

From: Eric Epstein <ericepstein@comcast.net>
To: "Michael T. Leaser" <nrcprep@nrc.gov>
Date: Tue, Dec 30, 2003 11:00 PM
Subject: Comments on Year 4 of ROP

11/13/03
68 FR 64374
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December 30, 2003

SUBJECT: SOLICITATION of PUBLIC COMMENTS
on the FOURTH YEAR of IMPLEMENTATION of the
REACTOR OVERSIGHT PROCESS

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EFMR Monitoring and Three Mile Island Alert's Comments
on the Nuclear Regulatory Commission's Request
for Public Comment on the Fourth Year of the
Reactor Oversight Process

prepared by Eric Joseph Epstein
Coordinator of the EFMR Monitoring Group, Inc.
Chairman of Three Mile Island Alert, Inc.

December 30, 2003

Michael T. Leaser
Chief, Rules and Directives Branch,
Office of Administration
Mail Stop T6D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 2055-0001

Dear Mr. Leaser:

The substance of EFMR Monitoring's (EFMR) (1) and Three Mile Island
Alert's (TMIA) (2) comments dealing with the the Nuclear Regulatory

Template = ADM-013

F-EDS = ADM-03
Add = M. Haly (MSM3)
R. Frahm (RKF)

Commission's (NRC) Fourth Year Review of the Reactor Oversight Process (ROP) are being submitted as a collated version of: 1) EFMR and TMIA's Comments on the Nuclear Regulatory Commission's Request for Public Comment on the First Year of the Reactor Oversight Process (3); and, 2) EFMR and TMIA's Presentation "Deregulated Regulation" at the NRC's Annual RIC, 2003 held in Washington, D.C. on April 16, 2003. (4)

1 EFMR Monitoring: <http://www.efmr.org>

2 Three Mile Island Alert: <http://www.tmia.com>

3 EFMR Monitoring Group's and Three Mile Island Alert's (TMIA) Comments on the Nuclear Regulatory Commission's Request or Public Comment on the First Year of the Reactor Oversight Process, (Federal Register: December 14, 2000, Volume 65, Number 241, pp. 78215-78217).

These Comments were filed on April 13, 2001, and addressed to David Meyer, Chief Rules and Directives Branch, Office of Administration, Mail Stop T6D59, U.S. Nuclear Regulatory Commission, Washington, D.C., 2055-0001.

4 <http://www.nrc.gov/public-involve/conference-symposia/ric/>

1

EFMR's and TMIA's comments document and support our initial assessment of shortcomings in the NRC's Regulatory Oversight Pilot Program including, but not limited to: failure to maintain safety margins; allowance and encouragement of plant operator self-regulation without the introduction of meaningful punitive measures; dramatic decrease in public confidence; and, an increase in regulatory bias through a system of announced inspections and assessments based on the financial impact to licensee.

These comments, taken together, demonstrate that the Commission has created and implemented "regulatory inertia" and citizen disenfranchisement. However, the NRC should be congratulated on its successful efforts to collaborate with the American Nuclear Society, the Institute for Nuclear Power Operations, and the Nuclear Energy Institute. In fact, the Reactor Oversight Process has facilitated increased, industry cross-subsidization and influence through the "NEI Loan Program". According to the NEI, this program is slated to double the number of participants "on loan" to the NRC this year.

Unfortunately, the NRC in general and Dr. William Travers in specific, continue to propagate the myth that all "external stake holder feedback" is balanced and representative of reactor communities. External stake holders are dominated by industry based representatives "[public interest groups], industry representatives, and State and local government agencies...In general, external stake holders indicated that the ROP improved consistency, reduced unnecessary regulatory burden, and many public stake holder perceive the ROP as being more objective and scrutable, with an increase in regulatory risk significance." However, Dr. Travers specious recitation of "public input" fails to discern between the supportive comments of the "internal actors", e.g., industry and state regulators as opposed to people who actually live near nuclear power plants. (5) Moreover, the Commission routinely ignores state and local input when it comes to taxation and staffing (Please refer to discussion on , pp. 4-11)

5 ³Memo to the Commissioners: Year One of the Reactor Oversight Process², SECY-01-0114, June 25, 2001, Dr. William Travers.

2

The NRC's institutional hubris marks the agency's determination to return to the regulatory world of pre-March 28, 1979. However, the Commission has demonstrated an unprecedented determination to insinuate itself into the corporate board rooms of the nuclear industry. This development is further cause for alarm.

Since the implementation of the ROP, we have witnessed a vanishing nuclear work force. The employees of Peach Bottom and Three Mile Island (TMI) are an integral part of our community. However, Exelon, is placing these plant workers in harm's way through attrition, ³regionalization², forced overtime and consolidation of job functions. For example, since the ROP Pilot Program, AmerGen has sliced the number of workers at Reed from 804 (1998) to 643 (2002). Contract labor, including security, has supplanted existing full-time positions, and the number of contractor and subcontractor employees has grown from 65 (2000) to 103 (2002).

