

**BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

August 15, 2005 (4:30pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**Eric Joseph Epstein's, *Pro se*,
Request for a Public Hearing on
the Application for Approval of the
Indirect License Transfer of
Three Mile Island Nuclear Station, Unit 1
Facility Operating License No. DPR-50;
NRC Docket No . 50-289**

August 15, 2005

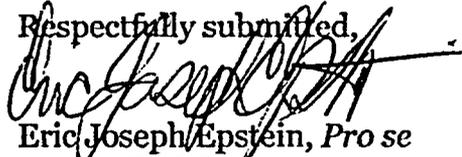
Secretary of the U.S. Nuclear Regulatory Commission
U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Dear Secretary:

Enclosed please find for filing an original of "Eric Joseph Epstein's, *Pro se*, Request for a Public Hearing on the Application for Approval of the Indirect License Transfer of Three Mile Island Nuclear Station, Unit 1 Facility Operating License No. DPR-50 NRC Docket No . 50-289" pursuant to 52 Pa. Code S 5.71, 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,



Eric Joseph Epstein, *Pro se*
4100 Hillsdale Road
Harrisburg, PA 17112
(717)-541-1101 Phone
(717)-541-5487 Fax
ericepstein@comcast.net

DATED: August 15, 2005

Table of Contents

Table of Contentspp. 2-4

I. Introduction.....pp. 5-11

II. Timing.....p. 12

III. History of Proceeding.....pp. 13-16

IV. Standingpp.17-18

V. Precedent.....pp. 19-20

VI. Contentions.....p. 21

Contention 1:
As a result of the merger, AmerGen may become owned, controlled or dominated by foreign interests; and, the management committee of AmerGen may change as a result of the "virtual divestiture" and "virtual ownership of portions of Three Mile Island.....pp. 22-25

Contention 2:
Exelon's auction manager, who was contracted to "virtually divest" the ownership of AmerGen, may be owned, controlled or dominated by foreign interests.....pp. 26-27

Contention 3:

AmerGen will not continue to own, operate, and market power from Three Mile Island-1.....pp.27-28

Contention 4:

The technical qualifications of AmerGen will be affected by the merger.....pp. 29-30

Contention 5:

The AmerGen organization in place at Three Mile Island is overworked and understaffed as demonstrated by their Corrective Actions Program.....pp. 31-32

Contention 6:

The new Management Model: the Exelon Way, may result in the “downsizing” of AmerGen personnel or reassignment to nuclear stations involved in the proposed merger.....pp. 33-35

Contention 7:

AmerGen's programs, procedures, and conduct of operations will be altered for these facilities as a result of the merger.....pp. 36-39

Contention 8:

AmerGen's training programs, procedures, and conduct of operations for Emergency Planning are in violation of federal regulations.....pp. 39-41

Contention 9:

The proposed merger and proposed transfers will affect the financial qualifications of AmerGen as the licensed owner and operator.....pp. 41-43

Contention 10:

The proposed transfer does affect the existing contingency funding arrangement since it was not modified from the initial \$65 million joint commitment made by British Energy and PECO Energy.....pp. 44-46

Contention 11:

Decommissioning Funding Assurance will be adversely affected as proposed by the Indirect License Transfer, and AmerGen's decommissioning savings levels at Three Mile Island remain inadequate.....pp.47-50

Contention 12:

AmerGen will not continue to maintain the financial protection required by 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," and the property insurance required by 10 CFR 50.54; "Conditions of licenses: paragraph (w), for Three Mile Island," and these arrangements are adversely impacted by the proposed license transfers.....pp. 51-52

VII. Conclusions.....p. 53

VIII. Remedies.....p. 54

I. Introduction

The Nuclear Regulatory Commission (NRC) approved and opted for a course of inaction regarding Exelon's Indirect License transfers of AmerGen plants as submitted to the U.S. Nuclear Regulatory Commission Document Control Desk on March 3, 2005. The approval is based on an undocumented "threshold review of the facts and circumstances set forth" in Exelon's letter of March 3, 2005. The "letter, dated July 6, 2005, documents the conclusion of NRC activities related to the indirect license transfer requests for the subject plants".

However, based on the Application for Approval of Indirect License Transfers and AmerGen's Response contained in their May 24, 2005 NRC request for "Additional Information for License Transfer Applications," the current Indirect License Transfer is fatally flawed and requires a thorough and transparent hearing to address numerous outstanding issues associated with safe operation of Three Mile Island Unit-1 (TMI-1).

The five core issues and sub issues identified in AmerGen's Application of March 3, 2005, are deficient on their face value. Serious questions remain outstanding relating to: 1) The potential for adverse impact on the Three Mile Island Nuclear Generating Station; 2) Further erosion of managerial or technical qualifications; 3) Impairment of AmerGen's financial qualifications as the owner and operator of TMI-1; and, 4) Possible influence exerted by a foreign ownership, control or domination of Three Mile Island.

Presently, the proposed Indirect License Transfer will result in undue risk to public health and safety, could be inimical to common defense and security, and is 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 License Transfer of Three Mile Island-1. (2)

¹ 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.

² There are two other AmerGen plants involved the Indirect License transfer.

Clinton is a 930 megawatt (MWe) boiling water reactor (BWR) designed by General Electric. The plant came on line in April, 1987 and cost Illinois Power (and the Soyland Power Coop) \$4.25 billion to build. It was sold to AmerGen for \$20 million in 1999.

Oyster Creek is a 619 MWe BWR designed by General Electric that came on line in December 1969. The plant is also owned and operated by AmerGen. Oyster Creek was purchased by AmerGen on September 19, 1999 for \$10 million or \$16 per megawatt of generating capacity.

Three Mile Island Unit-1 is a 819 pressurized water reactor (PWR) supplied by Babcock and Wilcox. The plant came on line in September 1974 at a cost of \$400 million. TMI was sold for one-fifth of book value, i.e., \$99/\$512 million, in 1999 to AmerGen. The sale of TMI-1 was the first sale of a commercial nuclear power plant, and since 50% of AmerGen was held by a foreign corporation, the NRC stipulated several provisions to protect national security (Refer to NRC Order Approving Transfer for Three Mile Island 1, Nuclear Station, Unit 1, from GPU Nuclear et al, to AmerGen Energy Cooperation, LLC and Approving Conforming Amendment (TAC No. MA33070), April 12, 1999).

