstEnergy Exchange Power Plant Interests

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PITTSBURGH, March 26 /PRNewswire/ -- Duquesne Light Company (NYSE: [DQE](#) - news) announced today that it has executed definitive agreements providing for the exchange of its partial interests in five power generation stations for three wholly-owned generating facilities from FirstEnergy Corp. (NYSE: [FE](#) - news). The three fossil-fired plants that Duquesne will receive have an aggregate net demonstrated capacity of 1,323 MW and two of those plants, Avon Lake and Niles, are located in Ohio while the other facility, New Castle, is located in Western Pennsylvania. The ownership interests transferred by Duquesne to FirstEnergy include the Beaver Valley and Perry nuclear stations and the fossil-fired Mansfield, Eastlake and Sammis plants which represent an aggregate net demonstrated capacity of 1,400 MW. The five plants are all co-owned by FirstEnergy which operates each of the facilities with the exception of Beaver Valley.

The generation swap with FirstEnergy is another significant step in Duquesne's effort to strategically reposition the company. Duquesne will incorporate its three new facilities into a portfolio of generating assets totaling 2,614 MW to be divested in a formal auction process set to begin in April 1999. Duquesne will also include four wholly-owned, fossil-fired stations (Cheswick, Elrama, Brunot Island and Phillips) located in and around the city of Pittsburgh in its auction. Duquesne's asset auction will be the first of its kind in the ECAR market, which serves customers in all or a portion of seven Midwestern states. The proceeds from the auction will be used to mitigate Duquesne's stranded costs.

Duquesne will also be conducting a parallel auction process for all its retail supply business, which represents the opportunity to supply the provider of last resort service (POLR), at pre-determined fixed rates, for all of Duquesne's 580,000 customers who do not choose an alternative generation supplier. The auction of Duquesne's retail supply business is notable because it is the first auction of its type outside of the New England region and it would be one of the largest single market transactions ever. The concurrent auction of Duquesne's generating assets and retail supply business is a unique opportunity for a purchaser to acquire the first competitive integrated energy supply business in the U.S.

Certain aspects of the generation swap are subject to regulatory approvals by agencies including the Pennsylvania Public Utility Commission, Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. Duquesne anticipates making the requisite regulatory filings before these agencies in April 1999. The swap is expected to close by year end 1999.

SOURCE: Duquesne Light Company

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and News: • FirstEnergy Corp (NYSE:FE - news)

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ATTACHMENT 3

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

UTILITY WORKERS UNION OF AMERICA
LOCAL 270,

Plaintiff,

v.

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, et al.,

Defendants.

Case No. 1:98CV2041

Judge Ann Aldrich

ORDER

On December 16, 1998, a hearing was held on Local 270's motion for a temporary restraining order to restrain defendants CEI and First Energy from transferring their control and/or interests in two generating plants until the defendants have agreed to arbitrate in accordance with the plaintiff's position in this case. (Doc. 23).

This Court must consider four factors in determining whether to issue a temporary restraining order under Federal Rule of Civil Procedure 65(b): (1) whether the movant has established a substantial likelihood or probability of success on the merits; (2) whether there is a threat of irreparable harm to the movant if the order is not granted; (3) whether issuance of the order would cause substantial harm to third parties; and (4) whether the public interest would be served by granting injunctive relief. See, e.g., Mason County Medical Assoc. v. Knebel, 563 F.2d 258, 261 (6th Cir. 1977). In addition, in the context of federal labor law, a movant must show that injunctive relief appropriately falls within the narrow exception to the anti-injunction policy of the Norris-

LaGuardia Act recognized in Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970), and its progeny. See also 29 U.S.C. § 104 (courts generally do not have jurisdiction to issue injunctions under Norris-LaGuardia Act). This exception has been extended "to embrace employer behavior which has the effect of evading a duty to arbitrate or which would otherwise undermine the integrity of the arbitration process." Aluminum Workers Int'l Union v. Consolidated Aluminum Corp., 696 F.2d 437, 441 (6th Cir. 1982). A movant in this context may show "likelihood of success on the merits" by proving that "the position he will espouse in arbitration is sufficiently sound to prevent the arbitration from being a futile endeavor." *Id.* at 442, n.2 (quotation and citations omitted).


Upon consideration of the pleadings, affidavits, and matters discussed at the hearing, this Court finds that Local 270 has not satisfied the requirements for injunctive relief. First, it is far from clear that the union will suffer irreparable harm as a result of the transfer and reconfiguration of the defendants' assets. Where the defendants will remain solvent and able to reinstate affected employees or pay backpay in the event of an arbitration award against them, any potential "loss of employment, even if occasioned by employer action which is subject to arbitration, is not irreparable harm." *Id.* at 443. Second, the defendants have provided ample evidence that enjoining the transfer of the two plants would not be in the public interest; these transfers arise in the context of lengthy regulatory and business decisionmaking processes that affect thousands of employees, nearly \$1 billion in assets, and numerous regulatory agencies. Third, and for similar reasons, injunctive relief could cause substantial harm to third-party dealmakers and employees. See, e.g., United Food and Commercial Workers Union, Local No. 626 v. Kroger Co., 778 F.2d 1171, 1176 (6th Cir. 1985), *cert. denied*, 479 U.S. 815 (1986) (risk of substantial economic harm unless union posts very large bond weighs against issuance of preliminary injunction).

Finally, in this case, a determination of whether the union will espouse a sound and viable position in arbitration -- and whether the parties are contractually bound to arbitrate the underlying grievance -- would force this Court to rule on the merits of this case under the guise of a separate and distinct motion for a temporary restraining order. See Aluminum Workers, 696 F.2d at 442 (Boys Markets exception applies when underlying grievance is one which parties are bound to arbitrate). Although this Court rests its denial of the plaintiff's motion on the absence of

traditional bases for equitable relief, this Court does not find that the transfer of the two plants would itself be the kind of "behavior which has the effect of evading a duty to arbitrate or which would otherwise undermine the integrity of the arbitration process." Aluminum Workers, 696 F.2d at 441. The transfer of those interests is not at issue in this litigation, and this Court is reluctant to expand the exception to the anti-injunction policy of the Norris-LaGuardia Act.

For the foregoing reasons, this Court denies the plaintiff's motion for a temporary restraining order. This denial is, however, without prejudice to re-filing another such motion if, after this Court rules on the pending summary judgment motion, circumstances so warrant.

IT IS SO ORDERED.


 ANN ALDRICH
 UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, A SUBSIDIARY OF CENTERIOR
ENERGY CORPORATION

CASES NOS. 8-CA-28441
8-CA-28878
8-CA-29051
8-CA-29128
8-CA-29221
8-CA-29346
8-CA-29415

and

UTILITY WORKERS OF AMERICA,
LOCAL 270, AFL-CIO

FIRSTENERGY CORP.

CASES NOS. 8-CA-29873
8-CA-29943
8-CA-29956
8-CA-30028
8-CA-30067

and

UTILITY WORKERS OF AMERICA,
LOCAL 270, AFL-CIO

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AN OPERATING COMPANY
OF FIRSTENERGY CORP.

and

CASE NO. 8-CA-30210

UTILITY WORKERS OF AMERICA,
LOCAL 270, AFL-CIO

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Utility Workers of America, Local 270, AFL-CIO, herein called the Union, in Cases Nos. 8-CA-28441, 8-CA-28878, 8-CA-29051, 8-CA-29128, 8-CA-29221, 8-CA-29346, and 8-CA-29415 has charged that Cleveland Electric Illuminating Company, a subsidiary of Centerior Energy Corporation, herein called Respondent CEI, and the Union, in Cases Nos. 8-CA-29873, 8-CA-29943, 8-CA-29956, 8-CA-30028, and 8-CA-30067 has charged that FirstEnergy Corp., herein called Respondent FirstEnergy, and the Union, in Case No. 8-CA-30210, has charged Respondent CEI, as an operating company of Respondent FirstEnergy, have been engaging in

unfair labor practices as set forth and defined in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (A) The charge in Case No 8-CA-28441 was filed by the Union on August 9, 1996, and a copy was served by mail on Respondent CEI on August 12, 1996.

(B) The charge in Case No. 8-CA-28878 was filed by the Union on March 13, 1997, and a copy was served by mail on Respondent CEI on March 13, 1997.

(C) The charge in Case No. 8-CA-29051 was file by the Union on May 21, 1997; and a copy was served by mail on Respondent CEI on May 21, 1997.

(D) The charge in Case No. 8-CA-29128 was filed by the Union on June 24, 1997, and a copy was served by mail on Respondent CEI on June 24, 1997.

(E) The charge in Case No. 8-CA-29221 was filed by the Union on July 30, 1997, and a copy was served by mail on Respondent CEI on July 31, 1997.

(F) The charge in Case No. 8-CA-29346 was filed by the Union on September 24, 1997, and a copy was served by mail on Respondent CEI on September 25, 1997.

(G) The charge in Case No. 8-CA-29415 was filed by the Union on October 20, 1997, and a copy was served by mail on Respondent CEI on October 20, 1997.

(H) The charge in Case No. 8-CA-29873 was filed by the Union on May 4, 1998, and a copy was served by mail on Respondent FirstEnergy on May 4, 1998.

(I) The charge in Case No. 8-CA-29943 was filed by the Union on May 27, 1998, and a copy was served by mail on Respondent FirstEnergy on May 27, 1998.

(J) The charge in Case No. 8-CA-29956 was filed by the Union on June 3, 1998, and a copy was served by mail on Respondent FirstEnergy on June 3, 1998.

(K) The charge in Case No. 8-CA-30028 was filed by the Union on July 7, 1998, and a copy was served by mail on Respondent FirstEnergy on July 8, 1998.

(L) The charge in Case No. 8-CA-30067 was filed by the Union on July 29, 1998, and a copy was served by mail on Respondent FirstEnergy on July 29, 1998.

(M) The charge in Case No. 8-CA-30210 was filed by the Union on September 15, 1998, and a copy was served by mail on Respondent CEI on September 21, 1998.

2. (A) At all times material herein, prior to November 7, 1997, Cleveland Electric Illuminating Company (Respondent CEI) was a subsidiary of Centerior Energy Corporation, an Ohio corporation headquartered in Cleveland, Ohio where it operated and continues to operate a public utility engaged in the generation and distribution of electricity in Northeast Ohio. Annually, Respondent CEI, in conducting its business operations described above and in paragraphs 2(C), 2(D), 2(E), and 2(F), derives gross revenues in excess of \$250,000 and annually purchases and receives goods valued in excess of \$50,000 from points located outside the State of Ohio.

(B) At all times material herein, prior to November 7, 1997, Ohio Edison Company, an Ohio corporation, was headquartered in Akron, Ohio, where it operated a public utility engaged in the generation and distribution of electricity in Ohio and Pennsylvania.

(C) On or about September 13, 1996 Ohio Edison Company, hereafter called Ohio Edison, and Centerior Energy Corporation, hereafter called Centerior, entered into an agreement and Plan of Merger. Pursuant to the Merger Agreement, Ohio Edison and Centerior formed FirstEnergy Corp., an Ohio corporation, which, in turn, formed two wholly owned subsidiaries.

One Subsidiary then merged with Ohio Edison, with Ohio Edison continuing as the surviving corporation and the other merged with Centerior, with Centerior continuing as the surviving corporation. After the Centerior merger, Centerior then merged with and into FirstEnergy, with FirstEnergy continuing as the surviving corporation. The merger was consummated on November 7, 1997.

(D) Following the merger, FirstEnergy became a holding company which directly held all the issued and outstanding common stock of Ohio Edison and all the issued and outstanding common stock of Centerior's direct subsidiaries, which included Respondent CEI. Since the merger on November 7, 1997, Respondent CEI became an operating company of Respondent FirstEnergy.

(E) At all material times since November 7, 1997, Respondent FirstEnergy and Respondent CEI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision, have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out to the public as single integrated business enterprises.

(F) Based on its operations described above in paragraph 2(A), (C), (D), and (E), Respondent FirstEnergy and Respondent CEI, herein also known collectively as Respondents, constitute a single integrated business enterprise and a single employer within the meaning of the Act.

3. (A) At all material times, Respondent CEI has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(B) At all material times, Respondent FirstEnergy has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. (A) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent CEI within the meaning of Section 2(11) of the Act and agents of Respondent CEI within the meaning of Section 2(13) of the Act:

Charles Jones	-	Vice President
Lew Meyers	-	Vice President
James Bena	-	Plant Manager
Kevin P. Murphy	-	Manager Labor Relations
Brian Sexten	-	Manager
Matt Slagle	-	Manager
William Bene	-	Supervisor, Electrical Construction
Laura Dielman	-	Coordinator of Human Resources
Donald Casper	-	Acting Supervisor, Brooklyn Service Center
James H. Wilcox	-	Manager, Generation Services

(B) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act, and agents of Respondents within the meaning of Section 2(13) of the Act:

William R. Holland	-	Chairman of Board, Chief Executive Officer of FirstEnergy
Peter Burg	-	President and Chief Financial Officer, FirstEnergy
Guy Pipitone	-	Vice President, Fossil Generation, FirstEnergy
Charles Jones	-	Regional President, Northern
Lew Meyers	-	Vice President, Nuclear, Perry
Gary Benz	-	Senior Attorney
Tom Kayuha	-	Manager, Labor Relations
Brian Sexten	-	Manager
Matt Slagle	-	Manager
William Bene	-	Supervisor, Electrical Construction
Laura Dielman	-	Coordinator of Human Resources
Donald Casper	-	Acting Supervisor, Brooklyn Service Center

6. (A) The following employees of Respondent CEI, at its northeast Ohio facilities, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All operating maintenance and construction employees, but excluding office clerical, sales and technical employees, employees in the Civil and Mechanical Engineering, Electric Engineering, Wire Relations, Survey and Records elements, production and test engineers, load and trouble dispatchers, chemists and laboratory assistants, Property Protection employees, Electrical Inspectors, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(B) On October 18, 1943, in Cases Nos. R-5358 to R-5367 the Union was certified as the exclusive collective-bargaining representative of the Unit.

(C) At all times since October 18, 1943, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(D) The Unit referred to above in paragraph 6(A) remained the same after the merger referred to in paragraphs 2(C) and 2(D).

(E) Since about October 18, 1943 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and since then the Union has been recognized as the representative by Respondent CEI. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which became effective May 1, 1993.

(F) About February 7, 1997, the Union, by letter, pursuant to provisions in the collective bargaining agreement referred to above in paragraph 6(E), gave Respondent CEI notice of Articles in the collective bargaining agreement it wished to change.

(G) At various times from April 8, 1997 to April 27, 1998 Respondent CEI and the Union met for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment of the Unit as described in paragraph 6(A). About December 19,

1997 Respondent FirstEnergy representatives joined Respondent CEI and the Union and met for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment of the Unit as described in paragraph 6(A).

7. On May 1, 1998 Respondents, by Donald Casper, at their Brooklyn Service Center, threatened employees that he, Donald Casper, had been instructed by Charles Jones that any employee wearing a red Union armband would be noted and would be the first one terminated.

8. (A) On or about August 7, 1996, contrary to its contract referred to in paragraph 6(E), Respondent CEI attempted to circumvent its bargaining obligation by requiring employees to attend meetings to develop work units, procedure, standards and productivity measures for electrical, construction and maintenance employees.

(B) On or about May 2, 1997, contrary to its contract referred to in paragraph 6(E), Respondent CEI attempted to circumvent its bargaining obligation by requiring employees to attend meetings in May and June 1997 to draft future job titles, summaries and responsibilities for the supply chain.

(C) The subjects set forth above in paragraphs 8(A) and 8(B) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent CEI engaged in the conduct described above in paragraphs 8(A) and 8(B) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent CEI with respect to this conduct and the effects of this conduct.

9. (A) Since about August 30, 1996, the Union, by letter, has requested that Respondent CEI furnish the Union with the names of all Unit employees who serve on Respondent CEI committees.

(B) The information requested by the Union, as described above in paragraph 9(A), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since September 30, 1996 Respondent CEI has failed and refused to furnish the Union with the information requested by it as described above in paragraph 9(A).

10. (A) Since about March 14, 1997, and at various times thereafter, including May 14, July 29, August 18, and August 28, 1997, the Union, by letters and in negotiations, has requested that Respondent CEI furnish the Union with merger information, including the duty to consult with Ohio Edison, plans, drafts and studies relative to the proposed merger.

(B) The information requested by the Union, as described above in paragraph 10(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about May 20, 1997, Respondent CEI, by letter, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 10(A).

11. (A) Since about July 24, 1997, and at various time thereafter, including August 18, 1997, the Union, by the above letters and in negotiations, has requested that Respondent CEI furnish the Union with individual employee overtime hours by department.

(B) The information requested by the Union, as described above in paragraph 11(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about August 14, 1997, Respondent CEI, by letter and at negotiations, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 11(A).

12. (A) The collective bargaining agreement described above in paragraph 6(E) provides:

ARTICLE VI
Seniority

Section 7.

(a) During the period from May 1, 1993 through April 30, 1997, no employee in the bargaining unit who has ten or more years of continuous service and who is desirous of continuing employment with the Company will be laid off for lack of work.

(b) An employee with ten or more years of continuous service who becomes surplus, other than as a result of an employee exercising his rights under Section 5 of this Article, will receive no reduction in his hourly rate of pay. In addition, he will receive no future general increases as long as his rate remains above the maximum rate of the job classification into which he is placed. This paragraph will have no application to incapacitated employees or employees who are unable or unwilling to qualify for available work.

* * *

ARTICLE XV
Terms and Renewal

Section 4.

If notice is given in accordance with Section 2 or Section 3 of this Article and no agreement has been reached on the changes proposed by May 1, 1997, (or by May 1, 1995, in the case of changes in general hourly rates of pay, Article IX, Section 1), the parties will make every effort to reach agreement thereafter. All provisions of this Agreement will remain in full force and effect thereafter except that (i) if no agreement has been reached by (the respective applicable date set out above), the provisions of Article IV will be waived until such agreement is reached, and (ii) all provisions of this agreement will be without force or effect during any period of concerted failure to report for work, cessation of work, slowdown, strike, picketing, or lockout.

(B) On or about October 15, 1997 Respondent CEI informed the Union that all provisions of the collective bargaining agreement referred to in paragraph 6(E) with the exception of Article IV, No Strikes or Lockouts, referred to above in Article XV, and Article VI, Section 7 would remain in full force and effect if its final proposal was not accepted.

(C) On or about October 29, 1997 Respondent CEI unilaterally extended the collective bargaining agreement referred to in paragraph 6(E) as set forth in paragraph 12(B) to April 30, 1998 and unilaterally eliminated Article VI, Section 7 referred to in paragraph 12(A).

(D) On or about October 15, 1997 Respondent CEI notified the Union that if its final proposal was not accepted by October 29, 1997 it would withdraw all its proposals and, thereafter, did withdraw all its proposals after October 29, 1997.

(E) On or about November 21, 1997 Respondent FirstEnergy adopted the position taken by Respondent CEI referred to above in paragraphs 12(B), 12(C) and 12(D).

(F) The subjects set forth above in paragraphs 12(A), 12(B), 12(C), 12(D), and 12(E) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondents engaged in the conduct above in paragraphs 12(A), 12(B), 12(C), 12(D), and 12(E), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

13. (A) Since about October 31, 1997, and various times thereafter, including December 19, 1997, February 24, March 27, and April 28, 1998, the Union, by the above letters and in negotiations, has requested that Respondents furnish the Union with merger information, including plans, studies and transition team information relative to the merger.

(B) The information requested by the Union, as described above in paragraph 13(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about January 26, 1998, Respondents, by letter dated January 26, 1998 and verbally, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 13(A).

14. (A) In or about January 1998 Respondents eliminated the surviving spouse benefit.

(B) On or about January 23, February 24 and on March 6, 1998 Respondents announced at negotiations that they would merge the 401K plan with the FirstEnergy Savings Plan and the subject was non-negotiable.

(C) On or about January 23, February 24 and on March 6, 1998 Respondents announced at negotiations that they would discontinue the stock purchase discount plan and the electrical discount plan and that the subjects were non-negotiable.

(D) On or about March 11, 1998 Respondents announced at negotiations that Respondents' Employee Assistance Programs, including long term care, travel and accident, educational assistance and financial planning were non-negotiable.

(E) In or about March 1998 Respondents implemented a new drug and alcohol policy.

(F) The subjects set forth above in paragraphs 14(A) through 14(E) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondents engaged in the conduct described above in paragraphs 14(A) through 14(E) without affording the Union an opportunity to bargain with Respondents with respect to this conduct and effects of this conduct.

15. (A) Since about February 19, 1998, and at various times thereafter, including February 29, March 31, and April 28, 1998, the Union, by the above letters and in negotiations, has requested that Respondents furnish the Union with individual employee overtime hours by department.

(B) The information requested by the Union, as described above in paragraph 15(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about February 29, 1998, Respondents have failed and refused to furnish the Union with the information requested by it as described above in paragraph 15(A) and/or have provided inaccurate information.

16. (A) Since about February 24, 1998, and at various times thereafter, including March 30, April 9, and April 22, 1998, by letter and in negotiations, the Union requested that Respondents furnish the Union with the benefit master plans and IRS Form 5500's for the pension and health insurance plans and the life insurance plans.

(B) Since about July 6 and 8, 1998, the Union, by letter, requested Respondents to furnish the Union with the Aetna and Unum contracts, summary plan for Unum, master plan for Unum and conversion plan for Unum, Aetna and Unum being the life insurance carriers for Respondents' employees.

(C) The information requested by the Union, as described above in paragraphs 16(A) and 16(B) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(D) Since about February 24, 1998, Respondents have failed and refused to furnish the Union with the information requested by it as described above in paragraph 16(A).

(E) Since about July 6, 1998, Respondents have failed and refused to furnish the Union with the information requested by it as described above in paragraph 16(B).

17. (A) In or about the first week of March 1998, Respondents, at their Perry Nuclear Power Plant, unilaterally implemented a Pledge of Commitment form.

(B) On or about March 9, 1998 Respondents, by Lew Meyers, at their Perry Nuclear Power Plant, threatened Union representatives, who were employees, that they would be terminated if they did not cooperate regarding the Pledge of Commitment form.

(C) On or about March 11, 1998 Respondents, at their Perry Nuclear Power Plant, unilaterally implemented and required all employees, under threat of discipline, to sign the Safety Tagging Commitment.

(D) The subjects set forth above in paragraphs 17(A) through 17(C) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(E) Respondents engaged in the conduct described above in paragraphs 17(A) through 17(C), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

18. (A) At various times from March 1997 to April 27, 1998, Respondent CEI and the Union met for the purposes of collective bargaining, including additional representatives from Respondent FirstEnergy since December 15, 1997 to April 27, 1998, with respect to wages, hours and other terms and conditions of employment of the Unit.

(B) Since about May 18, 1998 and continuing thereafter, Respondents refused to bargain collectively in good faith with the Union.

(C) About May 27, 1998 Respondents unilaterally, without reaching agreement or lawful impasse, implemented its last bargaining offer, made on May 18, 1998.

(D) Since on or about November 1997 and continuing thereafter, Respondents engaged in conduct, including, but not limited to, the allegations set forth in paragraphs 12(E), 13, 14, 15, 16(A), 17, and 18(C); insisted that the ten-year clause was no longer operative; abandoned the position and proposals taken by Respondent CEI prior to the merger; rejected the tentative agreements reached by Respondent CEI; summarily rejected the Union's bargaining proposals without discussion or consideration; entered into negotiations with a predetermined resolve that the collective bargaining agreement had to be patterned after Ohio Edison contracts; continued to propose multi-contracts and multi-units over the Union's objections; implemented

an offer which de facto preserved its position for separate units; set or imposed artificial deadlines and threats of implementation; continually changed proposals without affording the Union an opportunity to understand and evaluate them; failed to discuss or bargain over substantive issues of proposed contract which substantially changed from the prior agreement referred to in paragraph 6(E), including, but not limited to: seniority, layoff and recall, promotions, subcontracting, before declaring impasse in the negotiations; unilaterally changed benefits during bargaining; asserted that early retirement and severance were only offered if contract ratified; informed the Union and the membership that it would not consider any counterproposals and that further bargaining would be futile; and unlawfully declared impasse in the negotiations.

(E) By its overall conduct, including the conduct described above in paragraphs 12(E), 13, 14, 15, 16(A), 17, 18(B), 18(C), and 18(D), Respondents have failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit as described in paragraph 6(A).

19. (A) On or about May 7, 1998 the Union, by letter, requested Respondents to bargain about potential layoffs and the ten-year clause.

(B) Since about May 18, 1998, and continuing thereafter, Respondents, by letter, refused to bargain collectively in good faith with the Union.

(C) On or about May 20, 1998, the Union, by letter, requested Respondents to bargain about potential layoffs.

(D) The collective bargaining agreement described above in paragraph 6(E) provides:

ARTICLE VI

Seniority

Section 6.

(a) The Company will give one week's notice or one week's pay of forty (40) hours in lieu of notice to an employee being laid off. An employee intending to resign will give the Company one week's notice. The Company will notify the Union at least two weeks in advance of any proposed layoffs and afford the Union an opportunity to discuss the matter fully with the Company.

(b) If it becomes necessary to reduce the working force in any job classification, reductions shall be made in the following manner:

Starting with the job classification in which the surplus exists, the surplus employees will be determined on the basis of those having the least occupational group seniority. The surplus employee or employees in the order of their occupational group seniority will first be given the opportunity of exercising any rights they may have under Article VI, Section 4. If no such rights exist, or the employee declines to exercise such rights, then he shall be given the opportunity of displacing any employee in a job of lower classification provided he has greater occupational group seniority than the employee being displaced in the lower job classification and provided he is qualified and capable of performing the work. Employees who are displaced from their jobs by this process will be given the opportunity of displacing employees in lower job classifications in the same manner. Employees who are so transferred or demoted (but not laid off) shall retain their seniority in their former job classification and be entitled to fill any subsequent vacancies in such job classification in the inverse order of their transfer or demotion therefrom without regard to the seniority of employees of lower classification.

An employee who is unable to displace any other employee in his line of promotion and is thereby surplus in the lowest job classification in that occupational group will be given the opportunity, based on his continuous service seniority, to displace a probationary employee in a starting job for which he can qualify or the employee with the least continuous service seniority in a starting job which the surplus employee is qualified and capable of performing, before he is laid off. Regular employees who are so transferred or laid off shall retain their seniority in their former job classification for a period of two (2) years from the date of layoff and shall be entitled to fill any subsequent vacancies in such job classification in the inverse order of their layoff without regard to the seniority of employees of lower classifications, if any. On a subsequent increase of such working force within a period of two (2) years, employees will be called back to work in the inverse order of their layoff, if available, and able and qualified to return to work, before new employees are added from other departments or from outside the Company.

In order to avoid unfairness that may exist in any unusual or special case, the layoff and rehiring procedure of this section may be varied by agreement between the Union and the Company.

(E) The unilaterally implemented contract referred to in paragraph 18(C) provides:

ARTICLE IV Seniority

Section 1.

"Seniority" as used herein is defined as the status accruing to an employee through length of service which entitles him to promotions, layoffs, recalls and choice of vacation time as hereinafter provided. "Location" as used herein is defined as either the Avon Lake Power Plant, the Ashtabula Power Plant, the Lakeshore Power Plant, the Eastlake Power Plant, the Perry Nuclear Power Plant, all areas within the Northern Region, all areas within the Eastern Region Ashtabula Service Center and Main Avenue Customer Center, Traveling Maintenance, or the Power Plant Support Center, as appropriate.

(b) "Location Seniority" is the length of service at a particular location while holding a bargaining unit position. For transition purposes, on May 1, 1998 Local Seniority shall equal Company Seniority. Thereafter, Location Seniority shall accrue in accordance with the first sentence of this subparagraph. For purposes of computing Location Seniority under Section 8, only, all areas within the Northern Region and the Eastern Region Ashtabula Service Center and Main Avenue Customer Center shall collectively be considered a "Location."

Section 8.

(a) When a decrease in the number of employees in a given job is necessary, the surplus employee or employees in that job with the least Location Seniority shall be first released from the job and offered employment in the next lower job in the same promotion line, provided that his Location Seniority is greater than that of any employees in the lower job, and this process shall be continued until the necessary number of employees have been laid off either because they are surplus, are not qualified, or have rejected the job of jobs offered. When an employee has gone down through his own line of promotion he shall be laid off, unless he has at least eighteen (18) months' Location Seniority, in which case he shall be offered employment in the lowest available job in any other line of promotion for which he has sufficient Location Seniority and qualifications, and which job is held by an employee with less Location Seniority. The displaced person shall in turn have Location Seniority rights over employees in lower jobs in the same promotion line, as above set forth.

(b) An employee with ten (10) or more years of continuous service with the Company who would be laid off by application of the preceding paragraph, shall not be laid off but shall be offered a bargaining unit job for which he is qualified. This commitment will not require the Company to create a new job. The Company will first offer such a job in the employee's Location. If no such job is available in the employee's Location, the Company will offer the employee a job in the same job classification or if no such job is available a job for which he is qualified in another Location. The Company will use its best efforts to place the employee in a Location which will not require him to move his residence. The job offered will be such that the employee's placement in that job will not displace an employee in the same Location who at the time of transfer has ten (10) or more years of continuous service with the Company and will not displace an employee in another Location with more than five (5) years of continuous service with the Company. If the employee refuses that job offered him he will be laid off and his right to be recalled will not be affected by such refusal. Any employee displaced through the application of this Section 8.b shall be considered as a surplus employee in that job and the procedure set forth in Section 8.a of this Article shall then become applicable. The employee with at least ten (10) years of service who accepts a job pursuant to the terms of this Section shall not have his hourly rate of pay reduced, but shall receive no future general wage increases unless and until his rate is equal to the maximum rate for the job in which he is so placed.

This Section shall have no application to incapacitated employees or employees who are unable or unwilling to qualify for available work and does not preclude separation from the Company for reasons other than lack of work; or demotion in accordance with applicable provisions of this Agreement.

(F) On or about May 27, 1998 Respondents notified certain employees, including, but not limited to, the following named employees that they would be laid off from their respective jobs and did lay them off from their jobs commencing on or about May 27:

Denise M. Acierno	Warren V. Agee	Russell O. Aitken	Donald E. Albertone
Paul Albright	Timothy F. Alder	Rosemary Alexander	Ronald P. Alinen
Annette Anderson	Wayne L. Anderson	Tobias Armstrong	Edwin Arocho
Kenneth R. Auble, Jr.	Donald E. Ayers	Michael A. Azzarello	Robert L. Bacho
Simon M. Bajaksouzian	Michael C. Baker	Charles E. Baldwin	Vanessa D. Ball Tyus
Murphy Ball, Jr.	David W. Ballash	Lawrence K. Barrett	George R. Barsan
Gary S. Barsan	Thomas C. Basic	John G. Bass, Jr.	Daniel Baston
Roy C. Bean	David J. Beeman	Rudy A. Began	Robert E. Bell, Sr.
Albert G. Bellis	Allen J. Bennett	Andrew R. Beno	Gregory D. Beursken
Rocco Bevilacqua	Richard J. Biagiola	Howard E. Billups, Jr.	William J. Billy, Jr.
Terry L. Bittinger	Roy L. Bobbitt	Gary L. Boettcher	Jerome V. Boncella
Jeff F. Bordonaro	Mark A. Bordonaro	Stephen P. Boryk	Clare L. Bottorff
Theodore Boyd	Michael A. Boyle	Antonio B. Brooks	John A. Brown

Thomas P. Brunecz
Howard F. Campbell
Michael W. Carson
Karl A. Cimorelli
Bryan A. Cole
Jerry S. Counts
Edward G. Cummins
Mark E. Decress
Alan L. Dieffenbacher
Kevin M. Dirling
Charles H. Dowdy
Roman S. Drozd
Gregory F. Dydo
Brian K. Everett
Curt A. Farrell
Brian F. Fitzgerald
Donald J. Fousek
Douglas S. Fuke
Anthony J. Gamiere
Ronald D. Garrison
James R. Glicker
Robert J. Gorentz
Dale E. Greenwell
Gregory E. Griffiths
Randall J. Harman
George J. Henry, Jr.
James M. Hinojosa
Robert A. Hooven
Margaret Houston
Joseph J. Iacano
Thomas A. Jansen
Neal Johnson
Paul E. Kastelic
Forrest K. Kennedy
Claude J. Kindle
Robert P. Kogut
Donald C. Kraus
Gregory Krejci
Mark A. Kurdas
Martin A. Langer
David Leyva
Stephen A. Lochmueller
David J. Lorince
John R. Lyons
Jerry Marinella
Mario A. Martinez
Martin Mazie
Kenneth J. McKay
Richard S. McDonald
Frank S. Mendlik
Roger W. Miller, Sr.
John H. Molnar
Randy L. Morris

Catherine A. Burda
James C. Campbell
Thomas H. Chabola
John J. Cirelly
Ford L. Cole
William A. Craig
Jerry E. Damron
Scott Del Pizzo
John F. Digiandomenico
Louis J. Dolsak
Douglas A. Drake
Roberto B. Dubreuil
Terry M. Egan
Karl F. Eykyn
Judson C. Fell
Matthew Fort, Jr.
Alfred E. Frazier
James R. Funderwhite
Douglas L. Garcia
Nicola Giancola
Joseph M. Goebel
Daniel R. Gorey, Jr.
Brian Greenwood
Ronald M. Gruening
William R. Harwood
Thomas P. Heppler
Albert P. Hoch
Kimberly S. Hope
Donald R. Hricko
Joseph P. Iglai
C.D. Janz
Wilbert Johnson
Joseph J. Kastelec
Dale J. Kestran
Daniel I. King
Gregory Koman
Robert E. Kraus
Richard J. Krstyen, Jr.
Kenneth F. Kushner
Mark R. LeCappelain
Charles J. Lillis, Jr.
John C. Lombardy
Eugene L. Lovley
Eugene E. Mackey
Harold Martin
Dale E. Masiker
Charles D. McCall
Charles P. McQueen
Gerald T. McFaul, Jr.
David F. Merkle
Bryan S. Mindek
Thomas Molnar
Eugene D. Morrison, Jr.

