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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FORMAL COMPLAINT
BEFORE THE

ORIGINAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION

FORMAL COMPLAINT, PROTEST AND PETITION TO INTERVENE
OF THE ENVIRONMENTALISTS
REGARDING THE MERGING COMPANIES' RESTRUCTURING PLANS
Duquesne Light Co., DOCKET R-00974104
West Penn Power Co., DOCKET R-00973981

For Commission Use Only:

COMPLAINT DOCKET NO. _____ REF. # _____
UTILITY CODE _____

PLEASE PRINT:

1. YOUR NAME, ADDRESS AND TELEPHONE NUMBER.

Name Alan J. Barak, Esq., Alan J. Barak, Attorney at Law (Attorney for Environmentalists)¹ Street 1417 Blue Mountain Parkway
City Harrisburg State PA Zip 17112
County Dauphin Work Telephone - Area Code (717) 540-5106

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2. COMPANY YOU ARE COMPLAINING ABOUT

¹The Environmentalists are represented through the efforts of Penn. Energy Project. Located in offices on the Harrisburg campus of Widener University School of Law, Penn. Energy is supported by gifts from the Heinz Endowments and receives further assistance from the Widener Law School. Penn. Energy secures *pro bono publico* representation primarily for environmental and other public interest groups which could not meaningfully participate in legal proceedings without such assistance.

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SEP 17 1997

Name Each of two announced merger partners: Duquesne Light Co. and West Penn. Power Co. of Allegheny Power System

3. WHAT IS YOUR COMPLAINT? (DESCRIBE PROBLEM)

BACKGROUND

1. On August 1, 1997, Duquesne Light Company ("DLC") and West Penn Power Company ("West Penn"), collectively "the Companies" filed their respective Applications for Approval of their Restructuring Plans, and with them submitted the written testimony and exhibits of their proposed witnesses and related materials. The filings were made to comply with the requirements of the Electricity Generation Customer Choice and Competition Act ("the Act") (66 Pa. C.S. §§2801 *et seq.*). The Commission assigned the matters Dockets No. R-00974104 (DLC) and R-00973981 (West Penn).

INTERESTS

2. SUMMARY OF INTERESTS

We are a coalition of groups which have come together to advocate a common agenda of interests in the Companies' restructuring proposals. These groups and organizations, all of which have members who are ratepayers of the Companies, as indicated,² have interests in the following aspects of this proceeding:

- a. The protection of the natural environment and public health from the serious environmental consequences of electricity generation and use. The Environmentalists want an electric power marketplace which does not encourage and contribute to the degradation of Pennsylvania's air, water and land water quality.
- b. An electric power marketplace designed to allow for the development of clean, distributed energy technologies and supplies as a component of

²Unless otherwise stated, the named organizations have members in both service territories who are customers of the Companies.

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Pennsylvania's sustainable economy. The Environmentalists want the development of safe, clean and reliable energy projects in each of the Companies' service territories and are interested in the sale of such electricity to the Companies' customers.

- c. An electric power marketplace and a regulatory system designed to make energy conservation and energy efficiency meaningful options for consumers and for the distribution and transmission systems. The Environmentalists believe that conservation and efficiency are cost-effective strategies which have broad economic and environmental benefits.
- d. A fair, healthy and robust electric power marketplace in which the Companies' are denied the ability to use their influence and power for anti-competitive ends. The Environmentalists believe that the Act must deliver real competition, not a hollow promise.
- e. A significant rate reduction for all ratepayers. The Environmentalists want competition to fulfill its promise of economic benefits to the Companies' service territories.
- f. An effective Universal Service program. The Environmentalists want the Companies to fulfill the Act's promise of universal access to electricity at affordable rates.
- g. An effective consumer education program. The Environmentalists believe that consumers will realize the potential savings and environmental benefits only if they have access to objective information in consistent formats and an accurate understanding of the choices they are called on to make.

3. IDENTIFICATION OF THE MEMBER ORGANIZATIONS

The Environmentalists represent an important segment of the Pennsylvania community, one particularly concerned with the interrelationships between energy production,

distribution and consumption, public health and the quality of our natural environment. The Environmentalist coalition consists of the following organizations:³

a. Citizen Power, Inc. is a nonprofit research and advocacy organization composed of residential and commercial customers of DLC and West Penn, and based in Pittsburgh.⁴

b. Citizens' Organization on Utility Policies ("COUP") is a nonprofit organization consisting of individuals, families and businesses who are customers of DLC and West Penn.⁵

c. Clean Water Action ("CWA") is a nonprofit statewide organization that works to empower citizens to improve their environment and safeguard public health. CWA has over 70,000 members, many of whom are DLC and West Penn Power customers.⁶

