

August 21, 2005(4:30pm)

**BEFORE THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**Eric Joseph Epstein's, *Pro se*, Request  
for a Public Hearing on the Applications  
for Approval of the Direct License and Indirect License  
Transfers of Facility Operating Licenses and Conforming  
Amendments of Exelon Generation Company, LLC  
and PSEG Nuclear LLC, at  
Peach Bottom Atomic Power Station, Units 2 and 3;  
[Docket Nos. 50-277 and 50-278]  
(ML050670664)**

August 21, 2005

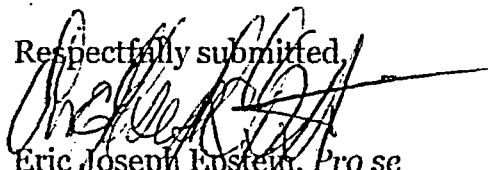
Secretary of the U.S. Nuclear Regulatory Commission  
U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555-0001

Dear Secretary:

Enclosed please find for filing an original of "Eric Joseph Epstein's, *Pro se*, Request for a Public Hearing on the Applications for Approval of the Direct License and Indirect License Transfers of Facility Operating Licenses and Conforming Amendments of Exelon Generation Company, LLC and PSEG Nuclear LLC, at Peach Bottom Atomic Power Station, Units 2 and 3; [Docket Nos. 50-277 and 50-278]" to intervene under the 10 CFR NRC, Section 50: 80 § 2.309.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Respectfully submitted,



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## **I. Introduction**

The Nuclear Regulatory Commission (NRC) published notice in the Federal Register on August 2, 2005 (Volume 70, Number 147) [Page 44389-44390] of Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing Exelon Generation Company, LLC, PSEG Nuclear LLC, Peach Bottom Atomic Power Station, Units 2 and 3; [Docket Nos. 50-277 and 50-278]. The filing is based on the application dated March 3, 2005, (MLO50670664).

However, based on the Applications for Approval of Indirect and Direct License Transfers, the current, unamended Applications are fatally flawed and require a thorough and transparent hearing to address numerous outstanding issues associated with the safe operation of Peach Bottom 2 & 3 ("Peach Bottom").

The core issues and sub issues identified in the Applications of March 3, 2005 are deficient on their face value. Serious questions remain outstanding relating to: 1) The potential for adverse impact on the Peach Bottom Atomic Power Station (PBAPS); 2) Further erosion of managerial or technical qualifications; and, 3) Impairment of Exelon's financial qualifications as the owner and operator of Peach Bottom.

Presently, the proposed Indirect and Direct Licensees Transfers will result in undue risk to public health and safety, and are inconsistent with the Atomic Energy Act and Nuclear Regulatory Commission regulations.

Under the 10 CFR NRC, Section 50: 80 § 2.309 Hearing Requests, petitions to intervene, requirements for standing, and contentions, (1) I am formally requesting a public hearing in regard to the proposed Indirect and Direct License Transfers proposed for the Peach Bottom Atomic Power Station.

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<sup>1</sup> Subpart C--Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings:

(a) General requirements: Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing. Except as provided in paragraph (e) of this section, the Commission, presiding officer or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

## II. Timing

The Federal Register posting on August 2, 2005 stated:

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days of the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. (2)

Mr. Epstein's requests are timely.

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<sup>2</sup> Federal Register on August 2, 2005 (Volume 70, Number 147) [Page 44389-44390] of Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing Exelon Generation Company, LLC, PSEG Nuclear LLC, Peach Bottom Atomic Power Station, Units 2 and 3; [Docket Nos. 50-277 and 50-278]. The filing is based on the application dated March 3, 2005 (ML050670664).

### **III. History of Proceeding**

On December 22, 2004 Peco Energy Company (“PECO” or “PECO Energy”) and Public Service Electric and Gas (“PSE&G”) announced a proposed merger.

On February 4, 2005 PECO Energy served Mr. Epstein with a hard copy of the Joint Application of PECO and PSE&G for Approval of the Merger of PSE&G with the Pennsylvania Public Utility Commission (“PUC” or “Commission”). The filing was delivered by Federal Express and included Supporting Testimony and Supporting Exhibits.

On February 4, 2005 Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”), (the “Applicants”) filed an Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 Federal Power Act (“FPA”) which was supplemented on February 9, 2005 (“Application”), and included a request to “virtually divest” nuclear generating assets, including Hope Creek, Salem and the Peach Bottom Atomic Power Station.

On March 3, 2005, Exelon and PSEG filed Applications with the NRC for Approval of the Direct License and Indirect License Transfers of Facility Operating Licenses and Conforming Amendments of Exelon Generation Company, LLC and PSEG Nuclear LLC, at Peach Bottom Atomic Power Station, Units 2 and 3; [Docket Nos. 50–277 and 50–278] (ML050670664).

In March 10, 2005 Edward J. Cullen, Esquire, Vice President & Deputy General Counsel, Corporate & Commercial, Exelon Business Services Company provided Mr. Epstein with Proprietary and Nonproprietary Copies of the Indirect and Direct License Transfers relating to Hope Creek, Salem 1 & 2, and Peach Bottom 1, 2 & 3 as well as the Indirect License Transfer Applications for Clinton, Oyster Creek, and Three Mile Island-1.

On March 11, 2005 a Confidentiality Agreement was executed between Edward J. Cullen, Vice President & Deputy General Counsel, Corporate & Commercial, Exelon Business Services Company and Eric Joseph Epstein.



On May 9, 2005 Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”), (together, “Applicants”) filed Answer and Supplement (“May 9 Supplement”) to their February 4, 2005 Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 Federal Power Act (“FPA”), supplemented on February 9, 2005 (“Application”), requesting to expand the amount of “virtually divested” nuclear assets including PSEG and Exelon facilities.

On May 16, 2005 Mr. Epstein contacted Mr. George F. Dick, U.S. Nuclear Regulatory Commission, Project Manger, Section 2, Project Directorate III Division of Licensing Project Management Office of Nuclear Reactor Regulation Washington, D.C., who agreed to provide copies of Exelon's Responses after speaking with the Company. (A prospective applicant may confer with the staff prior to filing the application (10 CFR ) (§ 2.101) (a). )

PJM Market Monitoring Unit’s (“PJM-MMU”) report on the competitive impacts of the Transaction entitled Exelon/PSEG Merger Analysis was issued on May 24, 2005 (“May 24 Report”). The Report was a response to the request of the New Jersey Board of Public Utilities (NJBPU). PJM-MMU criticized the virtual divestiture of nuclear assets for failing to identify which units would be divested or sold to unaffiliated third parties under three- and fifteen-year contracts; and retirements that will reduce megawatt-for-megawatt the amount of capacity that is divested.

On June 30, 2005 FERC approved the Joint Applicant’s merger proposal without obtaining specified information relating to the “virtual divestiture” of Exelon and PSEG’s nuclear assets, material issues of fact, or discovery.

The “virtual divestiture” will transfer control of the output of 2,600 MWe of nuclear capacity from the merged firm to **unidentified purchasers**. The FERC’s Order requires the companies to make a “compliance filing” at the end of the divestiture process, and does not require consultation or overview from the Nuclear Regulatory Commission.

“Virtual divestiture” of nuclear power stations is a novel, controversial, and untested concept, and the NRC has failed to study or evaluate the impact on Exelon and PSEG nuclear stations located in Pennsylvania and New Jersey.

On June 16, 2005 Mr. Epstein made a “Formal Request for Internal Revenue Service Rulings and Related Information on the Tax-Free Transfer of Decommissioning Funds Relating to Direct and Indirect License Transfers to Exelon Corporation at Hope Creek Generating Station; Oyster Creek Nuclear Generating Station; Salem Generating Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2 and 3; and, Three Mile Island Nuclear Generating Station, Unit 1” to the United States Nuclear Regulatory Commission’s Document Control Desk, Office of Chief Counsel and Mr. George F. Dick, Project Manger, Section 2, Project Directorate III Division of Licensing Project Management Office of Nuclear Reactor Regulation.

On July 18, 2005 Mr. Epstein wrote to Mr. Dick and requested that his name and address be added to the mailing list on all correspondence and filings relating to the license transfers associated with the Exelon/PSEG merger at Peach Bottom, Units 1, 2 and 3; Salem, Units 1 and 2; and Hope Creek, as well as the Indirect License Transfers of AmerGen Units including the Three Mile Island Nuclear Generating Station, Unit 1.

On August 2, 2005 the Nuclear Regulatory Commission (NRC) published notice in the Federal Register (Volume 70, Number 147) [Page 44389-44390] of Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing Exelon Generation Company, LLC, PSEG Nuclear LLC, Peach Bottom Atomic Power Station, Units 2 and 3; [Docket Nos. 50-277 and 50-278] (ML050670664).

However, based on the on the Applications for Approvals of Indirect and Direct License Transfers, the current Indirect and Direct License Transfers are fatally flawed and require a thorough and transparent hearing to address numerous outstanding issues associated with safe operation of the Peach Bottom Atomic Power Station.

The four core issues and sub issues identified in the Applications are deficient on their face value. Serious questions remain outstanding relating to: 1) The potential for adverse impact on the Peach Bottom Atomic Power Station; 2) Further erosion of managerial or technical qualifications; and, 3) Impairment of Exelon's financial qualifications as the owner and operator of Peach Bottom.

The proposed Indirect and Direct License Transfers will result in undue risk to public health and safety, and could be inimical to common defense and security, and are inconsistent with the Atomic Energy Act, Nuclear Regulatory Commission regulations.

