

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
WISCONSIN ELECTRIC POWER COMPANY)	Case No. U-15220
d/b/a We Energies for approval pursuant to)	
Sec. 6j(13)(b) of 1982 PA 304 and eligible facility)	
Designation pursuant to Sec. 1262 of the Public Utility)	
<u>Holding Company Act of 2005</u>)	

PROTECTIVE ORDER

A joint motion having been filed by Wisconsin Electric Power Company (“WEPCO”) and FPL Energy Point Beach LLC (“FPLE-PB”) (collectively “Movants”), Staff having filed a statement of non-objection thereto, and Tilden Mining Company L.C. and Empire Iron Mining Partnership (collectively “Mines”) having stated no objection to the entry of this Order.

The Administrative Law Judge finds based upon the Affidavits submitted by Movants in support of the Motion that entry of such Order as requested will facilitate preservation of confidentiality of commercially sensitive confidential information, will not harm the public interest, will protect the interests of FPLE-PB and WEPCo and will facilitate advising and informing the Commission of all relevant facts and information;

IT IS HEREBY ORDERED:

This Protective Order governs the use and disclosure of Protected Materials as herein defined concerning the filing and hearing room procedures in this case. The intent of this Protective Order is to protect all documents identified below which WEPCO and/or FPLE-PB allege contain confidential, proprietary, or commercially sensitive information (herein “Protected Materials”). Protected Materials include the materials FPLE-PB has identified and provided to Intervenor under confidentiality agreements in answer to the Intervenor's discovery request Numbers:

TM-FPL-001
TM-FPL-002
TM-FPL-004
TM-FPL-016

Protected Materials also include materials WEPCo has identified and provided to Intervenor under confidentiality agreements in answer to the Intervenor's discovery request Numbers:

TM-WE-012; and
TM-WE-014

In addition, Protected Materials includes any copy or reproduction of such designated materials by any person and any memorandum, handwritten notes, or any other form of information which copy and/or disclose Protected Materials.

Protected Materials shall not include (1) information that is public knowledge or which becomes public knowledge as a result of publication or disclosure by Movant; (2) information that a Movant has provided to another party prior to issuance of this Protective Order which is not covered by any confidentiality agreement; or (3) information which a Movant has ceased to treat as confidential or proprietary. In the event that Protected Materials designated pursuant to this Protective Order subsequently come within the exclusions provided in this subparagraph, notice shall be given to the parties that the materials are no longer Protected Materials.

For purposes of this Protective Order:

"Requesting Party" shall mean a party to the above captioned proceeding who has (1) requested access to Protected Materials, and (2) whose Reviewing Representative has signed a Nondisclosure Certificate.

"Reviewing Representative" shall mean a person who has signed a Nondisclosure Certificate governing the use of the Protected Materials) and who is:

- (1) a Commission Staff member who is advising, preparing for or testifying in this proceeding;
- (2) an attorney who has entered an appearance in this proceeding for a Requesting Party;
- (3) an attorney, paralegal, or other employee associated for purposes of this case with an attorney described in (2);
- (4) an expert or employee of an expert retained by a Requesting Party for purposes of advising, preparing for or testifying in this proceeding;
- (5) an employee or other representative of a Requesting Party with significant responsibility for this docket.

Administrative and filing staff of a Reviewing Representative may have access in the normal course of their duties without signing a Nondisclosure Certificate provided they are made aware of this Protective Order. The Reviewing Representative is responsible for assuring that persons under his supervision and control comply with this Protective Order.

“Nondisclosure Certificate” shall mean either: (i) the certificate attached to this Protective Order by which Reviewing Representatives who have been granted access to Protected Materials certify their understanding that such access is provided pursuant to the terms of this Protective Order and that they agree to be bound by it; or (ii) or confidentiality agreement (or an acknowledgement pursuant to a confidentiality agreement) between the Reviewing Representative and the disclosing party applicable to the Protected Materials.

Protected Materials responsive to the discovery requests identified above shall be available and accessible to intervenors during cross-examination of all witnesses in this proceeding, and shall be physically located in the Michigan Public Service Commission hearing room where such cross-examination occurs.

Protected Materials shall remain the property of WEPCO and/or FPLE-PB as appropriate and shall remain available to the Requesting Party at WEPCO's and/or FPLE-PB's counsel's Lansing offices until 60 days beyond the date of a final order issued by the Commission in this proceeding. Notwithstanding the preceding sentence, Protected Materials shall remain available at counsels' Lansing offices to an attorney for a party in this proceeding who has signed a Nondisclosure Certificate and who is representing such party in an appeal from a Commission final order in this proceeding, until the date that a final order in this proceeding is no longer subject to judicial review.