³Many of these organizations were members of the Environmentalists coalition which has been an active participant in many of the Commission's previous and/or pending restructuring proceedings, including Docket No. R-00973877 (the PECO Energy securitization case), Docket No. R-00973953 (the PECO restructuring case), Docket No. R-00973954 (the PP&L restructuring case), Docket No's. R-00974008 and 09 (the GPU Companies' restructuring case), Docket No. M-00960890 F.003 (the restructuring guidelines), Docket Nos. P-00971168, P-00971169, P-00971170, P-00971172, P-00971175 and P-00971183 (the pilot programs), Docket No. M-00960890 (the pilot program guidelines), Docket No. M-00960890 F.004 (the licensing guidelines), Docket No. M-00960890 F.002 (the Qualified Rate Order guidelines), Docket No. L-97-00970120 (the reliability rulemaking).

⁴Citizen Power conducts research on utility issues and makes its findings available to the public in a balanced and understandable format, and seeks to advance the interests of its members and their neighbors as energy service customers and as citizens. The organization's staff and board members have extensive experience in utility regulatory matters and are devoting substantial organizational resources to public education on retail electric restructuring.

⁵As "Citizens Opposed to Unsafe Power", COUP was originally organized in response to a proposal by General Public Utilities (GPU) and DLC to erect a 268-mile, 500 kv transmission line to transport power from Duquesne's generation sources, and other Midwest-based generators, to the Three Mile Island interface of the PJM power pool. Since the project's cancellation in 1993, COUP has undergone a re-organization to better reflect the broad scope of issues facing the electric consumer of today. Currently, as Citizens' Organization on Utility Policies, COUP is a 1,500-member nonprofit organization with particular interest in the forthcoming competitive electric utility market and the subsequent environmental and economic impacts inherent in such an industry-wide restructuring scheme.

⁶ CWA devotes special attention to the water we drink, use for recreation, food production, industrial and commercial production, and transportation. CWA works to educate the public and to promote environmentally sound policies at the local, state and national level. Its Pittsburgh office has been in operation since 1985.

d. The Group Against Smog and Pollution ("GASP"), is a nonprofit organization whose members are residential and/or commercial customers of DLC and West Penn.⁷

e. The Pennsylvania Public Interest Research Group ("PennPIRG") is a student-founded, state-wide public interest group, with members in both the DLC and West Penn service territories, that advocates for all citizens on a wide variety of consumer and environmental issues.⁸

f. The Sierra Club⁹ is a century-old broad-based citizens' environmental organization with active members throughout the Commonwealth. It has devoted significant resources to advocating cost-effective, environmentally benign alternatives to

⁷ GASP has worked since 1969 to ensure clean air and a healthy environment for all Pittsburgh Citizens. GASP is a volunteer, nonprofit, citizens' organization. GASP's mission includes promoting, encouraging and working for the enhancement of the environment through the coordination of the creative ideas, labor, and financial resources of conservation-minded individuals and organizations' education, advisory, and consultative efforts relative to the treatment and/or the prevention of all forms of pollution on our land, air, and water. GASP is a recognized leader in air quality advocacy.

As a steward of the public participation process, GASP has always served on government and industry-related working groups. Currently, GASP is represented at the Allegheny County Health Department Air Quality Program Advisory Committee and subcommittees, the Federal Advisory Committee Act's Common Sense Initiative: Iron and Steel Sector, Voluntary Initiative for Pollution Prevention, and the Pennsylvania DEP Air and Water Quality Technical Advisory Committee.

⁸PennPIRG is the Pennsylvania Public Interest Research Group, founded 20 years ago by Pennsylvania college and university students to advocate the interests of ordinary citizens to the Commonwealth's decision makers. PennPIRG now has 10,000 members statewide, of all ages. It advocates for environmental quality. Its membership takes service from seven of the state's largest utilities.

⁹The Sierra Club is based in San Francisco, California, and maintains a Pennsylvania Chapter with executive offices in Harrisburg, Pennsylvania. The organization's state membership of over 17,000 is located throughout the Commonwealth, and a state volunteer board is broadly representative of the interests of the state's regions. Sierra Club members take service from virtually all of the state's energy utilities. The Sierra Club has, since its founding in 1892, been concerned with the exploration, enjoyment, and protection of wild and scenic places of the Earth. Today's agenda includes protection of the national and global environment against threats of acid rain, water and air pollution, hazardous wastes, ozone depletion and global warming. The Sierra Club works to promote the utilization of renewable resources and technologies in order to preserve non-renewable natural resources for usages for which alternatives have not been identified.

traditional supply side utility resources. Many of Sierra Club's members take service from DLC and West Penn.¹⁰

The Environmentalists will update this list as necessary throughout the proceedings, in the form of amendments to this Complaint, Protest, and Petition.