The Nuclear Regulatory Commission does not track staffing levels. The community was told at the NRC's annual meeting in Middletown, Pennsylvania, on April 9, 2003 that the number of employees at TMI was 529. (6) When the NRC was apprised that they were off by 114 employees, they assured the community it didn't matter how many people worked at TMI based on the Commission's Performance Indicators "Report Card," TMI's Fitness for Duty Program (7).

6 The NRC outlined the ROP to the community, as they did during the Pilot Program and in the first three years of the ROP, but in a compressed format which was much appreciated by the general public. To the NRC's credit, the meeting was held after work and outside of TMI property for the first time. However, the NRC unsuccessfully attempted to block public comments after AmerGen's choreographed presentation. AmerGen representatives were present during the audience ³Q & A² session and included: Ralph DeSantis (Public Affairs); Bruce Williams (TMI-1, Vice-President); and, George Gellrich (TMI-1, Plant Manager). All three remained silent and sat with their back to the community.

7 Between July 1999 and December 2002, 143 workers and contract employees at Peach Bottom and TMI plants tested positive for drugs or alcohol. (Source: NRC).

3

During the unveiling of the ROP program through November 4, 2003, the Nuclear Regulatory Commission has issued 31 Non-Cited Violations or ³Apparent Violations² to Three Mile Island Unit-1's owners and operators: AmerGen. Based on calculations prepared by the Nuclear Energy Institute, the average cost to a company to respond to a Notice of Violation is \$50,000. The NRC has saved AmerGen at least \$1,705,000 by ³defining² 31 Violation as ³Non-Cited Violations².

Our community need only look across the border to see how the NRC's Reactor Oversight Process and its twin pillars of ³benign neglect² and ³decided ambivalence² have impacted the other AmerGen plant in Region I: Oyster Creek.

In 1990, Oyster Creek was owned by GPU Nuclear, and operated by 1,000

employees. Oyster Creek was sold to AmerGen, an Exelon company, for \$10 million dollars on September 14, 1999 or \$16 per megawatt of generating capacity. According to plant spokeswoman, Gina G. Scala, today there are 440 employees at the nation's oldest operating nuclear power plant.

Exelon has reiterated its commitment to slash its labor force, and is pursuing initiatives to attain "steady state" staffing levels. Exelon's program of labor reductions is called the "Exelon Way," and is designed to eliminate 3,400 employees or 15% of its work force by the end of 2002 (Press Release, January 29, 2003). On August 6, 2003, the company announced the elimination of 10% of its work force or 1,900 positions. Not to worry, according to company spokeswoman Ann Mary Carley, the job cuts will have a "minimal" impact on nuclear operations. The NRC did not comment since the ROP does not track staffing levels.

Despite Exelon's emphasis on downsizing, the company somehow found the resources to fund a "golden parachute" for Corbin McNeill, Jr., the ex-chairman and former CEO of Exelon Corp. His compensation package of nearly \$29.8 million last year made him the fourth highest paid CEO out of the 250 utility executives (Nuclear News, July 9.)

4

Peach Bottom witnessed similar staffing decreases during the institution of the ROP. From October 2000 through October 2002, at Peach Bottom 2 & 3, employee levels decreased from 853 to 810.

During an overlapping time frame, from July 2001 to May, 2003, the NRC reviewed and approved the licenses for Peach Bottom 2 & 3 for additional 20 years. (8)

Yet at some point during these processes², plant operations were declining at Peach Bottom. In November 2003, the U.S. Nuclear Regulatory Commission announced it would increase the frequency of its inspections at Peach Bottom Atomic Power Station's Unit 2.

Less than a month later (December 5, 2003), the NRC's Augmented Inspection Team announced the results of its study of an automatic shutdown of both reactors in September, 2003 at the Peach Bottom Atomic Power Station. The NRC's inspection team found six ³Green² violations as a result of the shutdown and subsequent disruption to the PJM grid (9). Fortunately for Exelon, all six transgressions were deemed Non-Cited Violations (NCV) and resulted in no punitive enforcement actions or civil penalties (Source: NRC AIT).

This month's AIT findings included the forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh and forty-eighth Non-Cited Violations since June 1998. Exelon's total cost avoidance, i.e., ³credit² for 48 Non-Cited Violations = \$2,490,000. These results are interesting given the steadfast insistence of A. Randolph Blough, John Rogee, and Craig Smith at the Middletown Area High School on August 9, 2000, when they admitted that the ROP was a self-regulating tool, but added ³We'll come down on them hard if they screw up.²

8 The NRC listed only three safety issues that need to be addressed prior to approval: replacement of electric fuse clips; removal of the anti-aging plan relating to license renewal examinations, and the replacement of faulty cables contained in replacement kits.