#### **IV. Standing**

Eric Joseph Epstein (“The Pctitioner,” “Mr. Epstein” or “Epstein”) is a resident of Lower Paxton Township, Pennsylvania and lives and operates a business in “close proximity,” i.e., 40 miles northeast of the Peach Bottom Atomic Power Station.

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.

Epstein 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.

Eric Joseph Epstein was an active Participant and a Signatory to the Joint Petition for Settlement (1): Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & 28 of the Public Utility Code, for Approval of A Plan of Corporate Restructuring, Including the Creation of A Holding Company and The Merger of the Newly Formed Holding Company and Unicom Corporation: Docket No: A-110550F0147.

Mr. Epstein actively participated in Settlement Negotiations related to the Unicom Merger, and helped to facilitate the resolution of the following issues: Nuclear Decommissioning; Planned Operating Life of PECO’s Nuclear Generating Stations; Spent Fuel Isolation; “Low-Level” Radioactive Waste Isolation; Rate Payer Equity; and, Community Investment in South Central Pennsylvania.

Eric Joseph Epstein and PECO Energy entered into an Agreement known as Appendix B: Nuclear Decommissioning and Waste Monitoring Agreement BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & 28 of the Public Utility Code, for Approval of A Plan of Corporate Restructuring, Including the Creation of A Holding Company and The Merger of the Newly Formed Holding Company and Unicom Corporation Application Docket No. A-110550F0147.

In 2004, Mr. Epstein was a principal negotiator along with the Office of Consumer Advocate, the Office of Trial Staff, and PIEUG, in PECO Energy Company's Supplement No. 44 request to its Nuclear Decommissioning Tariff for Limerick 1 & 2, Peach Bottom 1, 2 & 3; Hope Creek and Salem 1 & 2.

Mr. Epstein has over twenty years of experience in publishing, researching and actively intervening before the Pennsylvania Public Utility Commission and the Nuclear Regulatory Commission on nuclear decommissioning, nuclear waste isolation, nuclear economics, nuclear safety, universal service, and community investment.

Mr. Epstein has a direct, immediate and proximate interest in the proposed applications to transfer the Indirect and Direct Facility Operating Licenses and Conforming Amendments at Peach Bottom Atomic Power Station, Units 2 and 3.

## **V. Contentions**

The Proposed Indirect and Direct License Transfers merit a federal register posting and public hearings as required by 10 CFR 50.80. The Application is fatally flawed, and current corporate organization is unable to demonstrate that:

(1) Exelon will not possess the technical and financial qualifications to own and operate these facilities.

(2) The applications do provide the necessary information to support the proposed transfers, and to demonstrate that the transfers are justified and will not lead to any undue risk to public health and safety.

(3) The proposed Indirect and License Transfers raise significant safety, public health, and regulatory issues.

## Contention 1:

### **The management committee of Exelon may change as a result of the "virtual divestiture" and "virtual ownership" of portions of Peach Bottom.**

As previously discussed on pp. 8-10 , the merger between PSEG and Exelon is contingent upon the concept of "virtual divestiture" (3) which confers "virtual ownership" on the purchaser(s) of Exelon's energy assets. In order to provide 2,600 MWe of nuclear mitigation, Exelon will have to "virtually divest" 25 megawatt chunks of nuclear units, and in some instances, the entire output from a Pennsylvania or New Jersey nuclear generating station including Peach Bottom, Salem and Hope Creek.

Exelon and PSEG have repeatedly asserted in their Applications, Testimony, and "structural market concentration analysis" at the Federal Regulatory Commission and Pennsylvania Public Utility Commission, that "virtual divestiture" is on an "**equal basis with actual divestiture,**" and this **transfer of ownership of assets** will "eliminate potential market power" issues. (4)

Exelon and PSEG have refused to identify with specificity the actual units to be divested, the location of divested units, and who or what will purchase these nuclear assets. The companies' "identification of a pool of generation available for divestiture rather than specific generating plants... addresses the concern that Exelon might divest its least efficient units," FERC said.

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3 Dominion, FirstEnergy, and PPL own and operate nuclear generating stations and are protesting the merger and the concept of "virtual divestiture" at the FERC.

4 *Nucleonics Week*, (Volume 46; Issue 27), 7 July , 2005.

There is a distinct possibility that portions of Peach Bottom's generating assets will be sold to a single entity or multiple organizations dominated by foreign interests. Since the "virtual owners" have not been identified, it is not possible to evaluate the character or competence of any of the potential owners of Peach Bottom, Hope Creek or Salem.

Evaluation of the levels of "virtual ownership" proposed by the companies is a complex task, yet the NRC made no effort to determine the impact "virtually divesting" Peach Bottom would have on foreign ownership and operation. There are no provisions in the Indirect or Direct License Transfers to prevent control or domination by foreign interests during the "virtual divestiture," or the management committee of Exelon to change as a result of the sales.

However, US citizenship does not in and of itself confer the requisite financial, technical, and moral qualification to safely operate a nuclear generating station.

There is no mention of this concept of "virtual divestiture" or "virtual ownership" contained in the statutory bars of the Atomic Act of 1954, sections 103 and 104, which stipulate that "no license may be issued to any person, within the United States if, in the opinion, of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public."

Peach Bottom's license was initially issued for Units 2 and 3 by the Nuclear Regulatory Commission in 1974 to Philadelphia Electric Company (PECO) or **25 years before** the NRC sought "public comment on A Standard Review Plan (SRP) on Foreign Ownership, Control, or Domination." The SRP did not contemplate or discuss "virtual divestiture."



In fact, **Exelon and AmerGen established a public record** of seeking to **weaken control over foreign ownership of nuclear assets**. PECO Energy submitted comments on “A Standard Review Plan (SRP) on Foreign Ownership, Control, or Domination,” and asked the NRC to “show some degree of deference” based on whether the applicant comes from a country with “close ties” to the United States. The NRC declined. (5)

The NRC refused to grant AmerGen’s request to set up “safe harbors” for certain operating and ownership arrangements. AmerGen also requested “a stock threshold creating a presumption of no foreign control absent foreign investment in the management of the operation,” but the NRC rebuffed this request as well and noted the difficulty of accounting “for every potential fact or circumstance that could be present in any given situation.” (6)

The impact of the proposed divestiture depends on the identification of nuclear units owned and operated by Exelon. The lack of disclosure has alarmed the PJM Market Monitor (PJM MMU). The Monitor also identified a need to know the purchaser of the divested units in order to determine the appropriate mitigation, particularly if restrictions (7) on the market share of the purchaser are removed.

The Market Monitor concluded that “identification of specific units to be divested is required for a meaningful evaluation of the effectiveness of the Applicant proposed Divestiture.” (p.2)

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5 Federal Register Notice: March 2, 1999 (Volume 64, Number 40; pp. 10166-10169.)

6 *Public Utilities Fortnightly*, “Foreign Ownership,” November 15, 1999, p. 15.

7 Restrictions are based on PJM market and asset share prior to the consummation of the merger. Exelon’s proposal **does not bar foreign owned or dominated entities from buying some or all of the 2,600 megawatts of nuclear generation.**

Under the revised mitigation plan, the limitation on entities that could purchase an asset have been removed. The PJM MMU Report points out that this can have a significant impact on the effectiveness of the mitigation plan. “A subsequent analysis based on the purchaser of the asset may be required and additional mitigation may be necessary.” (8)

The NRC must investigate the impact of “virtually divesting” Peach Bottom 2 and 3, Hope Creek and Salem prior to approving Indirect and Direct License Transfers. Based upon FERC Order of July 1, 2005, Peach Bottom will be divested because Exelon is required to divest nuclear units with the “**highest value.**” (p. 141)

In addition, the NRC must compel Exelon to identify the purchaser(s) of Peach Bottom 2 and 3, Hope Creek and Salem’s generating. The Applicant must also submit verifiable pledges that nuclear assets will not be purchased, owned or operated by a foreign dominated entity.

It is incumbent upon the NRC to convene a public hearing on the novel, controversial and precedent setting ownership arrangement referred to as “virtual divestiture.” The Commission must compel Exelon to identify how much of Peach Bottom 2 and 3, Hope Creek and Salem will be divested, and who will purchase the assets.

Furthermore, the staff must also apply the following sections of the Atomic Energy Act to the proposed purchaser(s): 10 CFR Sec. 50.33 (d) (1) (2) (3) (i) (ii) (iii) (iii) (4); 10 CFR Sec. 50.38; 10 CFR Sec. 50.80 (a) (c) (2)

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8 Exelon/PSEG Merger Analysis Supplemental Report, PJM Marketing Monitoring Unit, June 16, 2005; PJM MMU Report at 4, 19.

## Contention 2:

**Exelon's auction manager, who was contracted to "virtually divest" the ownership of Peach Bottom, may be owned, controlled or dominated by foreign interests.**

On August 1, 2005 Exelon's counsel submitted a compliance filing in response to FERC's Merger Order. (9) Exelon identified an "independent auction manger" to coordinate the sale of nuclear generating assets. The identified corporate finalist is **absent from corporate flow charts** contained in "Enclosure 1: Proposed Corporate Structure of Exelon Electric and Gas and Principal Subsidiaries submitted on March 3, 2005."

The two finalists (the other manager has yet to be identified) chosen to auction Exelon's nuclear assets were selected from a "pool, of eight companies." (10) None of the manger's employees were listed.