Edward V. Burns
Cyrus L. Carpenter
Brian N. Chabot
Larry M. Cloonan
Marc B. Comar
Paul M. Crilley
Larry M. Davis
Matthew Dezelan
Mark G. Diperna
Robert Domachowski
Christopher A. Drenski
Dennis J. Dudas
Darryl S. Elom
Steven L. Eyring
Robert R. Fenton
Steven C. Foster
Loyal A. Freeman
Scott W. Furukawa
Michael W. Garnett
Donald G. Giermann
Robert J. Goliass
John M. Graham
Brian L. Griffith
Michael Guciardo
Dean A. Helkowski
G. Edward Heyworth
Vernon Hollins
Steve L. Horton
Michael J. Hrnyak
Nestor W. Jakimyszyn
Darnell Johnson
Charles M. Johnston
Ronnie D. Keene
Douglas W. Kiesel
Douglas A. Kirk
David J. Kowall
Walter F. Krauss, Jr.
Damien J. Kruzel
Darnell Land
Martin P. Lehman
Timothy A. Lillis
Richard H. Longden
Gregory Lowe
Robert C. Malinky
Mark A. Martin
Philip D. Mathieu
Thomas McCormick
Kelly K. McCloskey
Ronald L. Melaragno
John E. Miklos
Bruce B. Mitchell
William W. Monroe
Melvin M. Motley

Roy J. Bushnell
Gene W. Carpenter
Reginald Childs
Ronald L. Coates
Joseph C. Coughlin
Eric J. Cromwell
Leon Davis
John N. Dickson
James T. Dipert, Jr.
James W. Donelan
David J. Dreslinski
Richard R. Dudas
John D. Ertle
Richard C. Faeking
Jay F. Fine
Douglas W. Foulkes
David A. Fritz
Ivan Gabriel
Paul C. Garriga
Ronald J. Giermann
Hugh A. Goodale
Carl W. Gran
Carol F. Griffith
James Haase
David G. Henderson
Todd R. Hinkle
Edward J. Holstein
Joshua R. Houghtaling
Daniel A. Hughes
Robert S. Jansen, Jr.
Ivery L. Johnson, Jr.
Mark S. Johnston
Darrell W. Kelly
Rolland S. Kihn
Randall S. Kline
Paul J. Kowalsick
William H. Krava
Charles A. Kupcik
Gregory A. Landi
Steven M. Letterle
Darryl Lindemann
Thomas P. Loper
James E. Lustik
Anthony Malov
Stephen C. Martin
Carmen A. Matteo
Edward N. McDonald
David N. McDonald
Philip J. Meli
Craig C. Miller
Joseph M. Mlakar
Mario Montemafano
Gregory R. Mott

Thomas A. Moviel	Gloria M. Murdock	John Musacchio	Donald E. Nemeo
Douglas A. Nenadovich	Sallie D. Newson	Gerald F. Niznik	Douglas Nolan
Robert L. Novak	Scott A. Novotny	Warren K. Novotny	Leonard O'Dell, Jr.
John Obranovich	Richard G. Olah	Leonard W. Olasky, Jr.	James L. Oliverio
Russell A. Olson	Jerry L. Orf	George A. Orlando, Jr.	Kenny Orozco
James C. Orr, Jr.	Shawn M. Osborne	Ronald W. Park	Jason A. Parrish
Romeo W. Patterson, Jr.	Marilyn E. Payne	Ramon L. Perez	Vincent Peric
James J. Perry	Kenneth L. Perry	William J. Perusek	Donald J. Pesta
Raymond S. Peteritis	Dale R. Pinney, Jr.	Thomas C. Pinta	Gary R. Plungas
John R. Pollock	Gary L. Poole	Patrick C. Power	Joseph A. Pridemore
James Henry Prill	Richard F. Radovanic	Nick A. Ranallo, Jr.	Christopher J. Reardon
Judy A. Reed	Robert J. Reed	Robert C. Reiser	Raymond J. Ressler
Edward J. Revay	Robert A. Rexroad	Mickey E. Reynolds	Mitchell R. Ribis
Elauter Rivera	Christopher C. Roberts	Walter C. Robinson	Angelo L. Rocco
Jeffrey A. Rocco	Cynthia L. Rogers	Vincent Rohm	Jesus Rosalez
Lewis D. Ross	Nelson D. Rowan	Thomas P. Roznik	Robert R. Ruck
Joseph W. Ruffin	John F. Rumancik	Emil J. Runt	Dale M. Russo
James P. Ryan	Lori J. Rys	Richard Sanchez	Michael J. Sanders
Julio Santiago	Bruce Schiffbauer	Gary E. Schor	Danny W. Scolaro
James Scott	Bobbie R. Seagraves	Andrew G. Sebok	John L. Sedlak
George M. Seigman	Terrance J. Seith	Kevin Sepik	Steve A. Sferra
Scott A. Shebestak	Brian B. Shuss	Anthony N. Signorelli	Garry L. Simons
Robert T. Simmons	Willie L. Simmons	David L. Simpson	Robert Sentic
Douglas E. Smith	Brian E. Soeder	Steven L. Sparks	Robert M. Spelich
Donald H. Spence	Michael C. Spencer	Michael T. Spencer	Harland L. Sprinkle
Charles J. Sprosty, Jr.	Charles J. Steenstra	David K. Steiroos	Lee A. Stewart, Jr.
Richard H. Stonitsch	John C. Stinger	Kim M. Summerville	Tony M. Sutyak
Gordon A. Swan, Jr.	Harry R. Tabor, Jr.	Jack L. Tabor	Matthew Tabor, Jr.
William F. Taft	Deborah Takah	Victor A. Taketa	Jonathan S. Taylor
Michael J. Terwoord	Danny Thomas	Dean A. Tibbs	Charles R. Tilburg
John F. Toth	Frederick L. Tracy	Ernest Tufts, Jr.	Samuel S. Tumino
Joseph M. Turner	John J. Uhrain, II	Frank W. Vacha, Jr.	Gene P. Vasiloff
Mark A. Vendetti	Gordon A. Vojtech	Lee G. Vollman	Gregory J. Volpe
David W. Wagner	John W. Waid	Richard M. Walcher	Frank R. Waldman
Jerry L. Walker	Michael J. Walker	Noel A. Walker	Thomas V. Wallace
Gary A. Ward	John A. Ward	Joseph G. Watson	David E. Wells
Robert F. Wenning, II	Kenneth L. Wessolek	Gary A. Westerhold	Melvin Whitley
Eddie S. Williams, Jr.	Esper Wialliams	James H. Williams	Wiley P. Williams
Max G. Wilson	Richard W. Winiski	Diana J. Wiser	Raymond A. Wodzisz
Max C. Wolford	Steve Woods	Charles C. Woodworth	David L. Woodworth, Jr.
Walter O. Worley	Jeffrey S. Wozniak	Frank W. Zabudske	James A. Zaebst
Bret A. Zak	Martin A. Zart	Steven J. Zbin	Timothy T. Zrubek
Ernest A. Zsebik			

(G) On or about May 27, 1998, Respondents notified certain employees, including, but not limited to, the following named employees that they would be laid off from their respective jobs, and did lay them off from their jobs on or about May 27 through June 10, 1998,

but subsequently, prior to January 30, 1999, recalled them to positions of employment, unilaterally, without bargaining with the Union:

Jared Alvarez	Ricky C. Barnett	Jason M. Bean	Laura A. Becerra
Robert A. Bosiacki	Robyn E. Bruson	Glendon J. Burnham	Thomas R. Clingerman
Thomas P. Cook	Anthony Costanzo	Douglas E. Cunningham	Stanley F. David
David A. Doughty	Raymond Douglas	Eric L. Earskine	David W. Evans
Chuck E. Fidler	Dennis W. Flack	Kevin M. Flynt	Christopher R. Fredriks
Gregory E. Grubb	Reginald L. Hamilton	Gary P. Hasselbach	Daniel L. Henningan
Garrick A. Hietala	Thomas J. Hill	Willaim M. Holtz	Robert S. Hoose
Erik Howard	Glen A. Hulvalchick	Mark L. Inman	George F. Jackson
Mark A. Jeglie	Richard Kalivoda	Jemaine Kennedy	Kenneth P. Kosarko
David Kruzel	Terry W. Lanham	Delbert B. Laskowski	Richard S. Malnar
John C. McDermott	Joseph D. Miklavic	Robert C. Miller	Patrick A. Minor
Thomas A. Munz	George P. Nagle, Jr.	James M. Neary	Ava Newton
Timothy O'Loughlin	William H. Pascol	Bryan C. Phelps	Thomas M. Poje
James M. Rastall	James T. Rearick	Lawrence Roberts, Jr.	Donald Robinson
Elizabeth Rullen	Frank A. Ruolo, Jr.	Robert Sackett	George W. Schoepe, III
Rajko R. Senica	Greg A. Senskey	Derrick Spivey	Tom D. Stitt
Michael R. Straka	Daniel F. Straky	Daniel J. Tanno	James J. Tanno
Bruce Washington	Bruce Washington, Jr.	Aaron Williams	

(H) Respondents engaged in the conduct described above in paragraphs 19(F) and 19(G) because the named employees of Respondents joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(I) The conduct described above in paragraphs 19(F) and 19(G) is inherently destructive to the rights guaranteed employees by Section 7 of the Act.

(J) The subjects set forth above in paragraphs 19(A), 19(C), 19(D), 19(E), 19(F) and 19(G) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(K) Respondents engaged in the conduct described above in paragraphs 19(A), 19(C), 19(D), 19(E), 19(F) and 19(G) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

20. (A) The collective bargaining agreement described above in paragraph 6(E) provides:

ARTICLE XII
Working Conditions

Section 10,

For the duration of this agreement the Company does not intend to expand its present practices with respect to the employment of outside contractors and will continue efforts to minimize the employment of outside contractors to perform work ordinarily and customarily done by its regular employees.

However, where specific jobs, ordinarily and customarily done by regular employees, are required to be done within a specified time, and the work cannot be done by the regular employees in the time required for completion, the Company will notify the Union of such outside contractor work on a timely basis, as conditions permit.

Further, the Company agrees it will not employ outside contractors when the employment of such outside contractors would result in and directly relates to the layoff, demotion or reduction of hours below the statutory straight time work week of its regular employees.

(B) The unilaterally implemented contract referred to in paragraph 18(C) provides:

Article XII
Working Conditions

Section 6.

It is the intention of the Company to staff for normal running operations and maintenance, as defined and determined from time to time by the Company in accordance with Article III and therefore the Company reserves the right to contract work related to peak periods, such as outages, overhauls or specialty work not ordinarily and customarily performed on a day-to-day basis during such periods of normal running operations and maintenance, work required to be done within a specified time when such jobs cannot be done by the regular employees because of volume of work, as well as work that is not core to normal running operations or maintenance. Some examples include, but are not limited to, tree trimming, custodial work, vehicle washing, snow removal, painting, lawn care, building maintenance, mobile equipment maintenance, plant cleaning, elevator repair, HVAC maintenance, underground trenching and duct installation, and other work of a similar nature as determined by the Company from time to time.

(C) Since on or about May 27, 1998, and continuing to date, Respondents have subcontracted the following work which is work performed by employees, including those on lay off, in the unit referred to in paragraph 6(A):

- ◆ Semi-skilled and skilled repair work on condensers, turbines, boilers, fans, air compressors, pumps, and auxiliary equipment involving welding, sheet metal work, pipe-fitting and machine shop work.
- ◆ Repair, and/or replacing, aligning, balancing of rotating equipment.
- ◆ Performing code and non-code welding, oxyacetylene burning, layout and fabrication of parts, maintenance to piping.
- ◆ Removing, and/or repairing, and/or installing boiler tubes, repairing boiler accessories, auxiliary equipment, and valves.
- ◆ Machining and making parts and assemblies.
- ◆ Performing insulation and refractory work, by installing, removing and repairing both hazardous and non-hazardous insulation.
- ◆ Setting up rigging, tackle, blocking, scaffolding, ladders, moving heavy parts, and equipment.
- ◆ Repairing, and/or replacing motors, associated equipment, and rewiring.
- ◆ Repairing of ductwork, precipitators, hangers, boiler feed pumps, feedwater heaters, and diaphragms.
- ◆ Repairing, and/or replacing, resetting, testing, switchgear, devices and relays.
- ◆ Repairing, and/or replacing coal and ash-handling equipment, nuva feeders, fluidizing systems, and railroad repairs.
- ◆ Cleaning, removing slag, flyash and debris using water, and/or vacuum equipment.
- ◆ Performing excavation, backfilling, forming of and pouring concrete, asphalt, underground tank removal, and road repairs.
- ◆ Repairing, and/or replacing, and/or installing, siding, flashing, gutters, downspouts, trench drains, glass and windows, doors, overhead doors, water lines, plumbing, sprinkler systems, handrails, fence repairs, sewers, manholes, and general construction.
- ◆ Repairing, and/or replacing, and/or installing, conduit, lighting, performing maintenance on elevators, and overhead cranes.
- ◆ Inspection and troubleshooting equipment.
- ◆ Performing sandblasting and guniting.
- ◆ Installing, and/or repairing, and/or replacing conveyor belts, sootblowers, chutes, pumps, strainers, and scales.

- ◆ Performing maintenance and repairs to locomotives, towmotors, trucks, vans, cars, and other equipment.
- ◆ Performing plant clean-up, substation clean-up, housekeeping, janitorial, landscaping, and snowremoval.
- ◆ Diagnostic testing, pole reinforcement, flagging and safetyman duties.

(D) The subjects set forth above in paragraphs 20(A), 20(B) and 20(C) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(E) Respondents engaged in the conduct described above in paragraph 20(C), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

(F) As part of the remedy for the unfair labor practices alleged above in paragraphs 20(B) and 20(C), the General Counsel seeks an Order requiring Respondents to reinstitute its illegally subcontracted work as it existed prior to May 27, 1998, consistent with the collective bargaining agreement referred to above in paragraph 6(E). The General Counsel further seeks other relief as may be appropriate to remedy the unfair labor practices alleged.

21. (A) Since about June 11, 1998, and at various times thereafter, including July 8, 1998, the Union by letter has requested Respondents to furnish it with subcontracting information regarding certain enterprises, including Valley Systems and Servall Service Company

(B) The information requested by the Union, as described above in paragraph 21(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about July 2, 1998, Respondents, by letter, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 21(A).

22. (A) In or about July 1998, Respondents unilaterally changed their leave of absence policy regarding employees holding union office, specifically President David Kotecki and Vice President Robert J. Chet, with respect to their pension and health coverages, prescription drug coverage, dental coverage and life insurance.

(B) Respondents engaged in the conduct described above in paragraph 22(A), because the above-named employees of Respondents formed, joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(C) The subjects set forth above in paragraph 22(A) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(D) Respondents engaged in the conduct described above in paragraph 22(A), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

23. (A) Since July 6, 1998, the Union, by letter has requested Respondents to furnish it with information regarding FirstEnergy Nuclear Operating Company (FENOC), including studies, discussions, and plans relative to FENOC's impact on the Unit.

(B) The information requested by the Union, as described above in paragraph 23(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(C) Since about July 15, 1998, Respondents, by letters, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 23(A).

24. (A) In or about mid-July 1998, Respondents, at various locations, unilaterally implemented and solicited employee location preference forms from employees in the Unit.

(B) The subject set forth above in paragraph 24(A) relates to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondents engaged in the conduct described above in Paragraph 24(A), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

25. (A) By the conduct described above in paragraphs 7 through 24, Respondent CEI has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

(B) By the conduct described above in paragraphs 7, 12 through 24, Respondent FirstEnergy has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

26. (A) By the conduct described above in paragraphs 19(F), 19(G), 19(H), 19(I), 22(A) and 22(B), Respondent CEI has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

(B) By the conduct described above in paragraphs 19(F), 19(G), 19(H), 19(I), 22(A) and 22(B), Respondent FirstEnergy has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

27. (A) By the conduct described above in paragraphs 8, 9, 10, 11, 12(B), 12(C), 12(D), 12(E), 12(G), 13, 14, 15, 16, 17, 18, 19(E), 19(F), 19(G), 19(K), 20(B), 20(C), 21, 22(A), 22(D), 23 and 24, Respondent CEI has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

(B) By the conduct described above in paragraphs 12(E), 12(G), 13, 14, 15, 16, 17, 18, 19(E), 19(F), 19(G), 19(K), 20(B), 20(C), 21, 22(A), 22(D), 23 and 24, Respondent FirstEnergy has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

28. (A) The unfair labor practices of Respondent CEI described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

(B) The unfair labor practices of Respondent FirstEnergy described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that commencing at a date, time and place to be designed later, a hearing will be conducted before an administrative law judge of the Board on the allegations in this complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this complaint within 14 days from service of it, and that, unless Respondent does so, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceeding Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Cleveland, Ohio this 1st day of April 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

Attachments

Scott J. Rubin
Attorney • Consultant

3 Lost Creek Drive • Selinsgrove, PA 17870 • (570)743-2233 • Fax: (570)743-8145 • sjrubin@ptd.net

049580

April 21, 1999

KJR

James McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

DOCUMENT
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Re: Application of Duquesne Light Company for
Approval of its Restructuring Plan
Docket No. R-00974104

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SECRETARY'S BUREAU
99 APR 22 AM 9:01

Dear Mr. McNulty:


Please be advised that the labor unions that represent employees of Duquesne Light Company have amalgamated into one local. As a result, effective May 1, 1999, System Council U-10 will cease to exist and it will be replaced as a party in the above-captioned case by Local 29, IBEW.

Please revise the service list in this matter to reflect service on the undersigned as counsel for Local 29, IBEW, and on Local 29 directly as follows:

Timothy Moran, Business Manager
Local 29, IBEW
986 Greentree Road
Pittsburgh, PA 15220
telephone: 412-922-6969
fax: 412-922-5649

If you or any of the parties have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,


Scott J. Rubin
Counsel for Local 29, IBEW

cc: All parties of record

JOHN & HENGERER
A LAW PARTNERSHIP
1200 17TH STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20036-3013

May 20, 1999

DOUGLAS F. JOHN
EDWARD W. HENGERER
KEVIN M. SWEENEY
KIM M. CLARK
GORDON J. SMITH
JOELLE K. OGG
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(202) 429-8805

Via Overnight Mail

James J. McNulty
Secretary
Pennsylvania Public Utilities Commission
Room B-20, North Office Building
Commonwealth & North Street
Harrisburg, Pennsylvania 17120

DOCKETED

MAY 27 1999

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MAY 20 1999

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Secretary McNulty:

This letter is to inform the Public Utilities Commission (PUC) that Duke Energy Trading and Marketing, L.L.C. (DETM) would like to withdraw from the following cases before the PUC in which DETM has intervened. DETM has come to the conclusion that its interests do not warrant continuing as an active participant in the following cases.

- Docket No. R-00973981, *Application of West Penn Power Company*
- Docket No. R-00974008, *Application of Metropolitan Edison Company*
- Docket No. R-00974009, *Application of Pennsylvania Electric Company*
- Docket No. R-00974104, *Application of Duquesne Light Company*

DETM also requests that the PUC remove DETM from the applicable service lists. If you have any questions concerning this issue, please contact our office. Thank you for your attention to this matter.

Sincerely,



Kevin D. Ryan, Esq.

Counsel for
Duke Energy Trading and
Marketing, L.L.C.

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SRB

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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May 26, 1999

By Overnight Delivery

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James J. McNulty
 Secretary
 Office of the Prothonotary
 Pennsylvania Public Utility Commission
 North Office Building
 Harrisburg, Pa. 17105-3265

MAY 26 1999


PA PUBLIC UTILITY COMMISSION
 SECRETARY'S BUREAU

Re: Duquesne Light Company Restructuring Case,
Docket No. R-00974104

Dear Secretary McNulty:

Duquesne Light Company hereby provides notice to all parties that, as agreed by the participants at the technical conference that was held May 12, 1999, comments on the generation exchange with FirstEnergy Corp. will be due June 7, 1999. Also as discussed at the technical conference, Duquesne is enclosing a revision to the accounting protocols to correct an error respecting the calculation of deferred taxes.

Respectfully submitted,



John S. Moot
 Counsel for Duquesne Light Company

cc: All active parties (via facsimile)
 All persons on official service list (via U.S. mail)

Correction of Computational Error in Accounting Protocols

Auction Plan and Intervenor Comments

Duquesne's August 27, 1998 Generation Auction Plan proposed an accounting protocol in Appendix G to calculate offset credits for stranded costs and deferred taxes based on the after-tax proceeds from the auction. The protocol accounted for stranded costs as of the date of the closing of the auction sale.

In their filed comments on the Auction Plan and in technical sessions held in September and October of 1998, the OCA and DII questioned Duquesne's recovery of the FAS 109 Regulatory Asset if auction proceeds were accounted for on an after-tax basis. The OCA and DII contrasted Duquesne's after-tax approach with the pre-tax approach agreed to in the settlement with GPU, which allowed the recovery of FAS 109 Regulatory Assets. The OCA and DII also questioned Duquesne's plan to account for stranded costs as of the date of closing.

Reply Comments and May 3rd Application

Duquesne's November 23, 1998 Reply Comments agreed with the OCA/DII position that if the auction proceeds are reconciled on an after-tax basis, then Duquesne does not also need to recover the FAS 109 Regulatory Asset balance of \$179.00 million (and associated deferred tax balance of \$57.48 million). As well, the Reply Comments proposed a "Method B" accounting protocol that accounted for stranded costs as of January 1, 1999.

On May 3, 1999, Duquesne sought approval for the "Method B" accounting protocols as part of the Application of Duquesne Light Company for Certificate of Public Convenience (the "Application") seeking approval of the generation swap with FEC. Appendix E to the Application contained the revised accounting protocols and reflected the final agreement with FEC on the swap contained in the executed swap documents.

Computational Error in Appendix E

The accounting protocols for the Auction should credit no more (or less) than the Net Auction Proceeds to reduce recoverable stranded cost and deferred tax balances¹. Properly calculated, recoverable stranded costs should be reduced by the amount of after-tax auction proceeds and recoverable deferred taxes should be reduced by the amount of current (or cash) taxes paid. However, Appendix E to the Application contained a computational error in the calculation of the offset credit for deferred taxes that would result in total reductions exceeding the Net Auction Proceeds. The error was a calculation of the required reduction to deferred taxes as if the tax basis of the assets were equal to zero. If the tax basis of the assets sold is greater than zero -- as is the

¹ The proper allocation of the Net Auction Proceeds between reductions to stranded costs and deferred taxes depends on the tax basis at the time of sale. As well, because of the timing difference between the closing date and the year-end 1998 calculation of stranded cost, the reductions are properly present valued to January 1, 1999 under Method B.

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case for Duquesne's assets -- this will result in too large an offset for deferred taxes (i.e., in excess of the cash taxes actually paid). As such, the total of both reductions is greater than the Net Auction Proceeds.

Effect of Correcting Appendix E Error

The correction of the deferred tax credit calculation in the auction example presented in Appendix E is shown on Revised Page 4a. To simplify the presentation, the after-tax administratively determined market value of (\$110.95) million is deleted and replaced by the Market Value Offset Credit of (\$328.64) million. This credit represents the After-tax Auction Proceeds discounted to January 1, 1999. Similarly, the Deferred Tax Offset Credit of (\$114.09) million represents the Current Taxes payable on closing discounted to January 1, 1999. The sum of the Market Value Offset Credit and the Deferred Tax Offset Credit is equal to Net Auction Proceeds discounted to January 1, 1999.

The correction of the deferred tax credit calculation in the Appendix E example results in a recoverable deferred tax balance at January 1, 1999 of \$560.22 million. This correction is also reflected in the amortization calculations shown on Revised Pages 5a and 7a. After making the correction, and accounting for both the offset credits and the elimination of the FAS 109 Regulatory Asset, stranded costs are still reduced by a total of \$396.69 million and the associated deferred tax balances are reduced by a total of \$92.88 million, as compared to the allowed amounts under a standalone administrative determination.

Minimum Commitment

The minimum commitment by FEC is adequate to ensure ratepayers receive no less than the *after-tax* \$110.95 million plant valuation contained in the Restructuring Order. That is, the After-tax Auction Proceeds will always be greater than or equal to \$110.95 million. This equates to a Total Stranded Generation as of January 1, 1999 of \$1,102.96 million and a corresponding amount of deferred taxes of \$545.66 million, for a combined recovery for Total Stranded Generation of \$1,648.62 million. See Appendix E (at 1a). The minimum commitment therefore ensures that *total* stranded cost recovery will not exceed the sum of \$1,648.62 million for both deferred taxes and stranded generation.²

² Footnote 7 (page 11) of the Application incorrectly suggested that there are two "caps," one applicable to stranded generation and one applicable to deferred taxes. As indicated above, however, there is a single cap applicable to the *total* amount of both items, or \$1,648.62 million. It also should be noted that this guarantee applies only to Total Stranded Generation and does not cap the amount of stranded cost or deferred tax recovery for Decommissioning or Regulatory Assets shown in Appendix E (at 1a).

APPENDIX E
ACCOUNTING PROTOCOLS
FOR DUQUESNE GENERATION AUCTION

As required by the Commission, the proceeds from the auction conducted pursuant to this Auction Plan will be used to determine the stranded costs of Duquesne for the Company's generation. This section will discuss the accounting protocols necessary to establish a market-based stranded cost valuation for generation from the auction proceeds and to reconcile that actual valuation with the collection of interim CTC charges¹ based on the generation credits from Duquesne's Pilot.

A. Net Auction Proceeds

The net auction proceeds ("Net Auction Proceeds") from the transfer of all divested Utility Assets² shall be defined as the sum of the sales prices paid by

¹ The Commission's August 13, 1998 Opinion and Order on Duquesne's compliance filing (the "Compliance Order") adopted the Company's proposal for the interim CTC charges. Compliance Order at 12.

² Generating assets auctioned by Duquesne (including the assets exchanged with FirstEnergy Corporation ("FEC")) are included for purposes of determining stranded costs and are considered to be Utility Assets. Pursuant to the Generation Exchange Agreement, the Nuclear Conveyance Agreement and the Electrical Facilities Agreements (collectively the "Swap Agreement") filed with the Commission, Duquesne will auction the wholly-owned fossil generating assets received from FEC (the "FEC Assets") rather than the partial interests in fossil and nuclear generating assets transferred to FEC (the "Transferred Assets"). The sum of the sales prices paid by the new owners for the FEC Assets will be included in the Net Auction Proceeds. The Transferred Assets will not be auctioned and thus not included in the Net Auction Proceeds. In addition, pursuant to the Commission's December 17, 1998 Order, the Net Auction Proceeds will also include the net proceeds from
(continued...)

the new owners less the transaction costs.³ Transaction costs shall include all reasonable incremental expenditures that are assignable to the divested Utility Assets ("Transaction Costs"), including but not limited to:

(i) The costs of developing and implementing this Auction Plan (e.g., fees of outside experts, including investment bankers, engineering and environmental consultants, economic and financial consultants and legal counsel);

(ii) The costs of implementing the Swap Agreement with FEC, including but not limited to:

(A) The costs associated with terminating the Beaver Valley II lease so as to permit the transfer of Beaver Valley II to FEC;

(B) The nuclear decommissioning contributions or payments in excess of \$42.96 million required

² (...continued)
sale of the non-rate base portions of the Brunot Island generating units, the Phillips generating unit and the Duquesne power contracts. However, the book values used in the Commission's administrative determination of stranded costs as of January 1, 1999, will still be used for finally determining stranded costs based on the offset credits to stranded costs and to deferred taxes derived from the market values determined in the auction. In summary, book values are based on Duquesne's original generation assets and market values are based on the generation assets auctioned.

³ The sales price shall be deemed to be zero for any Utility Asset for which a transfer is not completed, whether because no qualifying bids were received or because conditions precedent to such a transfer were not satisfied.

to be made by Duquesne on behalf of or to
FEC;

- (C) The costs of site remediation (i.e., building demolition) for the Shippingport facilities at Beaver Valley;
- (iii) Incremental O & M costs (e.g., associated with the demarcation of facilities at Utility Assets), employee costs, environmental costs and any tax implications relating to the Swap Agreement or this Auction Plan other than those described below under After-tax Auction Proceeds;
- (iv) Incremental capital expenditures (e.g., associated with the demarcation of facilities at Utility Assets or necessary facilities upgrades) relating to the Swap Agreement or the transfers to new owners; and
- (v) The present value of any severance, early retirement, retraining or outplacement service costs payable by Duquesne to or on behalf of employees at the Transferred Assets or the Utility Assets divested pursuant to this Auction Plan.

As an illustrative example assume that the sum of the sales prices for all Utility Assets is equal to \$625 million and that Transaction Costs total \$150 million, including fees of outside experts, the termination of the Beaver Valley II

lease, increased decommissioning contributions, incremental O & M, employee and environmental costs, and incremental divestiture-related capital expenditures. In that event, the Net Auction Proceeds would equal \$475 million or the sum of the sales prices (\$625 million) less the Transaction Costs (\$150 million).

B. After-tax Auction Proceeds

The after-tax gains or losses on the transfer of the auctioned assets will be reflected in determining the after-tax auction proceeds ("After-tax Auction Proceeds") from the sale of Utility Assets under this Auction Plan. The After-tax Auction Proceeds shall be defined as the Net Auction Proceeds less current taxes payable ("Current Taxes") as a result of the transfers of the Utility Assets divested.

Current Taxes are defined as all Pennsylvania or Ohio, and any other applicable gross receipts, excess dividends, property transfer and sales taxes (including applicable surcharges); plus, the difference between the Net Auction Proceeds and the remaining tax basis⁴ of the Utility Assets divested at the date of transfer, multiplied by the then-current combined federal-state income tax rate (currently 41.4935%).

⁴ The net tax effect of the implementing the Swap Agreement and auctioning the FEC Assets and Duquesne's remaining interest in Cheswick, Elrama, Brunot Island, and Phillips is that the tax basis of all auctioned assets will effectively be equal to the tax basis of Duquesne's generating assets as if the Swap Agreement had not been implemented. For purposes of the illustrative example, all references to the "tax basis of Utility Assets" divested are intended to refer to the tax basis of Duquesne's generating assets, including the Transferred Assets, and excluding the FEC Assets.

Again, as an illustrative example, in addition to the above assumptions assume the tax basis of Utility Assets divested is \$180 million on the date of closing, the tax rate is 41.4935% on the date of closing and no other Pennsylvania or Ohio taxes are applicable. In that event, the After-tax Auction Proceeds will equal \$352.59 million, or Net Auction Proceeds (\$475.00 million) less Current Taxes (\$122.41 million) as shown in the table below.

	(\$000)
Sum of Sales Prices	625,000
(Transaction Costs)	<u>(150,000)</u>
Net Auction Proceeds	475,000
(Tax Basis)	<u>(180,000)</u>
Taxable Gain	295,000
Current Taxes @ 41.4935%	<u>(122,406)</u>
After-tax Auction Proceeds	352,594

C. Stand Alone Base Case

The Restructuring Order includes a determination of stranded costs based on an administrative determination of the after-tax market value of Duquesne's generating assets as of year-end 1998 equal to \$110.95 million.

The Stand Alone Base Case for Duquesne is attached as Appendix E (at 1a).⁵ This table presents a revised Appendix B from the Restructuring Order,

⁵ Duquesne notes that page 1a includes \$25 million in deferred fuel costs as a recoverable
(continued...)

with an additional column to show the corrections to the Commission's deferred tax calculation from the Compliance Order.⁶ A copy of the Stranded Cost Allowance from the Compliance Order is reproduced in Appendix E (at 2a).

Three changes are necessary to properly reflect the administrative determination of stranded costs for Duquesne on a stand alone basis. First, the Compliance Order Stranded Cost Allowance in Appendix E (at 2a) includes the generation Merger Savings of \$152.28 million. In a non-merger scenario, no generation merger savings are obtainable. Second, pursuant to the Compliance Order the Deferred Fuel Cost Regulatory Asset should be shown at its updated value of \$25.00 million because Duquesne has been denied a roll-in of its ECR at the higher value reflected in the original compliance filing. Third, the Commission's calculation of \$493 million for deferred taxes is in error, and must be restated as \$653 million on a stand alone basis, most of which is attributable to the foregone merger synergies. The corrections to the deferred tax calculation are summarized below:

⁵ (...continued)
regulatory asset, while the Commission's orders only permit Duquesne to recover \$6.73 million. This figure is provided for illustrative purposes only and does not affect the accounting methodology; Duquesne recognizes that \$6.73 million is the approved amount pending the appeal of this issue.

⁶ The Compliance Order was issued on August 13 and contains certain calculational errors. Duquesne corrected those errors in its revised compliance filing, and a description of the main corrections is summarized here.

Deferred Tax Item	(\$Million)
a. Generating Plant Book ⁷	372.46
Corrected Value	<u>411.34</u>
a. Increase	38.88
b. Merger Savings	(107.99)
Corrected Value	<u>0.00</u>
b. Increase	107.99
c. Deferred Fuel Costs	4.77
Corrected Value	<u>17.73</u>
c. Increase	12.96
Total Increase (a. + b. + c.)	159.83
PA Jurisdictional (at 99.9%)	159.67

D. Reconciliation with Stand Alone Base Case

To reconcile the stranded costs resulting from the actual market value (i.e., the After-tax Auction Proceeds) with the Stand Alone Base Case resulting from the Commission's year-end 1998 administratively determined value of

⁷ For purposes of this summary calculation, the Restructuring Order's understatement of deferred tax balances by \$38.88 million has been attributed solely to Generating Plant Book. Duquesne took exception to this computational error in the Merger Compliance Filing. Page 2, note 2 clearly states that "Appendix A [to the Compliance Filing] also provides a description and break-down of the correct deferred tax balance associated with the Commission's administrative determination of stranded costs, while excluding the deferred taxes associated with disallowed cost items, including BI and Phillips. The Final Order does not explain how the deferred tax balance contained in Appendix D was derived, but it is not correct." The relevant pages of Appendix A to the Compliance Filing are reproduced here in Appendix E (at 3a-3c). The difference between the Commission's undocumented \$493.345 million deferred tax balance and Duquesne's detailed calculation of \$532.188 million (Appendix E at 3b) is \$38.88 million, as adjusted for the 99.9% PA jurisdictional factor.

\$110.95 million will require an adjustment to account for the timing of the auction.⁸ Continuing with the example discussed above, assume the asset sales close at year-end 1999 and the After-tax Auction Proceeds (as calculated above) are \$352.59 million. This amount cannot be reconciled directly (i.e., by subtraction) with the Commission's \$110.95 million administratively determined value because of the timing difference.

However, the \$352.59 million value can be present valued as a future after-tax cash flow (at the Commission's approved⁹ after-tax discount rate of 7.29%) and we can thereby determine the after-tax market value as of January 1, 1999. The resulting year-end 1998 value is \$328.64 million ($\$352.59 \text{ million} / 1.0729$).

Continuing with the example discussed above, Appendix E (at 4a) shows the changes to the Stand Alone Base Case that will result from calculating the offset credits at January 1, 1999. First, the administratively determined market value of \$110.95 million credited by the Commission is replaced by the offset credit ("Market Value Offset Credit") of \$328.64 million against recoverable stranded costs.¹⁰ An equivalent credit for the recoverable deferred taxes is calculated by

⁸ The Commission recognizes that the divestiture may not be accomplished by January 1, 1999 and requires that the actual stranded utility generation value be reconciled. See Restructuring Order at 81-82.

⁹ Restructuring Order at 192.

¹⁰ This assumes the closing occurs at year-end 1999. An earlier or later closing would require a different adjustment. The future value of \$352.59 million would be discounted for the actual number of days between January 1, 1999 and the date(s) of closing at an annual rate
(continued...)

discounting the Current Taxes payable on the sale to January 1, 1999. The deferred taxes¹¹ of \$78.69 million credited by the Commission are replaced by the offset credit ("Deferred Tax Offset Credit") of \$114.09 million against recoverable deferred taxes. Continuing with our example, the derivation of these credits is shown in the table below.

	(\$000)
After-tax Auction Proceeds	352,594
January 1, 1999 Market Value (at 7.29%)	328,637
Market Value Offset Credit	(328,637)
Current Taxes	122,406
January 1, 1999 Current Taxes (at 7.29%)	114,089
Deferred Tax Offset Credit	(114,089)

In addition to the offset credits shown in Appendix E (at 4a), if the auction proceeds are reconciled on an after-tax basis, as illustrated above, then Duquesne does not also need to recover the FAS 109 Regulatory Asset balance of \$179.00 million (and associated deferred tax balance of \$57.48 million). Thus, as illustrated in Appendix E (at 4a) the FAS 109 Regulatory Asset (and associated deferred tax balance) should be eliminated from otherwise recoverable stranded costs

¹⁰ (...continued)
of 7.29%.

¹¹ Associated with the administratively determined market value of \$110.95 million. See Appendix E Page (at 1a).

if the Company's proposal to account for auction proceeds on a net of tax basis is accepted. Accounting for both the offset credits and the elimination of the FAS 109 Regulatory Asset, stranded costs are reduced by a total of \$396.69 million and the associated deferred tax balances are reduced by a total of \$92.88 million¹².

E. Reconciliation with Interim CTC Revenues

The Restructuring Order provides if Duquesne divests its generating assets through an auction process, that beginning in 1999 an interim CTC may be charged to shopping customers based on the Pilot credits. Duquesne filed class specific residual CTC tariffs based on the Pilot credits in its Stand Alone Compliance Filing. The resulting Company average 1999 CTCs are approximately 2.7 cents (excluding GRT). The CTC revenues collected prior to completion of the auction will be allocable to recovery of stranded costs, return on the unamortized balance of stranded costs, and amortization of deferred taxes. However, the magnitude of the Market Value Offset Credit and the Deferred Tax Offset Credit will not be known until the auction is completed, and the reconciliation will be done at that time.

Continuing with the example discussed above, Appendix E (at 5a) shows the CTC revenues that will be collected under the Pilot credit tariffs, assuming the forecast level of sales during the interim period is realized. At 1,043,241,887 kWh/month, the monthly 1999 CTC revenues recovered under the Pilot tariffs will

¹² After application of the 99.9% PA jurisdictional allocation, the actual reduction in stranded costs is \$396.29 million and the reduction in the associated deferred tax balance is \$92.79 million.

be \$28,424,169. The allocation of the Pilot CTC revenues to return and amortization is based on the 99.9% jurisdictional 1999 CTC beginning balance of \$1,105.66 million and the 1999 DT beginning balance of \$560.22 million.

The amount of Pilot CTC revenues allocated to return is based on the Commission's allowed 11% CTC return as calculated monthly on the unamortized CTC balance. The amount of Pilot CTC revenues allocated to recovery of the stranded cost balance and to the amortization of the deferred tax balance is determined such that the reduction in each balance is proportionate. Thus, during the interim Pilot CTC period, the proportion of total dollar value of recovery of stranded costs (calculated as a percentage of the 1999 beginning stranded cost balance) will be equal to the proportion of total dollar value of amortization of deferred taxes (calculated as a percentage of the 1999 beginning deferred tax balance). The sum of the three components so calculated (return, recovery and amortization) will be equal to the total dollar value of Pilot CTC revenues collected.

Based on the 1999 CTC revenue collections (under the CTC Pilot credit tariffs) and the above allocation between the stranded cost and deferred tax components, the 1999 Ending Stranded Cost Balance will be \$955,021,646 and the 1999 Ending Deferred Tax Balance will be \$483,897,260.