9 True to form, the NRC failed to consult or coordinate its investigation with PJM, the Pennsylvania Public Utility Commission, or the Federal Energy Regulatory Commission. 5

The ³proposed² Reactor Oversight Process was presented as a fait accompli to an overflow audience in the library of the high school. Prior to this meeting, the NRC scheduled one ³public workshop² per region in hotels that were financially prohibitive and outside of affected communities. In fact, the NRC convened the public meeting after the ³pilot program² was completed and ³purported lessons were learned.² Not one member of the public in the TMI-area supported the change in protocol. The NRC acknowledged that this meeting raised a number of substantive questions, but the Commission insisted on adhering to a rigorous time schedule and failed to address numerous issues raised by the public.

Yet at this year's RIC Panel Presentation on April 16, 2003, the ROP, every NRC presentation exceeded its time allotment. In fact, Mr. Epstein was the only presenter to abide by the ground rules stipulated by the Commission. Ironically, Mr. Epstein's criticisms were the only comments not posted on the RIC website until October 20, 2003. No explanation on the ³oversight² was provided.

While the NRC does not concern itself abiding but its own rule or providing adequate opportunities and resources for public participation, it does not seem worry about about ³staffing² license ³hosted² events. The Mid-Atlantic Utilities Licensing Workshop was cosponsored by the NRC and PECO Energy at the Valley Forge Hilton in King of Prussia, Pennsylvania on May 2 & 3, 2000.

At this ³event², the NRC also spent a great deal of time and money preparing the Risk Informed Notebooks (TAC. NO MA6544) without issuing a similar resource for the public. Conflict of interest is too mild of term to describe this type of ³external stake holder² collaboration.

6

The NRC has also presided over a paradoxical policy of arbitrarily constricting the purview of the ROP and Commission's domain. For example, the NRC has remained silent during the underfunding nuclear decommissioning (10) funds yet actively involved with approving Exelon's transference of said funds to Nevada (11) in order to evade Pennsylvania state taxes. The NRC approval erodes a states¹ right to tax generating assets accumulated through rate payer contributions. This paper chase encourages licensees to engage in a ³nuclear shell² game; whereby, the licensee, or its progeny, gravitate toward the most advantageous state tax laws. This unrestricted loophole for accounting abuse, is contrary to the spirit of Sarbanes-Oxley, and has the potential to contravene IRS reporting requirements (12) .

¹⁰ December 3, 2003 Report: Funds set aside for nuke cleanup inadequate:
³ Congressional investigators [GAO] say utilities are not adequately setting aside

the hundreds of millions of dollars needed to clean up nuclear reactors at Three Mile Island and Peach Bottom when the plant sites close² (Lancaster New Era.)

11 On October 14, 2003, Douglas V. Pickett, Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation sent the following correspondence to Jack Skolds:

³By letter dated January 23, 2003, as supplemented by letters dated March 19, June 17, and July 29, 2003, Exelon Generation Company, LLC (ExGen), proposed changes to the trust agreements for the above facilities that would provide for assignment of the trusts to newly formed single-member limited liability companies in the state of Nevada.²

³The staff has completed its review of the proposed changes to the trust agreements. The enclosed safety evaluation documents the staff's findings resulting from the review of ExGen's proposal to change the trust agreements for the decommissioning trust funds.²

³The staff's review concludes that the requirements of 10 CFR 50.75 are being met and has no objections to the implementation of the proposed changes.²

12 The NRC has no statutory authority to collect tariffs from licensees, and did not consult with the Pennsylvania Public Utility Commission or the Internal Revenue Service before approving this first-ever transfer. Congress has considered amending Internal Revenue Code section 468A which would affect tax deductions for some decommissioning funds.

7

From the introduction of the Pilot ROP Program through four years of the Reactor Oversight Process, members from EFMR and TMIA made numerous inquiries as to the Commission's response to the devaluation of property values and staffing cuts at the Peach Bottom Atomic Power Station and Three Mile Island Nuclear Generating Station. Various levels of the the Commission in Washington (Dr. William Travers), Bethesda (Tim Cockburn, King of Prussia (A. Randolph Blough) and in Middletown (John Rogee), told the community that federal law precludes their involvement in property assessment of nuclear power plants and staffing was an issue the Commission was not charged to track.

The Public Utility Realty Tax Assessment (PURTA) was the tax assessment formula used prior to ³Restructuring² in Pennsylvania. The formula was predicated on a statewide distribution plan. The utilities influenced the legislature to "restructure" PURTA in Pennsylvania Deregulation Act (1998). The utilities (or licensees in NRC parlance) claimed that local communities would increase their revenues, decrease the amount of taxes paid by focusing on local school districts and municipalities. After the companies recouped approximately \$11.4 billion in ³stranded costs², they claimed that their large centralized generating stations were overassessed at disproportionate values.