However, these safeguards predate 9/11 terrorist attacks and do not address the challenges created by the shutdown of airports around Three Mile Island. On October 17, 2001, due to an “credible threat” against Three Mile Island, the Harrisburg and Lancaster airports were closed for four hours, air travel was restricted in a 20-mile radius, a fighter jets were scrambled around TMI. (3) And in November 2002, the NRC released a two-paragraph e-mail from Joseph Furia, a commission inspector, who concluded that that the NRC should have been better prepared to respond to the Oct. 11, 2001, non-credible threat made against TMI.

³ Through the Freedom of Information Act, the *York Daily Record* (December 21, 2003) found a “twofold” challenge when a threat against Three Mile Island caused the Harrisburg and Lancaster airports to close for four hours: Air travel was restricted in a 20-mile radius and fighter jets were scrambled around TMI.

Officials struggled with who to call first, next and last. Officials struggled with notifying state and local officials. And officials struggled with when and whether to notify the public...One NRC official had difficulty reaching senior management at TMI...No one contacted enforcement officials in York County about the threat...[PEMA] officials had to push plant officials to staff their emergency operations facility.

On September 5, 2002, Exelon announced that it was putting its share (50%) of AmerGen up for sale. British Energy's (BE) share is also up for sale. British Energy of Edinburgh, Scotland owned the plant in a joint venture called AmerGen. Exelon and British Energy each owned half of AmerGen which consists of the Clinton Power Station in central Illinois, Three Mile Island Unit 1 near Harrisburg, Pa., and the Oyster Creek Generating Station on the New Jersey shore.

AmerGen was formed in 1997 as a joint venture between PECO Energy Company and British Energy. PECO merged with Unicom of Chicago in 2000 to form Exelon.

BE was the first foreign company to buy a stake in an American nuclear power plant. The Company survived a controversial restructuring financed by the British government. Company losses of \$800 million in 2001 led the government to order the sale of BE's American assets.

British Energy sold its stake in AmerGen to Exelon Generation on December 22, 2003. BE received about \$277 million prior to various adjustments, i.e., BE paid a break fee of \$8.29 million to FPL Group following the termination of the original sale agreement between BE and FPL. Exelon exercised its right of first refusal and matched FPL's offer to become the sole owner of the AmerGen plants.

TMI-1's present book value is estimated to be between \$600 and \$650 million while its property assessed value is \$18.5 million.

Clearly, the history and terms of the sale, resale, and proposed Indirect License Transfer are complex and have involved General Public Utilities (GPU) (now FirstEnergy) Florida Power Light Group, and British Energy, a foreign held corporate organization forced to reorganize.

Mr. Epstein's request for a federal register notice and public hearings are nothing less than was afforded reactor communities in South Texas and Connecticut. Moreover, since the hearing scheduled in New Jersey has been pushed back to December 2005 and PUC evidentiary hearings in Pennsylvania have been delayed by a month, the immediate publication of a federal register notice will not affect or delay the proposed merger between Exelon and PSEG.

The Nuclear Regulatory Commission's recent decision relating to the Indirect License Transfers and internal realignment of Millstone 1, 2 & 3 clearly demonstrate that the agency is applying a sliding and fluid threshold regarding federal noticing and public hearings for Direct and Indirect License Transfers. (4)

The Millstone Nuclear Plant was purchased by Richmond, Virginia-based Dominion Resources, Incorporated from Northeast Utilities and Connecticut Power and Light on August 7, 2000. In March 2001, the sale was consummated for \$1.3 billion or \$655 per megawatt of generating capacity. The license transfer involved two American-based companies.

The Indirect License Transfer involved Dominion Nuclear Connect Inc. (DNC), an indirect subsidiary of Dominion Resources (DRI), and the ultimate partner to DNC. The proposed changes are the result of a proposed corporate realignment and bear similar trademarks to the proposed Indirect AmerGen and Exelon internal license transfers.

⁴ The Application was submitted on October 8, 2003. The NRC published a "Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring Opportunity for a Hearing," the U.S. Nuclear Regulatory Commission (the Commission or the NRC is considering the issuance of an order under 10 CFR 50.80, and the NRC offered a request for public hearing by December 2, 2003). (Federal Register: November 12, 2003 (Volume 68, Number 218), Pp. 64131-64132.)

As recently as July 25, 2005, the NRC publicized a federal notice of the “transfer of ownership of approximately 81 percent of the stock of Texas Genco’s indirect parent company, Texas Genco Holdings Inc. (TGN), from CenterPoint Energy, Inc. (CenterPoint Energy) to GC Power Acquisitions of LLC (GC Power). At the South Texas Project 1 & 2, Texas Genco is the indirect subsidiary of CenterPoint Energy.” (5)

South Texas 1 and 2 are 1,250 MWe power water reactors that came on line in August 1988 and June 1989. Their initial ownership and operations were split between Houston Lighting & Power Co. (30.8%), City Public Service Board of San Antonio (28%), Central Power and Light Co. (25.2%) and the City of Austin, Texas (16%). Unlike the numerous states, countries, and regulatory boards involved with approving the sales and transfers of Three Mile Island-1 the South Texas plant remains owned and operated by Texas entities, yet subject to a federal register posting:

The transaction would result in the indirect transfer of control of Texas Genco’s 30.8 percent undivided ownership in STP, Units 1 and 2, Texas Genco a corresponding 30.8 percent interest in STP Nuclear Operating Company (STPNOC), a not-for-profit Texas cooperation, which is the licensed operator of STP, Units 1 and 2. (6)

In fact, the NRC began a parent trial of public announcements dating back to 2003. (7)

5 The June 28, 2005 application requests the consent of the NRC to the proposed indirect transfer and corporate restructuring of control of the STP, Units 1 and 2, licenses to the extent held by Texas Genco and is a corporate restructuring plan.

6 Federal Register: November 17, 2004 (Volume 69, Number 221), pp. (67368).

7 Federal Register: November 15, 2003 (Volume 68, Number 214), pp. (62641-62642).

The Indirect License Transfer request of AmerGen's nuclear generating stations warrant the same level of scrutiny as those required at South Texas and Millstone. Moreover, a sense of fair play, regulatory consistency, and fiduciary accountability necessitate that the NRC publish a federal register notice giving the public an opportunity to comment on the proposed AmerGen Indirect License Transfer at Three Mile Island-1.

Furthermore, the Administrative Licensing Judge in the present proceeding before the PA PUC (Docket No: A-110550F0160) excluded nuclear generation, decommissioning, waste isolation, and security and safety issued from the Joint Applicants (PECO Energy and PSEG) request for approval to reorganize TMI-1 and acquire Peach Bottom 1, 2 & 3.