F. Post-Auction CTC Design

Based on the above reconciliation of the year 2000 starting balances, the new balances can be reamortized using the same methodology as approved in the Compliance Order.¹³

Appendix E (at 6a) shows the CTC revenue requirements¹⁴ in 2000 and later that will result from targeting the Commission's approved Company average shopping credits set out in the Restructuring Order. Appendix E (at 7a) sets out the monthly equivalent of these CTC revenue requirements (i.e., for 2000 the monthly CTC revenue requirement is \$309,939,205 divided by 12, or \$25,828,267). Appendix E (at 6a) shows how the remaining CTC and deferred tax balances are amortized over the remaining transition period. In each year the percentage amortization of the remaining CTC asset and remaining deferred tax balance are equivalent. Using the shopping credits from the Commission's Restructuring Order and the sales forecast and T&D rates from the most recent Company compliance

¹³ The Compliance Order (at 15-16) requires Duquesne to calculate CTC revenue requirements that would produce average shopping credits equal to those contained in the Restructuring Order. The resulting Company-wide CTC revenue requirements would be allocated to rate classes based on the production cost allocation methodology set out in Duquesne's compliance filing. Similarly, the actual reconciliation of the Pilot CTC revenues for each class would be based on the allocation of the total stranded cost and deferred tax balances at the beginning of 1999 using the production cost allocators. The annual reconciliation of class CTC revenues to class CTC revenue requirements, would be performed on a class specific basis with a recalculation of monthly recovery, return and deferred tax amortization based on actual sales volumes of that class. Within each year, the monthly pro-forma CTC revenue requirements provide for a recovery of stranded costs at a fully grossed-up return of 11% and a proportionate amortization of the associated deferred tax balance. Any underrecovery or overrecovery resulting from differences between forecast and actual sales for a particular class, would result in a lengthening or shortening of the recovery period for such class.

¹⁴ Originally filed November 5, 1998 as part of Duquesne's revised compliance filing.

filing, the CTC and Deferred Tax balances are almost fully amortized by year-end 2005.

**Stranded Cost Allowance
with Associated Deferred Taxes
(\$Millions)**

Stand Alone Base Case

<u>Category/Item:</u>	<u>Deferred Taxes</u>	<u>Amount</u>
Duquesne Light Restructuring		
Book Value:		
Generating Plant Book Value	\$ 411.34	\$ 852.03
Beaver Valley 2 Lease PV	\$ 213.01	\$ 300.35
M&S Fuel Related Sunk Costs	\$ -	\$ -
Working Capital	\$ -	\$ 61.53
Costs Independent of Operation	\$ -	\$ -
Offset Credit	\$ (114.09)	\$ (328.64)
Total Stranded Generation:	\$ 510.26	\$ 885.27
Decommissioning:		
Nuclear Decommissioning	\$ -	\$ 42.96
Fossil Decommissioning	\$ -	\$ -
Total Decommissioning	\$ -	\$ 42.96
Regulatory Assets:		
FAS 109 (including Plant reversal)	\$ -	\$ -
Post '05 Unamortized Debt Costs	\$ 10.67	\$ 18.67
Pre '06 Unamortized Debt Costs	\$ 6.82	\$ 9.61
Deferred Rate Synch. (Early Window)	\$ 1.87	\$ 23.50
Deferred Employee Costs	\$ -	\$ 14.24
Deferred Nuclear Maintenance	\$ 1.35	\$ 1.90
US DOE Decommissioning	\$ 2.33	\$ 3.25
Deferred Coal Costs	\$ -	\$ -
Deferred Caretaker Costs	\$ -	\$ -
Pre-Accrued Nuclear Outage	\$ -	\$ -
BV2 Training Costs	\$ 0.84	\$ 1.58
Low Level Radioactive Waste	\$ -	\$ 2.27
Coal Cost Equalization	\$ -	\$ 0.12
Transition Costs	\$ 7.51	\$ 10.59
SFAS 106 Deferral	\$ 1.40	\$ 1.97
Deferred Fuel Costs	\$ 17.73	\$ 25.00
Other Regulatory Assets	\$ -	\$ 0.53
Consumer Education	\$ -	\$ 10.00
Sale-Leaseback Tax Effect (Gain)	\$ -	\$ 55.13
Deferred Rate Synch. Costs	\$ -	\$ -
BV2 Tax Effect	\$ -	\$ 0.17
Total Regulatory Assets:	\$ 50.52	\$ 178.53
PA Jurisdictional % (1-FERC Allocation)	99.900%	99.900%
TOTAL STRANDED, STAND ALONE WITH JURISDICTIONAL ALLOCATION	\$ 560.223	\$ 1,105.658

First Year Pilot Revenues

	Revenue Requirements		Allocation of Pilot Revenues
Average Monthly CTC	\$ 22,063,694	77.62%	\$ 22,063,694
Average Monthly Deferred Tax	\$ 6,360,475	22.38%	\$ 6,360,475
Total Monthly	\$ 28,424,169	100.00%	\$ 28,424,169

Total CTC Revenue Requirement: Return Of & On Stranded Costs + Return Of Unamortized Cost Deferred Tax Balance
Total Monthly CTC Revenues based on Pilot Credit Average Residual CTC of \$0.027246.

Month	Monthly kwh	Deferred Tax	Stranded	Deferred Tax Beg. of Month	Stranded Cost Revenues	Deferred Tax Revenues	Total Monthly CTC Revenues	Def Tax %	Stranded %	Return %	Amort %
		\$ 560,222,955	\$ 1,105,658,356								
1	1,043,241,887	\$ 1,105,658,356	\$ 560,222,955	\$ 22,273,731	\$ 6,150,438	\$ 28,424,169	21.64%	78.36%	35.66%	42.70%	
2	1,043,241,887	\$ 1,093,519,826	\$ 554,072,517	\$ 22,236,312	\$ 6,187,857	\$ 28,424,169	21.77%	78.23%	35.27%	42.96%	
3	1,043,241,887	\$ 1,081,307,446	\$ 547,884,660	\$ 22,198,665	\$ 6,225,504	\$ 28,424,169	21.90%	78.10%	34.87%	43.23%	
4	1,043,241,887	\$ 1,069,020,766	\$ 541,659,157	\$ 22,160,789	\$ 6,263,380	\$ 28,424,169	22.04%	77.96%	34.48%	43.49%	
5	1,043,241,887	\$ 1,056,859,334	\$ 535,395,777	\$ 22,122,683	\$ 6,301,486	\$ 28,424,169	22.17%	77.83%	34.08%	43.75%	
6	1,043,241,887	\$ 1,044,222,696	\$ 529,094,291	\$ 22,084,345	\$ 6,339,824	\$ 28,424,169	22.30%	77.70%	33.68%	44.02%	
7	1,043,241,887	\$ 1,031,710,393	\$ 522,754,467	\$ 22,045,773	\$ 6,378,395	\$ 28,424,169	22.44%	77.56%	33.27%	44.29%	
8	1,043,241,887	\$ 1,019,121,965	\$ 516,376,072	\$ 22,006,967	\$ 6,417,202	\$ 28,424,169	22.58%	77.42%	32.87%	44.56%	
9	1,043,241,887	\$ 1,006,456,949	\$ 509,958,870	\$ 21,967,925	\$ 6,456,244	\$ 28,424,169	22.71%	77.29%	32.46%	44.83%	
10	1,043,241,887	\$ 993,714,879	\$ 503,502,627	\$ 21,928,645	\$ 6,495,523	\$ 28,424,169	22.85%	77.15%	32.05%	45.10%	
11	1,043,241,887	\$ 980,895,287	\$ 497,007,103	\$ 21,889,126	\$ 6,535,042	\$ 28,424,169	22.99%	77.01%	31.63%	45.38%	
12	1,043,241,887	\$ 967,997,701	\$ 490,472,061	\$ 21,849,367	\$ 6,574,801	\$ 28,424,169	23.13%	76.87%	31.22%	45.65%	

Ending Deferred Tax Balance	\$ 483,897,260
Ending Stranded Balance	\$ 955,021,646

Decomposition of Pilot Revenues

Month	Return	Recovery	Ending Balance
1	\$ 10,135,202	\$ 12,138,529	\$ 1,093,519,826
2	\$ 10,023,932	\$ 12,212,380	\$ 1,081,307,446
3	\$ 9,911,985	\$ 12,286,680	\$ 1,069,020,766
4	\$ 9,799,357	\$ 12,361,432	\$ 1,056,659,334
5	\$ 9,686,044	\$ 12,436,639	\$ 1,044,222,696
6	\$ 9,572,041	\$ 12,512,303	\$ 1,031,710,393
7	\$ 9,457,345	\$ 12,588,428	\$ 1,019,121,965
8	\$ 9,341,951	\$ 12,665,016	\$ 1,006,456,949
9	\$ 9,225,855	\$ 12,742,069	\$ 993,714,879
10	\$ 9,109,053	\$ 12,819,592	\$ 980,895,287
11	\$ 8,991,540	\$ 12,897,586	\$ 967,997,701
12	\$ 8,873,312	\$ 12,976,055	\$ 955,021,646

Post-Auction CTC Calculation							
Total CTC Revenue Requirement: Return Of & On Stranded Costs + Return Of Unamortized Cost Deferred Tax Balance							
After Market Value Offset Credit and Deferred Tax Offset Credit							
	Deferred Tax	\$	483,897,260		Stranded	Monthly Return:	Annual Return:
	Stranded	\$	955,021,646			0.9167%	11.000%
Month	Monthly kwh	Stranded Beg. of Month	Deferred Tax Beg. of Month	Stranded Cost Revenue Requirement	Monthly Return: Revenue Req.	Total Monthly Revenue Req.	
13	1,116,405,607	\$ 955,021,646	\$ 483,897,260	\$ 20,086,446	\$ 5,741,821	\$ 25,828,267	
14	1,116,405,607	\$ 943,689,565	\$ 478,155,439	\$ 20,051,513	\$ 5,776,754	\$ 25,828,267	
15	1,116,405,607	\$ 932,288,539	\$ 472,378,685	\$ 20,016,368	\$ 5,811,900	\$ 25,828,267	
16	1,116,405,607	\$ 920,818,150	\$ 466,566,786	\$ 19,981,008	\$ 5,847,259	\$ 25,828,267	
17	1,116,405,607	\$ 909,277,975	\$ 460,719,526	\$ 19,945,433	\$ 5,882,634	\$ 25,828,267	
18	1,116,405,607	\$ 897,667,590	\$ 454,836,693	\$ 19,909,642	\$ 5,918,625	\$ 25,828,267	
19	1,116,405,607	\$ 885,986,567	\$ 448,918,068	\$ 19,873,633	\$ 5,954,634	\$ 25,828,267	
20	1,116,405,607	\$ 874,234,477	\$ 442,963,434	\$ 19,837,405	\$ 5,990,862	\$ 25,828,267	
21	1,116,405,607	\$ 862,410,888	\$ 436,972,572	\$ 19,800,957	\$ 6,027,310	\$ 25,828,267	
22	1,116,405,607	\$ 850,515,364	\$ 430,945,262	\$ 19,764,287	\$ 6,063,980	\$ 25,828,267	
23	1,116,405,607	\$ 838,547,467	\$ 424,881,282	\$ 19,727,394	\$ 6,100,873	\$ 25,828,267	
24	1,116,405,607	\$ 826,506,759	\$ 418,780,409	\$ 19,690,276	\$ 6,137,991	\$ 25,828,267	
25	1,134,773,443	\$ 814,392,794	\$ 412,642,418	\$ 19,286,954	\$ 5,989,898	\$ 25,276,852	
26	1,134,773,443	\$ 802,571,108	\$ 406,652,521	\$ 19,250,512	\$ 6,026,340	\$ 25,276,852	
27	1,134,773,443	\$ 790,677,498	\$ 400,626,181	\$ 19,213,847	\$ 6,063,004	\$ 25,276,852	
28	1,134,773,443	\$ 778,711,527	\$ 394,563,177	\$ 19,176,980	\$ 6,099,891	\$ 25,276,852	
29	1,134,773,443	\$ 766,672,756	\$ 388,483,285	\$ 19,139,848	\$ 6,137,003	\$ 25,276,852	
30	1,134,773,443	\$ 754,560,741	\$ 382,326,282	\$ 19,102,511	\$ 6,174,341	\$ 25,276,852	
31	1,134,773,443	\$ 742,375,037	\$ 376,151,941	\$ 19,064,946	\$ 6,211,905	\$ 25,276,852	
32	1,134,773,443	\$ 730,115,195	\$ 369,940,036	\$ 19,027,153	\$ 6,249,698	\$ 25,276,852	
33	1,134,773,443	\$ 717,780,765	\$ 363,690,338	\$ 18,989,130	\$ 6,287,721	\$ 25,276,852	
34	1,134,773,443	\$ 705,371,291	\$ 357,402,616	\$ 18,950,876	\$ 6,325,976	\$ 25,276,852	
35	1,134,773,443	\$ 692,886,319	\$ 351,076,641	\$ 18,912,389	\$ 6,364,463	\$ 25,276,852	
36	1,134,773,443	\$ 680,325,388	\$ 344,712,178	\$ 18,873,667	\$ 6,403,184	\$ 25,276,852	
37	1,153,788,363	\$ 667,688,037	\$ 338,308,993	\$ 18,456,951	\$ 6,250,735	\$ 24,707,686	
38	1,153,788,363	\$ 655,351,560	\$ 332,058,258	\$ 18,418,921	\$ 6,288,765	\$ 24,707,686	
39	1,153,788,363	\$ 642,940,029	\$ 325,769,494	\$ 18,380,660	\$ 6,327,025	\$ 24,707,686	
40	1,153,788,363	\$ 630,452,985	\$ 319,442,468	\$ 18,342,167	\$ 6,365,519	\$ 24,707,686	
41	1,153,788,363	\$ 617,889,971	\$ 313,076,950	\$ 18,303,439	\$ 6,404,247	\$ 24,707,686	
42	1,153,788,363	\$ 605,250,523	\$ 306,672,703	\$ 18,264,476	\$ 6,443,210	\$ 24,707,686	
43	1,153,788,363	\$ 592,534,177	\$ 300,229,493	\$ 18,225,275	\$ 6,482,410	\$ 24,707,686	
44	1,153,788,363	\$ 579,740,465	\$ 293,747,083	\$ 18,185,838	\$ 6,521,849	\$ 24,707,686	
45	1,153,788,363	\$ 566,868,916	\$ 287,225,234	\$ 18,146,158	\$ 6,561,528	\$ 24,707,686	
46	1,153,788,363	\$ 553,919,057	\$ 280,683,705	\$ 18,106,237	\$ 6,601,448	\$ 24,707,686	
47	1,153,788,363	\$ 540,890,411	\$ 274,062,257	\$ 18,066,074	\$ 6,641,811	\$ 24,707,686	
48	1,153,788,363	\$ 527,782,499	\$ 267,420,646	\$ 18,025,667	\$ 6,682,019	\$ 24,707,686	
49	1,173,544,032	\$ 514,594,839	\$ 260,738,627	\$ 17,521,180	\$ 6,487,654	\$ 24,008,833	
50	1,173,544,032	\$ 501,790,779	\$ 254,250,973	\$ 17,481,709	\$ 6,527,124	\$ 24,008,833	
51	1,173,544,032	\$ 488,908,818	\$ 247,723,848	\$ 17,441,998	\$ 6,566,835	\$ 24,008,833	
52	1,173,544,032	\$ 475,948,485	\$ 241,157,013	\$ 17,402,045	\$ 6,606,788	\$ 24,008,833	
53	1,173,544,032	\$ 462,909,301	\$ 234,550,225	\$ 17,361,850	\$ 6,646,984	\$ 24,008,833	
54	1,173,544,032	\$ 449,790,786	\$ 227,903,241	\$ 17,321,410	\$ 6,687,424	\$ 24,008,833	
55	1,173,544,032	\$ 436,592,459	\$ 221,215,818	\$ 17,280,723	\$ 6,728,110	\$ 24,008,833	
56	1,173,544,032	\$ 423,313,833	\$ 214,487,708	\$ 17,239,790	\$ 6,769,044	\$ 24,008,833	
57	1,173,544,032	\$ 409,954,420	\$ 207,718,664	\$ 17,198,607	\$ 6,810,226	\$ 24,008,833	
58	1,173,544,032	\$ 396,513,729	\$ 200,908,438	\$ 17,157,174	\$ 6,851,660	\$ 24,008,833	
59	1,173,544,032	\$ 382,991,264	\$ 194,056,778	\$ 17,115,488	\$ 6,893,345	\$ 24,008,833	
60	1,173,544,032	\$ 369,386,529	\$ 187,163,433	\$ 17,073,549	\$ 6,935,284	\$ 24,008,833	
61	1,194,296,868	\$ 355,699,024	\$ 180,228,148	\$ 16,479,580	\$ 6,697,901	\$ 23,177,481	
62	1,194,296,868	\$ 342,480,018	\$ 173,530,247	\$ 16,438,830	\$ 6,738,651	\$ 23,177,481	
63	1,194,296,868	\$ 329,180,589	\$ 166,791,596	\$ 16,397,832	\$ 6,779,649	\$ 23,177,481	
64	1,194,296,868	\$ 315,800,246	\$ 160,011,948	\$ 16,356,584	\$ 6,820,896	\$ 23,177,481	
65	1,194,296,868	\$ 302,338,497	\$ 153,191,052	\$ 16,315,088	\$ 6,862,394	\$ 23,177,481	
66	1,194,296,868	\$ 288,794,847	\$ 146,328,657	\$ 16,273,336	\$ 6,904,145	\$ 23,177,481	
67	1,194,296,868	\$ 275,168,798	\$ 139,424,512	\$ 16,231,331	\$ 6,946,150	\$ 23,177,481	
68	1,194,296,868	\$ 261,459,847	\$ 132,478,362	\$ 16,189,070	\$ 6,988,410	\$ 23,177,481	
69	1,194,296,868	\$ 247,667,492	\$ 125,489,952	\$ 16,146,553	\$ 7,030,927	\$ 23,177,481	
70	1,194,296,868	\$ 233,791,224	\$ 118,459,025	\$ 16,103,777	\$ 7,073,704	\$ 23,177,481	
71	1,194,296,868	\$ 219,830,534	\$ 111,385,321	\$ 16,060,741	\$ 7,116,740	\$ 23,177,481	
72	1,194,296,868	\$ 205,784,906	\$ 104,268,581	\$ 16,017,443	\$ 7,160,038	\$ 23,177,481	
73	1,215,630,037	\$ 191,653,825	\$ 97,108,543	\$ 15,168,810	\$ 6,795,680	\$ 21,964,490	
74	1,215,630,037	\$ 178,241,843	\$ 90,312,863	\$ 15,127,465	\$ 6,837,025	\$ 21,964,490	
75	1,215,630,037	\$ 164,748,261	\$ 83,475,838	\$ 15,085,868	\$ 6,878,621	\$ 21,964,490	
76	1,215,630,037	\$ 151,172,585	\$ 76,597,217	\$ 15,044,019	\$ 6,920,471	\$ 21,964,490	
77	1,215,630,037	\$ 137,514,315	\$ 69,676,746	\$ 15,001,915	\$ 6,962,575	\$ 21,964,490	
78	1,215,630,037	\$ 123,772,948	\$ 62,714,171	\$ 14,959,555	\$ 7,004,935	\$ 21,964,490	
79	1,215,630,037	\$ 109,947,979	\$ 55,709,235	\$ 14,916,937	\$ 7,047,553	\$ 21,964,490	
80	1,215,630,037	\$ 96,038,889	\$ 48,661,882	\$ 14,874,059	\$ 7,090,430	\$ 21,964,490	
81	1,215,630,037	\$ 82,045,196	\$ 41,571,252	\$ 14,830,921	\$ 7,133,568	\$ 21,964,490	
82	1,215,630,037	\$ 67,966,355	\$ 34,437,683	\$ 14,787,521	\$ 7,176,969	\$ 21,964,490	
83	1,215,630,037	\$ 53,801,859	\$ 27,260,714	\$ 14,743,856	\$ 7,220,634	\$ 21,964,490	
84	1,215,630,037	\$ 39,551,187	\$ 20,040,081	\$ 14,699,826	\$ 7,264,564	\$ 21,964,490	
85	1,237,187,874	\$ 25,213,813	\$ 12,775,517	\$ 14,521,752	\$ 7,240,877	\$ 21,762,630	
86	1,237,187,874	\$ 10,923,188	\$ 5,534,640	\$ 14,477,699	\$ 7,284,931	\$ 21,762,630	

LAUREN S. McANDREWS
Senior Attorney - Environmental and Energy

ORIGINAL  **ALLEGHENY
TELEDYNE**
INCORPORATED

1000 Six PPG Place
Pittsburgh, PA 15222-5479
Phone: 412.394.2974
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June 2, 1999

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James J. McNulty
Secretary
Pennsylvania Public Utilities Commission
Room B-20, North Office Building
Commonwealth & North Street
Harrisburg, PA 17120

**DOCUMENT
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Secretary McNulty:

This letter is to inform the Pennsylvania Public Utilities Commission ("PUC") that Allegheny Teledyne Incorporated is withdrawing from the Application of Duquesne Light Company, Docket No. R-00974104. Allegheny Teledyne has concluded that its interests do not warrant continuing as an active participant in the case. Kindly remove Allegheny Teledyne Incorporated from the service list.

Very truly yours,


Lauren S. McAndrews

LSM:rg

cc: Parties of Record

BTI

37



Bob Taft, Governor

Alan R. Schriber, Chairman

ORIGINAL

June 4, 1999

RECEIVED

Mr. Jim McNulty
Secretary's Bureau
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg PA 17105-3265

JUN 07 1999

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Docket R-00974104, Duquesne Light Restructuring Plan

Dear Mr. McNulty:

Eric Levis from your Commission recommended that I contact you to be added to the document distribution service list in the Duquesne Light restructuring proceeding, Docket No. R-00974104. Pending before the Public Utilities Commission of Ohio is a proceeding involving the exchange of generation assets between Duquesne Light and FirstEnergy Corp. (Case No. 98-1636-EL-UNC). Information filed in the Duquesne restructuring proceeding will be useful to the Ohio Commission staff in its evaluation of the generation exchange case.

My mailing address is as follows:

David Hodgden, Deputy Director
Public Utilities Commission of Ohio
180 E Broad St
Columbus, OH 43215-3793

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You can call me at (614)644-8032 if you have any questions. Thank you.

Sincerely,

David Hodgden (signature)
David Hodgden

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JUN 11 1999

DH:ch

EEF

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RC
PB

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

HOSPITAL SHARED SERVICES and
ADMINISTRATIVE RESOURCES, INC.,
Petitioners

v.
PENNSYLVANIA PUBLIC UTILITY
COMMISSION,
Respondent

R-974104

No. 1593 C.D. 1998

NOTICE OF DISCONTINUANCE

This is to notify you that the above-captioned matter has been withdrawn discontinued and ended.

DATE: May 24, 1999

TRIAL COURT NO: 00973981

CP Hulet

DEPUTY PROTHONOTARY/CHIEF CLERK

CERTIFIED FROM THE RECORD
AND ORDER EXIT

MAY 24 1999

CP Hulet
Deputy Prothonotary - Chief Clerk

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LAW BUREAU

LOCAL 270

UTILITY WORKERS UNION OF AMERICA

AFFILIATED WITH THE AFL-CIO

LIGHT-HEAT

POWER-WATER

4205 CHESTER AVENUE

CLEVELAND, OHIO 44103-3615

ORIGINAL



TELEPHONE: (216) 881-0004

FAX: (216) 881-1333

DOCKETED

JUN 14 1999

June 4, 1999

RECEIVED

James J. Mc Nulty
Secretary
Office of the Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, PA. 17105-3265

JUN 4 1999

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. R - 00974104

VIA AIRBORNE EXPRESS

DOCUMENT
FOLDER

Dear Secretary McNulty:

As indicated through past correspondence Local 270 of the Utility Workers Union of America, AFL-CIO (UWUA) is the exclusive bargaining representative in all matters pertaining to wages, hours, working and all other conditions of employment for all Operating, Maintenance and Construction employees. Our members currently work at the Avon Lake Plant. It is one of the FirstEnergy Plants which is going to be auctioned off by the Duquesne Light Company.

We have some major concerns pertaining to our members and our labor organization particularly at the Avon Lake Plant. As indicated in the Generation Exchange Agreement dated March 25, 1999 between Duquesne Light Company, The Cleveland Electric Illuminating Company, Ohio Edison and the Pennsylvania Power Company, under Article VIII Section 8.11 (i), it specifically states that the winning bidder shall not be obligated to assume Local 270's Collective Bargaining Agreement or to recognize UWUA Local 270 as the exclusive bargaining agent. It goes on to state that the winning bidder further shall not be required to make offers of employment to Local 270 employees. (Attachment 1)

This is a violation of the National Labor Relations Act. There are pending complaints and charges issued against both FirstEnergy and the Duquesne Light Company pertaining to these issues.

Enclosed is a (27) page complaint against FirstEnergy pertaining to unfair labor practices committed by FirstEnergy which includes the unlawful implementation of their terms and conditions of employment. This resulted in the unlawful layoff of (485) members. Charges which are contained in this complaint date back to 1996. This complaint was issued on April 1, 1999. (Attachment 2)

EEF

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James J. McNulty
Pennsylvania Public Utility Commission
Docket No. R - 00974104

Judge Ann Aldrich of the United States District Court, Northern District of Ohio, Eastern Division, ruled on April 6, 1999 in the Union's favor ordering FirstEnergy to arbitrate Article XV of our 1993 Agreement which has a direct affect on the transfer of assets and our members at the Avon Lake Plant. FirstEnergy has made themselves unavailable until August 31, 1999 to arbitrate this issue (Attachment 3)

Additional charges have been filed against FirstEnergy with the National Labor Relations Board dated December 28, 1998 over the negotiations pertaining to the transfer of generation assets between FirstEnergy and Duquesne Light Company.
(Attachment 4)

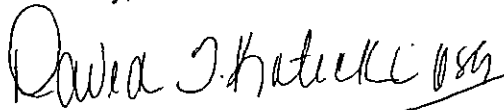
Charges have also been filed against the Duquesne Light Company pertaining to their involvement with the transfer of generation assets. (Attachment 5 & 6)

In reference to the Pennsylvania Public Utility Commissions public meeting held on December 17, 1998, we understand that the Commission directed Duquesne to provide (16) items in its divestiture plan, the last item being that the plan shall set forth transitional issues and the resolution of those issues in a manner that is fair to customers, investors, the employees of the Company, local communities and other affected parties. (Attachment 7)

As indicated by the above enclosed attachments, this divestiture agreement is not fair to the members of Local 270, but also questions the legalities of their actions. We need to have these issues resolved before this asset transfer is completed. I hope you take the above attachments under consideration before approving this transfer.

If you have any questions concerning this issue feel free to contact me at (216) 881-0004.

Sincerely,



David T. Kotecki
President/Local 270
Utility Workers Union of America AFL-CIO

DTK/asq opeiu 1794

cc: H. Peter Burg (without attachments)
FirstEnergy Corporation
Certified Mail Z 196 285 340

David D. Marshall (without attachments)
Duquesne Light Company
Certified Mail Z 196 285 341

JUN 4 1999

Employees", as the case may be, on such date if they are able (i) to return to work within the protected period under the FMLA or such other leave which in any event shall not extend more than twelve (12) weeks after the Auction Closing Date), whichever is applicable, and (ii) to perform the essential functions of their job, with or without a reasonable accommodation.

(k) The FE Subsidiaries are responsible for extending and continuing to extend COBRA Continuation Coverage to all employees and former employees, and qualified beneficiaries of such employees and former employees of the FE Subsidiaries, who become or became entitled to such COBRA Continuation Coverage on or before the Auction Closing Date, including those for whom the Auction Closing Date occurs during their COBRA election period.

(l) The FE Subsidiaries shall pay to each employee of such FE Subsidiaries to whom the Winning Bidder offers employment pursuant to this Section 8.11, all unpaid salary, bonus, and holiday compensation, workers' compensation or other compensation or employment benefits that are payable in cash which have accrued to such employees through and including the Auction Closing Date, at such times as provided under the terms of the applicable compensation or benefit programs. With respect to workers compensation claims of such employees that require payments that continue beyond the Auction Closing Date, the Winning Bidder shall be responsible for such payments. The FE Subsidiaries shall be responsible for initiating the transfer of the claims and the associated risk and liability to the Winning Bidder with either the Ohio or the Pennsylvania Bureau of Workers' Compensation, as appropriate.

(m) The following provisions shall apply with respect to employees who are covered by the UWUA Local 270 Collective Bargaining Agreement ("Local 270 CBA") who are employed in positions at the FE Plant of Avon Lake or, if employed at another location, perform substantially all their work in support of the FE Plant of Avon Lake "Local 270 Employees").

(i) Subject to Section (m)(ii) hereof, the Winning Bidder shall not be obligated to assume the Local 270 CBA or to recognize UWUA Local 270 as the exclusive collective bargaining agent for Local 270 Employees unless otherwise required by federal law as a result of the actions of the Winning Bidder. The Winning Bidder further shall not be required to make offers of employment to Local 270 Employees. The Winning Bidder shall inform the FE Subsidiaries of those Local 270 Employees, if any, to whom the Winning Bidder has made offers of employment not later than 90 days prior to the Auction Closing Date.

(ii) In the event that, not less than fifteen (15) days prior to the date for submission of final, binding bids in the Auction, UWUA Local 270 and the applicable FE Subsidiary modify the Local 270 CBA, the Winning Bidder shall be required to assume such Local 270 CBA so modified to the extent applicable to Local 270 Employees, provided that the Local 270 CBA as amended or modified permits the Winning Bidder to determine its staffing level requirements and does not require the Winning Bidder to offer employment to Local 270 Employees in excess of such staffing level requirements; and provided further that the Local 270 CBA as amended or modified does not, taken as a whole, materially exceed the provisions of the Local 140 CBA, including, without limitation, the provisions of the Local 140 CBA with respect to cash compensation, fringe benefits, health care, and pension benefits, as of the date of this Agreement.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

ATTACHMENT 2

RECEIVED

JUN 4 1999

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, A SUBSIDIARY OF CENTERIOR
ENERGY CORPORATION

CASES NOS. 8-CA-28441
8-CA-28878
8-CA-29051
8-CA-29128
8-CA-29221
8-CA-29346
8-CA-29415

and

UTILITY WORKERS OF AMERICA,
LOCAL 270, AFL-CIO

FIRSTENERGY CORP.

CASES NOS. 8-CA-29873
8-CA-29943
8-CA-29956
8-CA-30028
8-CA-30067

and

UTILITY WORKERS OF AMERICA,
LOCAL 270, AFL-CIO

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AN OPERATING COMPANY
OF FIRSTENERGY CORP.

and

CASE NO. 8-CA-30210

UTILITY WORKERS OF AMERICA,
LOCAL 270, AFL-CIO

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Utility Workers of America, Local 270, AFL-CIO, herein called the Union, in Cases Nos. 8-CA-28441, 8-CA-28878, 8-CA-29051, 8-CA-29128, 8-CA-29221, 8-CA-29346, and 8-CA-29415 has charged that Cleveland Electric Illuminating Company, a subsidiary of Centerior Energy Corporation, herein called Respondent CEI, and the Union, in Cases Nos. 8-CA-29873, 8-CA-29943, 8-CA-29956, 8-CA-30028, and 8-CA-30067 has charged that FirstEnergy Corp., herein called Respondent FirstEnergy, and the Union, in Case No. 8-CA-30210, has charged Respondent CEI, as an operating company of Respondent FirstEnergy, have been engaging in

unfair labor practices as set forth and defined in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (A) The charge in Case No 8-CA-28441 was filed by the Union on August 9, 1996, and a copy was served by mail on Respondent CEI on August 12, 1996.

(B) The charge in Case No. 8-CA-28878 was filed by the Union on March 13, 1997, and a copy was served by mail on Respondent CEI on March 13, 1997.

(C) The charge in Case No. 8-CA-29051 was filed by the Union on May 21, 1997, and a copy was served by mail on Respondent CEI on May 21, 1997.

(D) The charge in Case No. 8-CA-29128 was filed by the Union on June 24, 1997, and a copy was served by mail on Respondent CEI on June 24, 1997.

(E) The charge in Case No. 8-CA-29221 was filed by the Union on July 30, 1997, and a copy was served by mail on Respondent CEI on July 31, 1997.

(F) The charge in Case No. 8-CA-29346 was filed by the Union on September 24, 1997, and a copy was served by mail on Respondent CEI on September 25, 1997.

(G) The charge in Case No. 8-CA-29415 was filed by the Union on October 20, 1997, and a copy was served by mail on Respondent CEI on October 20, 1997.

(H) The charge in Case No. 8-CA-29873 was filed by the Union on May 4, 1998, and a copy was served by mail on Respondent FirstEnergy on May 4, 1998.

(I) The charge in Case No. 8-CA-29943 was filed by the Union on May 27, 1998, and a copy was served by mail on Respondent FirstEnergy on May 27, 1998.

(J) The charge in Case No. 8-CA-29956 was filed by the Union on June 3, 1998, and a copy was served by mail on Respondent FirstEnergy on June 3, 1998.

(K) The charge in Case No. 8-CA-30028 was filed by the Union on July 7, 1998, and a copy was served by mail on Respondent FirstEnergy on July 8, 1998.

(L) The charge in Case No. 8-CA-30067 was filed by the Union on July 29, 1998, and a copy was served by mail on Respondent FirstEnergy on July 29, 1998.

(M) The charge in Case No. 8-CA-30210 was filed by the Union on September 15, 1998, and a copy was served by mail on Respondent CEI on September 21, 1998.

2. (A) At all times material herein, prior to November 7, 1997, Cleveland Electric Illuminating Company (Respondent CEI) was a subsidiary of Centerior Energy Corporation, an Ohio corporation headquartered in Cleveland, Ohio where it operated and continues to operate a public utility engaged in the generation and distribution of electricity in Northeast Ohio. Annually, Respondent CEI, in conducting its business operations described above and in paragraphs 2(C), 2(D), 2(E), and 2(F), derives gross revenues in excess of \$250,000 and annually purchases and receives goods valued in excess of \$50,000 from points located outside the State of Ohio.

(B) At all times material herein, prior to November 7, 1997, Ohio Edison Company, an Ohio corporation, was headquartered in Akron, Ohio, where it operated a public utility engaged in the generation and distribution of electricity in Ohio and Pennsylvania.

(C) On or about September 13, 1996 Ohio Edison Company, hereafter called Ohio Edison, and Centerior Energy Corporation, hereafter called Centerior, entered into an agreement and Plan of Merger. Pursuant to the Merger Agreement, Ohio Edison and Centerior formed FirstEnergy Corp., an Ohio corporation, which, in turn, formed two wholly owned subsidiaries.

One Subsidiary then merged with Ohio Edison, with Ohio Edison continuing as the surviving corporation and the other merged with Centerior, with Centerior continuing as the surviving corporation. After the Centerior merger, Centerior then merged with and into FirstEnergy, with FirstEnergy continuing as the surviving corporation. The merger was consummated on November 7, 1997.

(D) Following the merger, FirstEnergy became a holding company which directly held all the issued and outstanding common stock of Ohio Edison and all the issued and outstanding common stock of Centerior's direct subsidiaries, which included Respondent CEI. Since the merger on November 7, 1997, Respondent CEI became an operating company of Respondent FirstEnergy.

(E) At all material times since November 7, 1997, Respondent FirstEnergy and Respondent CEI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision, have formulated and administered a common labor policy, have shared common premises and facilities, have provided services for each other, have interchanged personnel with each other, and have held themselves out to the public as single integrated business enterprises.

(F) Based on its operations described above in paragraph 2(A), (C), (D), and (E), Respondent FirstEnergy and Respondent CEI, herein also known collectively as Respondents, constitute a single integrated business enterprise and a single employer within the meaning of the Act.

3. (A) At all material times, Respondent CEI has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(B) At all material times, Respondent FirstEnergy has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. (A) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent CEI within the meaning of Section 2(11) of the Act and agents of Respondent CEI within the meaning of Section 2(13) of the Act:

- Charles Jones - Vice President
- Lew Meyers - Vice President
- James Bena - Plant Manager
- Kevin P. Murphy - Manager Labor Relations
- Brian Sexten - Manager
- Matt Slagle - Manager
- William Bene - Supervisor, Electrical Construction
- Laura Dielman - Coordinator of Human Resources
- Donald Casper - Acting Supervisor, Brooklyn Service Center
- James H. Wilcox - Manager, Generation Services

(B) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act, and agents of Respondents within the meaning of Section 2(13) of the Act:

- William R. Holland - Chairman of Board, Chief Executive Officer of FirstEnergy
- Peter Burg - President and Chief Financial Officer, FirstEnergy
- Guy Pipitone - Vice President, Fossil Generation, FirstEnergy
- Charles Jones - Regional President, Northern
- Lew Meyers - Vice President, Nuclear, Perry
- Gary Benz - Senior Attorney
- Tom Kayuha - Manager, Labor Relations
- Brian Sexten - Manager
- Matt Slagle - Manager
- William Bene - Supervisor, Electrical Construction
- Laura Dielman - Coordinator of Human Resources
- Donald Casper - Acting Supervisor, Brooklyn Service Center

6. (A) The following employees of Respondent CEI, at its northeast Ohio facilities, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All operating maintenance and construction employees, but excluding office clerical, sales and technical employees, employees in the Civil and Mechanical Engineering, Electric Engineering, Wire Relations, Survey and Records elements, production and test engineers, load and trouble dispatchers, chemists and laboratory assistants, Property Protection employees, Electrical Inspectors, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(B) On October 18, 1943, in Cases Nos. R-5358 to R-5367 the Union was certified as the exclusive collective-bargaining representative of the Unit.