One of Exelon's potential managers is Market Design, Inc. According to the Company's web site, Market Design Inc. (MDI) was founded in 1995, and it offers consulting services in the design of auction markets: "Our principals are academic experts in auction theory and practice." (11) Exelon disclosed that MDI has an "international reputation" and is currently "managing similar auctions of base load nuclear energy and peaking capacity in France and Belgium in partnership with IBM Europe."

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9 Paragraph H, Exelon Corporation, Public Service Enterprise Corporation, Inc. 112, FERC ¶ 61,011 (2005).

10 Letter to Secretary Magalie R. Salas, Secretary FERC, from Applicants, Re: Exelon Corporation, Public Service Enterprise Group Incorporated, Docket No. EC05-43-000, dated August 1, 2005.

11 Market Design Inc., 6418 Dahlonge Rd, Bethesda MD 20816-2102, USA, 240-396-1043 [www.market-design.com](http://www.market-design.com)

MDI's approval, and that of the other undisclosed auctioneer by FERC, is not due until October 1, 2005. In the interim, the NRC should investigate the implication of an auction manger with ties to foreign governments selling a pool of Exelon assets to unidentified buyers. It is only fair that the community be given the ability to discuss and question the "middle man" contracted to sell portions of Peach Bottom.

### **Contention 3:**

#### **Exelon will not continue to own, operate, and market power from Peach Bottom.**

Exelon and PSEG have **made material false statements** in their Application of March 3, 2005 by stating that "Exelon will continue to own, operate, and market power from Peach Bottom 2 & 3." This merger is contingent upon Exelon divesting 2,600 megawatts of nuclear power and transferring ownership of the assets in market power blocks of 25 megawatts to unidentified purchasers. Moreover, the FERC Order is contingent upon Exelon **transferring ownership of their nuclear generating assets** in order to ameliorate market power concentrations.

The FERC Order of July 1, 2005 explicitly stated:

Here, the virtual divestiture effectively transfers control of the output of 2,600 MW of nuclear capacity from the merged firm to the purchasers. That is, the merged firm cannot withhold the energy from the market and the buyer of the firm rights, not the seller, determines where and to whom the energy is ultimately sold. In effect, the virtual divestiture is a must-offer provision that removes the ability to withhold output, along with a contractual obligation that reduces the incentive to withhold output in order to affect market outcomes. (12)

<sup>12</sup> Letter to Secretary Magalie R. Salas, Secretary FERC, from Applicants, August 1, 2005, p. 4 **A. Auction Manger**.

Either Exelon misrepresented its ownership, operation and marketing before the FERC and the PA PUC, or the Company misrepresented its ownership, operation and marketing before the NRC. In any either event, the Applicants **cannot claim to own, operate and market the 2,600 MWe of nuclear capacity it sells during an auction.**

Consistent with the Discussion in **Contention 1**, the NRC needs to hold public hearings on the impact of “virtual divestiture” and “virtual ownership” on the safety and security of nuclear generating stations. The Commission must instruct Exelon and PSEG to identify which nuclear units will be divested, what percentage of the units will be divested, and identify the purchaser(s) of the assets.

Exelon and PSEG have made misleading or material false statements contained in the March 3, 2005 Application on page 4, C. Financial Qualifications of Exelon Generation. 1. Operating Financial Qualifications, “Exelon Generation will continue to own, operate, and market power from a diverse portfolio of nuclear, fossil, and hydroelectric generating units.”

Either Exelon and PSEG have **misrepresented their ownership, operation and marketing** before the Federal Energy Regulatory Commission and the Pennsylvania Public Utility Commission, or the Applicants **misrepresented their ownership, operation and marketing before the NRC.**

The NRC must also examine the veracity of the Applicants’ assertion: “Furthermore, based upon the financial stature of the company, Exelon Generation **expects to have an investment grade bond rating**, which will enable the Company to raise additional funds as necessary.” (13)

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13 “Application for Consent to License Transfers and Conforming License Amendments,” C. Financial Qualifications of Exelon Generation. 1. Operating Financial Qualifications, p. 4, Mach 3, 2005, Jeffrey A. Benjamin, Vice President, Licensing and Regulatory Affairs, Exelon Generation Company, LLC.

According to Fitches, Exelon's senior notes were rated "BBB+" as of June 7, 2005. Based on Exelon's previous financial statements and performance, the Applicants projections cannot be accepted without critical review. Two years earlier, on November 3, 2003, S&P placed Exelon on credit watch after the Company announced it wanted to buy Illinois Power from Dynergy. The deal fell through.

The bottom line is that simply by focusing on the expansion of Generation's portfolio does not guarantee improved ratings. Standard and Poor's downgraded Exelon's credit rating from "stable" to "negative" after "severely disappointing investment results in the merchant power market Boston Generation." (14)

Exelon's nuclear suitor, PSEG, is less than robust according to S&P. In a January 10, 2005 report, Standard & Poor's issued a negative outlook after PSEG's second quarter earnings report in 2004. "Since then PSEG's problems have continued, most notably in the form of the extended outage at Hope Creek." Moreover, the merger "will not obviate the need for the remediation projects that must be undertaken at Salem and Hope Creek," according to the S&P report. (15)

What's more, both Exelon and PSEG have developed "reputations" among their peers that further undermines the credibility of their financial projections. The *Reputation Strength Ratings for the Electric Power Industry*, employs a rigorous methodology in all phases of the rating process. The organization process "is based on years of time-tested methodologies in the research survey and credit analysis industries. The assignment of Reputation Strength Ratings (RSRs) is performed by a Rating Committee composed of experts in research methodology, financial analysis and the specific industry under investigation." (16)

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14 *Restructuring Today*, Tuesday October 7, 2003, p. 2. 15

15 *Nucleonics Week*, Volume 46, #25, July 7, 2005.

16 Please refer to Exhibit 1 for a detailed summary of the ratings.

# Corporate Reputation Ratings: Electric Power Industry

*Rating release date: 9 June 2004*

FPL Group, Inc. (FPL)	AA
The Southern Company (SO)	AA
American Electric Power, Inc. (AEP)	A
Dominion Resources, Inc. (D)	A
Duke Energy Corporation (DUK)	A
Progress Energy, Inc. (PGN)	A
Calpine Corporation (CPN)	BBB
Entergy Corporation (ETR)	BBB
<b>Exelon Corporation (EXC)</b>	<b>BBB</b>
PPL Corporation (PPL)	BBB
TXU Corporation (TXU)	BBB
Consolidated Edison, Inc. (ED)	BB
Edison International (EIX)	BB
PG&E Corporation (PCG)	BB
<b>Public Service Enterprise Group Incorporated (PEG)</b>	<b>BB</b>
Xcel Energy Inc. (XEL)	BB
CMS Energy Corporation (CMS)	B
FirstEnergy Corp. (FE)	B

The NRC must order Exelon to justify their unsustained claims regarding investment bond grades ratings, and investigate the impact of “virtual divestiture” on the Indirect and Direct License Transfers referenced above.

#### **Contention 4:**

### **The technical qualifications of Exelon will be affected by the proposed license transfers.**

The **status quo** will not guarantee technical qualifications that **did not exist prior to the Indirect and Direct License Transfer**. There are no guarantees that Exelon possess the requisite capabilities to operate an additional corporate structure to “virtually divested” assets along with an ailing infrastructure.

The Joint Applicants acknowledge in response to discovery filed by FirstEnergy, that they plan to significantly increase nuclear output “by 4.8 million MWH per year” or a 700 MWe increase in capacity. This scenario puts additional stress and pressure on TMI training programs, which have failed to pass industry standards with the current level of employees. The issue of adequate training under increased capacity pressure becomes more confused when unidentified “virtual owners” are factored into the mix.

The training program at Three Mile Island-1 was placed on probation in January 2005 by the National Nuclear Accrediting Board (NNAB). The Board reviews training programs every four years at commercial nuclear plants. The Board reports its findings to the Institute of Nuclear Power Operations (INPO), an industry policing organization established after the 1979 accident at the plant's other reactor.

The NNAB concluded that the training program for control room workers at Three Mile Island needs to be improved. This action jeopardized the TMI reaccreditation program.



According to the Pennsylvania Department of Resources, there is a nexus between the Exelon Way and TMI's training woes:

Also, from my observations the rapid growth of Exelon via mechanisms such as the PECO/Unicom merger has created a highly transient senior management organization. This dynamic senior management environment, combined with Exelon's staffing reduction over the past few years could adversely impact plant operations. As an example, the Three Mile Island Training Program was placed on probation by the Institute for Nuclear Operations in January 2005. ...I believe the problem with the TMI Training Program was partially caused by inadequate staff and material resources within the Training Program. An NRC inspection earlier in the year revealed that some training staff are working as much as 70 hours per week to meet the TMI training demands. Additionally, the organization failed to staff the Site Corrective Actions Program position for approximately two years. (17)

According to the data provided by Exelon, similar staffing reductions have taken place at Peach Bottom since the PECO/Com Ed merger was approved and implemented.

<u>Year</u>	<u>Exelon</u> +	<u>Contractor</u> =	<u>Total Number of Employees</u>
2000	718	135	853
2001	687	146	833 (18)
2002	678	132	810 (19)
2005	650 (20)		

17 DEP Statement No. 1, Direct Testimony of David Allard, Director of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, June 28, 2005 (PA PUC Docket # A-110550F0160).

18 Includes a 10% to 15% increase in size of Wackenhut guard force.

19 Actual security increase of 28% likely translates to two guards added per shift. However, these same positions were eliminated after the merger.

20 Estimate provided by site vice president during ROP meeting in Delta on March 29, 2005.

Poor oversight and declining performance have also plagued Peach Bottom since the Unicom merger.