If the NRC opts not to act and publish a notice of a public hearing in the federal register, the residents in the Three Mile Island area will have been deprived of due process and denied an opportunity to comment on the largest energy merger in the nation's history.

II. Timing

The “letter, dated July 6, 2005, documents the conclusion of NRC related to the indirect license transfer requests for the subject plants” arrived at Mr. Epstein’s residence as part of NRC’s Three Mile Island service list. There were no appendices, exhibits or supporting documents to defend or explain this oblique decision.

Mr. Epstein’s request is timely based on 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:

(b) Timing. Unless otherwise provided by the Commission, the request and/or petition and the list of contentions must be filed as follows:

(i) Sixty (60) days after publication of notice on the NRC Web site at <http://www.nrc.gov/public-involve/major-actions.html>, or

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.

Although the NRC Letter authored by Mr. George Dick, was dated on July 6, 2005 and documented “the conclusion of NRC related to the indirect license transfer requests for the subject plants,” Mr. Epstein did not receive the letter until July 20, 2005. Epstein’s request is consistent with the deadlines established in **§ 2.306 Computation of time:**

The period allotted for the recipient's response commences upon confirmation of receipt under § 2.305(e)(3) or (4), except that if a document is served in person, by courier, electronic transmission, or facsimile, and is received by a party after 5 p.m., in the recipient's time zone on the date of transmission, the recipient's response date is extended by one (1) business day.

Mr. Epstein’s requests are timely.

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 AmerGen assets.

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 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 AmerGen 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 third unaffiliated third parties under three- and fifteen-year contracts; and retirements that will reduce megawatt-for-megawatt the amount of capacity that is divested.

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 to Exelon provided to the NRC on May 24, 2005. The NRC submitted a list of follow-up questions requested by the NRC relating to the Indirect License Transfers. Mr. O'Neill provided a proprietary version to Mr. Epstein with confidential financial information.

On June 30, 2005 FERC approved the Joint Applicant's merger proposal without obtaining specified information relating to the "virtual divestiture" of AmerGen 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 AmerGen nuclear stations located in Pennsylvania and New Jersey.

The NRC Letter was signed by Mr. George Dick, dated on July 6, 2005, and documented "the conclusion of NRC related to the indirect license transfer requests for the subject plants," Mr. Epstein did not receive the letter **until July 20, 2005**. There were no appendix, exhibits or supporting documents to defend or explain this oblique decision. (8)

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.

8 In fact, AmerGen's earlier request for an Indirect Transfer of NRC Materials License dated August 25, 2000 (Transfer of the Control of TMI Unit 1 Materials License Nos. 37-17257-02 and 37-30199-01) provided cursory data, and was based on a corporate structure in which British Energy owned 50% of AmerGen, LLC (Letter from Mark E. Warner, Vice President TMI-1 to U.S. NRC, Region, Nuclear Materials safety branch, "Request for Indirect Transfer of NRC Materials License").

And on July 25, 2005 Mr. Epstein notified Mr. Dick: "I plan to challenge the Indirect License Transfer of TMI-1 through the Letter. Could you please clarify the timing sequence under **§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions**. I am unclear as to the timing restrictions associated with a hearing request in this matter."

The NRC approved a course of inaction regarding Exelon's Indirect License Transfers of AmerGen plants as submitted to the U.S. Nuclear Regulatory Commission Document Control Desk on March 3, 2005. The approval is based on an undocumented "threshold review of the facts and circumstances set forth" in Exelon's letter of March 3, 2005. The "letter, dated July 6, 2005, documents the conclusion of NRC activities related to the indirect license transfer requests for the subject plants".

However, based on the on the Application for Approval of Indirect License Transfers, and AmerGen's Response contained in their May 24, 2005 correspondence to the NRC requesting "Additional Information for License Transfer Applications," the current Indirect License Transfer is fatally flawed and requires a thorough and transparent hearing to address numerous outstanding issues associated with safe operation of Three Mile island Unit-1. (TMI-1)

The five core issues and sub issues identified in AmerGen's Application of March 3, 2005 are deficient on their face value. Serious questions remain outstanding relating to: 1) The potential for adverse impact on the Three Mile Island Nuclear Generating Station; 2) Further erosion of managerial or technical qualifications; 3) Impairment of AmerGen's financial qualifications as the owner and operator of TMI-1; and, 4) Possible influence exerted by a foreign ownership, control or domination of Three Mile Island.

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

IV. Standing

Eric Joseph Epstein (“The Petitioner,” “Mr. Epstein” or “Epstein”) is a resident of Lower Paxton Township, Pennsylvania and lives and operates a business in “close proximity,” i.e., 12 miles northeast of Three Mile Island.

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.

V. Precedent

Normally, **section, § 2.328 Hearings to be public**, “Except as may be requested under section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission,” would apply Direct or Indirect or License Transfers. However, the NRC opted not to publish a federal register notice or afford the local community an opportunity to comment.

Mr. Epstein’s request is consistent with the Nuclear Regulatory Commission’s recent decision relating to the “Indirect License Transfers and internal realignment from Dominion Nuclear Connecticut, Inc. (DNC) , an indirect subsidiary of Dominion Resources (DRI), the ultimate partner of DNC. The proposed changes would result from a corporate realignment... .” The Application was submitted on October 8, 2003. The NRC published a “Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring Opportunity for a Hearing,” the U.S. Nuclear Regulatory Commission (the Commission or the NRC) is considering the issuance of an order under 10 CFR 50.80, and the NRC offered a request for public hearing by December 2, 2003. (See discussion **I. Introduction pp. 2-3**)

As noted earlier, this request for a public hearing on the Indirect License Transfer of Three Mile Island is consistent with the Nuclear Regulatory Commission’s recent decision relating to an Indirect License Transfer of the STP Nuclear Operating Company, et al. South Texas Project, Units 1 and 2; “Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing. The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an order under Section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR) approving the indirect transfer of Facility Operating License Nos. NPF-76 and

NPF-80 for South Texas Project (STP), Units 1 and 2, respectively, to the extent held by Texas Genco, LP (Texas Genco).” (See discussion I. Introduction pp. 2-3)

Mr. Epstein is simply seeking the same opportunity for the people who live, work and parent in the TMI-community that citizens in South Texas and Connecticut were afforded during indirect license transfers.

In the past, the NRC has scolded Exelon for abusing its authority and making premature and unilateral interpretations of corporate standing.