Nuclear plants, with the NRC's approval, were bought and sold to domestic and international corporations at a fraction of their book value during the initial phase of the Reactor Oversight Process in Region I, e.g.,

Oyster Creek and Three Mile Unit-1. TMI was the first nuclear power plant sold in the United States (1999), at a bargain basement price of \$99 million including fuel. The net book value was approximately \$592 million. This blatant discrepancy in property value was later approved by the NRC during the licensee transfer. AmerGen based their initial property valuations on the the deflated sale price to calculate their tax base. (10)

10 TMI-1's present book value is estimated to be between \$600 and \$650 million. This month, the NRC approved Exelon purchase of British Energy's 50% share of AmerGen (Clinton, Oyster Creek and TMI) for \$276.5 million.

8

Nuclear power plants now sell for the same price (or greater) as fossil generating stations. Last month in Region I, the Rochester Gas and Electric (RG&E) Robert E. Ginna plant was sold to Constellation. The NRC has gone beyond the the role of ³regulator² and has aggressively promoted the sale of nuclear generating stations: ³The sale is contingent on NRC's extending Ginna's license to 2029. Constellation paid RG& \$401-million for the 517- MW Westinghouse PWR. The deal includes a 10-year power purchase agreement to sell back 90% of Ginna's power at \$44/megawatt-hour. Constellation said it intends to uprate the unit 17% in the coming five years ³ (³Platts Nuclear News², November 25, 2003) (Bold face type added).

Ultimately, the NRC has to approve the financial condition and assurances of the purchaser of nuclear power plant. The same branch that oversees the ROP at TMI-1 just completed its review and approval of British Energy's 50% of AmerGen to Exelon. The NRC which ignored or cede authority on staffing levels, sales prices and tax assessments, found ³Exelon is financially qualified to provide and fulfill a \$200 million contingency commitment to AmerGen². (14)

Dauphin County, abstractly refer to Dr. Travers as an another ³external stake holder² currently assessed the Fair Market Value for TMI-1 is \$64,942,500 as opposed to AmerGen's \$5 million valuation. The Case is on appeal. AmerGen is paying \$400,000 in taxes a year, compared with \$1.5 million it would have to pay under the county's assessment. Enclosed please find Pre-Deregulation and Post-Deregulation tax streams. Another ³external stake holder² Lower Dauphin School District already has spent \$75,000 in legal and appraisal fees to fight the appeal. In addition, capacity factors and uprates have increased the value of the plant since 1999.

14 SUBJECT: ³Substation of Contingency Funding Arrangements for AmerGen Company, LLC, Provided by Exelon Generation Company and British Energy PLC for Operational Purposes, Clinton Power Station Unit No. 1, Oyster Creek Nuclear Generating Station, and Three Mile Island Nuclear Generating Station, Unit-1 (TAC NOS. MC 1075, MC 076, and MC 1077)². Donna M. Skay, Senior Project Manager, project Directorate I-1, Division of Licensing, Project Management, Office of Nuclear Reactor Regulation, December 15, 2003.

9

The NRC's Reactor Oversight Pilot Project and Four Years of the Reactor Oversight Process has failed to capture two central issues affecting the safety of nuclear plants, and quality of life in reactor communities in Pennsylvania. Staffing levels and property values can not ignored an agency

which is charged with protecting the well being of reactor communities.

The NRC can not have it both ways and meddle in the internal affairs of state decommissioning funding and approve financial assurances for reactor sales while at the same time picking and choosing and ignoring what issues can and can not be placed in the Agency's regulatory matrix.

Most sincerely,

Eric Joseph Epstein

Mr. Epstein is the Chairman of Three Mile Island Alert , Inc., a safe-energy organization based in Harrisburg, Pennsylvania and founded in 1977. TMIA monitors Peach Bottom, Susquehanna, and Three Mile Island nuclear generating stations.

He is also the Coordinator of the EFMR Monitoring Group, a nonpartisan community based organization established in 1992. EFMR monitors radiation levels at Peach Bottom and Three Mile Island nuclear generating stations, invests in community development, and sponsors remote robotics research.

Enclosures:

Appendix

Service List

Testimony

11

Appendix

The following developments have occurred at the Peach Bottom Atomic Power Station and the Three Mile Island Nuclear Generation Station during the testing and implementation of the Reactor Oversight Pilot Program and Reactor Oversight Pilot Program:

Peach Bottom 2 & 3

€ Between July 1999 and December 2002, 143 workers at local power plants tested positive for drugs or alcohol. (Source: NRC).