(C) At all times since October 18, 1943, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(D) The Unit referred to above in paragraph 6(A) remained the same after the merger referred to in paragraphs 2(C) and 2(D).

(E) Since about October 18, 1943 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and since then the Union has been recognized as the representative by Respondent CEI. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which became effective May 1, 1993.

(F) About February 7, 1997, the Union, by letter, pursuant to provisions in the collective bargaining agreement referred to above in paragraph 6(E), gave Respondent CEI notice of Articles in the collective bargaining agreement it wished to change.

(G) At various times from April 8, 1997 to April 27, 1998 Respondent CEI and the Union met for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment of the Unit as described in paragraph 6(A). About December 19,

1997 Respondent FirstEnergy representatives joined Respondent CEI and the Union and met for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment of the Unit as described in paragraph 6(A).

7. On May 1, 1998 Respondents, by Donald Casper, at their Brooklyn Service Center, threatened employees that he, Donald Casper, had been instructed by Charles Jones that any employee wearing a red Union armband would be noted and would be the first one terminated.

8. (A) On or about August 7, 1996, contrary to its contract referred to in paragraph 6(E), Respondent CEI attempted to circumvent its bargaining obligation by requiring employees to attend meetings to develop work units, procedure, standards and productivity measures for electrical, construction and maintenance employees.

(B) On or about May 2, 1997, contrary to its contract referred to in paragraph 6(E), Respondent CEI attempted to circumvent its bargaining obligation by requiring employees to attend meetings in May and June 1997 to draft future job titles, summaries and responsibilities for the supply chain.

(C) The subjects set forth above in paragraphs 8(A) and 8(B) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent CEI engaged in the conduct described above in paragraphs 8(A) and 8(B) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent CEI with respect to this conduct and the effects of this conduct.

9. (A) Since about August 30, 1996, the Union, by letter, has requested that Respondent CEI furnish the Union with the names of all Unit employees who serve on Respondent CEI committees.

(B) The information requested by the Union, as described above in paragraph 9(A), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since September 30, 1996 Respondent CEI has failed and refused to furnish the Union with the information requested by it as described above in paragraph 9(A).

10. (A) Since about March 14, 1997, and at various times thereafter, including May 14, July 29, August 18, and August 28, 1997, the Union, by letters and in negotiations, has requested that Respondent CEI furnish the Union with merger information, including the duty to consult with Ohio Edison, plans, drafts and studies relative to the proposed merger.

(B) The information requested by the Union, as described above in paragraph 10(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about May 20, 1997, Respondent CEI, by letter, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 10(A).

11. (A) Since about July 24, 1997, and at various time thereafter, including August 18, 1997, the Union, by the above letters and in negotiations, has requested that Respondent CEI furnish the Union with individual employee overtime hours by department.

(B) The information requested by the Union, as described above in paragraph 11(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about August 14, 1997, Respondent CEI, by letter and at negotiations, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 11(A).

12. (A) The collective bargaining agreement described above in paragraph 6(E) provides:

ARTICLE VI
Seniority

Section 7.

(a) During the period from May 1, 1993 through April 30, 1997, no employee in the bargaining unit who has ten or more years of continuous service and who is desirous of continuing employment with the Company will be laid off for lack of work.

(b) An employee with ten or more years of continuous service who becomes surplus, other than as a result of an employee exercising his rights under Section 5 of this Article, will receive no reduction in his hourly rate of pay. In addition, he will receive no future general increases as long as his rate remains above the maximum rate of the job classification into which he is placed. This paragraph will have no application to incapacitated employees or employees who are unable or unwilling to qualify for available work.

* * *

ARTICLE XV
Terms and Renewal

Section 4.

If notice is given in accordance with Section 2 or Section 3 of this Article and no agreement has been reached on the changes proposed by May 1, 1997, (or by May 1, 1995, in the case of changes in general hourly rates of pay, Article IX, Section 1), the parties will make every effort to reach agreement thereafter. All provisions of this Agreement will remain in full force and effect thereafter except that (i) if no agreement has been reached by (the respective applicable date set out above), the provisions of Article IV will be waived until such agreement is reached, and (ii) all provisions of this agreement will be without force or effect during any period of concerted failure to report for work, cessation of work, slowdown, strike, picketing, or lockout.

(B) On or about October 15, 1997 Respondent CEI informed the Union that all provisions of the collective bargaining agreement referred to in paragraph 6(E) with the exception of Article IV, No Strikes or Lockouts, referred to above in Article XV, and Article VI, Section 7 would remain in full force and effect if its final proposal was not accepted.

(C) On or about October 29, 1997 Respondent CEI unilaterally extended the collective bargaining agreement referred to in paragraph 6(E) as set forth in paragraph 12(B) to April 30, 1998 and unilaterally eliminated Article VI, Section 7 referred to in paragraph 12(A).

(D) On or about October 15, 1997 Respondent CEI notified the Union that if its final proposal was not accepted by October 29, 1997 it would withdraw all its proposals and, thereafter, did withdraw all its proposals after October 29, 1997.

(E) On or about November 21, 1997 Respondent FirstEnergy adopted the position taken by Respondent CEI referred to above in paragraphs 12(B), 12(C) and 12(D).

(F) The subjects set forth above in paragraphs 12(A), 12(B), 12(C), 12(D), and 12(E) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondents engaged in the conduct above in paragraphs 12(A), 12(B), 12(C), 12(D), and 12(E), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

13. (A) Since about October 31, 1997, and various times thereafter, including December 19, 1997, February 24, March 27, and April 28, 1998, the Union, by the above letters and in negotiations, has requested that Respondents furnish the Union with merger information, including plans, studies and transition team information relative to the merger.

(B) The information requested by the Union, as described above in paragraph 13(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about January 26, 1998, Respondents, by letter dated January 26, 1998 and verbally, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 13(A).

14. (A) In or about January 1998 Respondents eliminated the surviving spouse benefit.

(B) On or about January 23, February 24 and on March 6, 1998 Respondents announced at negotiations that they would merge the 401K plan with the FirstEnergy Savings Plan and the subject was non-negotiable.

(C) On or about January 23, February 24 and on March 6, 1998 Respondents announced at negotiations that they would discontinue the stock purchase discount plan and the electrical discount plan and that the subjects were non-negotiable.

(D) On or about March 11, 1998 Respondents announced at negotiations that Respondents' Employee Assistance Programs, including long term care, travel and accident, educational assistance and financial planning were non-negotiable.

(E) In or about March 1998 Respondents implemented a new drug and alcohol policy.

(F) The subjects set forth above in paragraphs 14(A) through 14(E) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondents engaged in the conduct described above in paragraphs 14(A) through 14(E) without affording the Union an opportunity to bargain with Respondents with respect to this conduct and effects of this conduct.

15. (A) Since about February 19, 1998, and at various times thereafter, including February 29, March 31, and April 28, 1998, the Union, by the above letters and in negotiations, has requested that Respondents furnish the Union with individual employee overtime hours by department.

(B) The information requested by the Union, as described above in paragraph 15(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about February 29, 1998, Respondents have failed and refused to furnish the Union with the information requested by it as described above in paragraph 15(A) and/or have provided inaccurate information.

16. (A) Since about February 24, 1998, and at various times thereafter, including March 30, April 9, and April 22, 1998, by letter and in negotiations, the Union requested that Respondents furnish the Union with the benefit master plans and IRS Form 5500's for the pension and health insurance plans and the life insurance plans.

(B) Since about July 6 and 8, 1998, the Union, by letter, requested Respondents to furnish the Union with the Aetna and Unum contracts, summary plan for Unum, master plan for Unum and conversion plan for Unum, Aetna and Unum being the life insurance carriers for Respondents' employees.

(C) The information requested by the Union, as described above in paragraphs 16(A) and 16(B) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(D) Since about February 24, 1998, Respondents have failed and refused to furnish the Union with the information requested by it as described above in paragraph 16(A).

(E) Since about July 6, 1998, Respondents have failed and refused to furnish the Union with the information requested by it as described above in paragraph 16(B).

17. (A) In or about the first week of March 1998, Respondents, at their Perry Nuclear Power Plant, unilaterally implemented a Pledge of Commitment form.

(B) On or about March 9, 1998 Respondents, by Lew Meyers, at their Perry Nuclear Power Plant, threatened Union representatives, who were employees, that they would be terminated if they did not cooperate regarding the Pledge of Commitment form.

(C) On or about March 11, 1998 Respondents, at their Perry Nuclear Power Plant, unilaterally implemented and required all employees, under threat of discipline, to sign the Safety Tagging Commitment.

(D) The subjects set forth above in paragraphs 17(A) through 17(C) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(E) Respondents engaged in the conduct described above in paragraphs 17(A) through 17(C), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

18. (A) At various times from March 1997 to April 27, 1998, Respondent CEI and the Union met for the purposes of collective bargaining, including additional representatives from Respondent FirstEnergy since December 15, 1997 to April 27, 1998, with respect to wages, hours and other terms and conditions of employment of the Unit.

(B) Since about May 18, 1998 and continuing thereafter, Respondents refused to bargain collectively in good faith with the Union.

(C) About May 27, 1998 Respondents unilaterally, without reaching agreement or lawful impasse, implemented its last bargaining offer, made on May 18, 1998.

(D) Since on or about November 1997 and continuing thereafter, Respondents engaged in conduct, including, but not limited to, the allegations set forth in paragraphs 12(E), 13, 14, 15, 16(A), 17, and 18(C); insisted that the ten-year clause was no longer operative; abandoned the position and proposals taken by Respondent CEI prior to the merger; rejected the tentative agreements reached by Respondent CEI; summarily rejected the Union's bargaining proposals without discussion or consideration; entered into negotiations with a predetermined resolve that the collective bargaining agreement had to be patterned after Ohio Edison contracts; continued to propose multi-contracts and multi-units over the Union's objections; implemented

an offer which de facto preserved its position for separate units; set or imposed artificial deadlines and threats of implementation; continually changed proposals without affording the Union an opportunity to understand and evaluate them; failed to discuss or bargain over substantive issues of proposed contract which substantially changed from the prior agreement referred to in paragraph 6(E); including, but not limited to: seniority, layoff and recall, promotions, subcontracting, before declaring impasse in the negotiations; unilaterally changed benefits during bargaining; asserted that early retirement and severance were only offered if contract ratified; informed the Union and the membership that it would not consider any counterproposals and that further bargaining would be futile; and unlawfully declared impasse in the negotiations.

(E) By its overall conduct, including the conduct described above in paragraphs 12(E), 13, 14, 15, 16(A), 17, 18(B), 18(C), and 18(D), Respondents have failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit as described in paragraph 6(A).

19. (A) On or about May 7, 1998, the Union, by letter, requested Respondents to bargain about potential layoffs and the ten-year clause.

(B) Since about May 18, 1998, and continuing thereafter, Respondents, by letter, refused to bargain collectively in good faith with the Union.

(C) On or about May 20, 1998, the Union, by letter, requested Respondents to bargain about potential layoffs.

(D) The collective bargaining agreement described above in paragraph 6(E) provides:

ARTICLE VI

Seniority

Section 6.

(a) The Company will give one week's notice or one week's pay of forty (40) hours in lieu of notice to an employee being laid off. An employee intending to resign will give the Company one week's notice. The Company will notify the Union at least two weeks in advance of any proposed layoffs and afford the Union an opportunity to discuss the matter fully with the Company.

(b) If it becomes necessary to reduce the working force in any job classification, reductions shall be made in the following manner:

Starting with the job classification in which the surplus exists, the surplus employees will be determined on the basis of those having the least occupational group seniority. The surplus employee or employees in the order of their occupational group seniority will first be given the opportunity of exercising any rights they may have under Article VI, Section 4. If no such rights exist, or the employee declines to exercise such rights, then he shall be given the opportunity of displacing any employee in a job of lower classification provided he has greater occupational group seniority than the employee being displaced in the lower job classification and provided he is qualified and capable of performing the work. Employees who are displaced from their jobs by this process will be given the opportunity of displacing employees in lower job classifications in the same manner. Employees who are so transferred or demoted (but not laid off) shall retain their seniority in their former job classification and be entitled to fill any subsequent vacancies in such job classification in the inverse order of their transfer or demotion therefrom without regard to the seniority of employees of lower classification.

An employee who is unable to displace any other employee in his line of promotion and is thereby surplus in the lowest job classification in that occupational group will be given the opportunity, based on his continuous service seniority, to displace a probationary employee in a starting job for which he can qualify or the employee with the least continuous service seniority in a starting job which the surplus employee is qualified and capable of performing, before he is laid off. Regular employees who are so transferred or laid off shall retain their seniority in their former job classification for a period of two (2) years from the date of layoff and shall be entitled to fill any subsequent vacancies in such job classification in the inverse order of their layoff without regard to the seniority of employees of lower classifications, if any. On a subsequent increase of such working force within a period of two (2) years, employees will be called back to work in the inverse order of their layoff, if available, and able and qualified to return to work, before new employees are added from other departments or from outside the Company.

In order to avoid unfairness that may exist in any unusual or special case, the layoff and rehiring procedure of this section may be varied by agreement between the Union and the Company.

(E) The unilaterally implemented contract referred to in paragraph 18(C) provides:

ARTICLE IV

Seniority

Section 1.

"Seniority" as used herein is defined as the status accruing to an employee through length of service which entitles him to promotions, layoffs, recalls and choice of vacation time as hereinafter provided.

"Location" as used herein is defined as either the Avon Lake Power Plant, the Ashtabula Power Plant, the Lakeshore Power Plant, the Eastlake Power Plant, the Perry Nuclear Power Plant, all areas within the Northern Region, all areas within the Eastern Region Ashtabula Service Center and Main Avenue Customer Center, Traveling Maintenance, or the Power Plant Support Center, as appropriate.

(b) "Location Seniority" is the length of service at a particular location while holding a bargaining unit position. For transition purposes, on May 1, 1998 Local Seniority shall equal Company Seniority. Thereafter, Location Seniority shall accrue in accordance with the first sentence of this subparagraph. For purposes of computing Location Seniority under Section 8, only, all areas within the Northern Region and the Eastern Region Ashtabula Service Center and Main Avenue Customer Center shall collectively be considered a "Location."

Section 8.

(a) When a decrease in the number of employees in a given job is necessary, the surplus employee or employees in that job with the least Location Seniority shall be first released from the job and offered employment in the next lower job in the same promotion line, provided that his Location Seniority is greater than that of any employees in the lower job, and this process shall be continued until the necessary number of employees have been laid off either because they are surplus, are not qualified, or have rejected the job of jobs offered. When an employee has gone down through his own line of promotion he shall be laid off, unless he has at least eighteen (18) months' Location Seniority, in which case he shall be offered employment in the lowest available job in any other line of promotion for which he has sufficient Location Seniority and qualifications, and which job is held by an employee with less Location Seniority. The displaced person shall in turn have Location Seniority rights over employees in lower jobs in the same promotion line, as above set forth.

(b) An employee with ten (10) or more years of continuous service with the Company who would be laid off by application of the preceding paragraph, shall not be laid off but shall be offered a bargaining unit job for which he is qualified. This commitment will not require the Company to create a new job. The Company will first offer such a job in the employee's Location. If no such job is available in the employee's Location, the Company will offer the employee a job in the same job classification or if no such job is available a job for which he is qualified in another Location. The Company will use its best efforts to place the employee in a Location which will not require him to move his residence. The job offered will be such that the employee's placement in that job will not displace an employee in the same Location who at the time of transfer has ten (10) or more years of continuous service with the Company and will not displace an employee in another Location with more than five (5) years of continuous service with the Company. If the employee refuses that job offered him he will be laid off and his right to be recalled will not be affected by such refusal. Any employee displaced through the application of this Section 8.b shall be considered as a surplus employee in that job and the procedure set forth in Section 8.a of this Article shall then become applicable. The employee with at least ten (10) years of service who accepts a job pursuant to the terms of this Section shall not have his hourly rate of pay reduced, but shall receive no future general wage increases unless and until his rate is equal to the maximum rate for the job in which he is so placed.

This Section shall have no application to incapacitated employees or employees who are unable or unwilling to qualify for available work and does not preclude separation from the Company for reasons other than lack of work, or demotion in accordance with applicable provisions of this Agreement.

(F) On or about May 27, 1998 Respondents notified certain employees, including, but not limited to, the following named employees that they would be laid off from their respective jobs and did lay them off from their jobs commencing on or about May 27:

Denise M. Acierno	Warren V. Agee	Russell O. Aitken	Donald E. Albertone
Paul Albright	Timothy F. Alder	Rosemary Alexander	Ronald P. Alinen
Annette Anderson	Wayne L. Anderson	Tobias Armstrong	Edwin Arocho
Kenneth R. Auble, Jr.	Donald E. Ayers	Michael A. Azzarello	Robert L. Bacho
Simon M. Bajaksouzian	Michael C. Baker	Charles E. Baldwin	Vanessa D. Ball Tyus
Murphy Ball, Jr.	David W. Ballash	Lawrence K. Barrett	George R. Barsan
Gary S. Barsan	Thomas C. Basic	John G. Bass, Jr.	Daniel Baston
Roy C. Bean	David J. Beeman	Rudy A. Began	Robert E. Bell, Sr.
Albert G. Bellis	Allen J. Bennett	Andrew R. Beno	Gregory D. Beursken
Rocco Bevilacqua	Richard J. Biagiola	Howard E. Billups, Jr.	William J. Billy, Jr.
Terry L. Bittinger	Roy L. Bobbitt	Gary L. Boettcher	Jerome V. Boncella
Jeff F. Bordonaro	Mark A. Bordonaro	Stephen P. Boryk	Clare L. Botorff
Theodore Boyd	Michael A. Boyle	Antonio B. Brooks	John A. Brown

Thomas P. Bruncz	Catherine A. Burda	Edward V. Burns	Roy J. Bushnell
Howard F. Campbell	James C. Campbell	Cyrus L. Carpenter	Gene W. Carpenter
Michael W. Carson	Thomas H. Chabola	Brian N. Chabot	Reginald Childs
Karl A. Cimorelli	John J. Cirelly	Larry M. Cloonan	Ronald L. Coates
Bryan A. Cole	Ford L. Cole	Marc B. Comar	Joseph C. Coughlin
Jerry S. Counts	William A. Craig	Paul M. Crilley	Eric J. Cromwell
Edward G. Cummins	Jerry E. Damron	Larry M. Davis	Leon Davis
Mark E. Decress	Scott Del Pizzo	Matthew Dezelan	John N. Dickson
Alan L. Dieffenbacher	John F. Digiandomenico	Mark G. Diperna	James T. Dipert, Jr.
Kevin M. Dirling	Louis J. Dolsak	Robert Domachowski	James W. Donelan
Charles H. Dowdy	Douglas A. Drake	Christopher A. Dremski	David J. Dreslinski
Roman S. Drozd	Roberto B. Dubreuil	Dennis J. Dudas	Richard R. Dudas
Gregory F. Dydo	Terry M. Egan	Darryl S. Elom	John D. Ertle
Brian K. Everett	Karl F. Eykyn	Steven L. Eyring	Richard C. Faecking
Curt A. Farrell	Judson C. Fell	Robert R. Fenton	Jay F. Fine
Brian F. Fitzgerald	Matthew Fort, Jr.	Steven C. Foster	Douglas W. Foulkes
Donald J. Fousek	Alfred E. Frazier	Loyal A. Freeman	David A. Fritz
Douglas S. Fuke	James R. Funderwhite	Scott W. Furukawa	Ivan Gabriel
Anthony J. Garniere	Douglas L. Garcia	Michael W. Garnett	Paul C. Garriga
Ronald D. Garrison	Nicola Giancola	Donald G. Giermann	Ronald J. Giermann
James R. Glicker	Joseph M. Goebel	Robert J. Golia	Hugh A. Goodale
Robert J. Goreatz	Daniel R. Gorey, Jr.	John M. Grabam	Carl W. Gran
Dale E. Greenwell	Brian Greenwood	Brian L. Griffith	Carol F. Griffith
Gregory E. Griffiths	Ronald M. Gruening	Michael Guciardo	James Haase
Randall J. Harman	William R. Harwood	Dean A. Helkowski	David G. Henderson
George J. Henry, Jr.	Thomas P. Hepler	G. Edward Heyworth	Todd R. Hinkle
James M. Hinojosa	Albert P. Hoch	Vernon Hollins	Edward J. Holstein
Robert A. Hooven	Kimberly S. Hope	Steve L. Horton	Joshua R. Houghtaling
Margaret Houston	Donald R. Hricko	Michael J. Hrnjak	Daniel A. Hughes
Joseph J. Iacano	Joseph P. Iglai	Nestor W. Jakimyszyn	Robert S. Jansen, Jr.
Thomas A. Jansen	C.D. Janz	Darnell Johnson	Ivery L. Johnson, Jr.
Neal Johnson	Wilbert Johnson	Charles M. Johnston	Mark S. Johnston
Paul E. Kastelic	Joseph J. Kastellec	Ronnie D. Keene	Darrell W. Kelly
Forrest K. Kennedy	Dale J. Kestran	Douglas W. Kiesel	Rolland S. Kihn
Claude J. Kindle	Daniel I. King	Douglas A. Kirk	Randall S. Kline
Robert P. Kogut	Gregory Koman	David J. Kowall	Paul J. Kowalsick
Donald C. Kraus	Robert E. Kraus	Walter F. Krauss, Jr.	William H. Krava
Gregory Krejci	Richard J. Krstyen, Jr.	Damien J. Kruzal	Charles A. Kupcuk
Mark A. Kurdas	Kenneth F. Kushner	Darnell Land	Gregory A. Landi
Martin A. Langer	Mark R. LeCappelain	Martin P. Lehman	Steven M. Letterle
David Leyva	Charles J. Lillis, Jr.	Timothy A. Lillis	Darryl Lindemann
Stephen A. Lochmueller	John C. Lombardy	Richard H. Longden	Thomas P. Loper
David J. Lorince	Eugene L. Lovley	Gregory Lowe	James E. Lustik
John R. Lyons	Eugene E. Mackey	Robert C. Malinky	Anthony Malov
Jerry Marinella	Harold Martin	Mark A. Martin	Stephen C. Martin
Mario A. Martinez	Dale E. Masiker	Philip D. Mathieu	Carmen A. Matteo
Martin Mazie	Charles D. McCall	Thomas McCormick	Edward N. McDonald
Kenneth J. McKay	Charles P. McQueen	Kelly K. McCloskey	David N. McDonald
Richard S. McDonald	Gerald T. McFaul, Jr.	Ronald L. Melaragno	Philip J. Meli
Frank S. Mendlik	David F. Merkle	John E. Miklos	Craig C. Miller
Roger W. Miller, Sr.	Bryan S. Mindek	Bruce B. Mitchell	Joseph M. Mllakar
John H. Molnar	Thomas Molnar	William W. Monroe	Mario Montemarano
Randy L. Morris	Eugene D. Morrison, Jr.	Melvin M. Motley	Gregory R. Mott

Thomas A. Moviel	Gloria Murdock	John Musacchio	Donald E. Nemeo
Douglas A. Nenadovich	Sallie D. Newson	Gerald F. Niznik	Douglas Nolan
Robert L. Novak	Scott A. Novotny	Warren K. Novotny	Leonard O'Dell, Jr.
John Obranovich	Richard G. Olah	Leonard W. Olasky, Jr.	James L. Oliverio
Russell A. Olson	Jerry L. Orf	George A. Orlando, Jr.	Kenny Orozco
James C. Orr, Jr.	Shawn M. Osborne	Ronald W. Park	Jason A. Parrish
Romeo W. Patterson, Jr.	Marilyn E. Payne	Ramon L. Perez	Vincent Peric
James J. Perry	Kenneth L. Perry	William J. Perusek	Donald J. Pesta
Raymond S. Peteritis	Dale R. Pinney, Jr.	Thomas C. Pinta	Gary R. Plungas
John R. Pollock	Gary L. Poole	Patrick C. Power	Joseph A. Pridemore
James Henry Prill	Richard F. Radovanic	Nick A. Ranallo, Jr.	Christopher J. Reardon
Judy A. Reed	Robert J. Reed	Robert C. Reiser	Raymond J. Ressler
Edward J. Revay	Robert A. Rexroad	Mickey E. Reynolds	Mitchell R. Ribis
Elauter Rivera	Christopher C. Roberts	Walter C. Robinson	Angelo L. Rocco
Jeffrey A. Rocco	Cynthia L. Rogers	Vincent Rohm	Jesus Rosalez
Lewis D. Ross	Nelson D. Rowan	Thomas P. Roznik	Robert R. Ruck
Joseph W. Ruffin	John F. Rumancik	Emil J. Runt	Dale M. Russo
James P. Ryan	Lori J. Rys	Richard Sanchez	Michael J. Sanders
Julio Santiago	Bruce Schiffbauer	Gary E. Schor	Danny W. Scolaro
James Scott	Bobbie R. Seagraves	Andrew G. Sebok	John L. Sedlak
George M. Seigman	Terrance J. Seith	Kevin Sepik	Steve A. Sferra
Scott A. Shebestak	Brian B. Shuss	Anthony N. Signorelli	Garry L. Simons
Robert T. Simmons	Willie L. Simmons	David L. Simpson	Robert Sintic
Douglas E. Smith	Brian E. Soeder	Steven L. Sparks	Robert M. Spelich
Donald H. Spence	Michael C. Spencer	Michael T. Spencer	Harland L. Sprinkle
Charles J. Sprosty, Jr.	Charles J. Steenstra	David K. Stenroos	Lee A. Stewart, Jr.
Richard H. Stonitsch	John C. Stinger	Kim M. Summerville	Tony M. Sutyak
Gordon A. Swan, Jr.	Harry R. Tabor, Jr.	Jack L. Tabor	Matthew Tabor, Jr.
William F. Taft	Deborah Takah	Victor A. Taketa	Jonathan S. Taylor
Michael J. Terwood	Danny Thomas	Dean A. Tibbs	Charles R. Tilburg
John F. Toth	Frederick L. Tracy	Ernest Tufts, Jr.	Samuel S. Tumino
Joseph M. Turner	John J. Uhrain, II	Frank W. Vacha, Jr.	Gene P. Vasiloff
Mark A. Vendetti	Gordon A. Vojtech	Lee G. Vollman	Gregory J. Volpe
David W. Wagner	John W. Waid	Richard M. Walcher	Frank R. Waldman
Jerry L. Walker	Michael J. Walker	Noel A. Walker	Thomas V. Wallace
Gary A. Ward	John A. Ward	Joseph G. Watson	David E. Wells
Robert F. Wenning, II	Kenneth L. Wessolek	Gary A. Westerhold	Melvin Whitley
Eddie S. Williams, Jr.	Esper Wiilliams	James H. Williams	Wiley P. Williams
Max G. Wilson	Richard W. Winiski	Diana J. Wiser	Raymond A. Wodzisz
Max C. Wolford	Steve Woods	Charles C. Woodworth	David L. Woodworth, Jr.
Walter O. Worley	Jeffrey S. Wozniak	Frank W. Zabudske	James A. Zaebst
Bret A. Zak	Martin A. Zart	Steven J. Zbin	Timothy T. Zrubek
Ernest A. Zsebik			

(G) On or about May 27, 1998, Respondents notified certain employees, including, but not limited to, the following named employees that they would be laid off from their respective jobs, and did lay them off from their jobs on or about May 27 through June 10, 1998.

but subsequently, prior to January 30, 1999, recalled them to positions of employment, unilaterally, without bargaining with the Union:

Jared Alvarez	Ricky C. Barnett	Jason M. Bean	Laura A. Becerra
Robert A. Bosiacki	Robyn E. Bruson	Glendon J. Burnham	Thomas R. Clingerman
Thomas P. Cook	Anthony Costanzo	Douglas E. Cunningham	Stanley F. David
David A. Doughty	Raymond Douglas	Eric L. Earskine	David W. Evans
Chuck E. Fidler	Dennis W. Flack	Kevin M. Flynt	Christopher R. Fredriks
Gregory E. Grubb	Reginald L. Hamilton	Gary P. Hasselbach	Daniel L. Henningan
Garrick A. Hietala	Thomas J. Hill	Willaim M. Holtz	Robert S. Hoose
Erik Howard	Glen A. Hulvalchick	Mark L. Inman	George F. Jackson
Mark A. Jeglie	Richard Kalivoda	Jemaine Kennedy	Kenneth P. Kosarko
David Kruzal	Terry W. Lanham	Delbert B. Laskowski	Richard S. Malnar
John C. McDermott	Joseph D. Miklavic	Robert C. Miller	Patrick A. Minor
Thomas A. Munz	George P. Nagle, Jr.	James M. Neary	Ava Newton
Timothy O'Loughlin	William H. Pascol	Bryan C. Phelps	Thomas M. Poje
James M. Rastall	James T. Rearick	Lawrence Roberts, Jr.	Donald Robinson
Elizabeth Rullen	Frank A. Ruolo, Jr.	Robert Sackett	George W. Schoepe, III
Rajko R. Senica	Greg A. Senskey	Derrick Spivey	Tom D. Stitt
Michael R. Straka	Daniel F. Straky	Daniel J. Tanno	James J. Tanno
Bruce Washington	Bruce Washington, Jr.	Aaron Williams	

(H) Respondents engaged in the conduct described above in paragraphs 19(F) and 19(G) because the named employees of Respondents joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(I) The conduct described above in paragraphs 19(F) and 19(G) is inherently destructive to the rights guaranteed employees by Section 7 of the Act.

(J) The subjects set forth above in paragraphs 19(A), 19(C), 19(D), 19(E), 19(F) and 19(G) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(K) Respondents engaged in the conduct described above in paragraphs 19(A), 19(C), 19(D), 19(E), 19(F) and 19(G) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

20. (A) The collective bargaining agreement described above in paragraph 6(E) provides:

ARTICLE XII
Working Conditions

Section 10.

For the duration of this agreement the Company does not intend to expand its present practices with respect to the employment of outside contractors and will continue efforts to minimize the employment of outside contractors to perform work ordinarily and customarily done by its regular employees.

However, where specific jobs, ordinarily and customarily done by regular employees, are required to be done within a specified time, and the work cannot be done by the regular employees in the time required for completion, the Company will notify the Union of such outside contractor work on a timely basis, as conditions permit.

Further, the Company agrees it will not employ outside contractors when the employment of such outside contractors would result in and directly relates to the layoff, demotion or reduction of hours below the statutory straight time work week of its regular employees.

(B) The unilaterally implemented contract referred to in paragraph 18(C) provides:

Article XII
Working Conditions

Section 6.

It is the intention of the Company to staff for normal running operations and maintenance, as defined and determined from time to time by the Company in accordance with Article III and therefore the Company reserves the right to contract work related to peak periods, such as outages, overhauls or specialty work not ordinarily and customarily performed on a day-to-day basis during such periods of normal running operations and maintenance, work required to be done within a specified time when such jobs cannot be done by the regular employees because of volume of work, as well as work that is not core to normal running operations or maintenance. Some examples include, but are not limited to, tree trimming, custodial work, vehicle washing, snow removal, painting, lawn care, building maintenance, mobile equipment maintenance, plant cleaning, elevator repair, HVAC maintenance, underground trenching and duct installation, and other work of a similar nature as determined by the Company from time to time.

(C) Since on or about May 27, 1998, and continuing to date, Respondents have subcontracted the following work which is work performed by employees, including those on lay off, in the unit referred to in paragraph 6(A):

- ◆ Semi-skilled and skilled repair work on condensers, turbines, boilers, fans, air compressors, pumps, and auxiliary equipment involving welding, sheet metal work, pipe-fitting and machine shop work.
- ◆ Repair, and/or replacing, aligning, balancing of rotating equipment.
- ◆ Performing code and non-code welding, oxyacetylene burning, layout and fabrication of parts, maintenance to piping.
- ◆ Removing, and/or repairing, and/or installing boiler tubes, repairing boiler accessories, auxiliary equipment, and valves.
- ◆ Machining and making parts and assemblies.
- ◆ Performing insulation and refractory work, by installing, removing and repairing both hazardous and non-hazardous insulation.
- ◆ Setting up rigging, tackle, blocking, scaffolding, ladders, moving heavy parts, and equipment.
- ◆ Repairing, and/or replacing motors, associated equipment, and rewiring.
- ◆ Repairing of ductwork, precipitators, hangers, boiler feed pumps, feedwater heaters, and diaphragms.
- ◆ Repairing, and/or replacing, resetting, testing, switchgear, devices and relays.
- ◆ Repairing, and/or replacing coal and ash-handling equipment, muva feeders, fluidizing systems, and railroad repairs.
- ◆ Cleaning, removing slag, flyash and debris using water, and/or vacuum equipment.
- ◆ Performing excavation, backfilling, forming of and pouring concrete, asphalt, underground tank removal, and road repairs.
- ◆ Repairing, and/or replacing, and/or installing, siding, flashing, gutters, downspouts, trench drains, glass and windows, doors, overhead doors, water lines, plumbing, sprinkler systems, handrails, fence repairs, sewers, manholes, and general construction.
- ◆ Repairing, and/or replacing, and/or installing, conduit, lighting, performing maintenance on elevators, and overhead cranes.
- ◆ Inspection and troubleshooting equipment.
- ◆ Performing sandblasting and guniting.
- ◆ Installing, and/or repairing, and/or replacing conveyor belts, sootblowers, chutes, pumps, strainers, and scales.

- ◆ Performing maintenance and repairs to locomotives, towmot trucks, vans, cars, and other equipment.
- ◆ Performing plant clean-up, substation clean-up, housekeeping, janitorial, landscaping, and snowremoval.
- ◆ Diagnostic testing, pole reinforcement, flagging and safetyman duties.

(D) The subjects set forth above in paragraphs 20(A), 20(B) and 20(C) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(E) Respondents engaged in the conduct described above in paragraph 20(C), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

(F) As part of the remedy for the unfair labor practices alleged above in paragraphs 20(B) and 20(C), the General Counsel seeks an Order requiring Respondents to reinstitute its illegally subcontracted work as it existed prior to May 27, 1998, consistent with the collective bargaining agreement referred to above in paragraph 6(E). The General Counsel further seeks other relief as may be appropriate to remedy the unfair labor practices alleged.

21. (A) Since about June 11, 1998, and at various times thereafter, including July 8, 1998, the Union by letter has requested Respondents to furnish it with subcontracting information regarding certain enterprises, including Valley Systems and Servall Service Company

(B) The information requested by the Union, as described above in paragraph 21(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(C) Since about July 2, 1998, Respondents, by letter, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 21(A).

22. (A) In or about July 1998, Respondents unilaterally changed their leave of absence policy regarding employees holding union office, specifically President David Kotecki and Vice President Robert J. Chet, with respect to their pension and health coverages, prescription drug coverage, dental coverage and life insurance.

(B) Respondents engaged in the conduct described above in paragraph 22(A), because the above-named employees of Respondents formed, joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(C) The subjects set forth above in paragraph 22(A) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(D) Respondents engaged in the conduct described above in paragraph 22(A), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

23. (A) Since July 6, 1998, the Union, by letter has requested Respondents to furnish it with information regarding FirstEnergy Nuclear Operating Company (FENOC), including studies, discussions, and plans relative to FENOC's impact on the Unit.

(B) The information requested by the Union, as described above in paragraph 23(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(C) Since about July 15, 1998, Respondents, by letters, have failed and refused to furnish the Union with the information requested by it as described above in paragraph 23(A).

24. (A) In or about mid-July 1998, Respondents, at various locations, unilaterally implemented and solicited employee location preference forms from employees in the Unit.

(B) The subject set forth above in paragraph 24(A) relates to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondents engaged in the conduct described above in Paragraph 24(A), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

25. (A) By the conduct described above in paragraphs 7 through 24, Respondent CEI has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

(B) By the conduct described above in paragraphs 7, 12 through 24, Respondent FirstEnergy has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

26. (A) By the conduct described above in paragraphs 19(F), 19(G), 19(H), 19(I), 22(A) and 22(B), Respondent CEI has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

(B) By the conduct described above in paragraphs 19(F), 19(G), 19(H), 19(I), 22(A) and 22(B), Respondent FirstEnergy has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

27. (A) By the conduct described above in paragraphs 8, 9, 10, 11, 12(B), 12(C), 12(D), 12(E), 12(G), 13, 14, 15, 16, 17, 18, 19(E), 19(F), 19(G), 19(K), 20(B), 20(C), 21, 22(A), 22(D), 23 and 24, Respondent CEI has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

(B) By the conduct described above in paragraphs 12(E), 12(G), 13, 14, 15, 16, 17, 18, 19(E), 19(F), 19(G), 19(K), 20(B), 20(C), 21, 22(A), 22(D), 23 and 24, Respondent FirstEnergy has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

28. (A) The unfair labor practices of Respondent CEI described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

(B) The unfair labor practices of Respondent FirstEnergy described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that commencing at a date, time and place to be designed later, a hearing will be conducted before an administrative law judge of the Board on the allegations in this complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this complaint within 14 days from service of it, and that, unless Respondent does so, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceeding Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Cleveland, Ohio this 1st day of April 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

Attachments

RECEIVED

FILED

JUN 4 1999

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CLEVELAND U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UTILITY WORKERS UNION OF)
 AMERICA LOCAL 270,)
)
 Plaintiff,)
)
 vs.)
)
 THE CLEVELAND ELECTRIC)
 ILLUMINATING COMPANY, et al.,)
)
 Defendants.)
)
)

Case No. 1:98CV2041

Judge Ann Aldrich

ORDER

The Court has filed its memorandum and order granting the Union's motion for summary judgment (doc. #17); denying CEI's motion for oral argument (doc. #20); and denying the Union's motion to strike (doc. #21). Therefore,

IT IS ORDERED that the Union's motion for summary judgment is granted; CEI's motion for oral argument is denied; the Union's motion to strike is denied; final judgment is entered in favor of the Union; and the case is dismissed.