In the spring of 2005, the NRC criticized Exelon's corrective actions at Peach Bottom. Specifically, the Commission has noted that Unit 2 recorded a disproportionate number of unscheduled shutdowns among nuclear reactors. According to the NRC:

Between Jan. 1, 2003, and Dec. 31, 2004, the power station's Unit 2 reactor unexpectedly shut down five times for various equipment-related issues.

Only two other nuclear reactors in the nation reported more unscheduled shutdowns — or scrams — to the U.S. Nuclear Regulatory Commission during that same time period. Both Indian Point Unit 2 in New York and Saint Lucie Unit 2 in Florida worked through six unscheduled shutdowns in 2003 and 2004. (21)

On April 10, 2004, increased oversight was maintained by the NRC at Peach Bottom-2, "which will face a Nuclear Regulatory Commission supplemental inspection later this year as a result of deficient performance based on its number of unplanned shutdowns." (22)

On November 15, 2003, the NRC increased its inspections after four unplanned shutdowns of the nuclear plant's Unit 2 reactor. For the next year, the U.S. Nuclear Regulatory Commission will increase the frequency of its inspections at Peach Bottom Atomic Power Station's Unit 2.

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21 *York Daily Record/Sunday News*, March 13, 2005

22 *York Daily Record*, April 11, 2004.

Rates from the merger that produced Exelon remain high. The average residential electric rate per kWh in Pennsylvania in 2000 and 2001 was 9.5 cents per kWh. (22) PECO weighed in at 13.27 per kWh in October 2002, and 13.38 per kWh in January, 2003. (23)

On August, 15, 2001, the NRC's Office of Investigation documented **criminal behavior** by two of Exelon's Emergency Preparedness personnel. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$55,000 is considered for Severity Level III violation or problem. (24)

The NRC must examine the impact of License Transfers on the ability of Exelon to adequately train, staff and operate Peach Bottom. The NRC should be mindful of the impact of staffing cuts on the performance of Peach Bottom 2 and 3.

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22 Energy Information Administration/Electric Sales and Revenue Publication.

23 Jacksonville Electric Authority, February 27, 2003. The price includes the cost of base rates, fuel adjustments and franchise fees.

24 Hubert Miller, NRC, Regional Administrator, October 23, 2001.

## **Contention 5:**

**The new Management Model: the Exelon Way, may result in the “downsizing” of Exelon personnel or reassignment to nuclear stations involved in the proposed merger.**

The “Exelon Way” is the essence of the nuclear merger and relies on synergies of savings relating to staffing levels. The number of dedicated employees at Peach Bottom has been cut more than 10% since 2000. According to Exelon, staffing levels at Peach Bottom have shrunk from 718 in 2000 to 650 in 2005. Contract labor, including security, has supplanted existing full-time positions.

Exelon’s Chairman and Chief Executive John Rowe announced that the “Exelon Way” Business Model was approved as the Management Model on April 29, 2003. “Our financial performance will be affected by our ability to achieve the targeted cash savings under the Exelon Way Business Model...Our targeted cash savings range from approximately \$300 million in 2004 to approximately \$600 million in 2006.” (25)

On December 20, 2004 the Joint Applicants touted the efficacy of the new system. According Exelon’s press release announcing the merger, the “Exelon Way” is projected to increase output for PSE&G’s nuclear generating stations, and account for 15% of the proposed merger’s cost savings.

Yet, Gerald R. Rainey, AmerGen’s former Chief Executive Officer stated that, “The Exelon Way only works if a nuclear plant is purchased cheaply and operates just outside the top-performing quadrant.” (April 9, 2000)

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25 **Exelon Annual Report: 2003, Management's Discussion and Analysis of Financial Condition and Results of Operation, p. 25.**

The job reductions embedded in the “Exelon Way” are in addition to the Management Model Denis O'Brien outlined in PECO's Response to OCA-III-15.

Of the 1,400 to 1,500 position reductions estimated, the companies currently expect fewer than 250 positions to be from Pennsylvania and spread across all the new company business units (e.g., PECO, Business Services Company, Generation, etc.) with locations in Pennsylvania. The actual staffing changes and resulting direct payroll reductions to result from the combination are not known at this time and will not be known until after the merger is consummated. (Pa PUC)

Based on the momentum that is the “Exelon Way,” it is likely that the 250 “expected job cuts in Pennsylvania” will increase. On August 6, 2003 Exelon announced it would eliminate about 1,900 positions, or 10% of its workforce, by 2006. To that end Exelon will cut 1,200 positions by 2004, and another 700 layoffs are planned in 2006.

Last year Exelon Vice President and Chief Financial Officer Robert Shappard boasted that the “Exelon Way” can “cut 2,000 heads from our head count by the year 2006.” (26) And, on August 1, 2005, the ax fell for nuclear workers at PSEG's underperforming nuclear units at Hope Creek and Salem. (27)

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26 Robert Shappard, Exelon's Vice President and Chief Financial Officer, speaking to the Deutsche Bank energy conference in New York on June 22, 2004.

27 TRENTON (AP) -- Public Service Enterprise Group Inc., the parent company of PSEG Nuclear, said Monday it would trim 400 jobs from its nuclear power business in Salem County...

...Public Service Enterprise Group Chief Financial Officer Thomas O'Flynn said in a conference call Monday that about 200 workers at the company's Artificial Island nuclear generating complex in Lower Alloways Creek Township have volunteered to leave the company.

Staffing cuts and the impact of “virtual divestiture” are of great concern for the Commonwealth of Pennsylvania. David Allard, Director of the Bureau of radiation Protection, Pennsylvania Department of Environmental Resources, stated,

However, given the Joint Applicants’ reliance on the virtual divestiture proposal and increased performance at Salem and Hope creek to achieve the goals of this merger, it is possible that resources could be diverted away from Pennsylvania nuclear facilities or that there will be some change in the operations at some or all of the Joint Applicants’ facilities. (28)

Staffing cuts, another source of Exelon Nuclear’s profitability **prior** to the proposed License Transfers, has flattened. “This merger provides Exelon with another avenue to raise \$1.7 billion for their ‘free cash’ program while reducing staffing levels. (29) Cut and slash personnel programming is the heart and soul of the new Management Model referred to as the “Exelon Way.”

Therefore, the organizational structure submitted to the NRC in the March 3, 2005 Application and subsequent May 24, 2005 correspondence is necessarily deficient and do not include the post-merger Management Model at Exelon plants, i.e. , the “Exelon Way.” The Management Model submitted to the PA PUC or the FERC for review referred to as the “Exelon Way,” must also be reviewed by the NRC prior to approving the Indirect and Direct License Transfers. (30)

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28 DEP Statement No. 1, Direct Testimony of David Allard, Director of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, June 28, 2005, PA PUC Docket # A-110550F0160, pp. 6-7.

29 *Nucleonics Week*, Volume 46, #25, June 23, 2005.

30 See PECO’s Response to OCA-16 (PA PUC) for a description of the new “Management Model.”

The corporate organizational structure submitted by the Applicant in the March 3, 2005 Application to the NRC **does not include** a description of “virtual ownership” or “virtual divestiture” staffing levels and responsibilities.

The NRC did not evaluate the impact of staffing cuts on the Indirect or Direct License Transfers, nor did the agency review how the “Exelon Way” Management Model will impact operations at Peach Bottom. The NRC must examine the impact of the “Exelon Way” on the safe operation of PBAPS during a public and transparent hearing process.

### **Contention 6:**

#### **Exelon’s programs, procedures, and conduct of operations will be altered for these facilities as a result of the merger.**

This merger will bring PSEG’s nuclear plants under one corporate control with Exelon and AmerGen’s plants. This presents additional risks such as cost uncertainties associated with major outages, the potential significant liabilities that could result from increased safety requirements, and the significant costs of future capital additions.

Exelon’s recent Annual Report clearly stated that “nuclear capacity factors significantly affect Generation’s results of operations.” Nuclear energy’s substantial fixed operating costs are offset by low fuel prices. “Consequently, to be successful, Generation must consistently operate its nuclear generation facilities at high capacity factors.” (31)

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31 Exelon, 2004 *Annual Report*, *Nuclear Capacity Factors*, p. 89.

Hope Creek and Salem’s capacity factors have historically been far below the national and Exelon averages. Hope Creek’s capacity factor has steadily plummeted to 65.6% in 2004 while Salem hovers in the mid- to upper- 80 percentile range.

These trends were supposed to begin improve on January 17, 2005 when Exelon transferred staffing to Hope Creek and Salem under an Operating Services Contract (OSC). The OSC was announced on December 24, 2004, the same day as the merger, and remains the key to implementing the “Exelon Way” at PSEG’s nuclear units.

Nuclear capacity factors for Exelon, which derives approximately 67% of electricity from its 17 nuclear reactors, significantly affect results for Generation. In recent years, nuclear generating stations have absorbed high-fixed costs while benefitting from low, subsidized fuel costs.

In order for Exelon to profit from the acquisition of three low-performing nuclear reactors, Hope Creek and Salem must defy history and operate at a capacity range in the low 90th percentile. Exelon’s most recent operating history of 93% to 94% is simply unattainable by PSEG’s failing fleet. (32)

As evidenced by William D. Arndt’s response to the Office of Small Business Advocate, Question #20 (Pa PUC), the Joint Applicants expert analysis is not supported by operating history.