If this were simply a perfunctory matter, the Joint Applicants would have bypassed the application process and avoided spending the time, money, and resources associated with the filing process. Nor would the NRC have requested additional information relating to the Application. (9)

It is black letter law, and a cornerstone of American jurisprudence, that all Americans be treated equally under the law. The NRC should not be in the business of creating two classes of public: one entitled to a transparent and open process, while the other community is deprived of due process and public comment.

In short, the NRC’s determination violates the the spirit and intent of the Civil Rights Act of 1964 by arbitrarily segregating communities and providing preferential treatment based on whimsical and capricious standards of law.

9 Letter dated January 15, 2003, from Stuart A. Richard, Director, Projects Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, to Mr. John Skolds, Chairman and CEO, AmerGen energy Company, LLC, February 26, 2003.

VI. Contentions

The Proposed Indirect License Transfer merits 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) AmerGen will ^{not} continue to possess the technical and financial qualifications to own and operate these facilities ;

(2) AmerGen will, as a result of the merger, become owned, controlled, or dominated by a foreign corporation or government; and,

(3) The proposed Indirect License Transfer raises significant safety and regulatory issues . (10)

10 Three Mile Island-1 was the first and only reactor license transferred to a corporation with substantial foreign ownership. At the time of the transfer, the NRC acknowledged that, "The Commission has limited experience with license transfers applications that involve the issues of ownership, domination, or control."

NRC Order Approving Transfer for Three Mile Island 1, Nuclear Station, Unit 1, from GPU Nuclear et al, to AmerGen Energy Cooperation, LLC and Approving Conforming Amendment (TAC No. MA3307), April 12, 1999. p. 13.

There is no evidence that suggests that the Commission has gained additional experience related to this complex issue although the risks and variables have greatly increased since 1999. Moreover, the possibility for multiple avenues of foreign penetration, i.e., auction contractor and divestiture, suggest that a in-depth inquiry is necessary to examine the implications of the License Transfer.

Contention 1:

As a result of the merger, AmerGen may become owned, controlled or dominated by foreign interests; and, the management committee of AmerGen may change as a result of the "virtual divestiture" and "virtual ownership" of portions of Three Mile Island.

As previously discussed on pp. 8-10 , the merger between PSEG and Exelon is contingent upon the concept of "virtual divestiture" (11) which confers "virtual ownership" on the purchaser(s) of AmerGen's' energy assets. In order to provide 2,600 MWe of nuclear mitigation, Exelon and AmerGen 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 Three Mile Island-1 and Oyster 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. (12)

Exelon and AmerGen 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.

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

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

There is a distinct possibility that portions of Three Mile Island and Oyster Creek'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 Three Mile Island or Oyster Creek.

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" Three Mile Island or Oyster Creek would have on foreign ownership and operation. There are no provisions in the Indirect License Transfers to prevent control or domination by foreign interests during the "virtual divestiture," or the management committee of AmerGen 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.

When TMI's license was initially transferred from General Public Utilities (GPU) to AmerGen the NRC was "seeking public comment on A Standard Review Plan (SRP) on Foreign Ownership, Control, or Domination." The SRP did not contemplate or discuss "virtual divestiture."

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."

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. (13)

The NRC has also 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.” (14)

The NRC can not even apply the foreign ownership bar to the current AmerGen management structure since it was designed with and by British Energy personnel.

The impact of the proposed divestiture depends on the identification of nuclear units owned and operated by AmerGen and 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 (15) on the market share of the purchaser are removed.

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

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

15 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.**

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)

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. *Id.* at 4, 19, 25, 26. A subsequent analysis based on the purchaser of the asset may be required and additional mitigation may be necessary. (16)

The NRC must investigate the impact of “virtually divesting” Three Mile Island-1 and Oyster Creek prior to generating an Indirect License Transfer. Based upon FERC Order of July 1, 2005, TMI-1 will be divested because Exelon is required to divest nuclear units with the “**highest value.**” (p. 141)

In addition, the NRC must compel Exelon and AmerGen to identify the purchaser(s) of Oyster Creek and TMI’s generating assets in order to determine. 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 AmerGen to identify how much of the Three Mile Island 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)

16 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 AmerGen, 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. (17) 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 Figure 1 and Table 1 of Exelon's responses to the NRC dated May 24, 2005, i.e. "Additional Information Regarding License Transfer Applications." The two finalists (the other manager has yet to be identified) chosen to auction AmerGen's energy assets were selected from a 'pool, of eight companies." (18) 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." (18) 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."

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

18 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.

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 AmerGen assets to unidentified buyers. Based on the TMI's community negative experience with the foreign ownership from British Energy, it is only fair that the community be given the ability to discuss and question the "middle man" contracted to sell portions of TMI.

Contention 3:

AmerGen will not continue to own, operate, and market power from Three Mile Island-1 .

Exelon and AmerGen have **made material false statements** in their Application of March 3, 2005 by stating that "AmerGen will continue to own, operate, and market power from Three Mile Island-1." 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 and AmerGen 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. (19)

¹⁹ 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 AmerGen misrepresented its ownership, operation and marketing before the NRC. In any either event, **AmerGen 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 AmerGen to identify which nuclear units will be divested, what percentage of the units will be divested, and identify the purchaser(s) of the assets.

AmerGen has made misleading or material false statements contained in the March 3, 2005 Application on page 3, C. Financial Qualifications of AmerGen. 1. Operating Financial Qualifications, paragraph 2: “AmerGen will continue to own, operate, and market power from the referenced stations.”

Either Exelon has **misrepresented its ownership, operation and marketing** before the Federal Energy Regulatory Commission and the Pennsylvania Public Utility Commission, or AmerGen has **misrepresented its ownership, operation and marketing before the NRC.**

20 Letter to Secretary Magalie R. Salas, Secretary FERC, from Applicants, August 1, 2005., p. 4 **A. Auction Manger.**

Contention 4:

The technical qualifications of AmerGen will be affected by the merger.

AmerGen's present technical qualifications have been impeached by the Institute for Nuclear Power Operations and the Nuclear Regulatory Commission. The **status quo** will not guarantee technical qualifications that **did not exist prior to the Indirect License Transfer**. Moreover, depending on who or what purged AmerGen's "virtually divested" assets, there are no guarantees that AmerGen possess the requisite capabilities to operate an additional corporate structure 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.

On May 11, 2004, the NRC issued an inspection report about operator training problems at TMI. Among the litany of problems, two of the eight crews of operators failed their simulator examinations. The simulator examinations place the crews in a mock control room where they are tested on their ability to respond to simulated accidents such as steam generator tube ruptures, pipe breaks, and power outages. Two of the eight crews failed.

The annual simulator testing is done to gauge whether the operators could perform as needed during an actual event.

