

May 30, 2006

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Generation Company, LLC
Chairman and Chief Executive Officer
AmerGen Energy Company
4300 Winfield Road
Warrenville, IL 60555

and

Mr. William Levis
Senior Vice President and Chief Nuclear Officer
PSEG Nuclear LLC-N09
Post Office Box 236
Hancocks Bridge, NJ 08038

SUBJECT: ORDER APPROVING TRANSFERS OF LICENSES AND CONFORMING AMENDMENTS RELATING TO PEACH BOTTOM ATOMIC POWER STATION, UNIT NOS. 2 AND 3, HOPE CREEK GENERATING STATION, AND SALEM NUCLEAR GENERATING STATION, UNIT NOS. 1 AND 2 (TAC NOS. MC6361, MC6362, MC6365, MC6366, AND MC6367)

Dear Messrs. Crane and Levis:

By letters to the Nuclear Regulatory Commission (NRC) dated March 3 and March 4, 2005, as supplemented by letters dated May 24, October 5, and October 6, 2005, you submitted applications, pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR) requesting approval of the direct transfers of the Facility Operating Licenses for Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 (Peach Bottom), Hope Creek Generating Station (Hope Creek), and Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), to the extent held by PSEG Nuclear LLC (PSEG Nuclear), to Exelon Generation Company, LLC (EGC). The license transfers involve the transfer of PSEG Nuclear's ownership interests in Peach Bottom, Hope Creek, and Salem, and its licensed operating authorities for Hope Creek and Salem due to the merger of PSEG Nuclear's parent company, Public Service Enterprise Group (PSEG), into Exelon Corporation, EGC's parent company. The applications also requested approval of conforming amendments to the licenses pursuant to 10 CFR 50.90.

Enclosure 8 transmitted herewith contains sensitive unclassified information. When separated from Enclosure 8, this document is decontrolled.

~~OFFICIAL USE ONLY – PROPRIETARY INFORMATION~~

C. Crane and W. Levis

- 2 -

The NRC staff has completed its review of the applications. Enclosure 1 is the Order which approves the proposed license transfers, subject to the conditions described therein, and the conforming license amendments. Enclosures 2 through 6 provide conforming amendment pages for Peach Bottom, Hope Creek, and Salem. The conforming amendments will be issued and become effective at the time the transfers are consummated. Pursuant to 10 CFR 2.390, the NRC has determined that information provided in Enclosure 8 contains proprietary information. The NRC has prepared a nonproprietary version of the safety evaluation (SE), Enclosure 7, which has been placed in the NRC's Public Document Room and added to the Agencywide Documents Access and Management System's Publicly Available Records System Library.

The Order has been forwarded to the Office of Federal Register for publication.

Sincerely,

/RA/

Stephen J. Campbell, Project Manager
Plant Licensing Branch III-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-277, 50-278, 50-354,
50-272 and 50-311

Enclosures:

1. Order
2. Conforming Amendment to DPR-44
3. Conforming Amendment to DPR-56
4. Conforming Amendment to NPF-57
5. Conforming Amendment to DPR-70
6. Conforming Amendment to DPR-75
7. Non-proprietary SE
8. Proprietary SE

cc w/o Encl. 8: See next page

~~OFFICIAL USE ONLY – PROPRIETARY INFORMATION~~

OFFICIAL USE ONLY – PROPRIETARY INFORMATION

C. Crane and W. Levis

- 2 -

The NRC staff has completed its review of the applications. Enclosure 1 is the Order which approves the proposed license transfers, subject to the conditions described therein, and the conforming license amendments. Enclosures 2 through 6 provide conforming amendment pages for Peach Bottom, Hope Creek, and Salem. The conforming amendments will be issued and become effective at the time the transfers are consummated. Pursuant to 10 CFR 2.390, the NRC has determined that information provided in Enclosure 8 contains proprietary information. The NRC has prepared a nonproprietary version of the safety evaluation (SE), Enclosure 7, which has been placed in the NRC's Public Document Room and added to the Agencywide Documents Access and Management System's Publicly Available Records System Library.