**PSEG Units Capacity Factor Baseline**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Salem 1	84.8%	93.4%	86.6%	86.6%	93.4%
Salem 2	85.2%	86.6%	93.4%	75.1%	86.6%
Hope Creek	93.0%	81.7%	86.6%	93.4%	86.6%
Peach Bottom 2	97.0%	86.8%	97.0%	89.8%	97.0%
Peach Bottom 3	89.0%	97.0%	86.9%	97.0%	89.8%

<sup>32</sup> PSEG, Form 10-K for the Fiscal Year Ended December 31, 2004, pp. 148-154.



Further skewing the funding projections, Dr. William H. Hieronymous based nuclear outage rates on industry averages, although Exelon views decreased fleet refueling time as a central component of the “Exelon Way”. (33) For example, refueling outage days decreased in 2002 and 2003 from 202 days to 157 in facilities solely owned and operated by Exelon. (34) “Each twenty-six day outage, depending on the capacity of the station, will decrease the total nuclear annual capacity factor between 0.3% and 0.5%.” (35)

The bottom line is that if these plants fall below these optimistic operating margins, or are forced to undergo extended outages, Exelon-PSEG must buy higher-priced energy from the market.

Unfortunately, conditions have continued to deteriorate at Hope Creek and Salem despite the the arrival of 24 “Exelon Way” personnel. The Exelon employees are being incented by a \$12 million package for the “attainment of goals relating to safety, capacity factors of the plants, and operation and maintenance expenses.” (36)

In the fall of 2004, Hope Creek was shut down for three months before returning to service on January 26, 2005. “Sometime in February,” according to the new Exelon-PSEG nuclear team, Hope Creek began leaking again. On March 27, 2005 an “incident” put Hope Creek out of service for another two weeks. At the beginning of June, 2005 Hope Creek was shut down twice within a week due to steam leaks.

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33 The outage factors can be found in Dr. Hieronymous’s work papers . The nuclear outage factors are “NBUR” and “NPUR”.

34 **Exelon Annual Report: 2003, Management's Discussion and Analysis of Financial Condition and Results of Operation**, p. 132

35 **Exelon Annual Report: 2003, Management's Discussion and Analysis of Financial Condition and Results of Operation**, p. 32.

36 PSEG, Form 10-K for the Fiscal Year Ended December 31, 2004, pp. 148-154.

During a meeting with the Nuclear Regulatory Commission (NRC) on March 18, 2005, Salem's operators gave themselves poor marks in encouraging employees to raise safety and equipment concerns. Five weeks later on April 20, 2005, Salem 1 was shut down due to a leak.

Last spring the Institute of Nuclear Power Operations, an industry-funded group that evaluates nuclear reactors, lowered its rating of Public Service Enterprise Group Inc.'s Hope Creek reactor to the second lowest rung on its five-tier system.

Despite plummeting operating performance fleet wide, PSEG eliminated 600 jobs from its Hope Creek and Salem nuclear generating complex.

The most disturbing trend is the declining performance at Exelon Nuclear. Exelon's first quarter 2005 nuclear capacity factor was 89.9%. Exelon's Nuclear President and Chief Nuclear Operating Officer "doesn't foresee this as a long term trend," (37) and the Company's expert witnesses believe that capacity factors will steadily increase. (38)

The NRC must investigate not only staffing levels and organizational infrastructure at Peach Bottom, but the Commission must scrutinize, determine, and insist that programs, procedures, and conduct of operations to address problems and challenges as a result of the merger, will not be altered.

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37 *Nucleonics Week*, Volume 46, #18, April 28, 2005.

38 Response of William Arndt (Pa PUC, PECO's Response to OTS-35)

## **Contention 7:**

### **Exelon's training programs, procedures, and conduct of operations for Emergency Planning are in violation of federal regulations.**

Peach Bottom 2 and 3 have failed to include child care facilities in their Radiological Emergency Plans for the past 18 years. As such, the facility is currently in violation of Federal Laws put into place due to Presidential Executive Order 12148 to provide “reasonable assurance” that the public, including preschool children, could be protected in the event of a Radiological Emergency as a condition to own and operate a nuclear power license.

AmerGen and Exelon are in **violation** of the following Federal Regulations: 10 CFR § 50.47; 10 CFR § 50.54; 10 CFR § Part 50 Appendix E; and 44 CFR § 350.

Currently, Exelon is in violation of Section 4.16 Operations of Nuclear Power Plants (a) ((i)), which explicitly states:

(a) The operations of the nuclear generation stations currently owned, in whole or part, by the Company or any of its Affiliates (collectively, the “Company Nuclear Facilities”) are and have been conducted in compliance with all applicable laws and the Company Permits, except for such failures to comply that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each of the Company Nuclear Facilities maintains, and is in compliance with, (i) emergency plans designed to respond to an unplanned release of a Hazardous Substance therefrom of radioactive materials and (ii) plans for the storage and disposal of spent nuclear fuel, and each such plan enumerated in clauses (i) and (ii) conforms with the requirements of applicable law.

Approval for the Peach Bottom’s Indirect and Direct License Transfers must be postponed until Exelon is in compliance with Section 4.16 Operations of Nuclear Power Plants (a) ((i)).

## **Contention 8:**

### **The proposed license transfers will adversely impact Exelon's off-site emergency preparedness program.**

Exelon's offsite emergency preparedness was adversely impacted by the Com Ed and PECO merger. As Exelon acknowledged, " However, with the objective of improving emergency preparedness post-merger, a revision of the emergency plan for Oyster Creek Nuclear Generating Station may be proposed as a result of integrating the Salem and Hope Creek Generating Stations into the Exelon Generation/AmerGen fleet." (39)

Based on the negative fallout of the previous EOF consolidation of the Peach Bottom and Three Mile Island areas, the NRC needs to fully flush out the impact of further emergency plan consolidations with PSEG nuclear reactors.

On November 7, 2001 Exelon met with the NRC to discuss the consolidation of Emergency Plans for TMI, Peach Bottom and Limerick. The presentation was conducted by William Jefferson, Director, Generation Support, Exelon Nuclear, Mid Atlantic Regional Operating Group. Exelon requested the plans be approved and implemented by January 2, 2002. (40)

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39 Exelon Generation and AmerGen Energy Company provided additional information to the NRC regarding the requests for license transfers associated with the proposed merger of Exelon Corporation and Public Service Enterprise Group, May 24, 2005.

40 Presentation to the Nuclear Regulatory Commission, King of Prussia, Region I, William Jefferson, Director, Generation Support, Exelon Nuclear, Mid Atlantic Regional Operating Group, November 7, 2001.

After widespread public criticism, Exelon “notified the Nuclear Regulatory Commission [June 22, 2001] that it intends to delay submitting its application seeking approval for a standardized emergency plan for Three Mile Island, Peach Bottom and Limerick.” (41)

On July 25, 2002 Exelon submitted plans to move the EOF to the NRC. Despite pledges to notify local officials, the public was **not notified** until a week later by the NRC.

On 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 “**technicians 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.” (42) The NRC determined that a white “finding” (Violation) was warranted for the following infractions relating to the plant’s Public Address (PA) system and evacuation alarm/siren (EA) system:

1. From 1992 to December 19, 2000, approximately 47% of the PA system’s speakers were either inaudible or degraded to the point that personnel were not able to clearly hear instructions.

2. From January 19, 2001 to February 13, 2001, and again from March 20, 2001 to April 17, 2001, the plant PA system was operated only on the backup power breaker, which would have tripped after about 49 seconds of evacuation alarm actuation on the first sequence. (The primary breaker had tripped following the monthly test the beginning of each period.)

3. On February 13 and April 17, 2001, the plant PA/EA system would not properly function in that both the primary and the backup breakers were tripped for periods of 4.5 hours and 1.5 hours resulting in no system capability to provide instruction or sound the evacuation alarm. (43)

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41 *Exelon Nuclear*, Press Release, June 22, 2001.

42 Wayne D. Lanning, NRC, Director of Reactor Safety

43 Hubert J. Miller, NRC, Regional Administrator, August 22, 2001.

October 23, 2001, "In accordance with the Enforcement Policy, a base civil penalty in the amount of \$55,000 is considered for Severity Level III violation or problem. Because the Severity Level problem was deliberate, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy." (44)

Staffing reduction at the EOF followed criminal behavior at the siren outposts. When Exelon closed Three Mile Island and Peach Bottom's dedicated EOF's and relocated them to Coatesville, seventeen (17) positions were impacted. More specifically, the TMI Emergency Plan Positions affected included four (4) Technicians; one (1) On-Site OSC Coordinator; one (1) Dose Assessor; one (1) Off-Site Field Team Member; one (1) Communicator; one (1) Security Coordinator; and two (2) Auxiliary Operators.

The proposed License Transfers exacerbates problems caused by the consolidation of the TMI and Peach Bottom EOF's into one central location in Coatesville, Pennsylvania. PSEG acknowledged in their proposed License Transfer Applications that Exelon Generation "authority and responsibility for function necessary to fulfill emergency planning requirements ...Transition plans will be established to ensure that the support described in the existing emergency plans will be maintained following the transfer." The application noted:

The current off-site emergency facilities and equipment, including the Emergency Operations Facility ("EOF"), the Training Center, and radiation monitoring equipment will be transferred to Exelon Generation. As necessary, ownership of the the off-site emergency sirens will also be transferred to Exelon Generation. (45)

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44 Hubert Miller, NRC, Regional Administrator, October 23, 2001.

45 Proposed License Transfer and Conforming License Amendments Relating to the Merger of Public Service Enterprise Group, Hope Creek Generation Station Docket No. 50-354, Facility Operating License No. NPF-57, Salem Generation Station - Unit 1 and Unit 2, Docket No. 50-3272 and 50-311, Facility Operating License No. DPR-70 and DPR-75, pp. 11-12.