IT IS FURTHER ORDERED that this judgment is final and appealable.

Ann Aldrich by [Signature]

 ANN ALDRICH
 UNITED STATES DISTRICT JUDGE

FILED

99 APR -6 PM 4:03

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UTILITY WORKERS UNION OF)
AMERICA LOCAL 270,)

Plaintiff,)

vs.)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, et al.,)

Defendants.)

Case No. 1:98CV2041

Judge Ann Aldrich

MEMORANDUM AND ORDER

Currently pending before the Court is a motion for summary judgment and a motion to strike filed by plaintiff Utility Workers Union of America Local 270 ("Union), and a motion for oral argument filed by the defendants ("CEI"). For the reasons that follow, the Court grants the Union's motion for summary judgment (doc. # 17), denies CEI's motion for oral argument (doc. # 20), and denies the Union's motion to strike CEI's "Statement of Disputed Facts" (doc. # 21).

I.

The Union and the Centerior Energy Corporation, predecessor to CEI, were parties to a collective bargaining agreement ("CBA") that became effective on May 1, 1993. Article XV, Section 1 of the CBA reads:

This agreement will remain in full force and effect through April 30, 1997, and will continue in full force and effect from year to year thereafter unless the Company or the Union, as hereinafter provided notifies the other in writing of its desire to terminate the agreement or to amend or to change any of the provisions thereof.

The parties agree that under Section 1, they had three options: (1) do nothing, in which case the CBA automatically would renew; (2) give a notice to amend or to change the CBA, in which case Article XV, Sections 2 through 4 would apply; or (3) give notice to terminate, in which case the agreement would terminate.

Article XV, Section 4 reads:

If notice is given in accordance with Section 2 or Section 3 of this Article and no agreement has been reached on the changes proposed by May 1, 1997. . . the parties will make every effort to reach agreement thereafter. All provisions of this Agreement will remain in full force and effect thereafter except that (i) if no agreement has been reached by (the respective applicable date set out above), the provisions of Article IV will be waived until such agreement is reached, and (ii) all provisions of this agreement will be without full force or effect during any period of concerted failure to report for work, cessation of work, slowdown, strike, picketing, or lockout.

On February 7, 1997, the Union notified CEI in writing that it wanted to negotiate changes in the contract. The parties commenced negotiations for a new contract on February 28, 1997. By May 1, 1997, the parties had not reached agreement on a new contract. As the Union had provided notice to amend, Article XV, Section 4 "required the contract to continue in effect beyond its expiration date." The parties do not dispute this; CEI admits this in its "Statement of Disputed Facts."

In 1997, the parties negotiated for over seven months without reaching agreement on a new contract. On September 11, 1997, CEI submitted a final offer to the Union and allegedly advised the Union that if it did not accept that offer, the parties' contract would continue under Article XV of the CBA through April 30, 1998.

On February 3, 1998, CEI notified the Union in writing that it intended to terminate the CBA effective May 1, 1998. On May 26, 1998, CEI allegedly implemented the terms and conditions of employment contained in its September 11, 1997 offer. These new terms and conditions included a new grievance procedure. On June 17, 1998, the Union filed a grievance that states: "The Company has failed to abide by all the provisions of the collective bargaining agreement as required by Article XV, Section 4" of the original CBA.

Article V, Section 1 of the CBA includes an arbitration and grievance procedure that provides in part that "Any dispute, disagreement or difference arising between any employee or the Union and the Company may be presented as a grievance"; Article V also provides procedures for resolving the grievance, including arbitration. As it believed that the CBA was terminated, the CEI did not process the grievance in accordance with the CBA. It notified the Union that it considered the grievance untimely as per Article V, Section 1 of the new contract and returned the grievance to the Union as "it is deemed to no longer exist." On September 4, 1998, the Union filed this lawsuit under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, requesting the Court to compel arbitration of its grievance pursuant to the original CBA.

Thus, the parties dispute the terms of the original CBA. The Union alleges that because on February 7, 1997, it notified CEI in writing that it wanted to negotiate changes to the contract, Article XV, Section 4 "required the contract to continue in effect beyond its expiration date" — that is, required

the contract to continue in effect as of May 26, 1998, when CEI implemented the terms and conditions of employment contained in its September 11, 1997 offer. CEI agrees that the Union's February 7 notice required the contract to continue in effect beyond its expiration date but alleges that its February 3, 1998 notice terminated the CBA as of May 1, 1998.

II.

The issue before the Court is whether the parties are required to arbitrate this dispute, or whether the Court must determine if the original CBA terminated as of May 1, 1998.¹ CEI alleges that the Court must determine whether the CBA terminated as of May 1, 1998 in order to determine whether the parties must arbitrate the dispute, and that the Court cannot grant summary judgment in favor of the Union because genuine issues of material fact exist on that issue. The Union alleges that irrespective of whether the CBA terminated as of May 1, 1998, the dispute is arbitrable.

The Court finds the Union's argument persuasive. CEI does not argue that the dispute would be arbitrable if its February 3, 1998 notice were ineffective, and the Court finds that it would be so arbitrable under Article V, Section 1.

However, even assuming that the notice of termination filed on February 3, 1998 was effective, this dispute is arbitrable. An employer may be required to arbitrate a grievance filed after contract

¹ The Court rejects the Union's assertion, raised for the first time in its reply brief and unsupported with case law, that the parties intended to arbitrate the arbitrability issue under Article V, Section 3 of the original CBA.

expiration only where the disputes "arise under" the contract. A post-expiration grievance arises under a contract only:

where it involves facts and occurrences that arose before expiration, where an action taken after expiration infringes a right that accrued or vested under the agreement, or where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement.

Litton Financial Printing Div. V. NLRB, 501 U.S. 190, 206 (1991).

CEI alleges that this dispute does not arise under the original CBA in part because it does not involve "facts and occurrences that arose before expiration" — the Union's grievance alleges that the Company stopped adhering to the CBA on May 27, 1998 — after the CBA allegedly terminated on May 1, 1998.

The Court disagrees. The grievance involves facts and occurrences that arose before the alleged expiration of the CBA because it involves whether the Union's February 7, 1997 notice to amend "required the contract to continue in effect beyond its expiration date" under Article XV, Section 4, and continued in effect after CEI gave its notice of termination on February 3, 1998. The dispute involves facts and occurrences that arose before May 1, 1998 and involves the interpretation of Article XV, Section 4 of the original CBA. Thus, the grievance arises under the original CBA and is arbitrable under Article V, Section 1 of the CBA as "[a]ny dispute, disagreement or difference arising between any employee or the Union and the Company."

The dispute is arbitrable irrespective of whether the CBA terminated on May 1, 1998. This Court, however, renders no opinion concerning whether the CBA actually terminated on that date.²

2


The NLRB is currently investigating whether the negotiations between the parties had reached an impasse that entitled CEI to implement its final offer. Intertwined with this investigation

AT&T Technologies, Inc. v. Communications Workers, 475 U.S. 643, 649 (1986)("[I]n deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying case").

III.

The Court grants the Union's motion for summary judgment (doc. # 17), denies CEI's motion for oral argument (doc. # 20), and denies the Union's motion to strike CEI's "Statement of Disputed Facts" (doc. # 21).³ This order is final and appealable. See Laborer's Int'l Union of N. Am. v. Foster Wheeler Corp., 26 F.3d 375 (3d Cir.), *cert. denied*, 513 U.S. 946 (1994).

IT IS SO ORDERED.


ANN ALDRICH
UNITED STATES DISTRICT JUDGE

is whether CEI's notice to terminate was effective. The parties have allegedly submitted "considerable amounts of evidence to support their respective positions" to the NLRB, and CEI moves the Court to stay this action until the NLRB renders its decision to avoid duplicative and possibly conflicting holdings between the NLRB and the Court. As the Court can order arbitration without adjudicating the underlying dispute, the issue is moot. Even if it were not moot, the Court previously determined that it has concurrent jurisdiction with the NLRB over this dispute in its Order dated October 30, 1998 and will not revisit that decision.

3

The Court disagrees with CEI that pages 106 of its "Statement of Disputed Facts" fall outside of Local Rule 7.1(g). However, the Court found these six pages helpful to the resolution of the case and supportive of the Union's argument. Therefore, denying the motion to strike does not prejudice the Union.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

Amended

DO NOT WRITE IN THIS SPACE	
Case 8-CA-30437	Date Filed

INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer FirstEnergy/Cleveland Electric Illuminating Company		b. Number of workers employed 1,800
c. Address (street, city, state, ZIP code) 76 S. Main St, Akron, Oh 44308	d. Employer Representative Gary D. Benz	e. Telephone No. (330) 384-5802
f. Type of Establishment (factory, mine, wholesaler, etc.) Generation, Wholesale, Retail	g. Identify principal product or service Electric Power	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (1) (3) (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

See Attached

RECEIVED

JUN 4 1999

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Utility Workers Union of America, Local 270

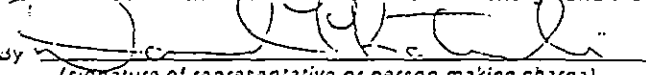
4a. Address (street and number, city, state, and ZIP code) 4205 Chester Ave, Cleveland, Ohio 44103	4b. Telephone No. (216) 881-0004
---	-------------------------------------

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: (to be filled in when charge is filed by a labor organization)

Utility Workers Union of America, AFL-CIO

E. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

by  (signature of representative or person making charge)	President (title if any)
Address 4205 Chester Ave, Cleveland, Oh 44103	(216) 881-0004 12/28/98 (Telephone No.) (date)

CHARGE AGAINST EMPLOYER

Name of Employer: FirstEnergy

Name of Party Filing Charge: Utility Workers Union of America, Local 270

Since on or about November 1, 1998, FirstEnergy Corporation, through its officers, agents and representatives, has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has refused to recognize and bargain collectively with the representative of its employees by, among other acts.

1. Failing and refusing to bargain in good faith with respect to the effects of the decision, to transfer assets and employees to Duquesne Light and Power Company and/or its successors by, among other acts, insisting that terms and conditions of employment previously imposed upon the bargaining unit be accepted by the Union, and by discriminating against those employees with regard to their employment because of their membership and/or the activities of their bargaining representative, Local 270 and by entering into an agreement requiring that the terms of any Collective Bargaining Agreement reached, before it will be assumed, cannot materially exceed the provisions of the Utility Workers Union of America, Local 140's Collective Bargaining Agreement.
2. Failing and refusing to bargain in good faith regarding and with respect to the effect of any decision, to transfer assets and employees to FirstEnergy Nuclear Operating Company, and/or American Transmission Systems, Inc., and/or its successors by, among other acts, insisting that terms and conditions of employment previously imposed upon the bargaining unit be accepted by the Union;
3. Transferring bargaining unit work to non-bargaining unit personnel without notice or an opportunity to bargain about the decision to do so or its effects, including but not limited to, transfer of the testing of electric metering test equipment.

Because of the gravity of the employer's actions, and the substantial likelihood that all of the above transfers will take place prior to the completion of the NLRB procedures, the Union respectfully request that injunctive relief pursuant to Section 10(j) of the Act be immediately sought.

MCCORMACK & WOLGAMUTH COMPANY, L.P.A.

THOMAS A. MCCORMACK
KEITH R. WOLGAMUTH

OF COUNSEL:
KATHLEEN A. DEHAAN

300 SUPERIOR LOFTS
1729 SUPERIOR AVENUE
CLEVELAND, OHIO 44114-2925
PHONE: 216/574-6230
FAX: 216/574-6235

VIA MESSENGER

May 20, 1999

RECEIVED

JUN 4 1999

PA PUBLIC UTILITY COM
SECRETARY'S BLDG

Frederick J. Calatrello
Director
National Labor Relations Board
1695 Federal Office Building
1240 East 9th Street
Cleveland, OH 44199-2086

Re: Utility Workers Union of America Local 270 v. DQE, Inc. and Duquesne Light and Power Co.; Request for Injunction pursuant to Section 10(j) of the Act.

Dear Director Calatrello:

Enclosed please find an original and four (4) copies of a Charge Against Employer submitted to you on behalf of Utility Workers Union of America, Local 270.

Very truly yours,


Keith R. Wolgamuth

KRW/rab

cc: David Kotecki (via fax)
David Marshall (via regular mail)

FORM NLRB-301 (11-88)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer DOE, Inc. and Duquesne Light and Power Co.		b. Number of workers employed 1800
c. Address (Street, city, state, and ZIP code) Cherrington Corporate Center, Suite 100 500 Cherrington Parkway Coraopolis, PA 15108-3184	d. Employer Representative David Marshall, CEO	e. Telephone No. 412-252-4700 Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.) Generation, Wholesale, Retail	g. Identify principal product or service Electric Power	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 3(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

(See attached)

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Utility Workers Union of America, Local 270

4a. Address (Street and number, city, state, and ZIP code) 4295 Chester Avenue, Cleveland, Ohio 44103	4b. Telephone No. (216) 251-0004 Fax No.
--	--

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

Utility Workers Union of America, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Signature of representative of party making charge: <u>Keith R. Wolgamuth</u>	Address: <u>1729 Superior Ave., Suite 300, Cleveland, Ohio 44114</u>	Telephone No.: <u>216 574-8236</u>	Date: <u>May 20, 1999</u>
---	--	------------------------------------	---------------------------

UNTRUE STATEMENTS ON THIS FORM MAY BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Since on or about November 19, 1998, Duquesne Light and Power Company (DQE, Inc.) through its agents, officers and representatives, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has refused to recognize and bargain collectively with the representative of its employees by, among other acts:

1. Failing and refusing to recognize and bargain collectively with Utility Workers Union of America, Local 270 concerning the terms and conditions of employment of its employees employed at its Avon Lake, Ohio facility.
2. Failing and refusing to abide by the terms and conditions of employment of such employees set forth in a certain collective bargaining agreement between Local 270 and Cleveland Electric Illuminating Company effective May 1, 1993.
3. Failing and refusing to bargain collectively concerning its decision to sell its Avon Lake, Ohio facility and transfer such employees to the purchaser, as well as the effects of that decision.
4. Interfering in collective bargaining between Local 270 and Cleveland Electric Illuminating Company (FirstEnergy Corp.)

Because of the gravity of the employer's actions, and the substantial likelihood that the above transfer will take place before NLRB procedures are completed, the Union respectfully requests that injunctive relief be immediately sought pursuant to Section 10(j) of the Act.

MCCORMACK & WOLGAMUTH COMPANY, L.P.A.

THOMAS A. MCCORMACK
KEITH R. WOLGAMUTH

OF COUNSEL:
KATHLEEN A. DEHAAN

300 SUPERIOR LOFTS
1728 SUPERIOR AVENUE
CLEVELAND, OHIO 44114-2825
PHONE: 216-574-6230
FAX: 216-574-6235

VIA MESSENGER

May 21, 1999

Frederick J. Calatrello
Director
National Labor Relations Board
1695 Federal Office Building
1240 East 9th Street
Cleveland, OH 44199-2086

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JUN 4 1999

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Utility Workers Union of America Local 270 v.
DQE, Inc. and Duquesne Light and Power Co.

Dear Director Calatrello:

Enclosed please find an original and four (4) copies of a Charge Against Employer submitted to you on behalf of Utility Workers Union of America, Local 270.

Very truly yours,

Keith R. Wolgamuth / rab

Keith R. Wolgamuth

KRW/rab

cc: David Kotecki (via fax)
David Marshall (via regular mail)

Internet:
FORM NLRB-501
(11-88)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer DQE, Inc. and Duquesne Light and Power Co.		b. Number of workers employed 1800	
c. Address (Street, city, state, and ZIP code) Cherrington Corporate Center 500 Cherrington Pky, Suite 100 Coraopolis, PA 15108-3184		d. Employer Representative David Marshall, CEO	e. Telephone No. 412-252-4700 Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.) Generation, Wholesale, Retail		g. Identify principal product or service Electric Power	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>(3)(5)</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.			

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

(see attached)

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Utility Workers Union of America, Local 270

4a. Address (Street and number, city, state, and ZIP code)

4205 Chester Avenue, Cleveland, OH 44103

4b. Telephone No.

216-881-0034

Fax No.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

Utility Workers Union of America, AFL-CIO

8. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Keith R. Wolgamuth
Signature of representative or person making charge

Attorney
(print type name and title or office, if any)

Address Keith R. Wolgamuth
1729 Superior Ave., Suite 300 Cleveland
Ohio 44114

(fax) 216-574-6235

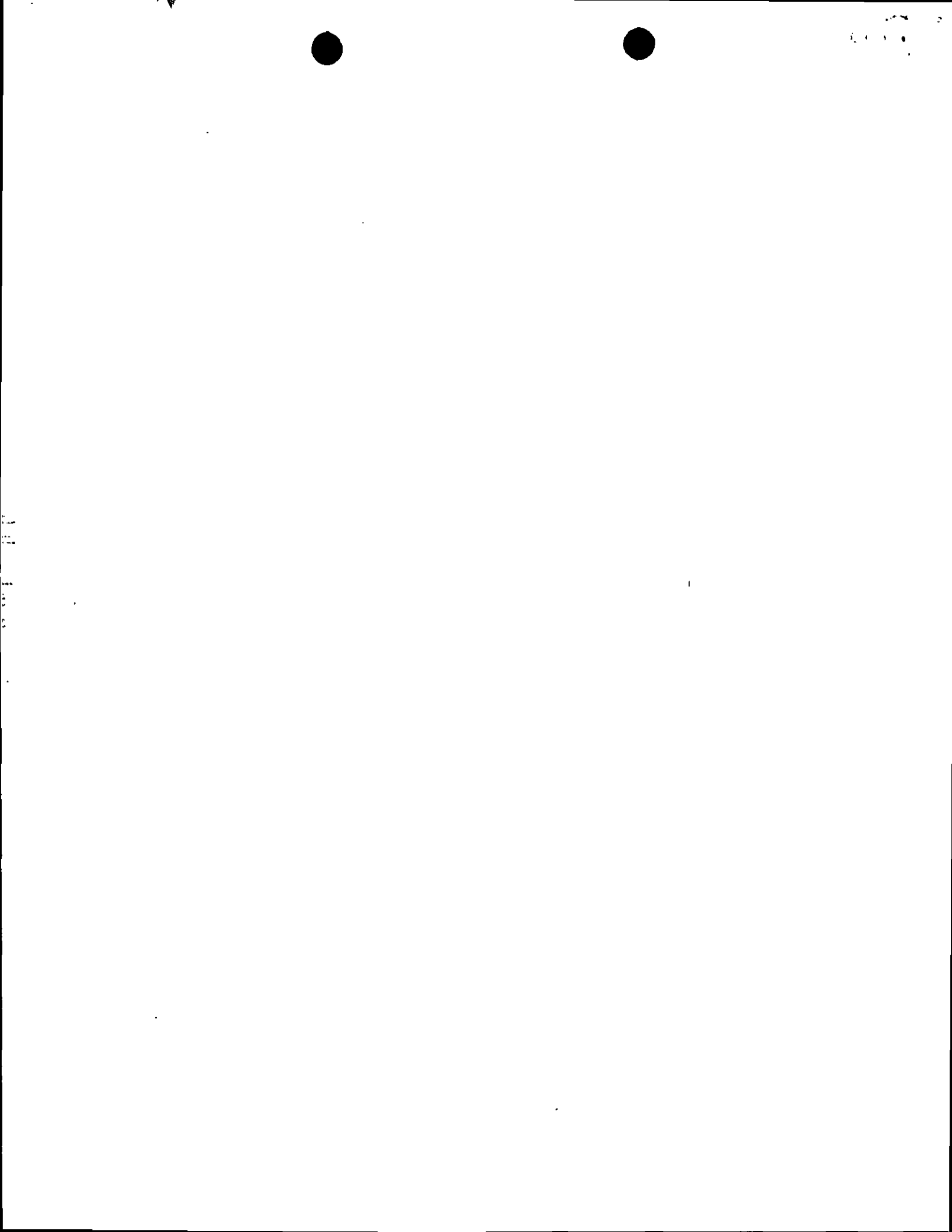
216-574-6230

5/21/99

(Telephone No.)

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)



Since on or about March 25, 1999, Duquesne Light and Power Company (DQE, Inc.) through its agents, officers and representatives, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, has discriminated in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, and has refused to recognize and bargain collectively with the representative of its employees by, among other acts:

1. Entering into an agreement with the FirstEnergy Corp./Cleveland Electric Illuminating Company where it singled out and discriminated against employees at the Avon Lake, Ohio Plant regarding their employment because of their membership in, or the activities of, U.W.U.A. Local 270.
2. Entering into an agreement with FirstEnergy Corp./Cleveland Electric Illuminating Company where it singled out and discriminated against U.W.U.A. Local 270 regarding recognition at the Avon Lake, Ohio facility
3. Entering into an agreement whereby it unlawfully conditioned and/or limited bargaining for a new contract between FirstEnergy Corp./Cleveland Electric Illuminating Company and U.W.U.A. Local 270 and/or its acceptance of any such contract at the Avon Lake, Ohio facility.

RECEIVED

buyer to determine the value of an asset is superior to the expert predictions of what the future value of that asset may be.

JUN 4 1999

We find that a present divestiture of utility generation can reasonably satisfy the "known and measurable" criteria set forth in the Act. Therefore, as recommended by the ALJ, we accept the rejoinder offer of Duquesne to divest itself of generation if the proposed DQE-APS merger is not consummated. We also accept Duquesne's proposal to offer that divestiture of its generating assets in order to determine the value of its stranded utility generation. In the event the proposed merger with APS is not consummated for any reason whatsoever, divestiture should occur, preferably within 18 months of entry of our final Order disposing of the application. As noted in Duquesne's exceptions, we recognize that a longer time frame may be necessary. A more specific time frame will be determined in the divestiture proceeding involving Duquesne.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Within 90 days of entry of this Order in this case, and in conformity with the guidelines established below, Duquesne should file a plan of divestiture of its generating assets, together with a proposal for addressing its continuing obligation to serve under the rate cap. All interested parties should have an opportunity to respond to the divestiture and/or obligation to serve proposals.

Duquesne is directed to provide the following items in its divestiture plan:

1. Company shall file the proposed plan for divestiture within 90 days.
2. The plan shall be served on all parties to this proceeding.
3. Parties shall file comments to the filed plan within 60 days.
4. Duquesne shall file a response to comments and accepted revisions within 30 days, thereafter.
5. The plan shall detail a schedule for pre-bid conferencing and the exchange of relevant information.
6. The plan shall disclose those assets and/or operational criteria of an asset essential for the continued reliability of service in the Duquesne territory.
7. The plan shall include a discussion of the treatment of shares of nuclear and fossil units for whom Duquesne is a minority owner. Specifically, the plan shall delineate Duquesne's

proposed treatment of nuclear ownership shares should no bids materialize for those shares, as well as Duquesne's ability to sell its stake in Beaver Valley 2 and Perry 1 to the other owners of those units or to swap Duquesne's stake in these units with the owners for the output of other fossil units.

8. Divestiture shall include both fossil and nuclear assets.
9. Proposals may be accepted for an individual asset or portion thereof.
10. The plan shall detail the approvals necessary for the acquisition of an individual asset or portion thereof.
11. The plan shall disclose environmental obligations of a particular asset and enforcement agreements entered into by Duquesne associated with an asset. The plan should detail the handling of current trust funds and reserves associated with environmental liabilities.
12. The plan shall describe the transmission access available to a particular asset and any general transmission agreements associated with a particular asset.
13. The plan shall include tracking and accounting for the transaction costs associated with the divestiture activities, both internal and external.
14. The plan shall describe the ratemaking accounting for use of proceeds of the plan as it relates to offsetting the generation and regulatory stranded costs and the computations of the CTC and shopping credit.
15. The plan shall include opportunity provisions for the continued sale of output to permit Duquesne to satisfy its obligation as provider of last resort.
16. The plan shall set forth transitional issues and the resolution of those issues in a manner that is fair to customers, investors, the employees of the Company, local communities, and other affected parties.

We would also note that as divestiture may not be accomplished by January 1, 1999, for the interim period the shopping credit in use shall continue to be the Pilot Customer Participation Credit ("CPC") and energy credits. Upon determination of the value of Duquesne's utility generation assets, following implementation of the divestiture plan, a CTC shall be adopted that reconciles the actual stranded utility generation value with the interim amount collected, as described below."

MCNEES, WALLACE & NURICK

ATTORNEYS AT LAW

100 PINE STREET
P. O. BOX 1166
HARRISBURG, PA 17108-1166
TELEPHONE (717) 232-8000
FAX (717) 237-5300

<http://www.mwn.com>

ORIGINAL

SECRETARY'S BUREAU
99 JUN 7 11 2:37
1999 JUN 11 11 2:37

PAMELA C. POLACEK

DIRECT DIAL: (717) 237-5368

E-MAIL ADDRESS: PPOLACEK@MWN.COM

June 7, 1999

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17120

VIA HAND DELIVERY

Re: Application of Duquesne Light Company for a Certificate of Public Convenience and for Commission Approval of the Transfer and Acquisition of Property Used and Useful in the Public Service Between Duquesne Light Company and FirstEnergy Corporation; Docket No. A-110150 F.0020

**Pennsylvania Public Utility Commission v. Duquesne Light Company;
Docket No. R-00974104**

Dear Mr. McNulty:

Enclosed for filing with the Commission are Comments of the Duquesne Industrial Intervenor's ("DII") in the above-referenced proceedings. We enclose an original and ten (10) copies for filing in Docket No. R-00974104 and an original and three (3) copies for filing in Docket No. A-110150F.0020.

As evidenced by the attached Certificate of Service, parties to the Duquesne restructuring proceeding have been duly served. Please date stamp the extra copy of this letter and kindly return it for our filing purposes.

Very truly yours,

MCNEES, WALLACE & NURICK

By

Pamela C. Polacek
Pamela C. Polacek

BTL

Counsel to the Duquesne Industrial Intervenor's

PCP:dt

Enclosures

c: Certificate of Service

**DOCUMENT
FOLDER**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

APPLICATION OF DUQUESNE LIGHT
COMPANY FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND FOR
COMMISSION APPROVAL OF THE
TRANSFER AND ACQUISITION OF
PROPERTY USED AND USEFUL IN
THE PUBLIC SERVICE BETWEEN
DUQUESNE LIGHT COMPANY AND
FIRSTENERGY CORPORATION

DOCKET NO. A-110150F.0020

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, ET. AL.

v.

DOCKET NO. R-00974104

DUQUESNE LIGHT COMPANY

**COMMENTS OF THE
DUQUESNE INDUSTRIAL INTERVENORS
ON ASSET TRANSFER APPLICATION**

J&L Specialty Steel, Inc.
LTV Steel Company, Inc.

Nova Chemicals, Inc.
USX Corporation - US Steel Group

David M. Kleppinger
James P. Dougherty
Pamela C. Polacek
McNEES, WALLACE & NURICK
100 Pine Street
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I. INTRODUCTION

By Opinion and Order entered on May 29, 1998, the Pennsylvania Public Utility Commission ("PUC" or "Commission") accepted the rejoinder offer of Duquesne Light Company ("Duquesne" or "Company") to divest its generation assets in order to determine the level of generation-related stranded costs recoverable by Duquesne under the Electricity Generation Customer Choice and Competition Act. See Pennsylvania Public Utility Commission v. Duquesne Light Company, Docket No. R-00974104, Opinion and Order entered on May 29, 1998 ("Final Order"). In accordance with the timeline established in the Final Order, Duquesne submitted its Generation Auction Plan on August 27, 1998. On October 14, 1998, Duquesne submitted an agreement in principle that it reached with FirstEnergy Corporation ("FirstEnergy") for the exchange of ownership interests in certain generation facilities. Interested parties, including the Duquesne Industrial Intervenors ("DII"), submitted Comments to the Commission regarding both the Generation Auction Plan and the proposed generation asset exchange.¹

On December 18, 1998, the Commission issued an Order addressing both the generation asset exchange and the auction plan. See Pennsylvania Public Utility Commission v. Duquesne Light Company, Docket No. R-00974104, Opinion and Order entered on December 18, 1998 ("Generation Auction Plan Order"). Among other issues, the Generation Auction Plan Order preliminarily approved the generation asset exchange with FirstEnergy, but required Duquesne to

¹ DII is an ad hoc association of some of Duquesne's largest industrial and institutional customers. DII members consume large amounts of electricity pursuant to tariffs, rules and riders provided by Duquesne, including Rates GL, L and HVPS, Riders 7, 8 and 20, and contracts pursuant to Duquesne's Rule 4. DII was an active participant in Duquesne's restructuring proceeding.

file definitive agreements regarding the exchange for comment by the parties and final approval by the Commission. On May 3, 1999, Duquesne submitted to the Commission definitive agreements reached with FirstEnergy regarding the generation asset exchange and filed the "Application of Duquesne Light Company for Certificate of Public Convenience and for Commission Approval of the Transfer of Property Used or Useful in the Public Service" ("Duquesne Application"). By agreement of the parties reached at the May 13, 1999, Technical Conference, the date for submitting Comments on Duquesne's Application is June 7, 1999.²

DII submits these Comments on Duquesne's Application addressing the following issues:

- Definitive approval of any accounting protocols and reconciliation procedures related to the generation auction proceeds and interim competitive transition charge ("CTC") revenues must be delayed until after the auction is completed;
- Duquesne's inappropriate request to increase ratepayers' responsibility for future nuclear decommissioning expenses must be rejected; and,
- The Commission should mandate that Duquesne join an Independent System Operator or Regional Transmission Organization rather than requiring the purchasers of Duquesne's generation units to address reliability concerns through mandatory "Must Run" agreements.

DII's limitation of its Comments to the specified issues should not be construed as an agreement that all other aspects of the Duquesne Application are proper and in the public interest. To the contrary, DII anticipates that other active parties will raise valid criticisms of Duquesne's

²Duquesne filed its Application in the Commission Docket assigned for review of its restructuring plan (i.e., Docket No. R-00974104). The Commission subsequently assigned the Application to Docket No. A-110150 F.0020 for review. On June 1, 1999, DII submitted a Petition to Intervene in Docket No. A-110150 F.0020. DII submits these Comments in both Docket No. A-110150 F.0020 and Docket No. R-00974104 because the issues raised herein impact both proceedings.

Application that are not addressed in these Comments. DII reserves the opportunity to adopt those positions and to address additional issues in any subsequent proceeding related to Duquesne's Application and Duquesne's Generation Auction.

II. COMMENTS

A. **The Commission Should Not Grant Definitive Approval For Any Proposed Accounting Protocols Until After The Auction Has Been Conducted.**

As part of the Application, Duquesne requests approval of accounting procedures associated with the future divestiture of all its generating units (both those subject to transfer under the Application and those currently fully-owned by Duquesne). See Duquesne Application, p. 23. Duquesne provides a description of the proposed methodology in Appendix E to the Application. See id., Appendix E. Duquesne asserts that approval of the protocols now is necessary to "remove uncertainty from the auction," which purportedly will be beneficial to all parties. See Duquesne Application, p. 23.

Approval of the protocols is premature. No certainty regarding the accounting protocols is needed for the auction to proceed. To the contrary, because the information needed to fully determine whether the proposed protocols are reasonable will not be available until the auction is completed, it is more prudent to await the results of the auction before definitively adjudicating the protocols. Approval of the accounting protocols at this time is unnecessary and should be rejected.

Preapproval of the accounting procedures is unnecessary and not related to the approval of the asset exchange or to the operation of the auction. Although Duquesne asserts that approval of the procedures will remove uncertainties from the auction (see Duquesne Application, p. 23), purportedly benefitting all parties, it is difficult to determine a connection between the post-auction treatment of the proceeds and the price that a buyer will pay for any of

Duquesne's generation assets. The activities of the buyers in the auction will be based on their estimate of the market value of the assets; the activities of the buyers will not be based on the accounting protocols that will be used to calculate Duquesne's recoverable generation-related stranded cost. Although Duquesne may claim that preapproval is necessary to provide the Company with certainty to complete the divestiture process, it seems highly unlikely that the Company will forgo divestiture simply because the accounting protocols are not preapproved. Preapproval of the accounting protocols will not significantly impact the operation of the asset auction and is unnecessary at this time.

In addition, definitive approval of the accounting protocols provides little benefit to Duquesne's ratepayers. The accounting protocols for the proceeds from the auction are an issue to be addressed between the Company and its ratepayers. At least one customer group, DII, strongly believes the final approval of the accounting protocols should be delayed until the results of the auction are known. Although DII's review of the protocols reveals that the proposal appears to be appropriate, definitive approval of an accounting methodology is premature prior to the actual auction of the generation assets. Unexpected events may occur during the actual auction that would necessitate adjustments to the proposed accounting protocols. Such adjustments can only be made based on actual results. Consequently, the Commission's resources are best utilized by waiting for a definitive set of facts and circumstances to determine whether the accounting protocols are appropriate.

Furthermore, certain aspects of Duquesne's proposal appear to be facially unreasonable and must be corrected. For example, Duquesne requests that the sales price of any asset for

which a transfer is not completed should be administratively established at \$0. See Duquesne Application, Appendix E, n. 3. This assumed value of \$0 will apply to any untransferred facility, whether the facility was not transferred because no bids were received on the facility or whether conditions precedent to the transfer of that facility were not satisfied. Id. As DII explained in its Comments regarding Duquesne's identical request in its Generation Auction Plan, the reasons for an asset not being transferred as part of the auction process may be due to factors beyond a simple lack of market value for the asset. See DII Comments on Generation Auction Plan, Docket No. R-00974104, filed on November 9, 1998, pp. 7-9 (incorporated herein by reference). For example, an asset may not be transferred because Duquesne has placed unreasonable (and unspecified) "conditions precedent" on the transaction. The exact reason for a failure to transfer any asset cannot be predicted and the Commission should not adopt an accounting protocol at this point that preordains the resulting market valuation for the stranded cost reconciliation.³ Moreover, the parties and the Commission may not need to address this issue at all if every

³ Another example of why an asset might not be transferred is because either FirstEnergy or Duquesne has exercised their ability to withdraw from the agreement due to the occurrence of a "Regulatory Adverse Effect." See Duquesne Application, Generation Exchange Agreement, Exhibit Q, ¶¶ 9.2(a) & 9.3(a). If either party withdraws from the agreement, Duquesne will again be auctioning only a share of the units that would otherwise have been transferred to FirstEnergy. FirstEnergy appears to be able to withdraw from the agreement if any regulatory body fails to approve its proposed transfer of all of its transmission assets to its affiliate, a transaction which is obviously unrelated to the generation asset exchange. See id. ¶ 1.1(184). Thus, the entire asset exchange agreement appears to be contingent, not only on approval of the exchange agreement, but also on approval of the FirstEnergy transmission asset transfer by this Commission, the Federal Energy Regulatory Commission ("FERC") and the Ohio Public Utilities Commission. Given these contingencies that are wholly unrelated to the market value of Duquesne's assets, a \$0 assumed market value for any untransferred asset is unreasonable.

Duquesne asset is transferred during the auction process. Clearly, issues such as this can and should be addressed only in a post-auction true-up proceeding.

The Commission previously acknowledged that many decisions related to the generation auction should be delayed until an appropriate time where more information is available. As the Commission recognized regarding the assumed \$0 market value proposal contained in Duquesne's Generation Auction Plan, "[T]his market value, along with the details of the disposition, will receive appropriate Commission scrutiny at the proper time." Generation Auction Plan Order, p. 30. The proper time to address all accounting issues is after the auction when all facts are known. DII requests that the Commission reject the Company's attempt to gain prior approval of the accounting protocols as part of its application to exchange assets with FirstEnergy.

B. To The Extent The Commission Approves The Accounting Protocols, The Commission Must Not Definitively Approve The Procedures For Reconciling Interim CTC Revenues And Establishing A Post-Auction CTC.