Twenty-five percent of the operating crews demonstrated their inability to protect the public in the event of an actual emergency. In other words, if another TMI-2 type-accident had happened, there was a 1 in 4 chance that the operators would once again be unable to prevent core damage.

This issue need to be addressed in the Applicant's request for an Indirect License Transfer.

Training problems are not limited to reactor operators. (20) The NRC must review the systematic problems associated with TMI's training program, and insert proactive amendments to the Indirect License Transfer to assure TMI is not placed on probation again.

20 On July 29, 2005, the NRC a issued White Violation relating to another **staffing deficiency** at Three Mile Island where "approximately 50% of the emergency responders," including "key responders" were "overdue" for their annual training for "an approximate five month period."

Contention 5:

The AmerGen organization in place at Three Mile Island is overworked and understaffed as demonstrated by their Corrective Actions Program.

Staffing reductions at TMI have gone beyond cutting the “fat” from the organization, and labor reductions have sliced into “muscle.” For a concise listing of staff reductions at Three Mile Island since the License was transferred from GPU to AmerGen in 1999, please refer to NRC Order Approving Transfer for Three Mile Island-1, Nuclear Station, Unit 1, from GPU Nuclear et al, to AmerGen Energy Cooperation, LLC and Approving Conforming Amendment (TAC No. MA3307), April 12, 1999 (Also refer to **Contention VI.**)

UCS pursues two paths to guard against safety problems caused by excessive staffing reductions. The first is the work hour rule... (10 CFR Part 26) that is intended to prevent surviving staff members from working so many hours that their performance is impaired from fatigue.

The second is to monitor the problem identification and resolution (PI&R) inspections conducted by the Nuclear Regulatory Commission (NRC). The PI&R inspection results provide insights into problems potentially caused by insufficient staffing. For example, the PI&R inspections may show that a site is not doing a good job of identifying problems. If so, a potential cause of that problem could be staffing cutbacks that decreased the effectiveness of the preventative maintenance program.

As another example, the PI&R inspections may show that a site has a large backlog of identified problems awaiting resolution. In that case, a potential cause could be staffing cutbacks that left too few maintenance personnel to handle the needed work load.

To try to gain insights into the effect of staffing reductions on safety performance at Three Mile Island Unit 1, the Union of Concerned Scientists reviewed all of the NRC inspection reports dating back to November 1999 that contained the word “PI&R” and/or the word “backlog.” (See Exhibit 1)

Based upon the UCS review, the corrective action program problems at Three Mile Island have been a “recurring event.” The UCS review at Three Mile Island reveals “some evidence” that “suggests insufficient staffing may be a factor.” For example, the NRC finding documented in the May 11, 2004 inspection report of “issues not being entered into the TMI CAP” could reflect a work load problem. “On the other hand, the NRC finding from the February 14, 2005 inspection report about lowering the threshold for raising issues suggests that work load concerns are not a limitation.”

With the addition of “virtual divestiture” and “virtual ownership,” AmerGen needs to establish clear management control and effectuate lines of authority and communications between all of the internal and external organizational units involved in the management, operation, and ownership of Three Mile Island-1.

Moreover, adequate staffing resources have changes since the conditions imposed by the April 1999 NRC Order. The Commission needs to evaluate if AmerGen and Exelon will have the staffing resources available to provide sufficient onsite technical support for the operation of TMI-1.

Prior to the Indirect License Transfer of Three Mile Island-1 the NRC must examine the CAP at Three Mile Island and dedicated staffing levels, to determine if further staffing reductions will impact the safe operation of the plant.

Contention 6:

The new Management Model: the Exelon Way, may result in the “downsizing” of AmerGen 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 employees at TMI has been cut more than 30% since 1999 when Chicago-based Exelon bought Three Mile Island's Unit 1 from GPU Nuclear. According to AmerGen, staffing levels at TMI have shrunk from 804 in 1998 to 550 in 2003. Contract labor, including security, has supplanted existing full-time positions, and the number of contractor and subcontractor employees has grown from 65 (2000) to 103 (2002).

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.” (21)

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)

21 **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.” (22) And, on August 1, 2005, the ax fell for nuclear workers at PSEG’s underperforming nuclear units at Hope Creek and Salem. (23)

22 Robert Shappard, Exelon’s vice president and chief financial officer, speaking to the Deutsche Bank energy conference in New York on June 22, 2004.

23 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, another source of Exelon Nuclear's profitability **prior** to the proposed License Transfers, has flattened. "Staffing levels at U.S. nuclear plants increased slightly in 2005 compared to a year ago, ending a long-term reduction trend." (24) This merger provides Exelon with another avenue to raise \$1.7 billion for their "free cash" program while reducing staffing levels. (24) 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 AmerGen plants, i.e. , the "Exelon Way." The Management Model submitted to the PA PUC or the FERC for review refereed to as the "Exelon Way," and must also be reviewed by the NRC prior to approving the Indirect License Transfer.

The corporate organizational structure submitted by the Applicant in the March 3, 2005 Application and the May 24, 2005 supplemental responses to the NRC **do 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 License Transfer, nor did the agency review how the "Exelon Way" Management Model will impact operations at TMI-1. The NRC must examine the impact of the "Exelon Way" on the safe operation of TMI-1.

NRC must determine how it plans to monitor and regulate the "virtual divestiture" and "virtual ownership" of AmerGen assets.

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

25 See PECO's Response to OCA-16 (PA PUC) for a description of the **new** "Management Model."

Contention 7:

AmerGen'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." (26)

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 improving 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.

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

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. (27)

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

	2005	2006	2007	2008	2009
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%

Further skewing the funding projections, Dr. William H. Hieronymus based nuclear outage rates on industry averages, although Exelon views decreased fleet refueling time as a central component of the "Exelon Way". (28) For example, refueling outage days decreased in 2002 and 2003 from 202 days to 157 in facilities solely owned and operated by Exelon. (29) "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%." (30)

²⁷ PSEG, Form 10-K for the Fiscal Year Ended December 31, 2004, pp. 148-154.

²⁸ The outage factors can be found in Dr. Hieronymus's work papers . The nuclear outage factors are "NBUR" and "NPUR".

²⁹ **Exelon Annual Report: 2003, Management's Discussion and Analysis of Financial Condition and Results of Operation**, p. 132

³⁰ **Exelon Annual Report: 2003, Management's Discussion and Analysis of Financial Condition and Results of Operation**, p. 32.

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 incited by a \$12 million package for the “attainment of goals relating to safety, capacity factors of the plants and, operation and maintenance expenses.” (31)

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.