The Order has been forwarded to the Office of Federal Register for publication.

Sincerely,
/RA/
 Stephen J. Campbell, Project Manager
 Plant Licensing Branch III-2
 Division of Operating Reactor Licensing
 Office of Nuclear Reactor Regulation

Docket Nos. 50-277, 50-278, 50-354,
 50-272 and 50-311

Enclosures:

1. Order
2. Conforming Amendment to DPR-44
3. Conforming Amendment to DPR-56
4. Conforming Amendment to NPF-57
5. Conforming Amendment to DPR-70
6. Conforming Amendment to DPR-75
7. Non-proprietary SE
8. Proprietary SE

cc w/o Encl. 8: See next page

DISTRIBUTION:

PUBLIC	LPLB R/F	GHill (10)	RidsNrrOd
RidsNrrAdro	RidsNrrDorl	RidsAcrsAcnwMail	RidsNrrDorlLpIB
RidsNrrPMSBailey	RidsNrrDirRebb	RidsSecyMailCenter	RidsNrrPMRGuzman
SBurnell,OPA	RidsNrrLACRaynor	RidsNrrLADClarke	RidsRgn1MailCenter
RidsNrrDorlDpr	RidsOgcRp	RidsNrrDirslolb	RidsNrrDprPfpb

Package: ML053630285
 Order: ML060310533
 Proprietary SE: ML053630296
 FOL Pages to DPR-44: ML061510097
 FOL Pages to DPR-56: ML061510179
 FOL Pages to NPF-57: ML061510188
 FOL Pages to DPR-70: ML061510112
 FOL Pages to DPR-75: ML061510104

*via email

OFFICE	LPLIII-2/PM	LPLI-2/PM	LPLI-2/PM	LPL I-2/LA	Tech Ed *	DIRS/IOLB	NSIR/DPR/LR	NSIR/DPR/IC
NAME	SCampbell:CA	RGuzman	SBailey	CRaynor (DClarke for)	CHuang	NO'Keefe	EWeiss	TMcMurtray (RKahler for)
DATE	5/25/06	5/4/06	5/4/06	5/26/06	5/2/06	4/26/06	1/25/06	5/23/06

OFFICE	DPR/PFPB	DLR/REBB	LPL3-2/BC	DORL/D	OGC	NRR	LPL3-2/PM
NAME	EMcKenna	RFranovitch	DCollins	CHaney	SUttal	JDyer	SCampbell
DATE	5/5/06	1/23/06	5/30/06	5/18/06	5/25/06	5/30/06	5/30/06

OFFICIAL RECORD COPY

UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PSEG NUCLEAR LLC)	
)	
EXELON GENERATION COMPANY, LLC)	
)	
(Peach Bottom Atomic Power Station, Unit Nos. 2 and 3))	Docket Nos. 50-277 and 50-278 License Nos. DPR-44 and DPR-56
)	
(Hope Creek Generating Station))	Docket No. 50-354 License No. NPF-57
)	
(Salem Nuclear Generating Station Unit Nos. 1 and 2))	Docket Nos. 50-272 and 50-311 License Nos. DPR-70 and DPR-75
)	

ORDER APPROVING TRANSFERS OF LICENSES
AND CONFORMING AMENDMENTS

I.

PSEG Nuclear LLC (PSEG Nuclear) owns Hope Creek Generating Station (Hope Creek), a 57.41-percent interest in Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), and a 50-percent interest in Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 (Peach Bottom). Exelon Generation Company, LLC (EGC) owns the remaining interests in Salem and Peach Bottom. PSEG Nuclear holds the Facility Operating License, No. NPF-57, for Hope Creek, co-holds the Facility Operating Licenses, Nos. DPR-70 and DPR-75, for Salem, and co-holds the Renewed Facility Operating Licenses, Nos. DPR-44 and DPR-56, for Peach Bottom, and is authorized to possess, use, and, except for Peach Bottom, operate the facilities in accordance with the terms and conditions of the licenses. EGC is the other co-holder of the

Renewed Facility Operating Licenses for Peach Bottom, and is authorized to possess, use and operate Peach Bottom, and is the other co-holder of the Facility Operating Licenses for Salem, and is authorized to possess Salem. Hope Creek and Salem are located in Salem County, New Jersey, and Peach Bottom is located in York and Lancaster Counties, Pennsylvania.