Duquesne includes in the accounting protocols a proposed method to reconcile the interim CTC revenues that it has collected since January 1, 1999, and a method to design the post-auction system-wide average CTCs. See Duquesne Application, Appendix E, pp. x-xiii. To the extent the Commission is willing to consider preapproval of the accounting protocols, this should not extend to approval of the proposed procedures for reconciling the interim CTC revenues and determining the post-auction CTCs. Rather, the Commission must carefully consider these calculations and methodologies based on the actual auction results to ensure that

each class receives credit for an appropriate portion of CTC revenues paid during the interim period and that the resulting CTCs after the auction produce viable shopping opportunities.

Duquesne discusses how the Company will ensure that interim CTC revenues will be allocated to all aspects of its stranded cost recovery. See id. The Company's discussion of how it will ensure that each customer class receives appropriate credit for interim CTC revenues and an appropriate allocation of stranded costs after the auction is extremely cursory. Although DII has sought clarification from the Company regarding these procedures, the most prudent course of action is to address this issue based on the actual auction results.⁴

For example, to ensure that the calculation is performed in an appropriate manner, DII must examine, at a minimum, Duquesne's workpapers showing the development of total stranded costs at January 1, 1999, the allocation of that total to each rate class and an accrual accounting demonstrating how interim CTC revenues are credited on a class-basis. Because of the level of information needed to ensure that all rate classes are treated appropriately, the Commission should engage in a post-auction true-up proceeding that provides all parties with the

⁴ According to DII's discussions with the Company, Duquesne intends to perform a class-specific reconciliation of interim CTC revenues and establish post-auction CTC recovery periods for each class. The Company will begin this process by recomputing stranded costs as of January 1, 1999, based on the auction results. The Company will then allocate the January 1, 1999, stranded costs to rate classes based on a production cost allocator. According to the Company, a production revenue requirement allocator should be used to allocate a balance of stranded costs to each rate class. Each rate class will also receive a specific credit of prior CTC revenues paid during the interim period. On a going forward basis, CTC recovery will be reconciled on a class-basis. The Company anticipates that CTC recovery may terminate at different times for different rate classes.

opportunity to review and comment on the Company's calculations to ensure proper allocation to each rate class and proper credit for interim collections.

The Commission previously found that a post-divestiture true-up to examine stranded cost and accounting issues is reasonable in accepting Metropolitan Edison Company and Pennsylvania Electric Company's offers to divest their assets to determine generation-related stranded costs. See Application of Metropolitan Edison Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00974008, Opinion and Order entered on June 30, 1998, pp. 30-34 & Application of Pennsylvania Electric Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00974009, Opinion and Order entered on June 30, 1998, pp. 30-34. The Commission also indicated in its Order regarding Duquesne's Second Compliance Filing that, "[a]s stated in our August 13, 1998 Order, we reaffirm, that following the implementation of any divestiture plan, a transition period, and a CTC, shall be adopted that reconciles the actual stranded costs with the proceeds of divestiture and the interim amount collected." Pennsylvania Public Utility Commission v. Duquesne Light Company, Docket No. R-00974104, Order on Compliance Filing entered on October 16, 1998, pp. 10-11 (emphasis added). The Commission should convene a proceeding similar to that contemplated for the GPU companies to address Duquesne's accounting and stranded cost recovery issues.

In addition, holding a post-auction true-up proceeding will permit the Commission to make a judgment based on all of the available evidence regarding the sufficiency of the shopping credits to be applied in Duquesne's service territory. As the Commission is aware, despite the

fact that two-thirds of the peak load in Duquesne's service territory has the opportunity to access competitive supply, the number of customers and load actually being competitively provided is far below 66%. In fact, a recent survey performed by the Office of Consumer Advocate ("OCA") revealed that only 13% of Duquesne's customers, constituting 20% of the total load, are being served by alternative suppliers. The results are even more startling if only industrial customers are considered. For example, according to the OCA survey, while over 55% industrial customers in the PECO Energy service territory take service from an alternative supplier, only 13.4% of the industrial customers in Duquesne's territory use an alternative supplier. In terms of load, 53% of the industrial load in PECO's service territory receives competitive supply, while 7.8% of the industrial load in Duquesne's service territory receives competitive supply. Given the reputation of both PECO and Duquesne as high-cost utilities, disparate results such as these regarding competitive alternatives should not go unacknowledged and unaddressed.

One method the Commission could use to address this issue is to evaluate whether the shopping credits stated in the Final Order will provide Duquesne's customers a meaningful opportunity to shop.⁵ The Commission should only do this, however, after examining the final level of stranded costs to be collected from Duquesne's ratepayers and other relevant factors. This information will only be available in a post-auction true-up proceeding. Consistent with the Commission's statements in the Order regarding Duquesne's Second Compliance Filing, the

⁵ Duquesne states that it will design the post-auction shopping credits "equal" to those in the PUC's Final Order. See Duquesne Application, Appendix E, n. 12. Although the Commission previously stated that shopping credits should be consistent with those in the Final Order, it is certainly within the Commission's prerogative to adjust those shopping credits.

Commission should convene a post-auction true-up proceeding and use that proceeding as an opportunity to evaluate and adjust, as necessary, the shopping credits for Duquesne's service territory.

If the Commission is willing to definitively approve the accounting protocols for Duquesne's auction proceeds, the Commission should not extend this approval to the proposed procedures to reconcile the interim CTC revenues and to establish post-auction system-wide average CTCs. This judgment must only be made when the parties have full access to all relevant data to ensure that the calculations and methodologies do not result in interclass cost shifting. This analysis can only occur during a post-auction true-up proceeding. Approval of the procedures must be delayed until that time.

C. Duquesne's Request To Increase Its Nuclear Decommissioning Cost Recovery Above The Amount Authorized In The Commission's Final Order Must Be Firmly Rejected.

In the Final Order regarding Duquesne's restructuring plan, the Commission approved recovery by the Company for future nuclear decommissioning expenses of \$ 42.959 million. Final Order, p. 148. In Duquesne's Reply Comments regarding the agreement in principle, the Company assured the Commission and the parties that it had "established a 'firm cap' on its nuclear decommissioning liability equal to the amounts already funded and those additional amounts authorized" in the Final Order. See Duquesne Reply Comments, Docket No. R-00974104, filed on November 23, 1998, p. 7. Duquesne is now rescinding that assurance and seeks approval to recover additional nuclear decommissioning expenses from ratepayers. See

Duquesne Application, p. 9, Appendix C & Appendix E, pp. ii-iii. Duquesne's attempt to revisit this issue and unreasonably increase ratepayer responsibility for nuclear decommissioning expenses must be rejected.

The appropriate stranded cost recovery for future nuclear decommissioning expenses was a contested issue in Duquesne's restructuring proceeding. The Commission weighed the proposals advanced by the various parties and determined that the appropriate valuation of and recovery for future decommissioning expenses associated with Duquesne's nuclear generation assets is \$42.959 million (net present value at December 31, 1998). See Final Order, p. 148. This decision was not challenged by Duquesne via a Petition for Reconsideration or an appeal to the Commonwealth Court.

The definitive agreement between Duquesne and FirstEnergy increases the amount that Duquesne must pay to FirstEnergy prior to the transfer for future nuclear decommissioning expenses to \$57.4 million. See Duquesne Application, p. 9. Duquesne seeks to increase its stranded cost recovery for nuclear decommissioning expenses from ratepayers by classifying any amount in excess of \$42.9 million to be paid to FirstEnergy for nuclear decommissioning as a "transaction cost" to be deducted from the auction proceeds prior to determining the definitive level of generation-related stranded costs. See Duquesne Application, Appendix E, pp. ii-iii. The inclusion of this increased nuclear decommissioning amount as a transaction cost consequently reduces the auction proceeds and increases Duquesne's stranded cost recovery.

In addition, Duquesne requests that the Commission issue an accounting order including the full \$57.4 million in Duquesne's cost of service for ratemaking purposes. See id., Appendix

C. The form order attached to the Application states that \$57.4 million of the CTC revenues collected by Duquesne during 1999 should be treated as nuclear decommissioning costs. See id. The Application specifically notes that the accounting order is necessary to “clarify[] the amount of authorized decommissioning costs and confirm[] that such amount will be collected from Duquesne’s ratepayers through the CTC prior to the transfer.” Duquesne Application, p. 10.

No basis exists to increase Duquesne’s stranded cost recovery for future nuclear decommissioning expenses. The Commission fully considered the issue of an appropriate amount of future nuclear decommissioning expense in the restructuring proceeding and determined that the most reasonable and supported amount for such recovery is \$42.9 million. Not surprisingly, the amount that Duquesne seeks to include as the total nuclear decommissioning expense to be recovered from ratepayers is the identical amount that Duquesne requested in the restructuring proceeding. See Final Order, pp. 145-147. This request was, of course, rejected in favor of the more reasonable estimate provided by the DII witness Kollen. In fact, the Commission specifically stated that “the Company’s proposal, which includes a 4% annual inflation factor up to the year of each plant’s decommissioning, is improperly inflated due to the inclusion of contingency factors.” Id. at 148. The reasonableness of the Commission’s decision does not change because Duquesne has voluntarily decided to divest its generating assets. Duquesne’s request to increase its stranded cost recovery from ratepayers for nuclear decommissioning expenses must be firmly rejected.

While Duquesne may argue that an increase in recovery for nuclear decommissioning expenses was a “trade off” reached for other benefits received under the definitive agreement, the

Commission cannot effectively evaluate whether the alleged benefits received in return for the increase are adequate from the perspective of Duquesne's ratepayers. See Duquesne Application, p. 9 (describing additional items received from FirstEnergy in exchange for the increase in nuclear decommissioning expense). Duquesne's ratepayers had reason to believe, based on the Commission's unchallenged decision in the Final Order and the Company's assurances regarding the preliminary agreement with FirstEnergy, that the liability for future nuclear decommissioning expenses was capped at \$42.9 million. The Commission cannot currently determine whether the additional \$14 million in nuclear decommissioning expense is offset by an actual increase in the value of the generation portfolio.⁶ In addition, Duquesne seeks to include additional employee severance costs and environmental remediation costs at the Beaver Valley site as transaction costs. See Duquesne Application, p. 9 & Appendix B, p. iii. These additional costs also should be considered by the Commission in evaluating whether ratepayers are receiving a sufficient bargain under the definitive agreement.

Duquesne's request to increase ratepayer liability for nuclear decommissioning must be soundly rejected. The Commission properly determined that ratepayer liability should be capped

⁶ One possible method to ensure that ratepayers are receiving an adequate bargain is to require Duquesne to demonstrate, after the auction, that the market value above book value of the additional 30 MW generating unit that was added to the FirstEnergy Agreement exceeds the increased commitments that Duquesne has attempted to make on behalf of its ratepayers as part of the definitive agreement for nuclear decommissioning. If the differential between the price received for the additional unit and that unit's book value does not exceed the additional decommissioning expense (and other expenses added to the deal such as employee severance and environmental remediation), ratepayers clearly cannot be forced to pay the additional nuclear decommissioning expenses as stranded costs. Ratepayers were not represented during the negotiations to ensure that the agreement was adequate. As Duquesne was the party in control of negotiating the agreement, any risk of an inadequate tradeoff must be borne by the Company.

at \$42.959 million. No valid basis exists to revisit this decision as part of the asset transfer application.

D. Rather Than Imposing A “Must Run” Agreement On The Buyers Of The Generating Units, Duquesne Should Be Required To Participate In An ISO Or RTO To Address Reliability Concerns.

Duquesne includes with the Application a “Must Run” agreement that the purchasers of all of the generating units that will be part of Duquesne’s auction will be required to execute. See Duquesne Application, pp. 16-17 & Generation Asset Agreement, Exhibit Q. This agreement will be required both for plants in the Duquesne service territory and plants in the FirstEnergy territory. The agreement allows FirstEnergy or Duquesne to unilaterally determine whether the particular unit should be placed in “Must Run” status to “maintain system reliability in a local area.” Id. at 17. Duquesne alleges that these agreements are necessary to ensure a facility owner does not “exercise market power because of the absence of alternative energy sources to supply the local area.” Id. The agreement also allows the owner of the “Must Run” plant to recover only the unit’s incremental costs of operation. Id.

The “Must Run” agreement is improper and must be rejected. As discussed in detail below, four obvious flaws exist in proposal:

- The agreement does not specify what qualifies as a “Must Run” condition.
- Permitting Duquesne to invoke “Must Run” status for generation supply-related reasons is antithetical to the operation of a competitive supply market.
- Providing Duquesne and FirstEnergy with the ability to confiscate the new owners’ management decisions regarding plant operations is inappropriate regardless of whether it is done for generation reasons or transmission reasons;

local area reliability decisions should only be made by an independent entity such as an Independent System Operator (“ISO”) or a Regional Transmission Organization (“RTO”).

- Requiring the new plant owner to enter into a “Must Run” agreement negotiated between the two incumbent electric distribution companies will impact the value of the assets and potentially increase stranded costs to be paid by ratepayers.

For all these reasons, the “Must Run” agreement is highly suspect and should be rejected.

First, the “Must Run” agreement is noticeably vague regarding what will constitute a reliability concern sufficient to invoke “Must Run” status.⁷ See Duquesne Application, Generation Exchange Agreement, Exhibit Q. The agreement does not specify whether the “reliability” concerns that will necessitate the “Must Run” status will be related to a lack of generation sufficient to meet customer demand or a transmission-related issue.⁸ Consequently, the purchasers of the generating units will be unclear as to when the facility potentially could be called upon to produce unanticipated output. The participants in Duquesne’s auction will be

⁷The lack of specificity is not surprising given that the agreement was “negotiated” between two parties with identical interests who will also be the entities with unilateral discretion to issue a dispatch order requiring the units to run.

⁸The language in Duquesne’s Application seems to indicate that Duquesne and FirstEnergy could invoke “Must Run” status to address either situation. Based on Duquesne’s allegation that the “Must Run” agreement is necessary to prevent the unit owner from exercising market power, it appears that generation resource unavailability is the reliability concern that the agreement is designed to redress. See Duquesne Application, p. 17. Later in the same paragraph, however, Duquesne implies that transmission issues will be addressed through the “Must Run” agreement and asserts that “it is expected that during must-run periods, which are peak periods, market prices will be above the cost of production at each of the divested plants and thus each plant will be selling into the market and producing sufficient energy to support the transmission system without any need to call on them under the Must-Run Agreement.” Id. (emphasis added) Regardless of the apparent contradictory statements in the Application, the “Must Run” agreement itself, which is the legal document that would govern the relationship between the new owners and Duquesne or FirstEnergy, contains no adequate explanation of this issue.

agreeing to have a significant management decision to not operate the acquired facility be subject to an undefined veto power by the incumbent utilities. This uncertainty will clearly decrease the attractiveness of acquiring the divested plants.

Second, permitting Duquesne to place any generating unit in a "Must Run" status due to a lack of generation resources in a local area to meet anticipated customer demand is antithetical to a competitive market structure for electric generation supply. A deregulated, market-based approach to electricity supply is based on each customer arranging for adequate supply, either through an alternative supplier or through a supplier of last resort. Alternative suppliers and the entity performing the supplier of last resort obligation must enter into contractual obligations to ensure that they will be able to deliver adequate supply to the customers. To the extent an alternative supplier or the supplier of last resort fails to adequately contract to meet anticipated customer needs, Duquesne and FirstEnergy, as the incumbent utilities (and, for the near future, also the suppliers of last resort), should not be able to mandate that a generating unit owner operate on any given day in order to ensure the adequacy of supply.⁹ If the unit does not operate,

⁹ The following situation provides an example of why Duquesne's proposal is unreasonable: The ultimate buyer of the 30 MW Niles unit that will be part of Duquesne's auction may decide to directly contract with a single industrial customer that will consume the unit's entire daily output. The new owner of the Niles unit and its single industrial customer may agree that the unit's daily output will vary in correlation with the customer's anticipated production load. The customer and unit owner may decide on a particular day that the unit should operate only at half of its maximum capacity because the demand for the customer's product produced at the facility is low and the customer will not have all production lines operating. Duquesne should not be able to force the unit owner to generate electricity beyond the amount its customer requires on that day. In addition, the customer and the unit owner may agree that the generating unit will be shut down for maintenance for a two-week period during August when the industrial customer ceases plant operations for employee vacation purposes. If
(continued...)

the unit owner will need to compensate or justify its actions to the entities that have contracted for its output. Similarly, if the entity supplying an alternative supplier or the supplier of last resort fails to deliver, appropriate action can be taken against the specific unit owner. Any purported ability for an owner to exercise "market power" can and should be adequately addressed through the contracting process as part of a competitive supply market.

Third, permitting Duquesne and FirstEnergy to unilaterally decide when a "Must Run" situation occurs is wholly improper. A sufficient separation does not exist between Duquesne and FirstEnergy's concerns as transmission control area operators and the utilities' obligations as the supplier of last resort to ensure the integrity of the decision to invoke a "Must Run" situation. This detachment is essential to ensure the development of a viable competitive market. Only an independent entity should be permitted to interfere with management and supply decisions for local area reliability concerns. To address reliability concerns, Duquesne should be required to join an appropriate ISO or RTO. The Commission has the authority to condition issuance of a Certificate of Public Convenience authorizing the transfer on Duquesne joining an ISO or RTO. See 66 Pa. C.S. §2811(e)(2). The Commission should do so and permit the scope of must run conditions to be formulated and enforced through an independent entity.

Fourth, contrary to Duquesne's representations, requiring a buyer to execute the mandatory "Must Run" agreement will clearly diminish the value of the plants in the auction,

⁹(...continued)

this two week period occurs during a time when Duquesne has prohibited planned outages (see Duquesne Application, Generation Exchange Agreement, Exhibit Q, ¶ 3.2(c)(i)), Duquesne should not be able to force the Niles plant to continue to operate if its only customer requires no energy and the unit will be foregoing maintenance.

thus increasing stranded costs.¹⁰ See Duquesne Application, p. 17. Duquesne will be removing from the purchaser of the facilities a management prerogative otherwise available to any business in a deregulated market. Although a truly independent entity whose only function is to ensure reliability may be able to do this under appropriate circumstances, the incumbent electric distribution company should not be permitted to do so. The mandatory “Must Run” agreement proposed in Duquesne’s Application, with the sketchy explanation of what constitutes a “Must Run” situation, will impact the attractiveness of Duquesne’s generating assets and the price a buyer is willing to pay for the units.

DII acknowledges that reliability issues exist in the instant situation. The solution for those issues is not a mandatory obligation to be placed on the owners of the divested plants. Rather, concerns regarding the reliability of Duquesne’s supplier of last resort function can be better addressed through appropriate oversight of Duquesne’s intended manner to fulfill this function. The supplier of last resort function is an area that specifically remains under Commission regulation and oversight. See 66 Pa. C.S. § 2807(e). The generation and supply of electricity, which is what the “Must Run” agreement seeks to provide oversight regarding, is deregulated. See id. § 2802(14). Reliability concerns for patient customers can be addressed

¹⁰ Duquesne’s Application repeatedly emphasizes that the “minimum commitment” by FirstEnergy will ensure that total stranded costs do not exceed the administratively determined level. See e.g., Duquesne Application, p. 10-11 n. 7. In actuality, however, any condition placed on the sale of the assets that decreases the value of the plants is an increase in the stranded costs that ratepayers must pay. Thus, all aspects of the auction transaction that Duquesne seeks to unilaterally impose via the definitive exchange agreement with FirstEnergy must be carefully scrutinized.

through means other than the Commission's interference with the competitive market through approval of a "Must Run" obligation for all purchasers of Duquesne's plants.

In addition, concerns regarding the reliability of the transmission system should be addressed through requiring Duquesne to join an ISO or RTO. The Federal Energy Regulatory Commission ("FERC") recently recognized the value of RTO participation by transmission owners to ensure the effective development of the competitive retail market. See Regional Transmission Organizations, Docket No. RM99-2-00, Notice of Proposed Rulemaking, 87 FERC ¶ 61,173 (May 13, 1999). DII urges the Commission to take this opportunity to advance the development of a viable competitive market by mandating that Duquesne join an appropriate ISO or RTO as a condition for final approval of the disposition of Duquesne's generation assets. See 66 Pa. C.S. § 2811(e)(2).

The "Must Run" agreement that Duquesne seeks to impose on the purchasers of its generating units is vague and appears to be anti-competitive. The Company proposes to employ a highly invasive means to address reliability concerns that could more appropriately be addressed through the Commission's oversight of Duquesne's supplier of last resort function. In addition, the Company conveniently ignores the obvious method to ensure reliability — establishment of an ISO or RTO. The Commission should reject the proposed "Must Run" agreement and instead mandate that Duquesne join an ISO or RTO as a condition for approval of disposition of its generating assets.

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the following modifications be made to Duquesne's Application for a Certificate of Public Convenience related to the generation asset exchange with FirstEnergy:

- Institution of a post-auction true-up proceeding to address all issues related to definitive approval of accounting protocols and reconciliation procedures;
- Rejection of Duquesne's request to increase ratepayer responsibility for nuclear decommissioning expense above the amount mandated in the Commission's Final Order in the restructuring proceeding; and
- Conditioning final approval of Duquesne's request to dispose of its generating assets on the Company joining an Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") rather than accepting the proposed "Must Run" agreement.

Respectfully submitted,

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Counsel to the Duquesne Industrial Intervenors

Dated: June 7, 1999

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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99 JUN -1 PM 2:37

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SECRETARY'S BUREAU

99 JUN -7 PM 2:37

Dated this 7TH day of June, 1999, in Harrisburg, Pennsylvania.

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Duquesne Light Company
for Certificate of Public Convenience
and for Commission Approval of the
Transfer of Property Used or Useful
in the Public Service

Docket No. R-00974104

DOCKETED

JUN 14 1999

**PETITION OF THE
UTILITY WORKERS UNION OF AMERICA, AFL-CIO
TO INTERVENE AND COMMENTS CONDITIONALLY OPPOSING
APPLICATION**

RECORDED
99 JUN -1 PM 4:08
PA. P.U.C. BUREAU
SECRETARY

Pursuant to 52 Pa. Code §§ 5.71 and 5.74(a), the Utility Workers Union of
America, AFL-CIO ("the UWUA"), hereby petitions to intervene in this proceeding, and
submits these comments conditionally opposing the Application of Duquesne for
Certificate of Public Convenience and for Commission Approval of the Transfer of
Property Used or Useful in Public Service, dated May 3, 1999.¹

I. PETITION TO INTERVENE

**DOCUMENT
FOLDER**

In support of its Petition, the UWUA states as follows:

1. The UWUA has previously intervened in this Docket No. R-00974104. The UWUA's November 6, 1998 motion to intervene, which sought intervention "for the purpose of filing comments on the Generation Auction Plan and on the generation exchange and participating in future proceedings in this docket," was granted by Commission Order dated December 17, 1998 (at 9, considering UWUA comments). The

¹ If deemed necessary, these comments should be treated as a conditional protest pursuant to 52 Pa. Code § 5.51.

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UWUA files this motion to intervene anew out of an abundance of caution, in case a renewed intervention is necessary to participate in this phase of this Docket.

2. The UWUA is the national union representing 45,000 workers primarily in electric, gas and water industries across the United States. UWUA's principal office is at 815 16th Street, NW, Washington, D.C. 20006.

3. The UWUA represents most of the nonclerical and nonmanagerial workers at the New Castle coal plant in New Castle, Pennsylvania. The New Castle plant is one of the plants currently owned by FirstEnergy that would be transferred to Duquesne Light Company ("Duquesne") as part of the generation exchange, thence to be sold at auction to an as-yet-unidentified new owner.

4. The UWUA also represents certain workers at plants in Ohio that are currently owned by Duquesne, operated by First Energy and slated to be transferred to FirstEnergy as part of the same generation exchange (e.g., Perry, Avon). The UWUA is particularly concerned about the protection of Ohio workers from the adverse effects of the proposed swap at the Avon plant. However, the Ohio Public Utility Commission has at least concurrent jurisdiction over the transfer of those generation plants that are located in Ohio, and has a direct interest in those Ohio plants' transfer. Accordingly, the UWUA intends to present its concerns regarding the non-federal aspects of the transfer of those plants primarily to the Ohio Commission. The UWUA's refraining from raising those Ohio-based concerns here should not be misconstrued as waiving those concerns, which it is hereby expressly preserving.

5. The UWUA's participation will be in the public interest. Its members have knowledge, information and a perspective to present regarding Duquesne's restructuring that cannot be provided by other parties.

6. No other participant can adequately represent the interests of the UWUA and its members. Although the UWUA's interests are generally aligned with those of the International Brotherhood of Electric Workers ("IBEW") and its System Council U-10, the UWUA and IBEW represent different workers and may not have identical interests. Notably, Duquesne refers to IBEW System Council U-10 as "the 'Union'" in its Appendix A on Provisions for Employees and throughout its Application, but makes no reference to UWUA's representation of workers at relevant plants.

7. Therefore, the UWUA meets the eligibility criteria of Pa. Code §§ 5.72(a)(2)-(3), justifying intervention — if a renewed intervention is necessary to participate in this phase of this Docket in which the UWUA has already intervened.

8. The UWUA will be represented in this proceeding by the following counsel, who should be placed on the Commission's service list and receive copies of all correspondence and other documents:

Cynthia S. Bogorad
David E. Pomper
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue, NW
Washington, DC 20005-4789
(202) 879-4000
(202) 393-2866 (fax)

To speed communications, the UWUA requests that its President and National Representative also be placed on the service list and receive copies:

Donald E. Wightman, President
Utility Workers Union of America,
AFL-CIO
220 Forbes Rd. Suite 210
Braintree, MA 02184
(781) 848-1106
(781) 848-0774 (fax)

Carl Wood, National Representative
Utility Workers Union of America,
AFL-CIO
168 Amigos Way
Fallbrook, CA 92028
(760) 723-7270
(760) 723-4156 (fax)

II. COMMENTS CONDITIONALLY OPPOSING THE PROPOSED APPLICATION

As noted above, UWUA Local 140 represents the workers at the New Castle plant, a Pennsylvania FirstEnergy plant that would be transferred to Duquesne as part of the proposed swap. On December 17, 1998, Local 140 entered into a Memorandum of Agreement with Duquesne (appended hereto) which defined the rights of the Local 140 with regard to affected workers at the New Castle Plant upon transfer to "Duquesne and/or any subsequent owner of the New Castle Plant, regardless of its relationship to Duquesne, through the expiration of the [Local's] collective bargaining agreement." The Memorandum of Agreement goes on to require the recognition of specified protection for these Pennsylvania workers as part of the definitive agreement for transfer of the New Castle Plant, including recognition of Local 140 as the exclusive collective bargaining representative.

The UWUA has quickly reviewed the Application² and have found extensive discussion of the employee protections offered Duquesne's employees that are

² Although the UWUA was granted intervention in this proceeding, they were not served with a copy of the

represented by IBEW System Council U-10, but complete silence as to the protections offered New Castle workers in FirstEnergy's New Castle plant, to be acquired by Duquesne. *See, e.g.*, Application at 20-21 and Appendix A. Indeed, Appendix A (at 1) simply defines IBEW System U-10 and its affiliated local unions as "the Union."

This omission from the Application of any reference to the protections for Local 140 gives rise to concerns. As Pennsylvania workers, Local 140 workers at the New Castle Plant merit the same protection and consideration as other Pennsylvania workers. *See, e.g.*, Electricity Generation, Customer Choice and Competition Act, 66 Pa. C.S.A. §§ 2802(8), 2802(11), 2802(18), 2803(3), and 42 § 3806(E). Thus, absent confirmation in the application of the protections agreed upon in the Memorandum of Agreement, the UWUA would object to the proposed swap. See November 6, 1998 Comments of the Utility Workers Union of America, AFL-CIO on Generation Exchange and Generation Auction Plan.

The UWUA intends to abide by its obligations under the Memorandum of Agreement that "Provided the Company complies with the provisions of this Agreement, the Union agrees further that it will not take any action that would impede the achievement of this transfer of the [New Castle Plant]...." Therefore, consistent with the Memorandum of Agreement, the UWUA will not oppose the proposed Application before this Commission if Duquesne expressly confirms that the Definitive Agreement

Application, but obtained one upon request late in the day of June 1 after requesting a copy the previous Friday. Thus, UWUA's review has necessarily been cursory and therefore the UWUA expressly reserve the right to supplement these comments if appropriate upon further review of the Application.

reflects the employee protections agreed upon in the Memorandum of Agreement.

Consistent with this Commission's obligations to protect workers, the UWUA further request that these commitments be reflected in any order approving the Application.

WHEREFORE, for the reasons set forth above, the UWUA's petition to intervene should be granted, if indeed a renewed intervention is necessary given that the UWUA has already been granted intervention in this Docket, and the UWUA should remain or should be made a full party to this phase of this Docket. In addition, the UWUA conditionally opposes the Application absent confirmation that the Definitive Agreement in fact reflects the Memorandum of Agreement.

Respectfully submitted,

Cynthia S. Bogorad

Cynthia S. Bogorad

David E. Pomper

Pennsylvania Bar No. 55998

Attorneys for the Utility Workers

Union of America, AFL-CIO

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June 7, 1999

MEMORANDUM OF AGREEMENT

WHEREAS, FirstEnergy Corp. has previously announced that it intends to enter into a definitive agreement with Duquesne Light Co., ("Duquesne") under which certain generation plant assets of the Company will be transferred and sold to Duquesne, including, but not limited to, the New Castle Power Plant, currently owned by Pennsylvania Power Co., a wholly owned subsidiary of the Company (collectively, the "Company");

WHEREAS, Duquesne has previously announced that once the sale and transfer of the generation plant assets from the Company has been completed, it intends to sell those assets to a yet unnamed purchaser to be identified once Duquesne completes the auction and bid process it intends to utilize as the means for selling the generation plant assets so acquired from the Company (Duquesne and/or any subsequent owner of the New Castle Plant, regardless of its relationship to Duquesne, through the expiration of the collective bargaining agreement between the Company and Local 140, Utility Workers Union of America, collectively referred to as "Acquiring Party");

WHEREAS, Local 140, Utility Workers Union of America ("Union") represents certain classifications of employees at the New Castle Plant ("Affected Employees"), pursuant to an agreement between the Union and the Company, as amended effective July 1, 1998 and has expressed its desire to provide certain protections and benefits for the Union and the Affected Employees at the New Castle Plant as that plant is sold and transferred to the Acquiring Party;

WHEREAS, the Union and the Company have commenced and engaged in good faith negotiations over the effects that the Company's decision to sell and transfer the New Castle Plant may have on the Affected Employees;

WHEREAS, the Union and the Company now enter into this Memorandum of Agreement ("Memorandum"), this 17 day of December, 1998, as a means of defining the rights of the Union and the Affected Employees once the sale and transfer of the New Castle Plant has been completed, which is scheduled to take place sometime within eighteen months of this Memorandum.

WITNESSETH:

1. The Company agrees to provide in its definitive agreement with Duquesne, as a condition of the transfer of its generation plant asset known as the New Castle Plant to Acquiring Party, the following:
 - a. That Acquiring Party recognize the Union as the exclusive collective bargaining representative of the Affected Employees at the New Castle Plant;
 - b. Effective July 1, 2000, a wage increase of 3% for the Affected Employees at the New Castle Plant will be granted at the rates then in effect.

c. That Acquiring Party assume the terms and conditions of the collective bargaining agreement, including the seniority rights of the Affected Employees, until the expiration of said agreement and to agree to comply with its legal obligations with respect to collective bargaining under Federal labor law;

d. Because of the Company's obligation to turn over to the new owner a viable operating plant, effective upon ratification, employees at the New Castle Plant shall not be eligible to bid into any other jobs outside of the New Castle Plant. Any employee who is not offered a job with the new owner shall thereafter be permitted to bid on any job openings.

e. If the Acquiring Party finds it necessary to have a reduction in force in a given classification within said 90 days prior to the sale and exchange of the New Castle Plant, the Company will first take the senior employees in the classification in which the reduction is to occur if they wish to exercise their bumping rights into other locations represented by Local 140. This process will continue until the necessary number of reductions are achieved. If the necessary number of reductions are not achieved by the language above, the least senior employees in the affected classification will receive severance.

f. That at least 90 days prior to the sale and exchange of the New Castle Plant, Acquiring Party provide the Company with notice of its staffing level requirements, listed by classification and operation, and offer employment to that number of Affected Employees, including any such employees absent from active service by reason of Company sick leave or other leave of absence, whether paid or unpaid, necessary to satisfy such staffing level requirements. In each classification, all offers of employment to Affected Employees shall be in order of their seniority.

g. That Acquiring Party provides to all employees who accept employment with Acquiring Party, until the expiration of the collective bargaining agreement, employee benefits equivalent to those provided under the collective bargaining agreement. This includes all benefits currently provided to the Affected Employees at the New Castle Plant as specified in either the collective bargaining agreement or the Company's Employee Compensation and Benefits Handbook. In providing such benefits, Acquiring Party, shall have the right to use different providers and to establish its own benefit plans or use its existing benefit plans as the means of meeting its obligation hereunder.

1. With respect to health care coverage currently provided to the Affected Employees, the Company will require Acquiring Party to waive all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for such employees, except that the Acquiring Party may require anyone who, at the time of the transfer to Acquiring Party, is then in the process of satisfying any similar exclusion or waiting period

under the Company's plan to satisfy fully the balance of the applicable time period for such inclusion or waiting period under the Acquiring Party's plan. With respect to the calendar year in which the transfer occurs, all health care expenses incurred by any such employee and/or any eligible dependent thereof in the portion of the calendar year preceding the closing that were qualified to be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the Company's health plan shall be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the Acquiring Party's health care plan for such calendar year.

2. With respect to service and seniority, the Company will require that Acquiring Party recognize each such Affected Employee's service with the Company for purposes of determining eligibility and extent of service-related welfare benefits such as vacation and sick pay benefits and to agree to give each such Affected Employee full credit for all vacation benefits bank, accrued, and unused, as of the date of the sale and transfer to Acquiring Party;

3. With respect to pension benefits, Affected Employees will continue to accrue pension credits in accordance with the terms and conditions of the Company's pension plan, through the date of the sale and transfer of the New Castle Plant to Acquiring Party. For the period thereafter, and for the period through the date of the expiration of the collective bargaining agreement, the Company shall require that Acquiring Party agree to provide pension benefits that are at least equal to what the Affected Employee would have received, if such employees had continued to be covered by the Company's plan until the expiration of the collective bargaining agreement and as it existed on the date of the sale and transfer of the New Castle Plant to Acquiring Party. Further, the Company shall require that the Acquiring Party agree, that any Affected Employee who is laid off and, at the time of such layoff, is between the ages of 50-54 and has ten or more years of combined service with the Company and the Acquiring Party, will qualify for a subsidized early retirement benefit from the Acquiring Party's plan rather than a vested pension benefit, beginning at age 55.

4. With respect to Pensions Article XV, paragraph 2 shall be amended to change "prior to five (5) years from January 1, 1996" to "prior to six (6) years from January 1, 1996", and further revise the last sentence of paragraph 2 to state ".....until sixty (60) days preceding July 1, 2001".

5. With respect to post retirement medical and life insurance programs, the Company will require that Acquiring Party provide to any Affected Employee who retires from the Acquiring Party through the expiration of the collective bargaining agreement and is at least age 55 and has ten years

of combined service with the Company and Acquiring Party, benefits, to the extent possible, that are equivalent to the Company's past retirement medical and life insurance programs that the Affected Employee would have received, if such employee had continued to be covered by the Company's plan until the expiration of the collective bargaining agreement and as it existed on the date of the sale and transfer of the New Castle Plant to Acquiring Party.

6. With respect to the Company's Savings Plan, the Company will require that Acquiring Party provide, until the expiration of the collective bargaining agreement, a Sec. 401(c) plan that is equivalent to the Company's Savings Plan and that Acquiring Party's accept into its plan all account balances and outstanding participant loans of each such Affected Employee.

7. With respect to severance benefits, the Company will require that Acquiring Party provide for any Affected Employee involuntarily terminated without good and sufficient reason until the expiration of the collective bargaining agreement, severance benefits at the level in effect for such employees at the date of the sale and transfer of the New Castle Plant to Acquiring Party.

8. For each Affected Employee who accepts employment with Acquiring Party, the Company will require that Acquiring Party provide a transition bonus of \$2,500, less applicable taxes, payable as soon as practicable following the transfer of employment from the Company to Acquiring Party. In no event shall any Affected Employee receive more than one transition bonus as a result of the transfer of employment from the Company to Acquiring Party.

9. The Company shall require the new owner to provide any required training to Affected Union Employees who may be required to attain any licenses, certifications, or other qualifications in order to continue working in their current or equivalent job classification for the new owner.

2. Upon the transfer of the New Castle Plant to Acquiring Party, the Affected Employees of said plant will cease to be employees of the Company. Notwithstanding the foregoing, after the final transfer and until the expiration date of the collective bargaining agreement, the Company agrees to give said former employees whose employment is terminated involuntarily other than for good and sufficient reason by Acquiring Party, preferred consideration for reemployment over applicants from outside the Company. Such former employees who return to employment with the Company on or before the expiration date of the collective bargaining agreement will have all service with Acquiring Party and prior service with the Company credited for benefit purposes by the Company. It is further understood that while said employees will cease to be Company employees on the date of the transfer of the New Castle Plant to Acquiring

Party, they will not be considered to have been subjected to layoff, surplus, transfer, reduction of force, or any other action by the Company under the provisions of the collective bargaining agreement and that, as a result, no Affiliated Employees will qualify for severance benefits under the Company's severance benefit plan as the result of their transfer from the Company to Acquiring Party. The Union acknowledges that upon the date of transfer of the New Castle Plant to Acquiring Party, the Company has no future obligations and liabilities under the collective bargaining agreement or otherwise with respect to members of the Union employed at the New Castle Plant, to the extent that those obligations or liabilities arise on or after the date of transfer to Acquiring Party.