David Allard, Director of the Bureau of Radiation Protection, shared concerns about the current state of Exelon's Emergency Preparedness Program where the NRC identified

... approximately 70% of TMI's Emergency Response Organization personnel had failed to complete required training in accordance with TMI procedures. During a previous inspection of the Emergency Preparedness Program at TMI, the NRC inspector had expressed concerns about the staffing of the Emergency Preparedness program. As a result of these inspections and findings, the Commonwealth has had to expend additional time and resources reviewing corrective action reports and conducting additional follow-up activities as part of its nuclear oversight responsibilities under the Radiation Protection Act. (46)

Mr. Allard conceded, "Unfortunately, exactly what changes will occur at any of the Joint Applicants' nuclear facilities in Pennsylvania or New Jersey after the merger, and how these changes will impact the Commonwealth's monitoring and planning responsibilities, is not known."

Given Exelon's history of criminal behavior in regard to siren testing and its record of EOF consolidation, it is necessary for the NRC to examine both issues and the impact of consolidation on Peach Bottom resources.

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46 DEP Statement No. 1, Direct Testimony of David Allard, Director of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, June 28, 2005, PA PUC Docket # A-110550F0160, p. 8.

### **Contention 9:**

#### **The proposed merger and proposed transfers will affect the financial qualifications of Exelon as the licensed owner and operator.**

This merger will bring PSEG's nuclear plants under one corporate control with Exelon and AmerGen's plants. This presents additional risks such as cost uncertainties associated with major outages, the potential for significant liabilities that could result from increased safety requirements, and the significant costs of future capital additions.

The Joint Applicants have not undertaken any analysis or review to measure the impact of increased capacity factors on wholesale or retail prices (Pa PUC, Response to OCA-V-2). PECO's predictions are not based on readily available fleet capacity factors. "Outage rates are based on industry averages" (Pa PUC, PECO's Response to OSBA-18) which resulted in an overstatement of net capacity gains.

This specious research format also produced skewed results (Please refer to discussion in **Contention 6**), and undermines the Company's claim that the merger will increase capacity and drive down prices for consumers in Pennsylvania.

The Company did not attempt to examine the impact of license renewals or power uprates on the proposed "virtual divestiture" scheme. The Company also failed to factor the impacts of extended and simultaneous refueling outages, the cost of generic rule making, or the increased price of uranium in a market dominated by rising domestic and international demand.



Cheap fuel, as described by the Joint Applicants, is the key ingredient to nuclear generation's competitive edge. (47) Yet demand for nuclear fuel continues to increase as suppliers struggle to keep pace. The price of nuclear spot fuel has been steadily climbing since the merger was announced. Pressure on the spot price of uranium during the week of March 21, 2005 reached \$22/lb U<sub>3</sub>O<sub>8</sub>, a 25-cent increase from the week before. "Ux Consulting said that U<sub>3</sub>O<sub>8</sub> prices 'are clearly under pressure' and that offers are being made at prices up to \$22.50/lb recently and at a price of \$23.25/lb U<sub>3</sub>O<sub>8</sub>." (48) During the week of June 13, 2005 "spot sales at \$29.50 a pound of U<sub>3</sub>O<sub>8</sub> were reported, which is about 50 cents higher than the prices published by TradeTech and Ux Consulting." (49)

The era of cheap and inexhaustible supplies of subsidized fuel is over and most experts anticipate price increases in the next 24- 36 months.

The resolute assumptions embedded in Exelon's PA PUC and FERC Testimony regarding capacity factors and fuel prices ignore nuclear pressures that will increase electric prices in the short and long terms, undermine the Company's bond ratings, and diminish Exelon's ability to maintain adequate staffing. (Please refer to discussion in **Contention 4.**)

Moreover, Exelon's Financial Assurances are based on the **original mitigation plan submitted to the FERC** on February 4, 2005, i.e., Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 Federal Power Act ("FPA"), supplemented on February 9, 2005 ("Application"). On May 9, 2005, Exelon Corporation ("Exelon") and Public Service Enterprise Group Incorporated ("PSEG"), (together, "Applicants") filed Answer and Supplement ("May 9 Supplement") in which they committed to divest 4,000 megawatts of intermediate and peaking generation facilities and to "virtually divest" 2,600 MWe of nuclear capacity.

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47 Exelon 2004 Annual Report Financial Information Supplement, p. 18.

48 *Nuclear Fuel*; Volume 30, Issue 7: March 28, 2005.

49 *Nuclear Fuel*; Volume 30, Issue 13: June 20, 2005.

Exelon has not submitted, nor has the NRC requested, basic credit and bond rating rationales used for financial assurance projections:

- Neither Exelon, PECO Energy nor AmerGen have provided analyses or studies that assess the credit ratings of a parent company and its affiliates, or that demonstrate that a higher credit rating for the affiliate is evidence that credit protections are in place.

- Exelon has not demonstrated it would be a solid investment grade company in the event of a credit downgrade.

- Exelon has not indicated if it would institute a dividend policy that would lead to a lowering of its credit rating.

Mr. Epstein reviewed the five year proprietary financial projections per the Confidentially Agreement he executed with the Company. Exelon Generation and PSEG Nuclear requested that the proprietary information be withheld from public disclosure pursuant to 10 CFR 2.390 .

**The assumptions contained in the five year proprietary financial projections are unrealistic, are not supported by historic trends.**

To the extent possible, an examination of the financial assurances raised by the Indirect and Direct License Transfers can include the development of a public record and separate corollary confidential examination. However, due to the sensitive nature of the financial data involved in this contention, Mr. Epstein requests that this contention be litigated between Exelon, PSEG and the NRC in a format that requires all three parties to sign-off a confidentiality agreement.

The NRC must examine the implications of reduced staffing, higher capital rates, and increased economic pressures on Exelon Generation. In short, the NRC must go beyond a cursory review of unsustainable growth projections, and rigorously examine the financial assurances (50) provided by Exelon based on the actual plant divestitures and revised financial projections associated with FERC's Order approving the merger.

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49 The Application to the NRC stated, "The five-year financial projections are proprietary. Exelon Generation and PSEG Nuclear have requested that the proprietary information be withheld from public disclosure pursuant to 10 CFR 2.390".

However, Mr. Epstein and Exelon have executed two separate Confidentiality Agreements.

On March 10, 2005 Edward J. Cullen, Esquire, Vice President & Deputy General Counsel, Corporate & Commercial, Exelon Business Services Company provided Mr. Epstein with Proprietary and Nonproprietary Copies of the Direct License Transfers relating to Hope Creek, Salem 1 & 2, and Peach Bottom 1, 2 & 3 as well as the Indirect License Transfer Applications for Clinton, Oyster Creek and Three Mile Island-1.

On March 11, 2005 a Confidentiality Agreement was executed between Edward J. Cullen, Vice President & Deputy General Counsel, Corporate & Commercial, Exelon Business Services Company and Eric Joseph Epstein.

On June 14, 2005 Thomas O'Neill, Esquire, Vice President & Associate General Counsel, Exelon Business Services Company, responded to Mr. Epstein's request for a copy of the answers Exelon provided to the NRC on May 24, 2005. The NRC submitted a list of follow question s requested by the NRC relating to the Indirect License Transfers. Mr. O'Neill provided a proprietary version with confidential financial information.

## **Contention 10:**

### **The proposed indirect and direct license transfers affect the present decommissioning funding assurances provided by Exelon Generation.**

The sources of decommissioning funding, with respect to Peach Bottom Units 2 and 3, are based on their respective abilities to cover operating costs by revenues from sales of electricity from the units. Therefore, combining the two shares can actually reduce financial qualifications based on Exelon's trust performance.

No one can predict with certainty what the impact of the merger and "virtual divestiture" will have on the new entity's ability to cover operating costs by revenues generated by the forced sale of nuclear assets.

The most disturbing trend is the declining performance at Exelon Nuclear. Exelon's first quarter 2005 nuclear capacity factor was 89.9%. Exelon's Nuclear President and Chief Nuclear Operating Officer "doesn't foresee this as a long term trend," (51) and the Company's expert witnesses believe that capacity factors will steadily increase. Despite factual evidence to the contrary, Dr. Hieronymous stated that increased capacity factors for the PSEG-operated nuclear plants will improve, and increased nuclear output will have a small but significant tendency to lower wholesale prices. (52)

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51 *Nucleonics Week*, Volume 46, #18, April 28, 2005.

52 PA PUC, *Witness: Volume IV, PECO Statement No. 3, Direct Testimony of William H. Hieronymous*, p. 7. *Exhibit No. J-1.*, Lines 26-30.

The Joint Applicants have not undertaken any analysis or review to measure the impact of increased capacity factors on wholesale or retail prices (Response to OCA-V-2). PECO's predictions are not based on readily available fleet capacity factors. "Outage rates are based on industry averages" (PECO's Response to OSBA-18) which resulted in an overstatement of net capacity gains.

Exelon's trust funds, which the Company believes will "ultimately be used to decommission Exelon's nuclear plants," have grossly underperformed. Despite record earnings and profits, Trust assets **dropped from \$4,271 million in 2002 to \$3,053 million as of December 31, 2003.**" (53)

Despite **losing money**, Exelon is still assuming on 2% real rate of return. By the Company's own admission, **Exelon's decommissioning account is funded "at a rate less than anticipated with respect to the NRC's Funding Levels."**(54)

The proposed license transfers amount to sinking good money into a hole to retrieve poorly invested funds. As of December 31, 2004, the "present value of Generation's obligation to decommission nuclear power plants was \$3,981 million." (55) The number substantially increased with the addition of PSEG obligations.

