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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION P.U.C.

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Application of Pennsylvania Power & Light	:	
Company For Approval of Its Restructuring	:	Docket No. R-00973954
Plan Under Section 2806 of the Public	:	
Utility Code	:	

DOCUMENT  
FOLDER

**PROTECTIVE ORDER**

Pennsylvania Power & Light Company ("PP&L") has moved for the entry of a protective order restricting access to proprietary information to be filed or otherwise provided in connection with this proceeding. PP&L has submitted a proposed order along with its motion. Many of the active parties to this proceeding have reviewed the proposed order and do not object to it. This Protective Order is issued by authority of 52 Pa. Code § 5.362.

1. This Protective Order shall govern all proprietary information produced by or on behalf of any participant in response to discovery requests in this proceeding and designated by that participant as protected, and any other material within the definition of Paragraph 2 below. Consistent with 52 Pa. Code § 5.423(a), a participant may designate as Protected Material that which customarily is treated as confidential or proprietary, which is not available to the public, and which the participant determines in good faith that, if disclosed freely, would subject that participant to risk of unfair economic or competitive damage.

The foregoing standard is intended to govern what material may be nominated as subject to a possible claim for protected treatment. The Administrative Law Judge shall determine what standard applies in determining whether a document should remain protected, if any participant objects to a designation.

2. For purposes of this order:

(a) The term "Commission" means the Pennsylvania Public Utility Commission.

(b) For purposes of this proceeding, "competitor" or "affiliate of a competitor" as used in 52 Pa. Code § 5.423(5)(c) means an entity directly involved in the purchase, sale, brokering, or marketing of electric energy or capacity at retail or wholesale or the planning, construction or operation of generation facilities.

(c) The term "participant" means a participant as defined in 52 Pa. Code § 1.8.

(d) The term "producing party" means a participant that has designated material as Protected Material.

(e) The term "Protected Material" means (1) all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by a producing party to be of a proprietary or confidential nature and which are so designated by being stamped "Confidential"; (2) any copy or reproduction of such designated material; (3) any information contained in or obtained from such

designated material; (4) any other material which is made subject to this Protective Order by the administrative law judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the participants; and (5) memoranda, handwritten notes, or any other form of information which copies or discloses protected material. When a statement or exhibit is identified for the record, the portions thereof that constitute Protected Material shall be designated for the record.

(f) Protected Material shall not include (1) any information or document contained in the public files of the Commission, or any other state or federal agency, or any federal or state court, unless said information or document is subject to a protective order of such agency or court; or (2) information or documents which at the time of, or prior to, disclosure in these proceedings, is or was public knowledge, or which becomes public knowledge, except where such disclosure is in contravention of the provisions of this Protective Order; provided, however, that an inadvertent production of material shall not constitute an automatic waiver of any protected status under this Protective Order.

(g) Unless otherwise agreed by the producing party or ordered by the Administrative Law Judge, the term "reviewing representative" means Commission trial staff and other Commission staff involved in this proceeding; those persons permitted access to proprietary information under 52 Pa. Code § 5.423(5)(c); and other persons employed by participants, involved in this

proceeding, who are not directly involved in, or do not have direct or supervisory responsibilities with respect to, the purchase, sale, brokering or marketing of electric energy or capacity at retail or wholesale, or the planning, construction or operation of generation facilities.

3. Protected Material shall be made available to participants only through their reviewing representatives subject to the terms of this Protective Order. Reviewing representatives shall use the Protected Material only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding. No reviewing representative shall permit any individual to inspect, participate in discussions regarding, or otherwise have access to Protected Material unless such individual has been designated a reviewing representative in accordance with the provisions of Paragraph 4.

4. Prior to making Protected Material available to any reviewing representative, counsel for the reviewing representative shall deliver a copy of this Protective Order to and shall receive a written acknowledgment from such representative in the form attached to this Protective Order and designated Appendix A. The producing party shall be notified of the identity of all persons provided access to Protected Material pursuant to this paragraph prior to producing the Protected Material.

5. In the event that any reviewing representative ceases to qualify as a reviewing representative within the terms of this Protective Order, access to Protected Material by that person shall be terminated immediately. Even if no

longer engaged in this proceeding, every person who has agreed to a nondisclosure certificate shall continue to be bound by the provisions of this Protective Order and the certificate.

6. The producing party shall designate Protected Material by stamping each page of Protected Material "Confidential" or otherwise physically marking such material. Protected Material that is not in written form shall be marked in a manner that provides comparable notice that such material is protected by this Protective Order. Where only part of data compilations or multi-page documents constitutes or contains Protected Material, the producing party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Protected Material.

7. A producing party shall give written notice to all participants at least 48 hours prior to the scheduled time of a deposition noticed in this proceeding that the producing party intends to invoke the procedures set forth in this paragraph. Absent such notice, no information disclosed during a deposition, or the deposition testimony and exhibits, shall be deemed to be Protected Material. If a producing party provides notice pursuant to this paragraph, all information disclosed during a deposition, and the deposition testimony and exhibits shall be deemed Protected Material for ten calendar days from the date of the deposition, unless the producing party giving notice under this paragraph agrees that the information disclosed during the deposition

should not be so designated. At the expiration of such ten-calendar day period, the deposition testimony and exhibits shall no longer be considered to be Protected Material, except for those portions of the deposition testimony and/or exhibits designed by the producing party as Protected Material within the ten-day calendar period by marking such material as Protected Material and sending notice thereof to the other participants.