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.

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

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," (32) and the Company's expert witnesses believe that capacity factors will steadily increase. (33)

The NRC must investigate not only staffing levels and organizational infrastructure at Three Mile Island, 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.

Contention 8:

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

The operations of Three Mile Island-1 has 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.

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

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

In 2004, Representative Todd Platts (R-York) requested Congressional Oversight Investigations into this matter. More specifically, Congressman Platts asked the Committee on Economic Development, Public Buildings and Emergency Management, and the House Energy and Commerce Committee Subcommittee on Oversight and Investigations, to examine if Three Mile Island had provided “reasonable assurances” that the public, including preschool children, could be protected in the event of a Radiological Emergency. The investigations are ongoing, but the Commission should contact the Congressman prior to approving the Indirect License Transfer to assure that AmerGen is complying with federal regulations.

On August 4, 2005 the Nuclear Regulatory Commission agreed to review a request from Suffolk County executives to challenge the emergency preparedness plan at Millstone 2 and 3. The nuclear generating stations are located in Waterford, Connecticut. County Executives from the New York municipality have alleged that Millstone’s owners and operators, Virginia-based Dominion Nuclear, are using outdated evacuation plans and emergency procedures.

Suffolk County, which lies in close proximity to Millstone, raised these issues while Dominion applies for license renewals at the Unit 2 and 3 reactors. Similar to Exelon’s applications for Indirect and Direct License Transfers, NRC regulations allow for public reviews of aging reactors, safety evaluations, and environmental impacts of 20-year license extensions. The NRC decided on August 4, 2005 that the county’s “out of time filing” was not fatal.

Three NRC commissioners voted to consider the county’s arguments. NRC Chairman Nils Diaz was absent for the vote but would have been in favor, too, had he been present, said Neil Sheehan, spokesman for the NRC’s Region 1 division. Suffolk County’s attempt to broaden the areas the NRC would consider when reviewing a license renewal application could lead to a change in the license renewal review process itself, if the NRC agrees with the county...

...the NRC's three-judge panel, the Atomic Safety & Licensing Board, had urged county and NRC officials to establish written agreement that would outline terms for informally reviewing and addressing evacuation issues, but the parties could not agree on a plan. (34)

Approval for the AmerGen Indirect License Transfer must be postponed until the NRC makes a file determination on the Millstone relicensing case. In the interim, the NRC must require AmerGen and TMI to bring their Emergency Operating procedures into compliance prior to the License Transfer.

Contention 9:

The proposed merger and proposed transfers will affect the financial qualifications of AmerGen 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 7**), and undermines the Company's claim that the merger will increase capacity and drive down prices for consumers in Pennsylvania.

34 "Safety Issues in Millstone Renewal", Patricia Daddona, *Day Staff*, Waterford, Connecticut, August 5, 2005.

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. (35) 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 U₃O₈, a 25-cent increase from the week before. “Ux Consulting said that U₃O₈ prices ‘are clearly under pressure’ and that offers are being made at prices up to \$22.50/lb recently at a price of \$23.25/lb U₃O₈.” (36) During the week of June 13, 2005 “spot sales at \$29.50 a pound of U₃O were reported which is about 50 cents higher than the prices published by TradeTech and Ux Consulting.” (37)

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 AmerGen’s ability to maintain adequate staffing. (Please refer to discussion in **Contention: 10.**)

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

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

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

Moreover, AmerGen's Financials 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's ("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 MW of nuclear capacity, including AmerGen units.

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 provided by AmerGen based on the actual plant divestitures and revised financial projections associated with FERC's Order approving the merger.

Contention 10:

The proposed transfer does affect the existing contingency funding arrangement since it was not modified from the initial \$65 million joint commitment made by British Energy and PECO Energy.

Based upon the financial stature of the company, and the specious projections associated with increased nuclear capacities, Exelon Generation will **not attain** projected investment grade bond ratings. Despite an inter company pool, mediocre bond gradations will prevent the Company from raising additional funds necessary to provide financial assurances to the AmerGen fleet.

Exelon's Intercompany "money pool" facilitates contributions and loans, and was designed to "provide an additional short-term borrowing option that will generally be more favorable to the borrowing participants than the cost of external financing." (38) Exelon Generation's and Exelon Business Service's participation in this program further erodes their ability to access internal financing. As of December 31, 2004, both entities were in **debt to their corporate siblings and parental units**: Generation has borrowed \$283 million while the BSC unit owes \$59 million.

The financial projections for AmerGen's assimilation into Exelon expose Three Mile Island and the surrounding communities to unnecessary financial risk. The NRC should examine the risk to area residents posed by the Exelon's absorption of AmerGen under one corporate roof, and examine what conditions should be imposed to protect the communities around TMI from the additional financial risks.

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, and that demonstrate that a higher credit rating for the affiliate is evidence that credit protections are in place.

- Neither Exelon nor PECO Energy have demonstrated that AmerGen would still be a solid investment grade company in the event of a credit downgrade, and that AmerGen would still have sufficient access to credit markets.

- 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, and are further undermined when compared to similar assumptions made in the License Transfer Order of 1999. (Please refer to Discussion in Contention 9.)

38 Exelon, 2004 Annual Report, Intercompany Money Pool, p. 75.

To the extent possible, an examination of the financial assurances raised by the Indirect License Transfer can include the development of a public record and separate corollary confidential examination. However, due to the sensitive nature of the financial data (39) involved in this contention, Mr. Epstein requests that this contention be litigated between AmerGen, Exelon and the NRC in a format that requires all three parties to sign-off a confidentiality agreement.

³⁹ 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 Direct License Transfers relating to Hope Creek, Salem & 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.

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 11:

Decommissioning Funding Assurance will be adversely affected as proposed by the Indirect License Transfer, and AmerGen's decommissioning savings levels at Three Mile Island remain inadequate.

The amount of decommissioning savings identified in the terms of the NRC Order Approving the License Transfer from GPU Nuclear to AmerGen Energy Corporation on April 12, 1999 have underperformed, and the Indirect License currently misrepresents the amount required to decommission TMI-1.

Although the NRC noted that the decommissioning amount was beyond generic limitations, it was not at the upper end from their own projections of what was needed to decommission Three Mile Island in 1999 based on 1996 dollars:

As part of the purchase agreement between GPUN and AmerGen, GPUN agreed to prefund the TMI-1 decommissioning trust account for at least **\$303 million**. This amount exceeds the minimum amount required by the generic formulas in 10 CFR 50.75(c), and thus allows AmerGen to buy TMI-1 without providing additional assurance for any unfunded portion of the decommissioning cost estimate. (40)

Please note the NRC choose the **minimum level to index decommissioning assurances based on 1996 estimated levels in 1999.**

40 Dr. William Travers, EDO, NRC, "Lessons Learned from the Transfer of the Operating Licenses of the Three Mile Island-1 and Pilgrim Nuclear Power Stations, July 1, 1999).