€ September 17, 2001: TMI-Alert filed a Petition for rule making with the NRC requiring the Agency to mandate armed security guards at the entrance to all nuclear power plants. A final decision is expected in November 1, 2002. The Nuclear Energy Institute, Exelon's ³voice in Washington, ³recommended² that the Petition be ³denied. No decision was made as of December 25, 2003.

€ Between 2000 - 2003, the number of employees at Peach Bottom decreased from 853 to 810. (Source: Exelon).

€ July 2001 - May, 2003: The NRC renewed the licenses for Peach Bottom 2 & 3 for additional 20 years.

€ August, 15, 2001: the NRC's Office of Investigation documented criminal behavior by two of Exelon's Emergency Preparedness personnel. The NRC found that the ³technicians fabricated siren testing maintenance records, performed deficient siren tests on the off site EP response sirens and intentionally installed jumper wires in the siren boxes disabling important system functions.² Source: (Wayne D. Lanning, NRC, Director of Reactor Safety.)

€ March 28, 2002: The NRC admitted that Peach Bottom and the 102 nuclear power plants could not withstand an impact of airplane the size of those that crashed into the Pentagon and World Trade Center on September 11, 2001.

€ May 31, 2002 - The public learned that the National Guard were equipped with unloaded M-16's at Peach Bottom and the four nuclear power plants in Pennsylvania.

€ July 25, 2002: Exelon submitted plans to move the EOF to the NRC. The public was notified a week later by the NRC.

€ August 31, 2002: Exelon's new security budget increased to \$2.2 million annual or \$550,300 less than John W. Rowe's base salary. (Source Exelon and Platts Nuclear News).

€ September 5, 2002: Three Mile Island Alert filed a formal Petition for Rulemaking with the Nuclear Regulatory Commission to include day-care centers and nursery schools in emergency evacuation planning. The proposed rule would affect all 103 operating nuclear plants in the United States. A ruling was expected by October, 2003. As of December 25, 2003, the NRC had not issued a decision.

€ November 7, 2003: ³ NRC Appoints New Senior Resident Inspector at the Peach Bottom Atomic Power Station. Craig Smith is the new senior resident inspector at the Peach Bottom Atomic Power Station in Delta, Pa. The two-unit site is operated by Exelon. Most recently, Mr. Smith was a resident inspector at the Three Mile Island nuclear plant in Middletown, Pa.² (³NRC Press Release²). However, Eric Epstein, Chairman of TMI-Alert, noted: ³Craig Smith was at TMI for five years and hid on the Island except for annual appearances.²

€ November-December, 2003: A special team that analyzed the causes of, and responses to, an automatic shutdown of both reactors in September at the Peach Bottom Atomic Power Station reported mixed findings about the facility's handling of the event. The NRC's Inspection team found six ³Green: violations as a result of the incidents. All six were deemed Non-Cited violations. (Source: NRC AIT).

€ This was the forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh and forty-eighth Non-Cited Violation since June 1998. Exelon's total cost avoidance, i.e., ³credit² for 48 Non-Cited Violations = \$2,490,000.

ii

Three Mile Island Unit-1

€ Between 1998 - 2003, the number of employees at Three Mile Island decreased from 804 to 643. (Source: AmerGen).

€ Between July 1999 and December 2002, 143 workers at local power plants tested positive for drugs or alcohol. (Source: NRC).

€ December 20, 1999: TMI-1's license was transferred from GPU Nuclear to AmerGen. TMI-2 remains a GPU possession in placed in Post-Defueling Monitored Storage in 1992. GPU contracts with AmerGen to maintain a skeletal staff presence at TMI-2. (Source: NRC).

€ June 23, 1999: ³Three Mile Island, trying to rid itself of clams, recently released too much of a potentially hazardous chemical into the Susquehanna River...State regulations allow TMI to release 0.3 parts per million of Clamtrol back into the Susquehanna River. For about an hour, the plant was releasing 10,500 gallons per minute containing twice that amount

(Source: Exelon).

€ As of January 4, 2000 : ³...[The] Total number of tubes plugged in OTSG-A is 1,336 (8.6% of the 15,531 tubes), and the total number of plugged tubes in OTSG-B is 404 (2.6% of the 15,531 tubes) ² (Sources: Exelon and the NRC).

€ March 31, 2000: The NRC announced its of ³Notice of Consideration² from AmerGen to transfer nuclear licenses' to Exelon.

€ April 21, 2001: An engineer, who worked at TMI for 20 years, was dismissed for possessing ³computer images of children engaging in sex acts or simulated sex acts.² The man faced 112 counts and was released on \$50,000 bail (Source: AmerGen).

iii

€ June 22, 2001: After widespread public criticism, AmerGen ³notified the Nuclear Regulatory Commission that it intends to delay submitting its application seeking approval for a standardized emergency plan for Three Mile Island, Peach Bottom and Limerick.