8. Any participant affiliated with the Commission or any other office, agency or department of the Commonwealth of Pennsylvania will consider and treat the Protected Material as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. § 66.1(2) until such time as the Protected Material is no longer subject to this Protective Order. Any participant affiliated with the federal government shall treat Protected Material as within the exemptions from disclosure provided in the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, until such time as the information is no longer subject to this Protective Order. If any request seeking Protected Materials is received by any participant subject to this paragraph pursuant to either the Pennsylvania Right-to-Know Act or FOIA, the participant receiving such request shall notify the producing participant immediately and give the producing participant not less than 14 calendar days to comment upon, object to, or seek a delay in the disclosure of such Protected Material in response to the request. A copy of such notice will be sent to the requester. In the event that a suit is filed against the Commission or a participant subject to this paragraph under the

Pennsylvania Right-to-Know Act or FOIA seeking to compel disclosure of Protected Material, the Commission or that participant shall immediately notify the producing party of such suit.

9. Any public reference to Protected Material by a participant shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Protected Material to understand fully the reference and not more. The Protected Material shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. If a participant tenders for filing any written testimony, exhibit, brief or other submission that includes, incorporates, or otherwise discloses Protected Material, all portions thereof disclosing such material shall be:

(a) Marked, "CONFIDENTIAL;"

(b) Filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order;

(c) Exempt from 52 Pa. Code §§ 1.71—1.76, which provide for the public access to Commission documents, and treated as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act, 65 P.S. Section 66.1(2), and FOIA until such time as the information is no longer subject to this Protective Order; and

(d) Served under seal only upon counsel for such participants with reviewing representatives designated in accordance with this Protective Order.

Counsel for the producing party shall provide to all parties who request the same a list of those counsel for participants entitled to receive such material.

11. Any participant seeking to use Protected Material in any public hearing held in this proceeding shall give reasonable advance notice to the producing party, designating precisely the Protected Material it seeks to use. The producing party and all participants participating in the public hearing shall then attempt to agree upon procedures for the conduct of the hearing during the time that such designated Protected Material may be disclosed, subject to the approval of the Administrative Law Judge. If the producing party and the participants are unable to agree upon such procedures, the administrative law judge shall exclude from the hearing all individuals except for reviewing representatives designated in accordance with this Protective Order and shall seal the portion of the transcript disclosing the designated Protected Material.

12. That part of any record of this proceeding containing Protected Material, including but not limited to all exhibits, writings, written testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in ordering Paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Protected Material is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to an order of the Administrative Law Judge or the Commission.

13. Any participant receiving Protected Material retains the right, either before or after receipt of the information, to challenge the designation of a document or information as Protected Material. If a challenge is made to the designation of a document or information as Protected Material, the producing party claiming that the document or information is Protected Material retains the burden of demonstrating that the designation is necessary and appropriate.

14. A participant shall retain the right to question or challenge the admissibility of Protected Material; to refuse or object to the production of Protected Material on any proper ground, including but not limited to irrelevance, immateriality or undue burden; and to seek additional measures of protection of Protected Material beyond those provided in this Protective Order.

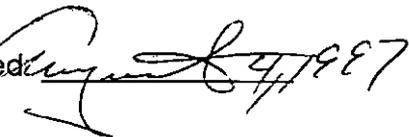
15. Within 30 days after a Commission decision is entered in the above-captioned proceeding, or in the event of appeals, within 30 days after appeals are finally decided, a participant, upon request, shall either destroy or return to a producing party all copies of all documents and other materials not entered into the record, including notes, whether written or oral, which contain any Protected Material. In the event that a participant or reviewing representative destroys all copies of documents and other materials containing Protected Material instead of returning the copies of documents and other materials containing Protected Material to the producing party, that participant or reviewing representative shall certify in writing to the producing party that the Protected Material has been destroyed.

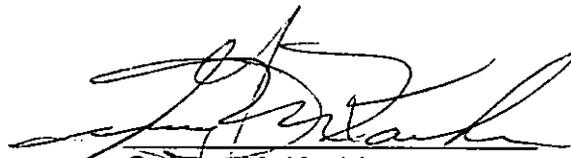
16. In the event that the Administrative Law Judge at any time in the course of this proceeding finds that all or part of the Protected Material need not be protected, those materials nevertheless shall continue to be subject to the protection afforded by this Protective Order until seven calendar days after the date of the administrative law judge's decision and, if the party seeking protection files or seeks to file an interlocutory appeal of the administrative law judge's decision denying protection, the material shall continue to be subject to the protection afforded by this order until seven calendar days after any order denying such appeal. The party seeking protection shall promptly notify all participants of its intent to file or seek to file an interlocutory appeal of the administrative law judge's decision denying protection.

17. This Protective Order shall remain in effect (notwithstanding any order terminating this proceeding) until specifically modified or terminated by the administrative law judge or the Commission, for good cause shown or on their own motion.

It is so ordered.

Dated

  
8/9/98

  
George M. Kashi  
Administrative Law Judge

**APPENDIX A**

Application of Pennsylvania Power & Light :  
Company For Approval of Its Restructuring : Docket No. R-00973954  
Plan Under Section 2806 of the Public :  
Utility Code :

**NONDISCLOSURE CERTIFICATE**

I have read and understand the Protective Order issued in the above-referenced proceeding, which deals with the treatment of Protected Material. I agree to be bound by, and comply with, the terms and conditions of said Protective Order. I understand that the contents of the Protected Material, any notes or other memoranda or any other form of information that copies or discloses Protected Material shall not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purpose of preparing or presenting evidence, cross-examination or argument in the above-referenced proceeding. I understand and acknowledge that a violation of this certificate may constitute a violation of an order of the Pennsylvania Public Utility Commission.

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
PARTICIPANT REPRESENTED

\_\_\_\_\_  
DATE

Application for approval of a Restructuring Plan

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