The staff estimated a decommissioning range for TMI between “\$303 million and \$320 million...” What’s more, the NRC’s initial assumptions in the Original License Transfer presumed the plant would “permanently cease operation in 2014” and a “2% credit would cause the decommissioning trust fund to grow to a range from \$402.3 million to \$424.7 million depending on the actual closing date.” (41)

None of these assumptions were correct.

The problem is that those estimates are no longer valid and have not been addressed in the Indirect License Transfer application submitted by the Joint Applicants. The amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75 (b) and (c) is **\$ 339.2 million**. This estimate was made in **2003** dollars, and does not include the costs of dismantling non-radiological systems and structures or the costs of attaining "Greenfield." (42)

The amount of decommissioning funds accumulated through March 31, 2003, was **below the savings bequeathed to AmerGen from GPU Nuclear:**

December 31, 2002 was **\$ 285.2 million**. However, [u]nder the plant purchase agreement, there is no remaining amount to be collected from the previous owner [.] A two percent annual real rate of return is being assumed on the decommissioning trust funds. Financial assurance for decommissioning continues to be provided by the prepayment method, coupled with an external trust fund. (43)

41 NRC Order Approving Transfer for Three Mile Island 1, Nuclear Station, Unit 1, from GPU Nuclear et al, to AmerGen Energy Corporation, LLC and Approving Conforming Amendment (TAC No. MA3307), April 12, 1999. pp. 9-11.

42 NRC Order Approving Transfer for Three Mile Island 1, Nuclear Station, Unit-1, SAR, pp. 9-11.

43 March 31, 2003, Letter from Jeffrey A. Benjamin, Vice President, Licensing and Regulatory Affairs, AmerGen, Energy Company, LLC to the U. S. Nuclear Regulatory Commission.

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.**" (44)

Despite **losing money**, AmerGen 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."**(45)

AmerGen's proposed license transfer would codify additional and substantial exposures to the dedicated decommissioning fund(s). As of December 31, 2004, the "present value of Generation's obligation to decommission nuclear power plants was \$3,981 million." (46)

AmerGen units have been taken out of the rate base. Exelon must propose a concrete option for the current state of underfunding. The current Indirect License Transfer proposal is occurring when the Company has reported a "temporary shortfall in NRC funding levels..." Moreover, AmerGen and 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. (47)

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

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

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

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

The most expensive components of nuclear decommissioning, as established by PECO's consultant TLG before the Pennsylvania PUC, (48) 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.

The NRC must reexamine the assumptions embedded in AmerGen's decommissioning savings projections, (49) 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." (50)

48 TLG's current estimates have increased **three fold** since 1995 for Hope Creek and Salem, Limerick and Peach Bottom. The 1995 predictions witnessed a **similar increase** when compared to TLG's 1990 assessments.

49 The NRC, under NUREG-1757, explicitly limits its "financial assurance and record keeping requirements to financial assurance plans, and instruments, record keeping plan." 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. The NRC is currently revising 10 CFR 20.1403(d), NUREG-1757, Volume 1, Section 17.8, and "seeking advice from affected parties on institutional controls and financial assurance for restricted use.

50 NRC Order Approving Transfer for Three Mile Island 1 Unit 1, p. 8 (a).

Contention 12:

AmerGen will not continue to maintain the financial protection required by 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," and the property insurance required by 10 CFR 50.54, "Conditions of licenses : paragraph (w), for Three Mile Island," and these arrangements are adversely impacted by the proposed license transfers.

Exelon carries property and liability insurance on all of its nuclear power plants. The policy normally covers approximately \$200 million in damages. Exelon purchased the maximum amount of liability insurance, or \$300 million, for all of its plants including TMI. (51) However, as Exelon assumes *pro rata* responsibility for PSE&G's share of liability insurance at Hope Creek, Salem 1 & 2, and Peach Bottom 1, 2 & 3, (52) will AmerGen's insurance coverage at Three Mile Island-1 be reduced to \$200 million?

This potential insurance reduction comes at a time when the plant's insurance coverage should actually be increased to account for increased rates and exposure as a result of the the National Nuclear Accrediting Board placing AmerGen and Exelon on probation for failing to adequately train its operators. The Board reports its findings to the Institute of Nuclear Power Operations, an industry policing body established after the 1979 accident at TMI. **The institute's ratings are used to set insurance rates for the plants.**

51 Exelon, 2004 **Annual Report**, *Nuclear Accident Risk*, p. 32.

52 Witness: PA PUC, Volume III, PECO Statement No. 2, Direct Testimony of William D. Arndt, p. 22, Lines 13-22 and page 23, Lines 1-17.

Moreover, the initial License Order of April 12, 1999 only required “\$65 million in a contingency commitment for an estimated fixed operation ... cost of a 6-month outage at TMI-1...” (53) The \$65 million, split between PECO and British Energy, is grossly inadequate.

On December 8, 2001, TMI resumed operation after a 58 day refueling outage (planned for 29 days) that cost the company over \$100 million in lost revenues, replacement energy, and planned and unplanned repairs. Among the “big-ticket” items: replacement of the turbine generator and four main transformers; repairs of cracks in six control-rod drive mechanisms; trouble shooting on chronic emergency feed water problems; and experimental steam tube generator repairs.

AmerGen announced plans to relicense TMI on April 29, 2005. “The company expects to spend an additional \$600 million over the next 15 years replacing the unit’s two steam generators, adding computer and digital upgrades, replacing feed water heaters, upgrading the plant’s cooling towers and condenser, and improving other components.”

The \$65 million figure needs to be revised upward to accurately reflect AmerGen’s experience operating Three Mile Island.

53 NRC Order Approving Transfer for Three Mile Island 1, Nuclear Station, Unit 1, from GPU Nuclear et al, to AmerGen Energy Cooperation, LLC and Approving Conforming Amendment (TAC No. MA3307), April 12, 1999. p. 6, & SAR, p. 8.

VII. CONCLUSIONS

For the reasons discussed above, the proposed Indirect License Transfer will:

- (1) Have an adverse impact on the operation of the referenced nuclear stations;
- (2) Adversely affect the managerial or technical qualifications of AmerGen, the operator of the nuclear stations;
- (3) Impair AmerGen's financial qualifications as the owner and operator of the nuclear stations; or,
- (4) Will result in any foreign ownership, control or domination of AmerGen.