THE ENVIRONMENTALISTS' POSITIONS

4. Based on a preliminary examination of the Companies' filings, the Environmentalists intend to advance the following positions in this proceeding:
 - a. The Companies' restructuring plans fail to reduce electric rates by a meaningful amount and thus fail to deliver the economic benefits which are the foundation of the Act.
 - b. The Companies' restructuring plans create barriers to a healthy and robust electric power marketplace contrary to the public interest and the goals of the Act.
 - c. The Companies' restructuring plans contain many features which may limit market entry by alternative suppliers and have negative consumer and environmental impacts. Among other things, the Environmentalists are concerned that the Companies may not have provided for an adequate firewall between regulated retail units and other divisions, that DLC's proposed rates and charges are anti-competitive and preclude meaningful rate reductions.
 - d. DLC has not, and West Penn may not have, properly unbundled rates.
 - e. DLC has not, and West Penn may not have, properly computed stranded costs and benefits.

¹⁰Metropolitan Edison Co., et. al. and Duquesne Light Co., Docket No., A-110300F051 (PA PUC) (filed 1991) (Sierra Club intervention granted). It has advocated environmental interests as a party to a traditional rate case. Re: GPU Energy, No. R-000943271 (Rate Filing) (1995), and in Commission generic and rulemaking cases, Investigation Into Demand Side Management By Electric Utilities, Docket No. I-900005 (Order of December 13, 1993), as one of the "Environmentalists", and has filed comments in Commission dockets I-860025 (all source bidding), I-900005 (seven electric utility DSM programs), and M-00940623 (IRP) as one of the Environmentalists. Sierra Club has also been an active party in the Commission restructuring proceedings identified in n. 3, *supra*.

- f. The Companies' estimate of future electric prices may be flawed, and their proposed true-up mechanism may not adequately permit computation of stranded costs.
- g. DLC has not, and West Penn may not have, adequately mitigated their stranded costs, including a failure to adequately write off and/or write up generation assets.
- h. DLC has not, and West Penn may not have, proposed a fair sharing of their stranded costs and benefits.
- i. The proposed Competitive Transition Charge for DLC is, and for West Penn may prove, excessive and unreasonable.
- j. The Companies' universal service plans may be inadequate and fail to meet the spirit and/or letter of the Act, and are subject to unnecessary qualifiers and provisos.
- k. The Companies' consumer information and education plans may prove inadequate and fail to meet the standards of the Act.
- l. The Companies' restructuring plans fail to adopt the integrated resource planning strategies of energy conservation, load management and distributed power generation to reduce or hold down the future costs of distribution system improvements, and unduly promote consumption.
- m. The Companies' restructuring plans must adequately address how the Companies will work with the Commission and others like the Environmentalists to establish an independent system operator ("ISO") and to operate the transmission system and the interstate power pool in a fair and reliable manner.
- n. The Companies' proposed overall rates of return (DLC 11.5%; West Penn 9.15%/9.21%) are excessive.
- o. DLC's proposal (Vol.1, Clayton Testimony p.41) to collect capacity costs beyond the year 2005 should be rejected.
- p. The Companies' restructuring plans are not in the public interest.

- q. The Companies' stranded cost estimates may be overstated because they undervalue their generating plants, and fail to account for all "stranded benefits" Such stranded benefits would include the APS transmission system, and older power plants, which preceded many of the Clean Air Act regulations.
 - r. DLC's nuclear decommissioning and waste-related costs should be fully and responsibly provided for, and the Companies' shareholders should bear an appropriate responsibility for them. It is also important that there be appropriate incentives for the Companies to control fossil and nuclear decommissioning costs, and to make economic decisions about plant retirement.
 - s. Coordination with outside organizations, like a Commission-run consumer education program, is essential to an effective education initiative to ensure that a balanced perspective is communicated. The Commission should require that provisions for disclosure and certification also be a part of the Companies' restructuring plans.
5. The Environmentalists reserve the right to identify and raise other issues relating to the Companies' restructuring plans as the facts become more apparent in the discovery and evidentiary phases.