II.

By letter dated March 3, 2005, as supplemented by letters dated May 24 and October 5, 2005, EGC submitted an application requesting approval of direct license transfers that would be necessary in connection with the transfer of the ownership interests held by PSEG Nuclear in Peach Bottom to EGC. By letter dated March 4, 2005, as supplemented by letters dated May 24 and October 6, 2005, PSEG Nuclear submitted an application requesting approval of direct license transfers that would be necessary in connection with the transfer to EGC of the ownership interests held by PSEG Nuclear in Hope Creek and Salem, and the transfer of operating authority from PSEG Nuclear to EGC.

All of the foregoing requests for approval are associated with the proposed merger of Public Service Enterprise Group (the ultimate parent company of PSEG Nuclear) into Exelon Corporation (the ultimate parent company of EGC). Upon completion of the merger, Exelon Corporation will change its name to Exelon Electric & Gas Corporation (EEG). EEG will then restructure its organization.

EGC and PSEG Nuclear also requested NRC's approval of conforming administrative license amendments that, in general, would reflect the transfers of the licenses, to the extent held by PSEG Nuclear, to EGC. No physical changes to the facilities or operational changes were proposed in the applications. After completion of the proposed license transfers, EGC would be the sole owner and operator of the facilities.

EGC and PSEG Nuclear requested approval of the transfers of the facility operating licenses and conforming license amendments pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR). Notices of the requests for approval and an opportunity for a hearing were published in the *Federal Register* on August 2, 2005 (70 FR 44389, 70 FR 44397, and 70 FR 44398).

One petition for leave to intervene pursuant to 10 CFR 2.309 was received on August 21, 2005, from Mr. Eric Joseph Epstein. By Memorandum and Order CLI-05-26, dated October 26, 2005, the Commission rejected Mr. Epstein's claim of standing and consequently dismissed the proceeding. The Commission directed the NRC staff to consider Mr. Epstein's contentions and supplemental filing dated October 7, 2005, as if they were "written comments" under 10 CFR 2.1305. The written comments have been considered by the NRC staff in connection with the issuance of this Order.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the applications and other information before the Commission, and relying upon the representations and agreements contained in the applications, the NRC staff has determined that EGC is qualified to hold the licenses for Hope Creek, Salem, and Peach Bottom as proposed in the applications, and that the transfers of the licenses as proposed in the applications are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the applications for the proposed license amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facilities will operate in conformity with the applications, the provisions of the Act and the

rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated May 30, 2006.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the direct transfers of the licenses as described herein are approved, subject to the following conditions:

1. At the time of the closing of the transfers of the licenses from PSEG Nuclear to EGC, PSEG Nuclear shall transfer to EGC all of PSEG Nuclear's respective decommissioning funds accumulated as of such time, and EGC shall deposit such funds in external decommissioning trust(s) established by EGC for the respective units.
2. Before completion of the transfers of the interests in the subject facilities to it, EGC shall provide to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that EGC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosures 2 through 6 to the cover letter forwarding this Order, to conform the licenses to reflect the subject direct license transfers are approved. The amendments shall be issued and made effective at the time the proposed direct license transfers are completed.