The status of decommissioning funding for Peach Bottom was shown in the most recent decommissioning funding reports submitted by PSEG Nuclear and Exelon Generations and will be updated in status reports, as required by 10 CFR 50.75, "Reporting and record keeping for decommissioning planning," paragraph (f), to be submitted by March 31, 2005.

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53 Exelon **Annual Report 2003**, Exelon Corporation and Subsidiaries Companies, Management's Discussion and Analysis of Financial Condition and Results of Operations, p. 105.

54 Exelon **Annual Report 2003**, p. 33.

55 Exelon, **2004 Annual Report Contractual Obligations and Off-Balance Sheet Arrangements**, p. 78.

The most expensive components of nuclear decommissioning, as established by PECO's consultant TLG before the Pennsylvania PUC, are low-level radioactive waste (LLW) and high-level radioactive waste (HLW) isolation. These costs are dramatically increased by 20-year license extensions and power uprates. In other words, Exelon's proposed merger with PSE&G, which is specially designed to increase nuclear power production, will create nuclear decommissioning funding shortfalls for TMI.

TLG continues to base decommissioning estimates on "field" studies extrapolated from small, minimally contaminated, or prematurely shutdown nuclear reactors.

The cost of estimating methodology employed in developing the decommissioning estimates, has been field verified by the Company's decommissioning consultant in work performed during the decontamination and dismantling of the Shippingport Atomic Power Station, Shoreham Nuclear Station and Pathfinder Atomic Station as well as for activities ongoing at the Yankee Rowe, Trojan and Rancho Seco nuclear units (56).

TLG applied Department of Energy standards (57) to assess the decommissioning of Peach Bottom; an NRC licensed generating station. TLG's studies relied on dated and internally created documentation, i.e., *Guidelines for Producing Commercial Nuclear Power Plant Decommissioning Cost Estimates.*" (58)

The *Project Cost Engineers' Handbook*, used by TLG for decommissioning studies at Peach Bottom, is twenty-one years old and does not incorporate advances made by the nuclear industry since 1984.

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56 Pa PUC, PP&L's Response to Interrogatories of Environmentalists, Q&A 155, Set 3, TLG, May 19, 1997.

57 The DOE standards were co-authored by TLG's founder, Thomas LaGuardia, in November 1980.

58 Published by the Atomic Industrial Forum: May, 1986.

TLG also failed to qualify and quantify the proportion, volume, curie content, and classes of low-level radioactive waste at Peach Bottom 2 and 3. The exact destinations for both LLW and HLW are unclear or not yet built.

No prudent financial officer operating outside of the nuclear industry would accept a funding formula and rate recovery strategy that relies on so many fluid caveats and assumptions. David Hayward, President of Hayward Consulting concluded that “nuclear plant owners have historically underestimated the cost of decommissioning nuclear power plants.” (59)

Exelon is in the same quandary as it was eight years ago: “However, at this time, the Company cannot predict future changes in decommissioning technology, decommissioning costs or nuclear regulatory requirements. Accordingly, the Company cannot anticipate future decommissioning cost requirements or the associated rate recovery levels.” (60)

Historically, Exelon and TLG have **grossly miscalculated decommissioning funding targets**. The data from the Unicom merger revealed the following discrepancies (61):

<u>Generating Stations</u>	<u>1985 Study/1995 Study</u>	<u>\$ Increase</u>
Limerick 1 & 2	\$272m/\$986m	\$714m
<b>Peach Bottom 2 &amp; 3</b>	<b>\$273m/\$947m</b>	<b>\$674m</b>
Salem 1 & 2	\$271m/\$701m	\$430m

59 *Public Utilities Fortnightly*, “Plant Valuation: Book Value and Beyond”, September 1, 1999, p. 58.

60 Pa PUC, “Q. & A. 157”, PP&L’s Response to Interrogatories of the Environmentalists, Set 3, Dated May 19, 1997.

61 All of the referenced studies were conducted by TLG Industries (TLG). ComEd’s net nuclear decommissioning costs **have almost doubled** from \$3,089 million in 1990 to \$5,426 million in 1999 (Pa PUC, PECO Energy’s Response to Eric Epstein -I-4, 1999.)

The Nuclear Regulatory Commission has only recently begun investigating whether or not to place limits on where, what, and how licensees can invest moneys raised through state ratemaking protocols (10 CFR 20.1403(d), NUREG-1757, Volume 1, Section 17.8).

Exelon must propose a concrete option for the current state of underfunding. The current Indirect and Direct License Transfer proposals are occurring when the Company has reported a “temporary shortfall in NRC funding levels...” Simply put, Exelon must qualify their plans to meet their decommissioning obligations:

Ultimately, when decommissioning activities are initiated, if the investments held by Generation’s nuclear decommissioning trusts are not sufficient to fund the decommissioning of Generation’s nuclear plants, Generation may be required to identify other means of funding its decommissioning obligations. (62)

In the instant case, it is actually more prudent to **transfer Exelon decommission months to PSEG** to manage based on Exelon’s past trust fund performance.

For PSEG Nuclear, the amounts accumulated in the funds at the end of 2002 exceeded the amount needed to be collected by that date to be consistent with the formulas in 10 CFR 50.75(c). The PSEG Nuclear fund is presently fully funded with no further collections through the state regulatory process anticipated. For the present Exelon Generation share, the amounts accumulated in the funds at the end of 2002 also exceeded the amount needed to be collected. (63)

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62 Exelon Annual Report 2003, p. 33.

63 Decommissioning Funding Assurance, Applications for Approval of the Direct License and Indirect License Transfers of Facility Operating Licenses and Conforming Amendments of Exelon Generation Company, LLC and PSEG Nuclear LLC, at Peach Bottom Atomic Power Station, Units 2 and 3, [Docket Nos. 50-277 and 50-278] (MLO50670664), pp. 4-5.



The NRC must reexamine the assumptions embedded in AmerGen's decommissioning savings projections, and reset decommissioning "targets" to be consistent with performance levels since 1999. In addition, the Commission needs to reexamine several outdated cost indices, i.e., LLW and HLW disposal cost factors are based on outdated and incorrect information in the "latest version [1999] of NUREG -1307."

Moreover, the NRC must await Internal Revenue Service rulings on Section 486 (a) of the tax transfer status of PSEG's qualified and non-qualified decommissioning funds, before approving the license transfers. The NRC needs to also consult with the State of New Jersey to determine who, i.e., New Jersey rate payers or Exelon, will receive the proceeds from PSEG's non-qualified decommissioning trusts.

### **Contention 11:**

**The transfers require a proposed amendment to accommodate the changes in the design and licensing basis, plant configuration, and operation of Peach Bottom 2 and 3 as a result of Exelon's compliance with the Environmental Protection Agency's 316 (b) mandate for power plants.**

The newly effective Federal regulations for Section 316 (b) of the Clean Water Act for Phase II facilities, "require[s] that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact."

Exelon must submit a compliance filing by **September 7, 2005** to the the Pennsylvania Department of Environmental Protection designating the Company's preferred alternative to abate the impingement and entrainment of aquatic species on the Lower Susquehanna River.

Peach Bottom Atomic Power Stations (PBAPS 2 & 3) are 1,065 MWe+ boiling water reactors manufactured by General Electric and relicensed until 2034. The plant has been a large consumer of water on the Lower Susquehanna since it began operating in 1974. Peach Bottom-2 & 3 routinely returns water to the River at temperatures in excess of 110 degrees. It is not uncommon for the plants to discharge chlorinated water (necessary to minimize bacterial contamination of turbines) or Clamtrol (chemical agent used to defeat Asiatic clam infestation) directly into the River.

The Peach Bottom Atomic Power Station uses and treats potable water from the Susquehanna River. The average daily usage is anywhere from 280,000 to 360,000 gallons per day.

On August 30, 2002, high differential pressures on the circulating water intake screens forced the manual shut down of Peach Bottom. "The problem was caused by a sudden surge in the amount of fish (Gizzard Shad) that entered the intake canal and clogged the screens. Unit 3 power was returned to 100 percent following cleaning of the circulating water screens and restating of the 3'A' circulating water pump." (64)

On July 9, 2004, the Environmental Protection Agency (EPA) issued the Final Phase II rule implementing Section 316(b) of the Clean Water Act. The first national standards for reducing fish kills at existing plants, "established requirements for reducing adverse environmental impacts from the entrainment and impingement of aquatic organisms living near power plants." (65)

Millions of fish, fish eggs, shellfish and other organisms are sucked out of the Lower Susquehanna River and killed by Peach Bottom each year. Now, large water consumers, including nuclear power plants, are compelled to document mortality rates and identify species of aquatic life affected by water intakes. Power plants have the option of implementing fish-protection measures such as screens with fish return systems or traveling screens with backwash devices.

A former Peach Bottom nuclear plant employee said he was "sickened" by the large numbers of sport fish he saw sucked out of the Susquehanna. "When the water comes in, fish would swim in through tunnels and swim into wire baskets," said the man who lives in southern Lancaster County and asked that his name not be used. "There were hundreds and hundreds of fish killed each day. Stripers and bass and walleye and gizzard shad and all kinds of fish. It took a forklift to carry them out." (66)

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64 Nuclear Regulatory Commission, Inspection Report, -50-277/02-05; 50-278/02-05.