4. WHAT DO YOU WANT US TO DO?

WHEREFORE, the Environmentalists REQUEST THAT THE COMMISSION:

- a. Receive for filing and docket this Formal Complaint, Protest and Intervention;
- b. Consolidate this Formal Complaint, Protest and Intervention with the Companies' Applications and all other Complaints, Protests and Interventions which are made part of Docket Numbers R-00974104 and R-00973981;
- c. Order that the Environmentalists be a party to such proceedings, that they be placed on the service list for each, and that each party to the proceedings provide them with all papers filed therein;

- d. Hold full evidentiary contested case hearings examining the reasonableness of the Companies' Applications and the policies, programs, terms of service, rates and other charges they propose to implement;
- e. After the completion of the formal parties' evidentiary hearings, hold public input hearings throughout the Companies' service territories in order to provide the customers with an opportunity to be heard on the record, and make the testimony and exhibits received therein a part of the record;
- f. Deny any increase or change in the Companies' rates, charges and/or policies that is unjust, unreasonable, unduly discriminatory or inconsistent with the Public Utility Code, sound ratemaking principles, and public policy;
- g. Determine the justness and reasonableness of the Companies' Applications and the policies, programs, terms of service, rates and other charges they propose to implement, as appropriate and lawful;
- h. Grant the relief requested in this Formal Complaint, Protest and Intervention;
- i. Grant all other relief to which the Environmentalists are entitled; and,
- j. Grant such other relief which the Commission may deem to be necessary and proper.

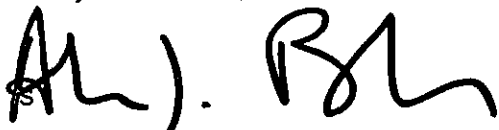
Complaint/Intervention of Environmentalists
Duquesne/West Penn. Restructuring Plans
Dockets R-00974104, -00973981

YOU MUST SIGN AND DATE YOUR COMPLAINT.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania state law if I purposely give false information. I am an attorney.

SIGNATURE OF COMPLAINANT:

Respectfully submitted,



Alan J. Barak

Alan J. Barak, Attorney at Law
Attorney for the Environmentalists
(Sup. Ct. No. 67886)

Dated: September 2, 1997

YOU DO NOT NEED A LAWYER If you **DO** have a lawyer **PLEASE PRINT** the lawyer's name, address and telephone number below.

Lawyer's Name Alan J. Barak, Esq.
Street 1417 Blue Mountain Parkway
City Harrisburg State PA Zip 17112
Telephone Number - (717) 540-5106
Fax Number - (717) 541-1970
E-mail address - barak@jgc.apc.org

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Application of West Penn Power Company
for Approval of its Restructuring Plan

Docket No. R-00973981 ✓

Application of Duquesne Power & Light
Company for Approval of its
Restructuring Plan

Docket No. R-00974104

Joint Application of Allegheny Power
Company and Duquesne Light Company for
Approval of Merger

Docket No. A-110150 F0015

CERTIFICATE OF SERVICE

I hereby certify that I have, this the 2nd day of September, 1997, served the foregoing documents, the Environmentalists' Formal Complaints, Protests and Petitions to Intervene, in the above-referenced dockets upon the persons listed below and in the manner specified.

Service by Fax and U. S. First Class Mail

Jacquelyn Morrow, Esq.
City Solicitor
City of Pittsburgh
313 City-County Building
Pittsburgh, PA 15219
Fax 412-255-2285

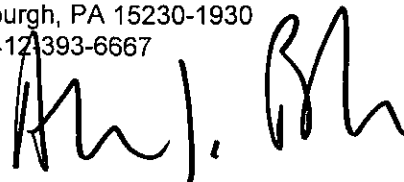
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A REGISTERED LIMITED LIABILITY PARTNERSHIP

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December 5, 1997

Via Facsimile and First Class Mail

John S. Moot, Esq.
Skadden, Arps, Slate, Meagher & Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Re: *Application of Duquesne Light Company for Approval of Restructuring Plan*
Docket No. ~~R-00974101~~

R-974104

Dear John:

Attached please find the Sixth Set of Interrogatories of Hospital Shared Services ("HSS") and Administrative Resources, Inc. ("ARI"). In addition to serving responses to these interrogatories upon undersigned counsel, please also have the responses, including copies of all documents and diskettes, delivered to the following individual:

Robert B. Weisenmiller, Ph.D.
MRW & Associates
1999 Harrison Street, Suite 1440
Oakland, CA 94612-3517

Very truly yours,

Mark F. Sundback
Mark F. Sundback, Esq.
Kenneth L. Wiseman, Esq.
Peter J. Thompson, Esq.
Counsel for Hospital Shared Services and
Administrative Resources, Inc.

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cc: All Active Participants (*via First Class Mail*)
Prothonotary (*w/o attachments*)