IT IS FURTHER ORDERED that EGC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date(s) of closing of the direct transfers no later than 5 business days prior to closing. Should the transfers of the licenses not be completed by May 30, 2007, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial applications dated March 3 and March 4, 2005, and supplemental letters dated May 24 (two), October 5, and October 6, 2005, and the non-proprietary safety evaluation dated May 30, 2006, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the

NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 30th day of May 2006.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

EXELON GENERATION COMPANY, LLC

PSEG NUCLEAR LLC

DOCKET NO. 50-277

PEACH BOTTOM ATOMIC POWER STATION, UNIT 2

AMENDMENT TO RENEWED FACILITY OPERATING LICENSE

Amendment No.

Renewed License No. DPR-44

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Exelon Generation Company, LLC on behalf of itself and PSEG Nuclear LLC (the licensees), dated March 3, 2005, as supplemented by letters dated May 24 and October 5, 2005, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I.
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Renewed Facility Operating License No. DPR-44 is hereby amended as indicated in the attachment hereto.
3. This license amendment is effective as of its date of issuance and shall be implemented within 30 days.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Renewed Facility Operating
License DPR-44

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

RENEWED FACILITY OPERATING LICENSE NO. DPR-44

DOCKET NO. 50-277

Replace the following pages of the Renewed Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1
2	2
4	4
5	5

EXELON GENERATION COMPANY, LLC

PSEG NUCLEAR LLC

DOCKET NO. 50-278

PEACH BOTTOM ATOMIC POWER STATION, UNIT 3

AMENDMENT TO RENEWED FACILITY OPERATING LICENSE

Amendment No.
Renewed License No. DPR-56

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Exelon Generation Company, LLC on behalf of itself and PSEG Nuclear LLC (the licensees), dated March 3, 2005, as supplemented by letters dated May 24 and October 5, 2005, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I.
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Renewed Facility Operating License No. DPR-56 is hereby amended as indicated in the attachment hereto.
3. This license amendment is effective as of its date of issuance and shall be implemented within 30 days.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Renewed Facility Operating
License DPR-56

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

RENEWED FACILITY OPERATING LICENSE NO. DPR-56

DOCKET NO. 50-278

Replace the following pages of the Renewed Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove

Insert

1
2
4
5
6

1
2
4
5
6

PSEG NUCLEAR LLC

DOCKET NO. 50-354

HOPE CREEK GENERATING STATION

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-57

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by PSEG Nuclear LLC (the licensee) dated March 4, 2005, as supplemented by letters dated May 24 and October 6, 2005, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. NPF-57 is hereby amended as indicated in the attachment hereto.
3. The license amendment is effective as of its date of issuance and shall be implemented within 30 days.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Facility Operating
License NPF-57

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. NPF-57

DOCKET NO. 50-354

Replace the following pages of the Facility Operating License with the attached revised pages. The revised pages are identified by Amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8

Replace the following pages of the Appendix "A" Technical Specifications with the attached revised pages. The revised pages are identified by Amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
3/4 7-5	3/4 7-5
3/4 7-9	3/4 7-9
B 3/4 8-2	B 3/4 8-2
6-20	6-20
6-26	6-26

Replace the following pages of the Appendix "B" Environmental Protection Plan with the attached revised pages. The revised pages are identified by Amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
Cover Sheet	Cover Sheet

Replace the following pages of the Appendix "C" Additional Conditions with the attached revised pages. The revised pages are identified by Amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1

PSEG NUCLEAR LLC
EXELON GENERATION COMPANY, LLC
DOCKET NO. 50-272
SALEM NUCLEAR GENERATING STATION, UNIT NO. 1
AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-70

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
 - A. The application for amendment filed by PSEG Nuclear LLC on behalf of itself and Exelon Generation Company, LLC (the licensees) dated March 4, 2005, as supplemented by letters dated May 24 and October 6, 2005, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. DPR-70 is hereby amended as indicated in the attachment hereto.
3. This license amendment is effective as of its date of issuance and shall be implemented within 30 days.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Facility Operating
License DPR-70

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. DPR-70

DOCKET NO. 50-272

Replace the following pages of the Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1
2	2
3	3
4	4
4b	4b
4c	4c
5	5
5a	5a
5c	5c