Procedures:

If a party receiving access to Protected Materials desires to incorporate, utilize, refer to, or otherwise use Protected Materials in this proceeding, such as but not limited to, pre-filed testimony, pleadings, direct or cross-examination, briefs, oral argument, comments, or motions, including any administrative or judicial review thereof, such party shall only do so pursuant to procedures that will maintain the confidential character of the Protected Material. For purposes of this order, the following procedures are established:

- (a) Testimony. If a party refers to Protected Materials in Testimony, such testimony shall be filed with such reference(s) redacted. Unredacted copies shall be provided to the other parties and an unredacted copy shall be placed in a sealed record.
- (b) Seal. While in the custody of the Commission, the materials containing reference to Protected Materials shall be marked, "CONFIDENTIAL--SUBJECT TO PROTECTIVE AGREEMENT AND ORDER, ISSUED ON JUNE __, 2007 IN CASE NO. U-15220" and shall be placed in a separate portion of the record under seal, and the Commission

shall take reasonable steps to protect such material from disclosure to persons not subject to this Protective Order.

- (c) Transcripts, Pleadings and Briefs. Any references to Protected Materials in the transcript, exhibits, briefs, and pleadings in this proceeding shall be placed under seal and shall be placed in a separate section of such documents and submitted to the Commission under seal.
- (d) Hearing Room Procedure. Before Protected Materials are to be referred to in oral testimony, cross-examination or argument, counsel intending to do so shall advise the Administrative Law Judge of same in order to provide the Administrative Law Judge an opportunity to take measures within her control to protect the confidentiality of the information.
- (e) Segregation of Files. Parts of any writing, depositions reduced to writing, written examinations, interrogatories and answers thereto, or other written references or notes to Protected Materials, if filed with the Commission, shall be sealed, segregated in the files of the Commission, and withheld from inspection by any party not bound by the terms of this Protective Order, unless such Protected Materials are released from the restrictions of this Protective Order, either through agreement of the Parties or, after notice to the Parties and hearing, pursuant to an order of the Administrative Law Judge, Commission and/or final order of a court of competent jurisdiction. If an appeal is filed, the sealed files containing the Protected Materials shall be transferred to the appellate court as part of the record in this proceeding.

- (f) Use of Sealed Information. No information under seal pursuant to this Protective Order shall be used in any manner except pursuant to Commission order, or final order of a court of competent jurisdiction after notice to the producing party and hearing, either unsealing such information or providing for the use of such information.
- (g) No person who is afforded access to any Protected Materials shall disclose the Protected Materials to anyone other than a Reviewing Representative pursuant to the terms of this Protective Order. Nor shall a Reviewing Representative use the Protected Materials in any manner inconsistent with this Protective Order. All persons afforded access to Protected Materials shall keep the Protected Materials secure in accordance with the purposes and intent of this Protective Order and shall adopt all reasonable precautions to assure continued confidentiality, including precautions against unauthorized copying, use or disclosure thereof.
- (h) Within sixty (60) days of the conclusion of Case No. U-15220, including any administrative or judicial review, all documents referring to Protected Materials shall be returned to FPPE-PB or WEPCo, as appropriate, except that any notes or comments or materials prepared by or at the direction of legal counsel may be retained by legal counsel and need not be returned. Legal counsel shall have the right to retain copies of the pleadings, orders, transcripts, briefs, comments and exhibits in these proceedings.

This Protective Order is intended to preserve the confidentiality of the Protected Materials and is intended to provide all lawful protection against disclosure under the Michigan Freedom of Information Act, MCL 15.231 et seq. In the event that a requestor under the Michigan Freedom of Information Act seeks disclosure of any Protected Materials covered by this Protective Order,

the person receiving such request to whom Protected Materials were provided shall immediately notify the affected Movant so that it may seek a protective order or otherwise enforce its rights to the confidential treatment of the material before the Commission and/or in the Michigan courts. Each Movant may take whatever actions or steps it deems appropriate to protect the information from disclosure under FOIA.

Upon motion filed by any party, the presiding ALJ may determine that a Movant has failed to show either that information designated as Protected Materials qualify or continue to qualify as confidential information or that disclosure of all or part of the Protected Materials may create a clearly defined and serious injury, and the ALJ may issue a ruling opening all or part of the Protected Materials to disclosure. In the event that the presiding ALJ determines that all or part of the Protected Materials should be opened, the determination shall not take effect for 28 days. Movant or any other party may seek a further stay of the ALJ's determination directly from the ALJ, by appealing to the Commission or by seeking review and a stay in any court of competent jurisdiction.

This Protective Order is issued in furtherance of the confidentiality and protective agreements the parties have entered into. Except as set forth herein, this Protective Order is not intended to modify the rights and obligations of the parties pursuant to such Confidentiality Agreements. None of the parties waive any independent rights they may have to seek additional administrative or judicial remedies.

The obligations of this Protective Order shall not apply if the Protected Materials are approved for release by written authorization of the provider of the Protected Materials, but only to the extent of such authorization.

Date: June 18, 2007

Administrative Law Judge

NONDISCLOSURE CERTIFICATE

MPSC Case No. U-15220

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order issued in Case No. U-15220, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order and are to be used only in connection with this proceeding.

Reviewing Representative

Date: _____

Title:

Representing: _____

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