€ October 17, 2001: Due to a ²credible threat² against Three Mile Island, the Harrisburg and Lancaster airports were closed for four hours, air travel was restricted in a 20-mile radius, a fighter jets were scrambled around TMI. (Source: PSP).

€ December 8, 2001: TMI resumed operation after a 58 day refueling outage that cost the company over \$100 million in lost revenues, replacement energy, and planned and unplanned repairs, and upgrades. Among the ³big-ticket² items: replacement of the turbine generator and four main transformers; repairs of cracks in six control-rod drive mechanisms; trouble shooting on chronic emergency feedwater problems; and, experimental steam tube generator repairs which led to the ³unplugging² of 870 tubes and taking 266 tubes out-of-service. (Sources: AmerGen, NRC, and Nucleonics Week).

€ January 11, 2002: Siren testing at TMI encountered numerous problems: All sirens failed in York County and one siren failed in Lancaster County. AmerGen attributed to computer malfunctions (Source: AmerGen and the NRC).

€ June 22, 2001: After widespread public criticism, AmerGen ³notified the Nuclear Regulatory Commission that it intends to delay submitting its application seeking approval for a standardized emergency plan for Three Mile Island, Peach Bottom and Limerick

€ September 17, 2001: TMI-Alert filed a Petition for rule making with the NRC requiring the Agency to mandate armed security guards at the entrance to all nuclear power plants. A final decision is expected in November 1, 2002. The Nuclear Energy Institute, AmerGen's ³voice in Washington, ³recommended² that the Petition be ³denied. No decision was made as of December 25, 2003.

iv

€ March 3, 2002: A siren malfunctioned in York County again. During TMI's annual test on on January 30, 2002, all 34 sirens in York County, located within ten-miles of the plant, failed to activate. (Source: AmerGen

and the NRC).

€ March 28, 2002: The NRC admitted that and the Three Mile Island and the 102 nuclear power plants could not withstand an impact of airplane the size of those that crashed into the Pentagon and World Trade Center on 9/11.

€ May 31, 2002 - The public learned that the National Guard were equipped with unloaded M-16's at TMI and the four nuclear power plants in Pennsylvania.

€ August 31, 2002: Exelon's new security budget increased to \$2.2 million annual or \$550,300 less than John W. Rowe's base salary (Source Exelon and Platts Nuclear News).

€ September 5, 2002: Three Mile Island Alert filed a formal Petition for Rulemaking with the Nuclear Regulatory Commission to include day-care centers and nursery schools in emergency evacuation planning. The proposed rule would affect all 103 operating nuclear plants in the United States. A ruling was expected by October, 2003. As of December 25, 2003, the NRC had not issued a decision.

€ December 12, 2002: Sirens malfunctioned in Cumberland and York counties . In Dauphin County, 28 sirens malfunctioned due to the "inadvertent" discharge of the "space bar" by a computer operator.

€ During this period, from July 17, 1998 through November 4, 2003, the Nuclear Regulatory Commission has issued 31 Non-Cited Violations or "Apparent Violations" to Three Mile Island Unit-1's owners and operators: AmerGen. Based on calculations prepared by the Nuclear Energy Institute, the average cost to a company to respond to a Notice of Violation is \$50,000. The NRC has saved AmerGen at least \$1,705,000 by "defining" 31 Violations at as "Non-Cited Violations".
v

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the interested parties named below by US mail or hand delivery.

Respectfully submitted,

Eric Joseph Epstein,
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DATE: December 30, 2003

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April 13, 2001

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EFMR's Comments on the Nuclear Regulatory Commission's
Request for Public Comment on the First Year of the
Reactor Oversight Process

Dear David:

Enclosed please find the EFMR Monitoring Group's (EFMR) Comments on the Nuclear Regulatory Commission's Request for Public Comment on the First Year of the Reactor Oversight Process, (Federal Register: December 14, 2000, Volume 65, Number 241, pp.78215-78217.)

I would strongly suggest that the Nuclear Regulatory Commission (NRC) schedule meetings in communities that are directly affected by Reactor Oversight Process (ROP). Requests for comments via the Federal Register and sponsoring meetings in the Washington-area, may be convenient for the Commission, the utility industry and national organizations, but this practice fails to accommodate and facilitate public participation.