Replace the following pages of the Appendix "A" Technical Specifications with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1-4	1-4
B 3/4 9-1c	B 3/4 9-1c
6-30	6-30
6-31	6-31

Replace the following pages of the Appendix "B" Environmental Protection Plan with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
Cover Sheet	Cover Sheet
4-1	4-1

Replace the following pages of the Appendix "C" Additional Conditions with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1

PSEG NUCLEAR LLC

EXELON GENERATION COMPANY, LLC

DOCKET NO. 50-311

SALEM NUCLEAR GENERATING STATION, UNIT NO. 2

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-75

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
 - A. The application for amendment filed by PSEG Nuclear LLC on behalf of itself and Exelon Generation Company, LLC (the licensees) dated March 4, 2005, as supplemented by letters dated May 24 and October 6, 2005, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. DPR-75 is hereby amended as indicated in the attachment hereto.
3. The license amendment is effective as of its date of issuance and shall be implemented within 30 days.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to Facility Operating
License DRP-75

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO.

FACILITY OPERATING LICENSE NO. DPR-75

DOCKET NO. 50-311

Replace the following pages of the Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1
2	2
3	3
4	4
7	7
21	21
22	22
22a	---
23	23
24	24
25	25

Replace the following pages of the Appendix "A" Technical Specifications with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1-4	1-4
B 3/4 9-1c	B 3/4 9-1c
6-30	6-30

Replace the following pages of the Appendix "B" Environmental Protection Plan with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
Cover Sheet	Cover Sheet
4-1	4-1

Replace the following pages of the Appendix "C" Additional Conditions with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
1	1

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

REGARDING DIRECT LICENSE TRANSFERS FROM

PSEG NUCLEAR LLC TO EXELON GENERATION COMPANY, LLC

PEACH BOTTOM ATOMIC POWER STATION, UNIT NOS. 2 AND 3

RENEWED FACILITY OPERATING LICENSES NOS. DPR-44 AND DPR-56

DOCKET NOS. 50-277 AND 50-278

HOPE CREEK GENERATING STATION

FACILITY OPERATING LICENSE NO. NPF-57

DOCKET NO. 50-354

SALEM NUCLEAR GENERATING STATION, UNIT NOS. 1 AND 2

FACILITY OPERATING LICENSES NOS. DPR-70 AND DPR-75

DOCKET NOS. 50-272 AND 50-311

1.0 INTRODUCTION

By letter dated March 3, 2005 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML050670664), Exelon Generation Company, LLC (EGC) and PSEG Nuclear LLC (PSEG Nuclear) jointly requested consent by the Nuclear Regulatory Commission (NRC) under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses," to the proposed direct transfer of the licenses for Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 (Peach Bottom), to the extent held by PSEG Nuclear, to EGC. The licenses currently authorize PSEG Nuclear to possess the facility regarding its 50-percent ownership share of Peach Bottom. The Peach Bottom licenses also authorize EGC to possess a 50-percent interest in the subject Peach Bottom units, as well as operate Peach Bottom. The application further seeks NRC approval of conforming license amendments under 10 CFR 50.90, "Application for amendment of license or construction permit," to reflect the proposed license transfers⁽¹⁾.

(1) The March 3, 2005, application requested, in addition, that the NRC consent to certain other actions to the extent they constituted indirect license transfers. The NRC's response to that portion of the application is documented in a letter dated July 6, 2005 (ADAMS Accession No. ML051670360), from the NRC to EGC, and is not the subject of this safety evaluation (SE).

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

By letter executed on March 4, 2005 (ADAMS Accession No. ML050750110), PSEG Nuclear, acting for itself and on behalf of EGC, requested consent by the NRC under 10 CFR 50.80 to the proposed direct transfers of the licenses for Hope Creek Generating Station (Hope Creek) and Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), to the extent held by PSEG Nuclear, to EGC. These licenses currently authorize PSEG Nuclear to operate Hope Creek and Salem and possess the facilities with respect to PSEG Nuclear's 100-percent ownership interest of Hope Creek and 57.41-percent ownership interest of Salem. The Salem licenses also authorize EGC to possess Salem in connection with EGC's current 42.59-percent ownership interest of Salem. The application further seeks NRC approval of conforming license amendments under 10 CFR 50.90 to reflect the proposed license transfers.