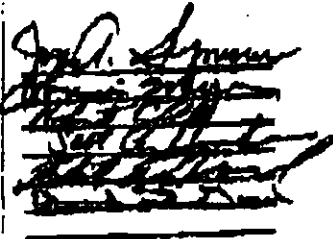
3. The Company and Union agree that the current collective bargaining agreement, scheduled to expire on June 30, 2000, shall be extended until June 30, 2001, and that the pension plan shall not be subject to further negotiation with respect to Affiliated Employees until the expiration of the extended agreement. In order to effectuate the foregoing, the current collective bargaining agreement shall be considered so amended.

4. The Union agrees that the provisions of this Agreement represent a fair and reasonable approach to the issues concerning Affiliated Union Employees as a result of the impending sale of the Company's New Castle Plant (NCP). Provided the Company complies with the provisions of this Agreement, the Union agrees further that it will not take any action that would impede the achievement of the transfer of the NCP and that it will withdraw any protest or objection to that transfer including pleadings currently on file with the PA FUC.

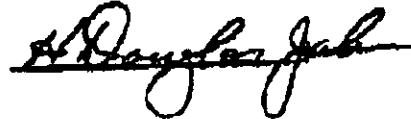
5. The Memorandum of Agreement shall become null and void if not ratified on or before December 30, 1998. The Union unanimously agrees to support, recommend and submit the terms of this Memorandum of Agreement to its members and to diligently use their best efforts to obtain prompt ratification by the membership.

IN WITNESS WHEREOF, the parties have duly executed this Memorandum as of the day and year first above written.

FOR THE UNION:

A block of several handwritten signatures in black ink, appearing to be a list of names or a collective signature for the Union.

FOR THE COMPANY:

A single handwritten signature in black ink, likely representing the Company's representative.

OHIO EDISON JOINT COUNCIL:

Norman D. Long

LIFE-TEK WORKERS UNION OF AMERICA:

Donald O'Parks
Donald O'Parks

CERTIFICATE OF SERVICE

I certify that I have this day served a true copy of the foregoing document
(Petition of the Utility Workers Union of America, AFL-CIO to Intervene Out of Time)
upon the participants on the attached list, in accordance with the requirements of § 1.54
(relating to service by a participant).

Dated this 7th day of June, 1999.

David E. Pomper
David E. Pomper

Attorney for
Utility Workers Union of America, AFL-CIO

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DATE: June 10, 1999

SUBJECT: R-00974104

TO: Law Bureau

FROM: James J. McNulty, Secretary

DOCKETED

JUN 14 1999

**DOCUMENT
FOLDER**

LAF

Duquesne Light Company Restructuring Plan

Attached is a copy of a Petition to Intervene and Comments Conditionally Opposing Application of Duquesne Light Company for Transfer of Property Used or Useful in Public Service filed by Utility Workers Union of America, AFL-CIO, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS; OSA

laf

EEF

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Duquesne Light Company)
Application to approve)
restructuring plan pursuant)
to 66 Pa. C.S. § 2806(d))**

**RECEIVED
Docket No. R-00974104
JUN 14 1999**

**Duquesne Light Company Application)
for Certificate of Public Convenience)
and for Commission Approval of the)
Transfer and Acquisition of Property)
Used or Useful in the Public Service)
Between Duquesne Light Company)
and FirstEnergy Corp.)**

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
Docket No. A-110150F0020
(Motion to Consolidate Pending)**

REPLY COMMENTS OF DUQUESNE LIGHT COMPANY

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Dated: June 14, 1999

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Duquesne Light Company)	
Application to approve)	
restructuring plan pursuant)	Docket No. R-00974104
to 66 Pa. C.S. § 2806(d))	
Duquesne Light Company Application)	
for Certificate of Public Convenience)	
and for Commission Approval of the)	
Transfer and Acquisition of Property)	Docket No. A-110150F0020
Used or Useful in the Public Service)	
Between Duquesne Light Company)	(Motion to Consolidate Pending)
and FirstEnergy Corp.)	

REPLY COMMENTS OF DUQUESNE LIGHT COMPANY

Duquesne Light Company ("Duquesne") hereby submits its comments in reply to the comments of the intervenors on (i) the generation exchange with FirstEnergy Corp. ("Exchange"), and (ii) Duquesne's accounting protocols.

DOCKETED
JUN 16 1999

INTRODUCTION

No intervenor opposes the Exchange. In fact, "the OCA continues to support both the Generation Auction and the Generation Exchange" and "expects that the Generation Exchange with FirstEnergy will improve the value realized by Duquesne and its ratepayers through the divestiture process." OCA Comm. at 3, 7. The only disputed issue related to the Exchange is the Duquesne Industrial Intervenors' ("DII") opposition to a modest increase in decommissioning costs from

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\$43 million to \$57.4 million). While DII argues that these costs were finally determined in the Restructuring Order, that is not the case. The purpose of the auction is to allow the market to determine the value (net of any costs, including decommissioning) of Duquesne's generation. Restructuring Order at 79. Decommissioning costs are simply one component of the cost of generation that a purchaser must value. Furthermore, DII ignores the fact that any increase in decommissioning costs is covered by the minimum commitment and the fact that the Exchange, *taken as a whole*, remains in the public interest. As the OCA states:

[I]n light of the other inter-related aspects of the Generation Exchange, including the firm cap on the decommissioning liability of Duquesne and its ratepayers, the additional generating unit and the increased minimum commitment, the OCA does not oppose the increased decommissioning liability.

OCA Comm. at 9-10. As the OCA recognizes, it is neither fair nor appropriate to perform a piecemeal review of individual components of the Exchange, as DII apparently seeks.

There also is no substantive opposition to the Accounting Protocols. The OCA states that it "generally accepts the accounting protocols as set forth by Duquesne" (OCA Comm. at 12) and DII states that its "review of the protocols reveals that the proposal appears to be reasonable" (DII Comm. at 5). This notwithstanding, DII urges the Commission to once again delay its approval of the Accounting Protocols, asserting that doing so will have no effect on the Auction. That

assertion should be rejected, as DII, despite ample time and opportunity to review the protocols, has not identified a single flaw in them and, in fact, contends that they "appear to be reasonable." Any continuing uncertainty regarding the Accounting Protocols will, in fact, undermine the Auction because it creates uncertainty as to whether the Exchange and Auction transactions actually will close.

DISCUSSION

I. COMMENTS ON THE EXCHANGE

A. Minimum Commitment

The minimum commitment, as described by the OCA, is "a guarantee that the Generation Auction would realize, at a minimum, the administrative determination of the market value of Duquesne's generation assets." OCA Comm. at 7. The OCA requests that any "additional [nuclear decommissioning] tax liabilities and Beaver Valley employee transition costs created by the transfer of the nuclear assets" be covered by the minimum commitment. *Id.* at 9. Duquesne can confirm, as it did at the April 13, 1999 technical conference, that the minimum commitment covers such costs (whatever the final level of such costs), such that, when all transaction costs and tax effects are accounted for, the market value for Duquesne's generation will be no less than the \$110 million amount set forth in the Restructuring Order.

B. Nuclear Decommissioning Costs

The OCA states that "in light of the other inter-related aspects of the Generation Exchange, including the firm cap on the decommissioning liability of Duquesne and its ratepayers, the additional generating unit and the increased minimum commitment, the OCA does not oppose the increased decommissioning liability." OCA Comm. at 9-10. DII, however, contends that "[n]o basis exists to increase Duquesne's stranded cost recovery for future nuclear decommissioning expenses" and that the Commission should adhere to "the more reasonable *estimate* provided by the DII witness Kollen." DII Comm. at 13 (emphasis added).

DII's position should be rejected. First, DII's position mistakenly assumes that the "estimate" provided by Mr. Kollen, and accepted by the Commission as the *administrative* estimate, controls the Auction. Clearly, it does not. Rather, as the Commission held in the Restructuring Order:

We agree with the ALJ that it is an economic tenet that the *market-place* determines the true value of an asset. Specifically, an actual "arms length" market transaction between a willing seller and a willing buyer to determine the value of an asset is superior to the expert predictions of what the future value of that asset may be.

Restructuring Order at 79 (emphasis added). Consequently, the decommissioning "estimate" provided by Mr. Kollen is just that, a cost *estimate* that the marketplace is free to accept or reject. As the Commission reaffirmed in its Auction Order, "[w]e

agree with the Company's assertion that 'the issue of whether the assets have great value or no value is for the market to decide.'" Auction Order at 30.

Second, DII fails to recognize that Mr. Kollen's estimate of decommissioning cost is, under the Customer Choice Act, only an *initial* estimate that could later be increased by Duquesne based on changes in decommissioning requirements. Section 2804(4)(iii)(F) permits an "increase [in the] allowance for nuclear decommissioning costs to reflect new information not available at the time the utility's existing rates were determined." With the Exchange, however, Duquesne's ratepayers will not be at risk for any increase in decommissioning costs above the amounts requested in this Application. Rather, as provided in the Nuclear Conveyance Agreement, FirstEnergy will assume "[a]ll liabilities and obligations of DLC in respect of Decommissioning the DLC Nuclear Assets, and the Decommissioning Costs relating thereto whether arising prior to, on or after the applicable DLC Nuclear Closing Date." NCA § 2.3(f). As the OCA recognizes, this provision establishes a "firm cap on the decommissioning liability of Duquesne and its ratepayers." OCA Comm. at 9. This cap provides greater protection to Duquesne's ratepayers than an administrative "estimate" that is subject to changes in decommissioning costs over time.

Third, DII's position seeks to preserve for its customers all the *value* achieved through the Exchange, but to disallow selected costs. That one-sided

approach is clearly unfair and Duquesne is not prepared to close the Exchange under those circumstances.¹ The appropriate standard of review is whether the Exchange, *taken as a whole*, is in the public interest. DII does not contend otherwise and, as the OCA has stated, Duquesne's ratepayers will be far better off through an auction of wholly owned fossil units *and* a minimum commitment regarding auction proceeds than they would have been under an auction of the CAPCO Units.

C. Environmental Remediation

The Nuclear Conveyance Agreement requires that Duquesne perform limited environmental remediation at the Beaver Valley site, with the estimated cost being approximately \$2 million. The OCA states that "this additional work should also be covered by the minimum commitment." OCA Comm. at 12. Duquesne confirms that the costs of this environmental remediation will be treated the same as any other transaction cost – *i.e.*, the costs will be deducted from auction proceeds and will be covered by the minimum commitment.

D. Ancillary Services

One of the additional benefits of the Exchange is a contractual commitment by FirstEnergy to meet Duquesne's full requirements for certain ancillary services (regulation, spinning reserve and supplemental reserve) at rates

¹ See Generation Exchange Agreement at page 20 (Duquesne can terminate Agreement if the PUC "disallows from recovery in rates a material portion of the expenses related to the Generation Exchange").

that are below Duquesne's current ancillary service rates. *See* Ancillary Services Service Agreement. The OCA states that "Duquesne could utilize the difference between the rate provided by FirstEnergy and the rate included in Duquesne's generation component as an offset to stranded cost." OCA Comm. at 15. Duquesne disagrees with this suggestion because, as the OCA recognizes (*id.*), it would cause a shift in the manner in which ancillary services are included in retail rates (currently, in the shopping credit) and would preclude EGS' from self-supplying certain services (currently, they can self-supply supplemental reserves). Duquesne, however, supports the OCA's alternative position that "Duquesne offer to provide these services at these favorable rates to competitive suppliers who are seeking to supply Duquesne's customers." *Id.* Duquesne confirms that, as stated in the Application (p. 16 n.11), it will offer ancillary services to third parties at its cost to procure or supply those services. If the arrangement with FirstEnergy represents the least-cost option, Duquesne will amend its rates at FERC to offer an EGS the option of purchasing these three ancillary services from Duquesne at the same rates and terms as available to Duquesne.

E. Must-Run Agreements

The Restructuring Order required that Duquesne's divestiture plan "disclose those assets and/or operational criteria of an asset essential for the continued reliability of service in the Duquesne territory." Rest. Order at 80. In compli-

ance with this requirement, Duquesne's Auction Plan explained that it is necessary for the Cheswick and Elrama units to operate during peak periods to maintain reliability in the eastern portion of Duquesne's system. Auction Plan at 33.

Duquesne also included a term sheet describing the must-run requirements and pricing that would be required of the new owner(s) of Cheswick and Elrama.

Auction Plan, Appendix F.

No party objected to Duquesne's proposal regarding must-run generation. Rather, the OCA and Trial Staff both sought clarification that Duquesne would continue to pursue the least-cost option for resolving must-run issues. *See* DLC Reply Comments at 40-41.² Duquesne responded that it would do so and, specifically in response to OTS, noted that the must-run agreement would protect ratepayers by "permitting the generator to charge for service only in the hours it is called on (and, even then, only if its costs exceed market rates), rather than [allowing] a fixed capacity payment that would be payable by Duquesne and its ratepayers without regard to the number of hours the unit was needed for reliability purposes." *Id.* at 41. Duquesne thereafter negotiated a Must-Run Agreement with FirstEnergy that conforms to the term sheet attached to the Auction Plan.

² The IBEW stated that it had several "questions" regarding the proposal. DLC Reply Comments at 41. The IBEW has since withdrawn any opposition to the Auction.

The OCA and OTS do not oppose the Must-Run Agreement. However, DII, despite failing to raise any concerns at the time the Auction Plan was filed and never once raising must-run issues at any of the technical conferences, now contends that the Must-Run Agreement is "improper and must be rejected." DII Comm. at 15.

DII's comments should be rejected as untimely. DII could have raised the same concerns in its comments on the Auction Plan, which included a term sheet containing all the same terms to which DII now objects. DII failed to do so, however, and thus Duquesne properly proceeded to negotiate the necessary arrangements with FirstEnergy and has now circulated the Must-Run Agreement to all the bidders in the Auction. DII, having sat on its hands, should be deemed to have waived any ability to undermine the Auction at this late date. Rejecting DII's comments as untimely will not, in any event, prejudice DII, as the Must-Run Agreement is FERC-jurisdictional (and was filed with this Commission for informational purposes only) and therefore DII will have the opportunity, if it so desires, to comment on the Must-Run Agreement at the time it is filed with FERC for approval.

Duquesne will nevertheless briefly address DII's concerns below. DII's objections are based on misunderstandings of both the operational conditions that necessitate the Agreement and the Agreement itself.

First, DII argues that the Agreement is "noticeably vague regarding what will constitute a reliability concern" and "does not specify whether the 'reliability' concerns . . . will be related to a lack of generation sufficient to meet customer demand or a transmission-related issue." DII Comm. at 16 & n.16. DII fails to understand that, by its very nature, a must-run condition represents a combination of transmission and generation limitations. Because of the transfer limits on Duquesne's transmission system during certain peak hours, the eastern portion of Duquesne's system cannot import its full generation requirements from external sources. Consequently, local area generation must be committed during those hours to maintain generation service to retail load *and* to avoid thermal overloads or voltage limits on the transmission system. The Agreement, which requires Duquesne to provide weekly information regarding expected must-run conditions (*see* Agreement § 3.2(b)), provides as much notice as possible to the new owner(s) as to *when* these limits will arise.

Second, DII argues that "to place any unit in a 'Must Run' status . . . is antithetical to a competitive market structure for electric generation supply" and that "[a]ny purported ability for an owner to exercise 'market power' can and should be adequately addressed through the contracting process as part of a competitive supply market." DII Comm. at 17-18. This comment also fails to appreciate the nature of a must-run condition. A must-run condition cannot, by definition, be alleviated

"through the contracting process as part of a competitive supply market" because, for the local area in which the condition exists, there is no competitive supply market during must-run hours. During the few peak hours when either Cheswick or Elrama, or both, must operate to maintain reliability in the eastern portion of Duquesne's system, the owners of those units will have no competition to serve a portion of the load in that area and, in the absence of the Must-Run Agreement, could therefore increase prices to noncompetitive levels. That is the very reason that Duquesne – like every other utility in the country facing these same conditions, including the ISOs in California, PJM, New York and NEPOOL – has adopted a Must-Run Agreement that imposes cost-based caps on prices during must-run periods.³

Third, DII argues that Duquesne "should be required to join an ISO or RTO" before it can "unilaterally decide when a 'Must-Run' situation occurs." DII Comm. at 18. DII's position is unrealistic and without merit. Duquesne's divestiture is expected to close within the next six to nine months and it is clear that no ISO or RTO will exist in the area prior to that time. It is therefore imperative, to maintain reliability, that the Must-Run Agreement be implemented by Duquesne at the time the divestiture closes. To the extent an ISO later becomes operational in the

³ DII also mistakenly believes that the Must-Run Agreement is related to Duquesne meeting its obligations as the Provider of Last Resort. See DII Comm. at 19. That is not the case, as the Agreement addresses the need for local generation to maintain reliability for both POLR loads and loads served by an EGS.

Duquesne area, the Agreement provides that Duquesne may assign the Agreement to that ISO. Agreement § 7.1(b). Prior to that time, Duquesne will act in functionally the same manner as an ISO, given that it will own no generation and therefore have no incentive to treat the owners of the must-run units differently than any other supplier or generation owner.

Fourth, DII asserts that "requiring a buyer to execute the mandatory 'Must Run' agreement will clearly diminish the value of the plants in the auction." DII Comm. at 18. This fact, even if true (which it is not), misses the mark because, as required by the Restructuring Order (p. 80), reliability must be maintained following the divestiture even if there is a cost to doing so. The objective, of course, as contemplated by the Auction Order (page 46), is to select the *least-cost* option of maintaining reliability. Duquesne has done so by limiting the owners of Cheswick and Elrama to recovery of their operating costs, rather than providing them a fixed capacity payment, so as not to repeat the mistakes made in other regions of the country.⁴ Duquesne also has provided the owners of Cheswick and Elrama the option to "buy out" the Must-Run Agreement by paying for any transmission

⁴ In California, where a large fixed capacity payment was provided, a study determined that this capacity payment was skewing the competitive market, resulting in generators "withholding" capacity from the competitive bidding process because of their ability to obtain more revenue when called upon under the must-run agreements. *See* Report on Market Issues in the California Power Exchange Markets, Market Monitoring Committee of the California Power Exchange, FERC Docket No. ER98-2843-000 *et al.*

upgrades that would alleviate the transmission constraints. *See* Agreement § 2.5.⁵ This flexibility will allow the owner of these units to make the decision as to the most economic option, whether it be providing service under the Agreement or terminating it by constructing new facilities. This will allow the new owner(s) to maximize the value of its generation, contrary to the speculation of DII.

For all the foregoing reasons, DII's objections to the Must-Run Agreement should be rejected.

F. Comparable Value

The Environmentalists are the only party contending that "Duquesne has failed to demonstrate that the two sets of plants have comparable value." Env. Comm. at 4. This contention should be rejected for the same reason that it was in the Auction Order. Auction Order at 15. The FirstEnergy plants have greater value – whether viewed on an administrative forecast basis or on the basis of expected auction values – than the CAPCO Units. *See* October 29, 1998 Duquesne Comparison of Value. Because of this, the OCA "expects that the Generation Exchange with FirstEnergy will improve the value realized by Duquesne and its ratepayers through the divestiture process." OCA Comm. at 7. That expectation also is consistent with

⁵ Duquesne determined that, rather than constructing these upgrades itself and requesting that they be treated as transaction costs, the new owners of the generation would be better situated to make a determination of whether upgrades are a cost-effective means of addressing the must-run condition.

the Auction Order, in which the Commission "reiterate[d] our belief that it is better to deal with the sale of a unit as a whole, rather than trying to auction off a minority/partial interest." Auction Order at 38.

Against this evidence, and prior Commission fact finding, the Environmentalists fail to identify a single characteristic of any of the FirstEnergy plants that would cause the Commission to be concerned that they will not bring greater value in the Auction than Duquesne's partial interests in the CAPCO Units.⁶ Rather, the Environmentalists focus only on certain *costs* of the transaction, as if those costs are being incurred *because of* the Exchange. This is not the case, as the costs at issue – *e.g.*, termination of the Beaver Valley lease, environmental remediation, and incremental O&M and capital – would be incurred *even if* there were no Exchange and Duquesne had auctioned its partial interests in the CAPCO Units to an entity other than FirstEnergy. The relevant point is that, because of the Exchange, ratepayers will be protected by the minimum commitment from any risk that these costs will increase the stranded costs payable under a stand-alone adminis-

⁶ The Environmentalists also complain that "the due diligence reports were not presented" to the Commission. Env. Comm. at 5. There is no such requirement. The Auction Order required Duquesne only to "summariz[e] the results of the due diligence." Auction Order at 15. Duquesne has done so, explaining that "due diligence has revealed no material environmental conditions and independent experts have concluded that the FE Plants are well maintained when compared to similar plants." Application at 22.

trative determination of stranded costs. That protection is simply not available without the Exchange.

II. ACCOUNTING PROTOCOLS

A. More Delays in Approving the Protocols

The Restructuring Order required that Duquesne's Auction Plan "describe the ratemaking accounting for use of proceeds." Restructuring Order at 81. Consistent therewith, Duquesne filed detailed accounting protocols with the Auction Plan. Auction Plan, Appendix G. Several parties expressed concern with these protocols and, in response, Duquesne proposed an alternative accounting methodology and sponsored several technical conferences. DLC Reply Comm. at 19-23. Duquesne has now requested approval of the revised protocols. Application, Appendix E. No party opposes these accounting protocols. "The OCA generally accepts the accounting protocols as set forth by Duquesne" and cautions only that "it will be necessary to review all costs incurred to assure that the transaction costs are just, reasonable, and prudent." OCA Comm. at 12. DII states that "[our] review of the protocols reveals that the proposal appears to be appropriate." DII Comm. at 5.

This notwithstanding, DII contends that "definitive approval of an accounting methodology is premature prior to the actual auction of the generation assets." *Id.* This request for further delay has no merit. The Restructuring Order *required* the submission of the protocols at the time the Auction Plan was filed. This

requirement would have been an empty gesture if, as DII now suggests, approval of them "will not significantly impact the operation of the asset auction and is unnecessary at this time." DII Comm. at 17. As the Restructuring Order recognized, the accounting protocols should be in place *before* the auction is complete.⁷ Finally, and in any event, DII offers no substantive reason for delaying approval of the protocols. It has not identified, despite having over six months to review them, a single flaw in the accounting protocols. In fact, DII concedes that "the proposal appears to be appropriate." DII Comm. at 5. There is no purpose to be served in further delaying, contrary to the Restructuring Order, approval of the Accounting Protocols.

B. Unsold Assets

Several parties note that the protocols continue to provide a "zero value" for any plant that cannot be sold in the Auction. OCA Comm. at 13; DII Comm. at 6. This issue has been addressed previously by the Commission. Duquesne's auction proposal specifically provided that the value of any unsold assets would be capped at zero. DLC St. 1-R at 17; DLC Reply Comm. at 25-27. The Commission agreed with Duquesne, holding that "the issue of whether the assets

⁷ As Duquesne as explained, "[t]he issue is whether, consistent with the Restructuring Order, Duquesne has sufficient certainty that it will recover its actual stranded costs for Duquesne to commit to binding contractual terms with the winning bidder(s). If not, there will be increased uncertainty regarding whether the auction will close and this uncertainty, as discussed *supra*, will harm the auction." DLC Reply Comm. at 20 (Nov. 23, 1998).

have great value or no value at all is for the market to decide." Auction Order at 30.

As Duquesne also has stated, however,

[T]he zero value (or "no bid") scenario was expected to occur, if at all, in the auction of Duquesne's nuclear interests in the Beaver Valley and Perry plants. Given that these interests will now support a swap that enables Duquesne' to market a portfolio of wholly owned fossil units, it is far less likely that the zero value scenario will occur. Consequently, the Commission may defer resolution of the zero value issue, provided that it approves the Generation Exchange.

DLC Reply Comm. at 27. It therefore remains appropriate, as contemplated in the Auction Order (p. 30), for the Commission to defer a final resolution of any "zero value" issues at this time, provided that the Exchange is approved.

C. Stranded Cost Amounts

The Environmentalists argue, without explanation, that Duquesne "seeks to change previous Commission rulings on stranded costs" for deferred taxes and deferred fuel costs. Env. Comm. at 4. That is not the case. First, the deferred fuel amount included in the Accounting Protocols is only for "illustrative purposes" in the event Duquesne prevails in its appeal, as the OCA recognizes. *See* OCA Comm. at 12. The protocols therefore do not conflict with the Commission's present exclusion of a portion of such costs from rates.

Second, with respect to deferred taxes, the accounting protocols properly implement the Restructuring Order, rather than "changing" it. It is undisputed that the final deferred tax balance must properly reflect the elimination of the

merger synergies (applicable only under an administrative determination), the elimination of the FAS 109 regulatory asset, and reflect the tax basis in the assets being sold. *See* Application, Appendix E; Letter of J. Moot to J. McNulty of May 26, 1999. Moreover, these accounting entries may benefit ratepayers as compared to the result under a stand-alone administrative determination. As shown in the example in Appendix E, after "accounting for both the offset credits and the elimination of the FAS 109 Regulatory Asset, stranded costs are still reduced by a total of \$396.69 million and the associated deferred tax balances are reduced by a total of \$92.88 million, as compared to the allowed amounts under a standalone administrative determination." Attachment A, page 2, May 26, 1999 Letter from J. Moot to J. McNulty.

III. CTC DESIGN AND SHOPPING CREDITS

Duquesne has proposed that the shopping credits be fixed for the transition period to support an auction of the POLR service and that any proceeds from the auction be used to shorten the transition period. In its Order on Third Compliance Filing, the Commission "agree[d] with Duquesne that we have held that the shopping credits for each class should remain fixed during the transition period and that it is too late to revisit this issue at this stage in the proceedings." 3d Comp. Order at 10-11. The Commission also has previously rejected proposals to reduce rates, including the CTC, agreeing with Judge Corbett that the objective of this

proceeding is "to assure ratepayers the transition period will end as quickly as possible." Recommended Decision at 447; *see* Restructuring Order at 185.

In their comments on the Exchange, both the OCA and DII raise certain issues related to CTC design and shopping credits. The most troubling position is that of DII, which, for the first time, requests that the Commission reconsider the shopping credits for industrial customers, noting that the switching levels for these customers are below that of PECO Energy. DII Comm. at 10. DII's position has no merit. First, as DII is well aware, the principal reason that a large portion of Duquesne's industrial load is not shopping is that their *existing* Rule 4 contracts – more so than those of any other utility in the state – already provide competitively priced service. Second, in any event, it is too late for DII to argue that the Commission should revisit the shopping credits. The Third Compliance Order finally resolves that issue and DII, having not appealed it, has waived any ability to change those shopping credits now. DII's position also would effectively nullify the POLR auction, as it would allow the Commission to revise the shopping credits *after* the winning bidder had already agreed to provide service under them. The Commission recognized the harm from this uncertainty in rejecting any changes to the shopping credits in the Third Compliance Order.⁸

⁸ 3d Comp. Order at 10 (noting Duquesne concern that "adopting OCA's proposal would add uncertainty to the Provider of Last Resort (POLR)
(continued...)

The OCA recommends that a portion of the proceeds from the Auction be used to reduce CTCs or, in the alternative, that if the proceeds are used to shorten the transition period and terminate the collection of CTCs prior to 2005, that the rate cap be extended to 2005. The OCA's first proposal, to reduce CTCs, is contrary to the Restructuring Order, which declined to order immediate rate relief and determined that shortening the transition period was in the public interest. Rest. Order at 185, *adopting* Rec. Dec. at 447. The second proposal is contrary to the Customer Choice Act, which provides that the generation rate cap will remain in effect only "for a period of nine years from the effective date of this chapter *or* until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution utility can choose an alternative provider of electric generation, *whichever is shorter*." 66 Pa. C.S. § 2804(4)(ii) (emphasis added). The OCA's position should therefore not be accepted.⁹

⁸(...continued)

auction because potential POLR bidders would not know with certainty the value of the shopping credits").

⁹ Duquesne has had informal discussions with the OCA in an attempt to address its concerns regarding rate cap protections for residential customers. Duquesne is willing to continue those efforts and, depending on information obtained in the POLR Auction, a resolution of this issue may be possible on a consensual basis with the OCA. Until that time, the Commission should adhere to its *prior findings that the shopping credits shall remain fixed and*

(continued...)

IV. OTHER ISSUES

A. Environmental Issues

The Environmentalists argue that, if the Commission allows Duquesne to "reopen the restructuring order and recognize some significant increases in the company's stranded costs," the Commission should order Duquesne to create a "sustainable energy fund." Env. Comm. at 8-9. As indicated *supra*, however, the Environmentalists are incorrect in contending that Duquesne is "changing" or "reopening" Commission findings on stranded costs. Rather, Duquesne is properly accounting for net auction proceeds and, notably, the OCA does not object to any of these accounting entries. There is, therefore, no need for the Commission to consider the unrelated issue of a sustainable energy fund.

B. Ohio Labor Issues

UWUA Local 140 states that the Application is "silenc[t] as to the protections offered New Castle workers," but that "the UWUA will not oppose the proposed Application . . . if Duquesne expressly confirms that the Definitive Agreement reflects the employee protections agreed upon in the Memorandum of Agreement [between UWUA Local 140 and with FirstEnergy]." UWUA Comm. at 5-6. While it is true that the Application does not discuss nonjurisdictional issues related

⁹(...continued)

that Auction proceeds shall be used to reduce the transition period.

to Ohio employee matters, the UWUA has overlooked the protections of its members included in Section 8.11 of the Generation Exchange Agreement. It is Duquesne's understanding that these protections embody Local 140's agreement with FirstEnergy, but any such interpretational issues, assuming they exist, are matters to be addressed and resolved between FirstEnergy and its union, not by Duquesne or this Commission.

UWUA Local 270 also has submitted comments on the Exchange, contending that certain provisions of the Generation Exchange Agreement constitute a "violation of the National Labor Relations Act." Letter from D. Kotecki to J. McNulty at 1 (June 4, 1999). Even if this were true (which it is not), this Commission is not a labor board and has no jurisdiction to decide such issues, particularly as it relates to employees of FirstEnergy. Moreover, and in any event, Local 270 is being treated comparably to the other unions affected by the Auction. Duquesne's IBEW local and FirstEnergy's UWUA Local 140 have reached an agreement with management regarding the divestiture and, consequently, the winning bidder(s) will be required to assume their respective collective bargaining agreements. The Exchange Agreement provides that, *if* Local 270 reaches a similar accommodation with FirstEnergy, the winning bidder(s) will be required to accept its collective bargaining agreement as well. Exchange Agreement § 8.11(m). There has been no

disparate treatment and, in any event, the Commission has no jurisdiction to address Local 270's concerns.

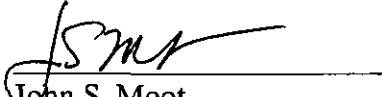
C. Allegheny Energy

Allegheny states that it "does not oppose the granting of the Certificate of Public Convenience requested by Duquesne Light Company per se." Allegheny Pet. at 4. Nevertheless, Allegheny contends that "given the present posture of the litigation [between Allegheny and DQE, Inc. regarding the now-terminated merger agreement], AE would seek to obtain an injunction against the transfer of assets" with FirstEnergy Corp. *Id.* at 4. According to Allegheny, such an injunction would be sought to preserve "pooling of interest accounting" for the now terminated merger between Allegheny and DQE, Inc. *Id.* Duquesne is cognizant of the fact that Allegheny opposes a closing of the Exchange and the Auction. DQE and Duquesne will continue to take all reasonable efforts to protect the Auction and to maximize the value of its generation for ratepayers. To the extent that any future actions, agreements or judicial decisions respecting Allegheny may have a material affect on the Auction, Duquesne will promptly so inform the Commission.

WHEREFORE, the Commission should approve the Exchange without modification, approve the accounting protocols, and issue an order consistent with the form of order attached hereto as Appendix A.

Respectfully submitted,

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Dated: June 14, 1999

APPENDIX A

**FORM OF ORDER
ON GENERATION EXCHANGE AND ACCOUNTING PROTOCOLS**

THEREFORE, IT IS ORDERED:

1. The Generation Exchange with FirstEnergy is hereby approved consistent with the findings in this Order.
2. The accounting protocols proposed by Duquesne are reasonable and shall be used to determine the net proceeds from the Auction.
3. Duquesne is authorized to recover, as transaction costs, the additional decommissioning costs and labor-related costs identified in the Application, subject to those costs being covered by the minimum commitment.
4. The form of accounting order respecting decommissioning that is attached as Appendix C to the Application is hereby approved.
5. Duquesne shall continue to auction its POLR service using the fixed shopping credits that have been approved by the Commission.
6. Duquesne shall, within 30 days of completion of the Auction, convene a technical conference to inform the parties of the results of the Auction.
7. Duquesne shall, within 60 days of completion of the Auction, file an accounting for auction proceeds and, in addition, file any new jurisdictional agreements for review and approval by the Commission.


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Duquesne Light Company)	
Application to approve)	
restructuring plan pursuant)	Docket No. R-00974104
to 66 Pa. C.S. § 2806(d))	
Duquesne Light Company Application)	
for Certificate of Public Convenience)	
and for Commission Approval of the)	
Transfer and Acquisition of Property)	Docket No. A-110150F0020
Used or Useful in the Public Service)	
Between Duquesne Light Company)	(Motion to Consolidate Pending)
and FirstEnergy Corp.)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served, by first-class mail, upon the participants on the attached service list in accordance with Section 1.54 of the Commission's regulations.

Dated this 14th day of June, 1999.



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LOCAL 270

UTILITY WORKERS UNION OF AMERICA

AFFILIATED WITH THE AFL-CIO

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JUN 30 1999

June 30, 1999

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ORIGINAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket Number: R-00974104

Via Airborne Express

Dear Mr. McNulty:

This letter is to notify the Pennsylvania Public Utility Commission of the most recent development between Local 270, Utility Workers Union of America, FirstEnergy and the Duquesne Light Company as it pertains to the transfer of generation assets.

In our June 4, 1999 letter we informed you that charges have been filed against FirstEnergy with the National Labor Relations Board over negotiations pertaining to the transfer of generation assets.

Those charges resulted in the issuance of yet another complaint and notice of hearing dated June 18, 1999. This complaint is in addition to the previous complaint issued on April 1, 1999. Enclosed is a copy of this complaint.

We believe that this complaint further bolsters the Union's position that FirstEnergy has failed and refused to bargain collectively over the transfer of generation assets.

Again, this divestiture agreement is not only unfair to the members of Local 270, but also questions the legalities of FirstEnergy and Duquesne's action against Local 270. I hope you will take this under consideration in your decision pertaining to the generation asset transfer.

Sincerely,

David T. Kotecki

David T. Kotecki
President
Local 270, U.W.U.A.

DTK/asq opeiu 1794

Enclosure

cc: H. Peter Burg - FirstEnergy without enclosure
David D. Marshall - Duquesne Light Company without enclosure

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These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows.

1. (A) The charge in Case No 8-CA-30437 was filed by the Union on December 28, 1998, and a copy was served by mail on Respondent FirstEnergy on December 31, 1998.

(B) The amended charge in Case No. 8-CA-30437 was filed by the Union on May 24, 1999, and a copy was served by mail on Respondents on May 28, 1999.

(C) The charge in Case No. 8-CA-30559 was filed by the Union on March 4, 1999, and a copy was served by mail on Respondent FirstEnergy on March 8, 1999.

2. (A) At all times material herein, prior to November 7, 1997, Cleveland Electric Illuminating Company (Respondent CEI) was a subsidiary of Centerior Energy Corporation, an Ohio corporation headquartered in Cleveland, Ohio where it operated a public utility engaged in the generation and distribution of electricity in Northeast Ohio.

(B) At all times material herein, Cleveland Electric Illuminating Company (Respondent CEI) has been an operating company of Respondent FirstEnergy, an Ohio corporation headquartered in Independence, Ohio where it operates a public utility engaged in the generation and distribution of electricity in Northeast Ohio. Annually, Respondent CEI, in conducting its business operations described above, derives gross revenues in excess of \$250,000 and, annually, purchases and receives goods valued in excess of \$50,000 from points located outside the State of Ohio.

(C) At all times material herein, prior to November 7, 1997, Ohio Edison Company, an Ohio corporation, was headquartered in Akron, Ohio, where it operated a public utility engaged in the generation and distribution of electricity in Ohio.

(D) At all times material herein, Duquesne Light Company, herein called Duquesne, a Pennsylvania corporation, was headquartered in Pittsburgh, Pennsylvania, where it operated a public utility engaged in the generation and distribution of electricity.