My initial impressions of the Reactor Oversight Process remain unchanged (1). To my dismay, the Commission has aggressively dismantled its traditional regulatory role by proposing, adopting, and implementing rule changes, either through its own prerogative, or through industry and Nuclear Energy Institute (NEI) initiatives. The cumulative outcome of this two year process has been deleterious on the public's confidence in the NRC. The foundation for the current laissez-faire regulatory protocol was laid in the mid-1990s. (2) The current regulatory regime, instigated by Senate Republicans on behalf of the nuclear industry, (3) created "deregulated regulation" and successfully: 1) Reduced on-site inspections and oversight; and, 2) Establishment of a self-policing and self-reporting industry. (4)

1 Please refer to EFMR's Comments to John A. Zwolinski, Director Division of Licensing Project Management, U.S. Nuclear Regulatory Commission, Two White Flint North, Rockville, MD 20800, Attn: Tim Cockburn, Fax: 301-415-2102, Re: Redefining the Role of the Division of Licensing Project Management in the Office of Nuclear Reactor Regulation, July 22, 1999.

2 "NRC allowed safety problems to persist because it was confident that redundant design features kept nuclear plants inherently safe and because it relied heavily on assurance from plant operators about their intentions to make changes. Moreover, NRC lacks a process for ensuring the plant operator uses competent managers. (Nuclear Regulation: Preventing Problem Plants Require More Effective NRC Action, GAO/RCED-97-145, May 30, 1997).

3 Senate Republicans relied on a specious document, i.e., The Martin Report (1995) to support the reduction of NRC staffing levels. The Martin Report (1995) compared NRC staffing levels with that of their counterpart in Japan and France. While these countries had half of the employees, the reported failed to: 1) Address the number of technical employees by the national government in support operations; and, 2) Generic reactor models employed by these nations.

The NRC's budget for fiscal year 1999 was slashed by 17 million by the Senate Appropriations Committee.

4 The NRC's policy shift was reflected on July 30, 1998, during Dr. Jackson testify before the Senate Oversight Subcommittee for the Nuclear Regulatory Commission. The public has witnessed a net decrease in dedicated inspector hours at nuclear stations from 3,100 to 2,500 or as Sam Collins from the NRR, noted. 1

The new reactor oversight process would lead to a 10-15% reduction in inspection hours. The new protocol abolished the SALP and the ³Watch List² (May 5, 1999) have been abolished, and experience at Three Mile Island and Peach Bottom has clearly demonstrated, Non-Cited Violations and ³traffic lights² have supplanted Violation, NOV's, civil, penalties and fines.

For their part, the Licensees have applauded the weakening of ³regulatory instability.² (5) At Peach Bottom, the ROP has been an economic boon. Since June 9, 1998, the NRC has issued 18 Non-Cited Violations. (Please refer to enclosure). The NEI estimated that the, ³Elimination of Level IV violations would save the average plant \$300,000 annually in violation response expenses.² (6) This bizarre logic allows that the more violations a plant accrues, the greater the financial and personnel savings. The NEI estimated that it costs the plant owner's approximately \$50,000 to respond to each Violation. By supplanting Severity Level IV Violations with Non-Cited Violations, the Commission saved PECO Energy \$900,000 from June 9, 1998 through October 22, 2000. (7) The NEI also projected annual savings in annual baseline inspections to be \$63,000. PECO's savings during refueling was at least \$100,000 in 2000. Victor Dricks, NRC spokesman, also noted that baseline inspection hours could be reduced from 350 to 900 hours per plant

5 Corbin McNeill, Chairman, Exelon Corporation, Megawatt Daily, December 4, 2000.

6 ³At the Core, The Effects of Nuclear Competition, Public Utilities Fortnightly, April 1, 1999, Volume 137, No. 7 pp. 26-32, Joseph F. Schuler, Jr, Associate Editor.

7 This is a conservative estimate. That actually savings, based on the fact hat reduced inspection hours necessarily decreased the number of identified violations, is difficult to gauge, but clearly in excess of \$900,000.

or an annual cost avoidance of at least \$300,000. Simply by doing nothing, and requiring PECO Energy to do less, the NRC saved PECO/Exelon at least \$1.7 million in two years. (8)

The ³proposed² Reactor Oversight Process was presented as a fait accompli to the public living around Three Mile Island (TMI) on August 9, 2000. Prior to this meeting, the NRC scheduled one ³public workshop² per region in hotels that were financially prohibitive and outside of affected communities. In fact, the NRC convened the public meeting after the ³pilot program² was completed and ³purported lessons were learned.² Not one member of the public in the TMI-area supported the change in protocol. The NRC acknowledged that this meeting raised a number of substantive questions, but the Commission insisted on adhering to a rigorous time schedule and failed to address numerous issues raised by the public (Please refer to enclosures).