The two applications noted above were supplemented by two letters dated May 24, 2005 from EGC (ADAMS Accession No. ML051470142) and PSEG Nuclear (ADAMS Accession No. ML051520456), October 5, 2005 from EGC (ADAMS Accession No. ML053550017), and October 6, 2005 from PSEG Nuclear (ADAMS Accession No. ML052920067). Notices of consideration of approval of the transfers of facility operating licenses and conforming amendments and opportunity for a hearing were published in the *Federal Register* on August 2, 2005 (70 FR 44389, 70 FR 44397, and 70 FR 44398). The supplements did not expand the scope of the original applications.

On August 21, 2005 (ADAMS Accession No. ML052580043), Mr. Eric Joseph Epstein requested a public hearing on the applications for Peach Bottom. Mr. Epstein's request included 11 contentions relating to the proposed license transfers. On October 26, 2005 (ADAMS Accession No. ML052990548), the Commission issued Memorandum and Order CLI-05-26, which denied Mr. Epstein's claims of standing and consequently dismissed the proceeding. The Commission directed the NRC staff to consider Mr. Epstein's contentions and his supplemental filing dated October 7, 2005 as if they were written comments under 10 CFR 2.1305, "Written comments." They are addressed in Section 6.0 of this SE.

2.0 BACKGROUND

EGC is an indirect subsidiary of Exelon Corporation (Exelon). PSEG Nuclear is an indirect subsidiary of Public Service Enterprise Group (PSEG). Exelon and PSEG have entered into a merger agreement under which PSEG will be merged into Exelon. Upon completion of the merger, Exelon will change its name to Exelon Electric & Gas Corporation (EEG). The direct license transfers described above would occur in connection with the Exelon-PSEG merger. The proposed transferee, EGC, would continue to be an indirect subsidiary of Exelon (renamed EEG), and continue to hold the licenses for its other nuclear facilities, in addition to receiving PSEG Nuclear's licensed interests in Peach Bottom, Hope Creek, and Salem.

3.0 REGULATORY EVALUATION

The applications requested the approval of the direct transfers of the licenses, to the extent held by PSEG Nuclear for the reactor units, to EGC, pursuant to 10 CFR 50.80. Section 50.80(a) states, "No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing."

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an applicant for a license transfer shall include as much of the information described in 10 CFR 50.33, "Contents of applications; general information" and 50.34, "Contents of application; technical information" of this part "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license...." Section 50.80(c) states that, "the Commission will approve the application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with applicable provisions of laws, regulations, and orders issued by the Commission pursuant thereto."

4.0 FINANCIAL QUALIFICATIONS ANALYSIS

4.1 Financial Qualifications

The license transfers proposed in the applications involve, in addition to the transfers of operating authority for Hope Creek and Salem, EGC acquiring additional ownership interests in Peach Bottom and Salem, and all of the ownership interest in Hope Creek, from PSEG Nuclear. EGC must be found to be financially qualified to hold these interests before the license transfers can be approved.

EGC does not qualify as an electric utility under 10 CFR 50.2, "Definitions." In accordance with 10 CFR 50.33(f), a non-electric utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license(s) are being sought. The information must show that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of each of the licenses. The applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source of funds to cover these costs.

In addition, 10 CFR 50.33(k)(1) requires that EGC provide information as described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," demonstrating that there is reasonable assurance that funds will be available to decommission Peach Bottom, Hope Creek, and Salem. The applicants' proposal for decommissioning funding assurance is discussed in Section 4.2 of this SE.