65 Exelon **Annual Report 2003**, Financial Information, p. 187.

66 Ad Crable, *Intelligencer Journal*, January 15, 2005.

It is possible that the Department will grant Exelon's request for a thermal variance from surface water quality standards (SWQS) for heat and temperature pursuant to Section 316 (a) of the Federal Clean Water Act. However, Exelon must address 316 (b) compliance at Oyster Creek, Salem, Quad Cities and the Peach Bottom Atomic Power Station. "At this time, Exelon cannot estimate the effect that compliance with the Phase II rule requirements will have on the operation of Generation's generating facilities and its future results on operations, financial condition and cash flows." (67)

The NRC must examine the financial impact that 316 (b) compliance will have on the Direct and Indirect License Transfers, and require a license amendment to accommodate the changes in the design and licensing basis, plant configuration, and operation of Peach Bottom 2 and 3.

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67 Exelon, 2004 Annual Report, pp. 98-99.

## VII. CONCLUSIONS

For the reasons discussed above, the proposed Indirect and Direct License Transfers will:

(1) Have an adverse impact on the operation of the referenced nuclear stations;

(2) Adversely affect the managerial or technical qualifications of Exelon, the operator of the nuclear stations;

(3) Impair Exelon's financial qualifications as the owner and operator of the nuclear stations; and,

(4) Will require a license amendment to address compliance upgrades mandated by the Section 316 (a) of the Federal Clean Water Act.

Accordingly, the proposed Indirect and Direct License Transfers will result in undue risk to public health and safety. The proposed Application will be inimical to the common defense and security of the United States of America. In its current form, the Indirect and Direct License Transfers of Peach Bottom 2 and 3 violates the Atomic Energy Act, NRC regulations and the Clean Water Act.

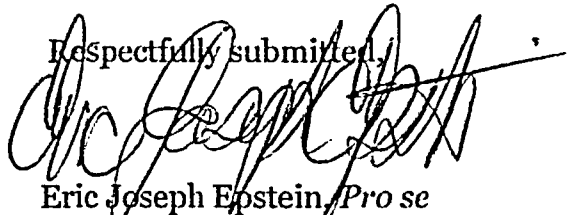
## VII. Remedies

Exelon's application does more than request approval of Indirect and Direct License Transfers, and would directly affect the actual operation of the facilities involved in any substantive way.

A sense of fair play and fiduciary obligation necessitate that the NRC provide the following relief:

- 1) Convene a public hearing under the auspices of the Atomic Safety and Licensing Board in the Peach Bottom area to examine the Indirect and Direct License Transfers;
- 2) Grant Mr. Eric Joseph Epstein Intervener Status; and,
- 4) Admit Mr. Epstein's contentions based on the above evidence.

Respectfully submitted,



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DATED: August 21, 2005

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Attention: Rulemakings and Adjudications Staff

## **Exhibit 1**

### **Corporate Reputation Ratings: Electric Power Industry**

*Rating release date: 9 June 2004*

FPL Group, Inc. (FPL)	AA
The Southern Company (SO)	AA
American Electric Power, Inc. (AEP)	A
Dominion Resources, Inc. (D)	A
Duke Energy Corporation (DUK)	A
Progress Energy, Inc. (PGN)	A
Calpine Corporation (CPN)	BBB
Entergy Corporation (ETR)	BBB

**Exelon Corporation (EXC)** BBB

PPL Corporation (PPL)	BBB
TXU Corporation (TXU)	BBB
Consolidated Edison, Inc. (ED)	BB
Edison International (EIX)	BB
PG&E Corporation (PCG)	BB

**Public Service Enterprise Group  
Incorporated (PEG)** BB

Xcel Energy Inc. (XEL)	BB
CMS Energy Corporation (CMS)	B
FirstEnergy Corp. (FE)	B

*\* Reputation Strength Rating*



# **Electric Power Industry**

*Rating release date: 9 June 2004*

## **Reputation Methodology**

- RRC employs a rigorous methodology in all phases of the rating process. Our process is based on years of time-tested methodologies in the research survey and credit analysis industries. The assignment of Reputation Strength Ratings (RSRs) is performed by a Rating Committee composed of experts in research methodology, financial analysis and the specific industry under investigation. While quantitative metrics are heavily employed as part of the rating process, it is important to understand that such data is simply a starting point for the rating process. Qualitative input from members of the Rating Committee as well as the financial analysts or other industry experts surveyed is a critical, and often defining, element in the assignment of the final reputational rating.

Companies selected for inclusion in each industry study are identified through a process of merging/purging a variety of lists and/or market indices identifying leading companies in that industry. Additionally, RRC's industry experts identify companies for inclusion in the study that may be smaller in terms of market capitalization but are judged to have potential impact on the industry 'landscape' by the industry experts.

Interviews are conducted among senior executives within the industry and financial analysts specializing in that industry. Respondents are asked to rate a subset of companies in the industry based on their level of familiarity with each company. The survey administered to each group differs but is comprehensive in nature and based on decades of experience in reputational research at Opinion Research Corporation and the input of Professor Stephen A. Greyser of the Harvard Business School (an RRC Board member). All interviews use a telephone survey methodology with strict adherence to rigorous interviewing protocols and CASRO (Council of American Survey Research Organizations) guidelines. Respondents are identified using a multi-stage screening process to ensure appropriateness for inclusion in the survey. All respondents are randomly selected for the interview using sample frames recognized as objective. On average, interviews among senior executives take 25 minutes to complete with interviews among financial analysts taking upwards of one hour. Financial analysts are given an honorarium in exchange for their participation in the study.

A more comprehensive explanation of the methodology is available with the purchase of each industry report.

## Reputation Ratings Definitions

### **AAA**

A company reputation that is rated **AAA** is of the highest quality and carries the smallest degree of reputation default risk. Companies with reputations in this category score highly across all reputation dimensions from all constituencies and are viewed as very solid and stable. Companies whose reputations are rated **AAA** are able to deploy their reputational strength as a powerful weapon with which to achieve objectives in strategic diversification, competitive positioning and overall business expansion. Companies in this rating category also enjoy extraordinary support in times of controversy and are easily able to charge a premium to market for products and services offered.

### **AA**

A company reputation that is rated **AA** is of high quality. Although companies with reputations in this category score well across all reputation dimensions from all constituencies, the strength across certain of those dimensions may not be as great as those of the highest quality. Companies whose reputations are rated **AA** are able to deploy their reputational strength in support of business expansion efforts but, unlike companies whose reputations are **AAA**-rated, the marketplace will not take their success in these endeavors for granted. Companies in this rating category will receive support in times of controversy but not to the same degree or for the same length of time as companies in the **AAA** category. Companies with **AA**-rated reputations may be able to charge a premium to market in some categories of products and services, but lack the leverage to do so in all.

### **A**

A company reputation that is rated **A** is of upper-medium quality and possesses many favorable reputation characteristics. Although companies with reputations in this category score well across many reputation dimensions from many constituencies, fundamentals may suggest weakness, either in certain dimensions or within certain constituencies. Companies whose reputations are rated **A** are able to deploy their reputational strength selectively in support of business expansion and other strategic efforts. Leveraging their reputation for business expansion efforts will arouse interest among potential and existing markets, but success will not be assumed. Companies in this rating category will receive a level of support in times of controversy that is commensurate with the visibility of their efforts to remedy the situation. These companies may be able to charge a premium to market for their products or services, but only in particular market niches as opposed to across the market as a whole.

## Reputation Ratings Definitions

### **BBB**

A company reputation that is rated **BBB** is of medium quality. Companies with reputations in this category score well on many reputation dimensions or from many constituencies, but show weakness in or from others. Companies whose reputations are rated **BBB** may not be able to use their overall reputation as a competitive tool, but may nonetheless be able to differentiate themselves along one or two dimensions. Companies in this rating category will receive limited support in times of controversy, support that will be gauged by highly public and visible corporate actions. Companies with **BBB**-rated reputations are unable to leverage their names to achieve premium pricing and must depend on specific market conditions (*e.g.*, limited supply, first mover advantage) to charge a premium to market for their products or services.

### **BB**

A company reputation that is rated **BB** is of lower medium quality. Companies with reputations in this category show weakness across many reputation dimensions and from many constituencies. Companies whose reputations are rated **BB** will need a dramatic shift in their current perception to be successful future contenders in their industries. Companies with **BB**-rated reputations will not be able to count on their historical reputations as a source of support in times of controversy nor will they be able to price their products or services at a premium to market.

### **B**

A company reputation that is rated **B** is of low quality. Companies with reputations in this category score poorly across most reputation dimensions and from most constituencies, and the likelihood of **reputational distress** is high. Companies whose reputations are rated **B** are unable to leverage their reputation in times of controversy and are likely to have to price their products and services at a discount to market.

### **CCC**

A company reputation that is rated **CCC** is of poor quality. Companies with reputations in this category score poorly across almost all reputation dimensions and from all constituencies. Companies whose reputations are rated **CCC** are in **reputational distress**. No significant reputational advantages accrue to companies in this category.

## Reputation Ratings Definitions

### **CC**

A company reputation that is rated **CC** is of very poor quality. Companies with reputations in this category show weakness across all reputation dimensions and from all constituencies, and are on the verge of **reputational default** or have entered the early stages of such default. **Reputational rehabilitation** is, however, still possible. No reputational advantages accrue to companies in this category.

### **C**

A company reputation that is rated **C** is of the poorest quality. Companies with reputations in this category are in outright **reputational default** and have no meaningful hope of reputational rehabilitation. No reputational advantages whatsoever accrue to companies in this category. In fact, the reputations of these companies carry significant negative connotations.