(E) On or about September 13, 1996 Ohio Edison Company, hereafter called Ohio Edison, and Centerior Energy Corporation, hereafter called Centerior, entered into an agreement and Plan of Merger. Pursuant to the Merger Agreement, Ohio Edison and Centerior formed FirstEnergy Corp., an Ohio corporation, which, in turn, formed two wholly owned subsidiaries. One subsidiary then merged with Ohio Edison, with Ohio Edison continuing as the surviving corporation and the other merged with Centerior, with Centerior continuing as the surviving corporation. After the Centerior merger, Centerior then merged with and into FirstEnergy, with FirstEnergy continuing as the surviving corporation. The merger was consummated on November 7, 1997.

(F) Following the merger, FirstEnergy became a holding company which directly held all the issued and outstanding common stock of Ohio Edison and all the issued and outstanding common stock of Centerior's direct subsidiaries, which included Respondent CEI. Since the merger on November 7, 1997, Respondent CEI became an operating company of Respondent FirstEnergy.

(G) At all material times since November 7, 1997, Respondent FirstEnergy and Respondent CEI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision, have formulated and administered a common labor

policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out to the public as single integrated business enterprises.

(H) Respondent FirstEnergy and Respondent CEI, herein also known collectively as Respondents, constitute a single integrated business enterprise and a single employer within the meaning of the Act.

(I) At all times material herein, FirstEnergy Nuclear Operating Company, herein called FENOC, has been a subsidiary of Respondent FirstEnergy that operates all nuclear assets owned by Respondent FirstEnergy.

(J) At all times material herein, American Transmission Systems, Inc., herein called ATSI, is a wholly-owned subsidiary of Respondent FirstEnergy that owns and operates the high-voltage transmission facilities of Respondent FirstEnergy.

3. (A) At all material times, Respondent CEI has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(B) At all material times, Respondent FirstEnergy has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4 (A) At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

(B) At all material times Utility Workers Union of America, Local 140, herein called Local 140, has been a labor organization within the meaning of Section 2(5) of the Act

5. (B) At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent FirstEnergy within the

meaning of Section 2(11) of the Act, and agents of Respondent FirstEnergy within the meaning of Section 2(13) of the Act:

William R. Holland	-	Chairman of Board, Chief Executive Officer of FirstEnergy
Peter Burg	-	President and Chief Financial Officer, FirstEnergy
Guy Pipitone	-	Vice President, Fossil Generation, FirstEnergy
Charles Jones	-	Regional President, Northern
Lew Meyers	-	Vice President, Nuclear, Perry
Gary Benz	-	Senior Attorney
John Gill	-	Senior Vice President
H. Douglas Jahn	-	Manager, Industrial Relations
Michael Q. Ryhal	-	Director of Labor Relations

6. (A) The following employees of Respondent CEI, at its northeast Ohio facilities, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All operating maintenance and construction employees, but excluding office clerical, sales and technical employees, employees in the Civil and Mechanical Engineering, Electric Engineering, Wire Relations, Survey and Records elements, production and test engineers, load and trouble dispatchers, chemists and laboratory assistants, Property Protection employees, Electrical Inspectors, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(B) On October 18, 1943, in Cases Nos R-5358 to R-5367 the Union was certified as the exclusive collective-bargaining representative of the Unit.

(C) At all times since October 18, 1943, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(D) The Unit referred to above in paragraph 6(A) remained the same after the merger referred to in paragraphs 2(E) and 2(F)

(E) Since about October 18, 1943 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Unit and since then the Union has been recognized as the representative by Respondent CEI. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which became effective May 1, 1993.

(F) About February 7, 1997, the Union, by letter, pursuant to provisions in the collective bargaining agreement referred to above in paragraph 6(E), gave Respondent CEI notice of Articles in the collective bargaining agreement it wished to change.

(G) About May 27, 1998 Respondents unilaterally, without reaching agreement or lawful impasse, implemented its last bargaining offer made on May 18, 1998, and since May 27, 1998 has generally, but not consistently, maintained the terms of their last offer in effect.

7. (A) About November 16, 1998, and on various dates thereafter, the Union requested that Respondents bargain collectively about the decision to close the Miles Meter Lab.

(B) About December 9, 1998 Respondents closed Miles Meter Lab.

(C) Since about November 18, 1998, Respondents have failed and refused to bargain collectively about the subject set forth above in paragraphs 7(A) and 7(B).

(D) The subject set forth above in paragraphs 7(A) and 7(B) relate to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(E) Respondents engaged in the conduct described above in paragraphs 7(B) and 7(C) without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

(F) As part of the remedy for the unfair labor practices alleged above in paragraphs 7(B) and 7(C), the General Counsel seeks an order requiring Respondents to reinstitute its Miles Meter Lab operation as it existed on November 18, 1998. The General Counsel further seeks other relief as may be appropriate to remedy the unfair labor practices alleged.

8. (A) About October 20, 1998, and on various dates thereafter, the Union requested that Respondents bargain collectively about the effects of their decision to enter into an asset transfer with Duquesne which involved the transfer of Respondents' Avon Lake facility, whose employees are represented by the Union.

(B) About October 20, 1998 and on various dates thereafter, the Union requested that Respondents bargain collectively about the effects of their decision regarding the formation of FENOC.

(C) About October 20, 1998 and on various dates thereafter, the Union requested that Respondents bargain collectively about the effects of their decision regarding the formation of ATSI.

(D) About December 15, 1998, as a condition to reaching agreement regarding the subjects set forth above in paragraphs 8(A), 8(B) and 8(C), the Respondents insisted that its unlawfully implemented last offer, with minor modifications, be accepted, supported and recommended to the Union membership for ratification.

(E) About December 15, 1998, as a condition to reaching agreement regarding the subjects set forth above in paragraphs 8(A), 8(B) and 8(C), the Respondents insisted that, upon ratification by the Union membership, the Union would withdraw with prejudice all unfair labor practice charges filed with the Board

(F) Since about December 15, 1998, Respondents have failed and refused to bargain collectively about the subject set forth above in paragraphs 8(A), 8(B) and 8(C).

(G) The subjects set forth in paragraphs 8(A), 8(B) and 8(C) relate to the wages, hours and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

9. (A) About February 12, 1999, the Union requested that Respondents bargain collectively about restructuring and changes to job classifications in Operations Support, Operations Services, Customer Service and FirstEnergy Administrative Services for jobs within the Unit.

(B) On or about March 5, 1999 through March 20, 1999, at various locations, Respondents implemented new bidding procedures for the new job classifications referred to above.

(C) On or about March 5, 1999 Respondents failed to bargain with the Union and refused to allow any employees, including those on lay off, to bid on the jobs referred to above in 9(A)

(D) On or about March 20, 1999 Respondents eliminated approximately 90 job classifications in Operations Support, Operations Services and Customer Account Services.

(E) On or about March 20, 1999 Respondents established wage rate ranges, job specifications and qualifications for 31 new job classifications and established new promotional charts in Operations Support, Operations Services, Customer Service, and FirstEnergy Administrative Services

(F) Since about February 17, 1999, Respondents have failed and refused to bargain collectively about the subjects set forth above in paragraphs 9(A), 9(B), 9(C), 9(D), and 9(E)

(G) The subjects set forth above in paragraphs 9(A), 9(B), 9(C), 9(D), and 9(E) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(H) Respondents engaged in the conduct described above in paragraphs 9(B), 9(C), 9(D), and 9(E), without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct.

10. (A) About March 25, 1999, Respondents, through its various subsidiaries and/or operating companies, including Respondent CEI, entered into a Generation Exchange Agreement with Duquesne which provides:

(m) The following provisions shall apply with respect to employees who are covered by the UAW Local 270 Collective Bargaining Agreement ("Local 270 CBA") who are employed in positions at the FE Plant of Avon Lake or, if employed at another location, perform substantially all their work in support of the FE Plant of Avon Lake ("Local 270 Employees").

(i) Subject to Section (m)(ii) hereof, the Winning Bidder shall not be obligated to assume the Local 270 CBA or to recognize UAW Local 270 as the exclusive collective bargaining agent for Local 270 Employees unless otherwise required by federal law as a result of the actions of the Winning Bidder. The Winning Bidder further shall not be required to make offers of employment to Local 270 Employees. The Winning Bidder shall inform the FE Subsidiaries of those Local 270 Employees, if any, to whom the Winning Bidder has made offers of employment not later than 90 days prior to the Auction Closing Date.

(ii) In the event that, not less than fifteen (15) days prior to the date for submission of final, binding bids in the Auction, UAW Local 270 and the applicable FE Subsidiary modify the Local 270 CBA, the Winning Bidder shall be required to assume such Local 270 CBA so modified to the extent applicable to Local 270 Employees, provided that the Local 270 CBA as amended or modified permits the Winning Bidder to determine its staffing level requirements and does not require the Winning Bidder to offer employment to Local 270 Employees in excess of such staffing level requirements; and provided further that the Local 270 CBA as amended or modified does not, taken as a whole, materially exceed the provisions of the Local 140 CBA, including, without limitation, the provisions of the Local

140 CBA with respect to cash compensation, fringe benefits, healthcare, and pension benefits, as of the date of this Agreement.

(B) Since on or about May 27, 1998, and continuing to date, Respondents have refused to allow employees in the Unit at its Avon Lake facility to bid on Unit jobs outside that facility.

(C) About December 10, 1998, Respondents informed the Union that employees in the Unit at the Avon Lake facility could not transfer but were required to remain employed at that facility.

(D) Respondents engaged in the conduct described above in paragraphs 10(A), 10(B) and 10(C) and because the named employees of Respondents joined and assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

(D) The conduct described above in paragraphs 10(A), 10(B) and 10(C) is inherently destructive to the rights guaranteed employees by Section 7 of the Act.

11. (A) At various times during the months of October through December 1998, Respondents and the Union met for the purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment of the Unit.

(B) Since in or about October 1998, in continuation of conduct engaged in since November 1997, Respondents engaged in conduct, including, but not limited to, the allegations set forth in paragraphs 7, 8 9, and 10; entering into negotiations with a predetermined resolve and agreement with Duquesne that the collective bargaining agreement could not materially exceed the provisions of Respondent's contract with Local 140; imposing artificial deadlines, informing the Union that it would consider proposals for cosmetic changes only, not substantive changes.

misleading and/or failing to fully inform the Union of filings with government agencies and/or the status or Respondents' intentions regarding newly created subsidiaries, and by other conduct.

(C) By its overall conduct, including the conduct described above in paragraphs 7, 8, 9, 10, and 11(B), Respondents have failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

12. By the conduct described above in paragraphs 7, 8, 9, 10, and 11, Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 9(C), 9(D) and 10, Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. By the conduct described above in paragraphs 7, 8, 9, 10, and 11, Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that commencing at a date, time and place to be designated later a hearing will be conducted before an administrative law judge of the Board on the allegations in this complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this complaint within 14 days from service of it, and that, unless Respondent does so, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceeding Pursuant to Section 10 of the National Labor Relations Act, As Amended, are attached.

Dated at Cleveland, Ohio this 18th day of June 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

Attachments

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Arlington, VA; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases Nos. 8-CA-30437, 30559

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request. *and*
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

FirstEnergy Corporation
Attn: Gary D. Bentz
76 S. Main Street
Akron, Ohio 44308

Avrum M. Goldberg, Esq.
Dawn E. Starr, Esq.
Akin, Gump, Strauss, Haver & Feld
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Utility Workers Union of America,
Local 270, AFL-CIO
Attn: David Kotecki, President
4205 Chester Avenue
Cleveland, Ohio 44103

Keith R. Wolgamuth, Esq.
McCormack & Wolgamuth
300 Superior Lofts
1729 Superior Avenue
Cleveland, Ohio 44114

Administrative Law Judges
1099 14th Street, N.W.
Washington, D.C. 20570

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: July 12, 1999

SUBJECT: R-00974104; Duquesne Light Company Restructuring Plan;
Petition to Intervene and Comments Conditionally
Opposing Application...filed by Utility Workers Union
of America, AFL-CIO

TO: James J. McNulty, Secretary

FROM: Karen Oill Moury, Deputy Chief Counsel *KOM*

By memo dated June 10, 1999, the Secretary's Bureau assigned the above-captioned Petition to Intervene to the Law Bureau for appropriate action. Please note that the issues raised by this Petition have been addressed in the draft Order prepared by the Bureau of Fixed Utility Services, in consultation with the Law Bureau, disposing of Duquesne's application, which was docketed at A-110150F0020. This Order is on the agenda for the public meeting of July 15, 1999 as FUS-1064.

Therefore, we believe that this assignment has been completed. Please feel free to call me at 2-8883 if you have any questions regarding this matter.

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NOV 1 1999

**DOCUMENT
FILED**

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

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DIRECT FAX
371-7012

OCT 19 1999

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

October 19, 1999

By Overnight Mail

James J. McNulty
Secretary
Office of the Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 17105-3265

KJR DOCKETED
OCT 20 1999

Re: Duquesne Light Company Generation Auction,
Docket No. R-00974104

Dear Secretary McNulty:

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The Commission's July 15, 1999 order approving the Generation Exchange with FirstEnergy Corp. provided that "Duquesne shall, within 30 days of completion of the Auction, convene a technical conference to inform the parties of the results of the Auction." On September 27, 1999, Duquesne announced that Orion Power Holdings, Inc., the winning bidder in the Auction, agreed to pay \$1.705 billion for Duquesne's generation portfolio and to supply Duquesne's requirements as provider of last resort. The proceeds from the Auction will allow Duquesne to cease stranded cost collections in 2001 for most major rate classes. By terminating CTC collection in the year 2001, the average residential customer will receive a rate reduction of more than 25% if market prices for electricity continue at or below the Commission-approved shopping credits.

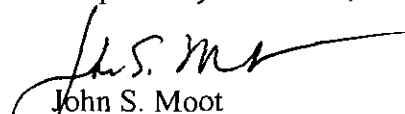
Duquesne originally had intended to present this and other relevant information, and to respond to questions from interested parties, at a technical conference later this month. Regrettably, however, that conference must now be

James J. McNulty
October 19, 1999
Page 2

delayed because Duquesne's counsel and key management personnel will be engaged, until the end of this month, in a federal court trial of Allegheny Energy Inc.'s lawsuit against DQE, Inc., Duquesne's parent company, regarding their now-terminated merger. It is particularly important to the Auction that these personnel devote full attention to this trial, given that Allegheny's lawsuit seeks, *inter alia*, to block the Generation Exchange and Auction, thereby depriving Duquesne's ratepayers of the foregoing stranded cost and rate reductions. The trial is scheduled to begin October 20, 1999 and should conclude by the end of the week of October 25-29.

Following conclusion of the trial, Duquesne will contact the active parties to this case to schedule a technical conference at the earliest possible date. We regret that the timing of this conference differs somewhat from that originally contemplated, but, given the circumstances, we believe the most prudent course is to devote our full efforts to protecting the benefits of the Auction against Allegheny's efforts to nullify them.

Respectfully submitted,


John S. Moot
Counsel for Duquesne Light Company

cc: All persons on official service list

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

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November 18, 1999

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VIA OVERNIGHT DELIVERY

NOV 18 1999

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Motion of Duquesne Light Company for
Extension of Time, Docket No. R-00974104

Dear Mr. McNulty:

Enclosed is an original and four copies of the Motion of Duquesne Light Company for Extension of Time in the above-captioned proceeding. Please date-stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope. Thank you for your consideration and assistance in this matter.

Sincerely,



Kathleen L. Barrón
Counsel to Duquesne Light Company

cc: Service List

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY)
COMMISSION)**

v.)

**DUQUESNE LIGHT COMPANY)
Application to Approve Restructuring)
Plan Pursuant to 66 Pa.C.S. § 2806(d))**

Docket No. R-00974104

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NOV 18 1999

**MOTION OF DUQUESNE LIGHT COMPANY)
FOR EXTENSION OF TIME)**
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code § 1.15, Duquesne Light Company

("Duquesne") hereby requests an extension of time in which to file definitive agreements and an accounting of proceeds from the auction of its generation assets. The Commission's July 15, 1999 order in this docket ("July Order") held, at Duquesne's request, that Duquesne should file, within sixty days of completion of the auction, jurisdictional agreements and an accounting for auction proceeds for review and approval by the Commission. Due to the continuing uncertainty regarding the effect on the auction of Allegheny Energy, Inc.'s ("Allegheny") lawsuit against DQE, Inc. for its termination of the Agreement and Plan of Merger, Duquesne requests a thirty-day extension of time to allow it to continue to devote its full efforts to protecting the auction against the effects of that lawsuit. In support of its motion, Duquesne states as follows:

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1. On December 17, 1998, the Commission approved Duquesne's plan to divest its generating assets through an auction and in the July Order approved Duquesne's plan to swap with FirstEnergy Corp. ("FirstEnergy") certain of Duquesne's minority interests in several generating stations for several of FirstEnergy's plants. Duquesne auctioned its generation assets and those acquired from FirstEnergy to the highest bidder, Orion Power Holdings, Inc. ("Orion"), for \$1.705 billion. Definitive agreements with Orion were signed on September 24, 1999. The July Order granted Duquesne's request to schedule a technical conference within thirty days of the completion of the auction to inform the parties of the results and to file, within sixty days of the completion of the auction, jurisdictional agreements relating to the transaction, along with an accounting for auction proceeds.

2. By letter dated October 19, 1999, Duquesne informed the Commission that regrettably it was forced to delay the technical conference required by the July Order. At that time, Duquesne's counsel and key management personnel were engaged in the federal court trial of Allegheny's lawsuit over the companies' terminated merger agreement. As part of its request for specific performance of the merger agreement, Allegheny has asked the court to enjoin the consummation of the generation exchange with FirstEnergy and the divestiture to Orion. Closing arguments are scheduled for November 23, 1999. The court is expected to rule by December 1, 1999.

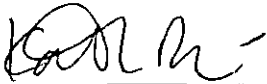
3. Good cause exists for the Commission to grant this motion.

Duquesne's counsel and management remain embroiled in efforts to preserve the benefits of the exchange and auction for Pennsylvania's ratepayers against the attacks on them from Allegheny. A short extension of time will permit Duquesne to continue to devote its full efforts to defending against Allegheny's lawsuit. The benefits to ratepayers of the \$1.705 billion purchase price for Duquesne's assets will be unaffected by a short delay in filing the jurisdictional agreements for review. If the Commission grants this motion, Duquesne will either make the required filing by December 23 or update the Commission regarding the status of the litigation and request an additional extension.

WHEREFORE, Duquesne respectfully moves the Commission to issue an order extending to December 23, 1999, the period of time in which Duquesne must file the agreements and accounting related to its generation auction.

Respectfully submitted,

Larry R. Crayne
Assistant General Counsel
DUQUESNE LIGHT COMPANY
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Dated: November 18, 1999

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY)
COMMISSION)**

v.)

Docket No. R-00974104

**DUQUESNE LIGHT COMPANY)
Application to Approve Restructuring)
Plan Pursuant to 66 Pa.C.S. § 2806(d))**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Extension of Time was served, by first-class mail, upon the participants on the attached service list in accordance with Section 1.54 of the Commission's regulations.

Dated this 18th day of November, 1999.



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DOCUMENT
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November 24, 1999

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NOV 24 PM 2:17
PA P.U.C.
SECRETARY'S BUREAU

James J. McNulty, Secretary
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North Office Building - Filing Room
PO Box 3265
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R-00 97 410 4

RE: Mid-Atlantic Power Supply Association Substitution of Counsel

Dear Secretary McNulty:

DOCKETED
DEC 07 1999

The purpose of this letter is to request that the Pennsylvania Public Utility Commission substitute counsel for the Mid Atlantic Power Supply Association ("MAPSA"). Please remove Malatesta Hawke and McKeon LLP, ("MHM") attorneys William T. Hawke, Craig R. Burgraff, Janet L. Miller and Todd S. Stewart as counsel for the MAPSA in any matter in which the firm has entered an appearance on behalf of MAPSA.

Please substitute in place of MHM the firm of Rhoads & Sinon, and attorney James Cawley, as counsel for the Mid-Atlantic Power Supply Association. In any future Pa. PUC proceedings where MAPSA is a party by virtue of participation in any of the dockets listed herein, please serve Mr. Cawley. Mr. cawley's address and telephone numbers are as follows:

James Cawley, Esq.
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One South Market Square
12th Floor
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76

The enclosed Certificate of Service reflects, to the best of our knowledge, all parties to matters in which MAPSA was represented by MHM. This list was compiled based upon

James J. McNulty, Secretary
Re: Substitution of Counsel
Mid-Atlantic Power Supply Association
November 22, 1999
Page 2

Commission service lists for each of the dockets referenced on the attached dockets sheet.

Attached hereto is what we believe to be a complete list of all dockets where MHM has entered an appearance for MAPSA. In addition, there are numerous dockets which are related to those listed where other parties served MHM as counsel for MAPSA. We would appreciate the Pennsylvania Public Utility Commission and parties substituting the firm of Rhoads & Sinon in place of MHM and its attorneys on those service lists as well.

If you have any questions regarding this substitution of counsel, please direct them either to me or to Mr. Cawley.

Very truly yours,


James Cawley

Rhoads & Sinon, LLP


Todd S. Stewart

Malatesta Hawke & McKeon LLP

TSS/bes

Attachment

cc: Chief Administrative Law Judge Robert Christianson
Certificate of Service

DOCKETS LIST
Mid-Atlantic Power Supply Association

99 NOV 24 PM 2:18
 PA.P.U.C.
 SECRETARY'S BUREAU
 3021

DOCKET NO.	CASE CAPTIONS
D-98S042	PECO Energy Company's Request For Establishment Of A Procedural Timeline For Its Annual CTC Reconciliation And Permission to Use A Cash Rather Than A Billed Basis Reconciliation Methodology
L-00970121	Rulemaking Order Establishing Standards For Changing A Customer's Electric Supplier
L-00970126	Rulemaking Re: Customer Information Disclosure for Electricity Providers, 52 Pa. Code Chapter 54
L-00970128	Rulemaking Re: Advanced Meter Deployment for Electricity Providers, 52 Pa. Code §§57.251-57.259
L-00970129	Rulemaking Re: Licensing Requirements for Electric Generation Suppliers; 52 Pa. Code Chapter 54 and §3.551
L-00970131	Rulemaking Re: Reporting Requirements for Quality of Service Benchmarks and Standards, 52 Pa. Code Chapter 54, §§54.151-54.155
L-00980132	Rulemaking Re: Establishment of Competitive Safeguards for the Pennsylvania Electric Industry
L-00980136	Rulemaking Re: Amending Annual Resource Planning Report Filing Requirements, 52 Pa. Code §§ 57.141-57.154
M-FACE#9905	West Penn Power Company - 1999 Competitive Transition Charge Reconciliation
M-00960890F0012	Retail Access Phased Implementation; 66 Pa. C.S. §2806(b)(4)
M-00960890F0015	Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers
M-00981208	Obligation of the Gas Suppliers to Comply With Chapter 56 Provisions
M-00991220	Procedures Applicable To Electric Distribution Companies and Electric Generation Suppliers During The Transition To Full Retail Choice

P-00971168 P-00971169 P-00971171 P-00971170 P-00971172 P-00971173 P-00971175 P-00971183	Consolidated Pilot Program Proceedings
C-00981846 P-00981615 P-00981862 P-00982011	Mid-Atlantic Power Supply Association v. PECO Energy Company; Clean Air Council, Inc. v. PECO Energy Company
R-00973953	Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code
R-00973954	Application of PP&L Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code
R-00974008	Application of Metropolitan Edison Company for Approval of Restructuring Under Section 2806 of the Public Utility Code
R-00974009	Application of Pennsylvania Electric Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code
R-00973981	Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code
R-00974104	Application of Duquesne Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code
R-00994875	PP&L, Inc. - 1999 Intangible Transition Charge Reconciliation Filing.
R-00984298	Pennsylvania Public Utility Commission v. PECO Energy Company



ORIGINAL

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SECRETARY'S BUREAU

NOV 30 11:41:01

November 30, 1999

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Room B-20, North Office Bldg.
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DOCUMENT
FOLDER

Re: Pennsylvania Public Utility Commission
v.
Duquesne Light Company
Application To Approve Restructuring Plan
Pursuant to 66 Pa.C.S. §2806(d)
Docket No. R-00974104

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Joint Petition For Settlement of Duquesne Light Company's appeal in the Commonwealth Court of the Commission's Order entered August 13, 1998 in the above-captioned proceeding. The Joint Petitioners are those parties who participated in the Commonwealth Court proceeding through the filing of Briefs at the Commonwealth Court. The Office of Consumer Advocate is filing this Joint Petition with the Commission on this date, and serving the Joint Petition on the signatory parties and Commission counsel in the appeal proceeding. Duquesne Light Company will serve the Joint Petition on all parties to its Restructuring Proceeding on Tuesday, November 30, 1999.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Tanya J. McCloskey
Senior Assistant Consumer Advocate

Enclosures

- cc: Lawrence Barth, Esq., Law Bureau
- Kathleen Barrón, Skadden, Arps, Meagher & Flom, LLP
- Larry R. Crayne, Duquesne Light Company
- Pamela C. Polacek, McNeese, Wallace & Nurick

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission

v.

Docket No. R-00974104

Duquesne Light Company
Application To Approve Restructuring
Plan Pursuant To 66 Pa.C.S. §2806(d)

DOCKETED

DEC 03 1999

JOINT PETITION FOR SETTLEMENT
OF DUQUESNE LIGHT COMPANY'S
APPEAL OF THE COMMISSION'S ORDER
OF AUGUST 13, 1998

**DOCUMENT
FOLDER**

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SECRETARY'S BUREAU

Duquesne Light Company (Duquesne or the Company), the Office of Consumer Advocate (OCA), and the Duquesne Industrial Intervenors (DII)(hereinafter referred to as Joint Petitioners), by their counsel respectfully submit this Joint Petition for Settlement of Duquesne's Commonwealth Court Appeal of the Commission's Order on Compliance of August 13, 1998 regarding Duquesne's restructuring plan at Docket No. R-00974104. The Joint Petitioners respectfully request that the Commission approve the Settlement of Duquesne's appeal of the Commission's August 13, 1998 Compliance Order, docketed at 2566 C.D. 1998.

I. BACKGROUND

On August 1, 1997, Duquesne filed its restructuring plan in accordance with Section 2806 of the Public Utility Code. *Application of Duquesne Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00974101. Among

other things, Duquesne's restructuring plan included a regulatory asset claim for deferred fuel costs of \$6.73 million as part of Duquesne's stranded cost claim. Additionally, Duquesne proposed to roll its Energy Cost Rate (ECR) into base rates and reflect a total energy cost in its base rates of 14.7 mills/kwh rather than the level of 12.8 mills/kwh that was currently reflected in Duquesne's total rates. During the proceeding, the OCA and DII did not challenge Duquesne's claim to recover its deferred fuel regulatory asset of \$6.73 million as part of its stranded cost claim, but OCA and DII did oppose the request to increase the level of energy costs reflected in base rates from 12.8 mills/kwh to 14.7 mills/kwh. Duquesne argued that it was permitted to increase its level of energy costs pursuant to the Commission's Order of June 20, 1996 that had established a 14.7 mill/kwh cap on Duquesne's energy costs. *Petition of Duquesne Light Company for Declaratory Order and Application for Certificate of Public Convenience*, Docket Nos. P-00951001, A-110150F.011 (June 20, 1996).

On March 25, 1998, the Administrative Law Judge issued a Recommended Decision which accepted Duquesne's deferred fuel cost regulatory asset of \$6.73 million, but specifically denied Duquesne's request to increase the level of its energy costs in base rates to 14.7 mills/kwh. On May 29, 1998, the Commission entered a Final Opinion and Order on Duquesne's restructuring plan. The Commission's Order, in its calculation of stranded cost, included Duquesne's claim for the deferred fuel regulatory asset of \$6.73 million. The Commission did not specifically address the Company's request to increase its energy costs charges to 14.7 mills/kwh. The Final Order directed Duquesne to make a Compliance Filing to implement the Final Order.

On June 18, 1998, Duquesne made its Compliance Filing and included an updated claim for its deferred fuel cost regulatory asset. Duquesne included an additional \$18.25 million in

its deferred fuel cost regulatory asset for a total claim of \$25 million. Duquesne also included the 14.7 mills/kwh of energy costs in its total rates in the Compliance Filing. OCA and DII, among others, filed Comments on the Compliance Filing seeking clarifications and objecting to these items in Duquesne's Compliance Filing.

On August 13, 1998, the Commission issued a Compliance Order resolving, among other things, the issue of Duquesne's updated deferred fuel cost regulatory asset and the appropriate amount of energy costs to be included in base rates. With respect to the updated deferred fuel cost regulatory asset, in its Tables, the Commission continued to utilize the \$6.73 million level rather than the \$25 million level in its calculation of stranded cost. With respect to the level of energy costs, the Commission found that the 12.8 mills/kwh should be utilized since the Commission found that this was the rate in effect on the effective date of the Act. Compliance Order at 12.

On September 14, 1998, Duquesne filed an appeal of the Compliance Order with the Commonwealth Court. The OCA and DII intervened in the appeal. Briefs and Reply Briefs have been filed in the appeal, and the case was scheduled for oral argument. Prior to the oral argument, Duquesne, OCA and DII reached the following agreement to resolve the issues presented for appeal.

II. SETTLEMENT OF DUQUESNE'S APPEAL

A. Settlement Terms

Duquesne, OCA, and DII have agreed to the proposed Settlement terms and conditions set forth below as a means of resolving the issues raised in Duquesne's appeal. Duquesne, OCA and DII intending to be legally bound and for consideration given, agree as follows:

1. The Joint Petitioners agree that Duquesne will withdraw its appeal of the Commission's decision to require Duquesne to include 12.8 mills/kwh of energy costs in its base rates rather than the 14.7 mills/kwh that Duquesne had requested. Duquesne agrees that it will reflect a level of energy costs of 12.8 mills/kwh in its base rates in accordance with the Commission's Order.

2. The Joint Petitioners agree that Duquesne will not defer any universal service costs to its next distribution rate case. Duquesne agrees that it will continue to implement the Commission's orders regarding the expansion of its CAP and LIURP consistent with the Commission's requirements.

3. The Joint Petitioners agree that Duquesne should be permitted to recover as a stranded cost its deferred fuel regulatory asset in the amount of \$25 million for the undercollection of energy costs incurred during the period commencing February 1, 1996 through the conclusion of its restructuring proceeding.

4. The Joint Petitioners agree that the cap on Duquesne's non-generation rates, which would otherwise expire on June 30, 2001 under Section 2804(4) of the Electric Generation Customer Choice and Competition Act (66 Pa.C.S. §2801 *et seq.*) will be extended by six months, until December 31, 2001 for all retail customers. The parties agree that Duquesne retains the right to file for an exception to the rate cap

pursuant to 66 Pa.C.S. §2804(4)(iii). All other parties retain the right to oppose Duquesne's request.

B. Resolution of Other Issues

Any issue not specifically addressed in this Settlement shall be treated and resolved in accordance with the resolution of that issue adopted by the Commission at this docket in the Restructuring Order entered May 29, 1998, the subsequent Compliance Orders entered August 13, 1998, October 16, 1998 and December 17, 1998, and other Orders entered at this docket.

C. Withdrawal of Pending Commonwealth Court Case

Within ten days after the Commission's approval of this Joint Petition becomes final and no longer subject to administrative or judicial challenge, Duquesne shall withdraw with prejudice all of its Commonwealth Court actions regarding the Commission's Orders at Docket No. R-00974104.

D. Miscellaneous

1. This Settlement Agreement is contingent upon approval by the Commission without modification. If the Settlement Agreement is modified by the Commission, a party may withdraw from this Settlement Agreement upon providing all Joint Petitioners written notice within ten days of the modification.

2. This Settlement Agreement is made without admission against or prejudice to any factual or legal positions which any of the Joint Petitioners may assert in any Commission or Court proceeding. Furthermore, the Joint Petitioners agree that this Settlement Agreement shall not constitute or be cited as controlling precedent in any other proceeding.

3. Signature pages for this Settlement Agreement transmitted by telefax shall be considered to be validly executed.

III. PUBLIC INTEREST CONSIDERATIONS

A. **A Potential Increase In Duquesne's Rates Will Be Avoided.** The Settlement provides that Duquesne will include only 12.8 mills/kwh of energy costs in its base rates which means that Duquesne's rates will remain at the level that was in effect on January 1, 1997.

B. **Transmission and Distribution Charges Will Be Capped For An Additional Period.** The Settlement provides for a cap on Duquesne's transmission and distribution charges through December 31, 2001, an extension of six months of the rate cap provided by the Electricity Generation Customer Choice and Competition Act.

C. **Universal Service Costs Will Not Be Deferred For Future Recovery.** The Settlement provides that Duquesne will not defer for future recovery its universal service costs. Duquesne retains its commitment to ramp up its universal service programs in accordance with the Commission's Orders.

D. **Litigation Over A Component Of Duquesne's Stranded Cost Claim Will Be Resolved.** The Settlement resolves the litigation over Duquesne's deferred regulatory asset claim bringing certainty to Duquesne's stranded cost claim as the auction of Duquesne's generation assets is concluded and the reconciliation of Duquesne's stranded costs with the auction proceeds begins.

E. **Litigation And Associated Costs Will Be Avoided.** The Settlement resolves issues raised in this proceeding and provides for the withdrawal of the actions pending in Commonwealth Court. The administrative and appellate burden and costs to continue to litigate the issues will be avoided.

F. **The Settlement Is Consistent With Commission Policies Promoting Negotiated Settlements.** The Settlement terms and conditions constitute a reasonable negotiated compromise of the issues addressed herein. This Settlement is consistent with the Commission's rules and practice encouraging negotiated settlements.

IV. FURTHER PROCEDURES

Duquesne requests that the Commission rule on this request by its final December meeting to allow Duquesne to inform the Commonwealth Court that the case has been discontinued and may be withdrawn from the argument list. As ordered by the Commission, Duquesne will provide a final accounting of the auction proceeds, transaction costs, and stranded costs in conjunction with its filing for approval of the auction.

V. CONCLUSION

WHEREFORE, the Joint Petitioners request approval of the Settlement.

For Duquesne Light Company



John S. Moot

Kathleen Barrón

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(202) 371-7012 (fax)

11/26/99

Date

For Duquesne Light Company



Larry B. Grayne

Assistant General Counsel

Duquesne Light Company

11/26/99

Date

For Duquesne Industrial Intervenors

Pamela C. Polacek

McNees, Wallace & Nurick

Date

For the Office of Consumer Advocate

Tanya J. McCloskey

Senior Assistant Consumer Advocate

Date

Dated: November 24, 1998

NOV. 24. 1999 1:36PM

OFFICE OF CONSUMER ADVOCATE

NO. 623

P. 9/9

V. CONCLUSION

WHEREFORE, the Joint Petitioners request approval of the Settlement.

For Duquesne Light Company

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Date

For Duquesne Light Company

Larry R. Crayne
 Assistant General Counsel
 Duquesne Light Company

Date

For Duquesne Industrial Intervenors

Pamela C. Polacek

Pamela C. Polacek
 McNees, Wallace & Nurick

Nov. 29, 1999
Date

For the Office of Consumer Advocate

Tanya J. McCloskey

Tanya J. McCloskey
 Senior Assistant Consumer Advocate

Nov. 29, 1999
Date

Dated: November 24, 1998

RECEIVED
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 SECRETARY'S BUREAU

DATE: December 2, 1999

SUBJECT: R-00974104

DOCKETED
DEC 03 1999

TO: Law Bureau

FROM: James J. McNulty, Secretary

LAF

DOCUMENT
FOLDER

Duquesne Light Company Application to Approve
Restructuring Plan

Attached is a copy of a Joint Petition for Settlement of Duquesne Light Company's Appeal in the Commonwealth Court of the Public Utility Commission's Order Entered August 13, 1998, filed by Duquesne Light Company, the Office of Consumer Advocate, and the Duquesne Industrial Intervenors in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: OTS
FUS

laf

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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DOCKETED

DEC 15 1999

December 8, 1999

By Overnight Mail

James J. McNulty
Secretary
Office of the Prothonotary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pa. 17105-3265

RECEIVED

DEC 08 1999

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Duquesne Light Company Generation Auction,
Docket No. R-00974104

Dear Secretary McNulty:

Duquesne Light Company hereby provides notice to all parties that a technical conference regarding Duquesne's Generation Auction will be held on Thursday, December 16, 1999, at 1:00 p.m. in Hearing Room No. 1. The purpose of the technical conference is to inform the parties of the current status of the Auction, describe the Auction filing Duquesne will submit later in the month, and answer any questions the parties may raise. Following the submission of Duquesne's Auction filing, Duquesne will schedule a second technical conference to answer any remaining questions.

Respectfully submitted,

Kathleen L. Barrón
Counsel for Duquesne Light Company

DOCUMENT
FOLDER

cc: All active parties on official service list (via facsimile)
All persons on official service list (via U.S. Mail)

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