Accordingly, the proposed Indirect License Transfer 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 License Transfer of Three Mile Island-1 violates with the Atomic Energy Act and NRC regulations.

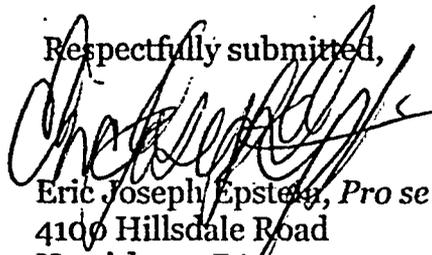
VII. Remedies

Exelon's application does more than request approval of Indirect License Transfer, 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) Publish notice of an opportunity for comment and a public hearing in the Federal Register;
- 2) Convene a public hearing under the auspices of the Atomic Safety and Licensing Board in the Three Mile Island area to examine if the Indirect License Transfer under more rigorous and in-depth filters;
- 3) Grant Mr. Eric Joseph Epstein Intervener Status; and,
- 4) Admit all twelve of Mr. Epstein's contentions based on the above evidence.

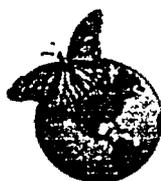
Respectfully submitted,



Eric Joseph Epstein, *Pro se*
4100 Hillsdale Road
Harrisburg, PA 17112
(717)-541-1101 Phone
(717)-541-5487 Fax
ericepstein@comcast.net

DATED: August 15, 2005

Exhibit I



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

July 29, 2005

Eric Epstein, Executive Director
Three Mile Island Alert
4100 Hillsdale Road
Harrisburg, PA 17112

**SUBJECT: THREE MILE ISLAND UNIT 1 STAFFING REDUCTIONS AND
CORRECTIVE ACTION PROGRAM**

Dear Eric:

I appreciate the information you provided me regarding the declining staffing level trends at Exelon's Peach Bottom and Three Mile Island Unit 1 nuclear reactors. The challenge has always been and remains determining when staffing reductions are cutting "fat" from the organization and when they have gone too far and slice "muscle." UCS pursues two paths to guard against safety problems caused by excessive staffing reductions. The first is the work hour rulemaking (10 CFR Part 26) that is intended to prevent surviving staff members from working so many hours that their performance is impaired from fatigue. The second is to monitor the problem identification and resolution (PI&R) inspections conducted by the Nuclear Regulatory Commission (NRC). The PI&R inspection results provide insights into problems potentially caused by insufficient staffing. For example, the PI&R inspections may show that a site is not doing a good job of identifying problems. If so, a potential cause of that problem could be staffing cutbacks that decreased the effectiveness of the preventative maintenance program. As another example, the PI&R inspections may show that a site has a large backlog of identified problems awaiting resolution. In that case, a potential cause could be staffing cutbacks that left too few maintenance personnel to handle the needed work load.

To try to gain insights into the effect of staffing reductions on safety performance at Three Mile Island Unit 1, I reviewed all of the NRC inspection reports dating back to November 1999 that contained the word "PI&R" and/or the word "backlog." Those inspection reports and my comments from reviewing them are as follows:

NRC Inspection Report	UCS Comment(s)
Inspection Report No. 1999-09, 01/21/2000	Section P4.1(b) described monthly meetings of a Human Performance Review Board that identified such adverse trends as repeated valve mispositionings (32 cases per year). NRC noted "few actions have been taken by the HPRB during this 18 month time period" despite identification of such adverse trends.
Inspection Report No. 2000-10, 01/17/2001	The NRC reported "The backlog of corrective actions was being managed well and the team did not identify any backlogged action that represented an adverse effect on plant risk."
Inspection Report No. 2001-03, 05/31/2001	None.
Inspection Report No. 2001-13, 03/08/2002	None.

Washington Office: 1707 H Street NW Suite 600 • Washington DC 20006-3919 • 202-223-6133 • FAX: 202-223-6162
Cambridge Headquarters: Two Brattle Square • Cambridge MA 02238-9105 • 617-547-5552 • FAX: 617-864-9405
California Office: 2397 Shattuck Avenue Suite 203 • Berkeley CA 94704-1567 • 510-843-1872 • FAX: 510-843-3785

NRC Inspection Report	UCS Comment(s)
Inspection Report No. 2002-05, 07/25/2002	None.
Inspection Report No. 2002-06, 11/07/2002	Section 40A2.1(b) reported "some weakness with AmerGen's disposition of an increase in reactor coolant system unidentified leakage" during the NRC's routine PI&R effectiveness assessment.
Inspection Report No. 2002-07, 01/28/2003	None.
Annual Assessment, 03/03/2004	The NRC reported "a substantive cross-cutting issue in the area of problem identification and resolution ... where the organization did not question or did not sufficiently evaluate plant equipment problems."
Inspection Report No. 2004-02, 05/11/2004	Section 40A2 reported on some identified failures to identify and correct problems and concluded "These issues appear to share a common theme of issues not being entered into the TMI CAP" [Corrective Action Program]
Inspection Report No. 2004-03, 07/29/2004	None.
Inspection Report No. 2004-04, 11/08/2004	Section 40A2 reported two deficient engineering evaluations performed to assess degraded plant conditions. In both cases, NRC prompting was necessary to get to the proper evaluations..
Inspection Report No. 2004-05, 02/14/2005	Section 40A2 reported "the 2004 IR initiation rate increased approximately 40 percent from the previous year ... [and the] increased IR initiation rate does not reflect degraded plant condition, but rather a lower threshold for station personnel to identify and resolve problems." The NRC also reported that findings "reveal that station corrective actions to address problem identification and resolution deficiencies have not yet proven effective."
Annual Assessment, 03/02/2005	NRC reported they "concluded that this cross-cutting issue [PI&R] is closed."
Inspection Report No. 2005-02, 05/11/2005	None.

Based upon my review, I observe that corrective action program problems have been a recurring event at Three Mile Island. I am not able to conclusively state that the cause for these problems is insufficient staffing. Some evidence suggests insufficient staffing may be a factor. For example, the NRC finding documented in the May 11, 2004, inspection report of "issues not being entered into the TMI CAP" could reflect a work load problem. On the other hand, the NRC finding from the February 14, 2005, inspection report about lowering the threshold for raising issues suggests that work load concerns are not a limitation.

Sincerely,



David Lochbaum
Nuclear Safety Engineer