I have submitted input, feedback and rulemaking suggestions as a representative of Three Mile Island Alert and the EFMR Monitoring Group at Three Mile Island & Peach Bottom for over 20 years. (9)

⁸ ³At the Core, The Effects of Nuclear Competition, Public Utilities Fortnightly, April 1, 1999, Volume 137, No. 7 pp. 26-32, Joseph F. Schuler, Jr, Associate Editor

⁹ Most recently I prepared the following documents: PETITION for RULEMAKING: 10 CFR CH.1 (1-1-99 EDITION) SUBPART -H §2802: PETITION to AMEND THE FINANCIAL ASSURANCE RECORD KEEPING for DECOMMISSIONING PLANNING, Parts: (a), (b), (c), (d), (e), and (f) to INCLUDE UNIFORM REPORTING and RECORD KEEPING for PROPORTIONAL OWNERS of NUCLEAR STATIONS and A REQUEST to ADOPT PETITIONER'S RECOMMENDATIONS for NUCLEAR DECOMMISSIONING IDENTIFIED in; II) STATEMENT of ISSUES: (A), (B), (C), (D), (E), and (F) REQUIREMENTS for DECOMMISSIONING NUCLEAR POWER REACTORS SECTION 50.75 REPORTING; Before the NUCLEAR REGULATORY COMMISSION, Petition for Rulemaking filed by Eric Joseph Epstein on May 12, 2000, 10 CFR Part 50-65 Federal Register 30550, Docket No: PRM-50-70; Nuclear Energy Institute's Petition for Rulemaking, 10 CFR 51, Docket No. PRM. 51-7, Nuclear Regulatory Commission, Re: Severe Accident Mitigation Alternatives, (September 2, 1999: Volume 64, Number 170, pp. 48117-48120), Submitted on: November 8, 1999, Eric Epstein, Chair, Three Mile Island Alert, 315 Peffer Street, Harrisburg, PA 17102; Before the NUCLEAR REGULATORY Commission; 10 CFR 50.2, 50.75, & 50.82; COMMISSION; Proposed Rule Making Amendments; RIN 3150-AF41 THREE MILE ISLAND ALERT COMMENTS on FINANCIAL ASSURANCE REQUIREMENTS for DECOMMISSIONING NUCLEAR POWER REACTORS, Eric Joseph Epstein, Chairman, Three Mile Island Alert, 315 Peffer Street , Harrisburg, PA 17102, NOVEMBER 20, 1997.

3

EFMR strongly supports Mr. Lochbaum's suggestions contained in the Union of Concerned Scientists's Petition for Rulemaking (Federal Register, March 5, 2001, Volume 66, Number 43, pp. 13267-13269) requesting that the NRC require nuclear plant owners to submit the performance indicator information needed for the NRC's reactor revised oversight program (10). UCS's comments are substantive, on point, and offer perhaps the last, best effort for the NRC to salvage its credibility.

The NRC's recent history of co-sponsoring and underwriting industry participation, is a clear indication that the the Commission views ³public participation² as a regulatory burden. (12) Citizen participation and input must not be limited to national organizations residing in Washington, D.C.. EFMR recommends that the NRC: 1) Make a concerted effort to convene meetings in communities directly affected by the NRC's decisions; 2) Establish a National Citizens Advisory Panel modeled after the body the NRC sponsored in the Three Mile Island Area which met 78 times between November 12, 1980 and September 23, 1993; (13) and, 3) Make stipends and scholarships available for community members.

¹⁰ Ironically, legal staff at Region I have recognized the Negotiated Settlement between EFMR and AmerGen (1999), and are currently in the process of officially acknowledging the Negotiated Settlement between EFMR and PECO Energy (2000).

¹¹ Letter from David Lochbaum, Union of Concerned Scientists, dated December 20, 2000: ³Comments on Nuclear Fuel Cycle Facility Oversight Program Revision.²

¹² The Mid-Atlantic Utilities Licensing Workshop was cosponsored by the NRC and PECO Energy at the Valley Forge Hilton in King of Prussia, Pennsylvania on May 2 & 3, 2000. The NRC also spent a great deal of time and money preparing the Risk Informed Notebooks (TAC. NO MA6544) without issuing a similar resource for the public.

¹³ Please refer to ³Lessons Learned From the Three Mile Island Unit-2 Advisory Panel², prepared for the NRC by D. Lach, P. Bolton, N. Durbin/BSRC., R. Harty/PNL, NUREG/CR-6252, PNL-9871, BSRC-800/94/014, August, 1994).

4

The Nuclear Regulatory Commission contains a dedicated, skilled, and experienced work force that has, in the past, demonstrated a willingness to work with local communities. However, the Commission's Reactor Oversight Process has succeeded in restoring the corporate and regulatory hubris that permeated nuclear power production prior to the partial core melt at Three Mile Island. If the NRC's goal was to alienate the public and coddle the industry, than the Reactor Oversight Process is a resounding success. Frankly, the people who live around Three Mile Island and Peach Bottom view the ROP as myopic and ³deregulated regulation². The Commission must make a concerted and good faith effort to restore public confidence, and actively involve public participation from all affected stake holders.

Sincerely,

Eric Epstein, Coordinator

Enclosures