The applicants submitted financial data for the post-merger EGC for 2006 through 2010 and a projected income statement for EGC (see Table 1), which contains EGC financial projections incorporating the combined generation capacity (nuclear and non-nuclear) to be operated by EGC. In addition, key assumptions were submitted for the projected income statement (Table 2), along with net annual mean rating, net capacity, and scheduled refueling outages by unit in the EGC nuclear fleet. According to the applications, revenue from the sale of electricity from EGC's nuclear plants will be sufficient to cover nuclear operating costs. In particular, EGC represented that with respect to Peach Bottom, their operating costs will be covered by revenues from the sale of electricity from those units. In addition, the applications assert that

EGC's overall revenue streams, from nuclear and other non-nuclear sources, provide assurance of EGC's ability to cover fixed operating costs associated with a 6-month shutdown of one or more of the nuclear units.

The NRC staff evaluated the financial qualifications of the post-merger EGC in a manner that is consistent with the guidance provided in NUREG-1577, Rev. 1, "Standard Review Plan [SRP] on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999. The NRC staff reviewed EGC's financial projections for reasonableness of estimated operating costs, reasonableness of financial projections and underlying assumptions, and sensitivity of revenue projections to market price of electricity sold.

The NRC staff compared the estimated operating costs provided in the applications for the Peach Bottom, Hope Creek, and Salem units against historical data on those five units and other similar units contained in NUREG/CR-6577, Supp. 2, "U.S. Nuclear Power Plant Operating Cost and Experience Summaries," dated December 2003. Based on this review, the NRC staff believes that the applicants' expense projections are consistent with historical trends, and are reasonable.

The NRC staff evaluated the data in Table 1 and found that the post-merger EGC is projected to have a positive net income for each year in the projection period, from approximately [] in 2006 to [] in 2010. The NRC staff also found that EGC's resultant net capacity for each of the five units under review was consistent with historical data contained in NUREG-1350, Vol. 16, "NRC Information Digest," dated July 2004, and that EGC's projected nuclear fleet-wide capacity factor, ranging from 92 percent to 93.5 percent, was consistent with industry trends. In response to NRC staff questions about the capacity factor for Hope Creek, EGC stated that, "prior year's capacity factors for Hope Creek were 95% in 2002, 78% in 2003 and 66% in 2004. Forward projections represent significant improvement for Hope Creek under EGC due to application of the Exelon Nuclear Management Model. Management Model controls include outage planning and execution, material condition improvement and long term asset management programs, and fundamental principles of operation."

The NRC staff reviewed market prices for sale of energy in the service areas where the five units are located as well as where other EGC units are located, and determined that EGC's market price projections of [] in 2006 to [] in 2010 are reasonable. Further, the NRC staff calculated that a 10 percent decrease in the price of energy sold would lower projected operating revenues and net income of EGC, but that lower net income would still be sufficient to pay for operation costs. Additionally, the application states that EGC expects to have an investment grade bond rating, which will enable the company to raise additional funds as necessary.

Based on the evaluation above, the NRC staff finds that EGC will have sources of funds to cover total annual operating costs for each of the first 5 years of operation at Peach Bottom, Hope Creek, and Salem. Accordingly, the NRC staff concludes that EGC possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the periods of the licenses, and that EGC thus will be financially qualified to hold the licenses for Peach Bottom, Hope Creek, and Salem to the extent described in the applications. The NRC staff notes that in light of EGC's representation that the Peach Bottom revenues are sufficient to cover those units' costs, EGC would appear to be financially qualified to hold the

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

Peach Bottom licenses as proposed without regard to whether the Hope Creek and Salem licenses are transferred. However, the NRC staff's findings regarding EGC's financial qualifications with respect to Hope Creek and Salem are premised upon the transfer of Peach Bottom with or before the transfer of Hope Creek and Salem.

4.2 Decommissioning Funding Assurance

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k)(1) requires that an application for an operating license for a utilization facility contain information to demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility.

According to the applications, EGC will become the owner of the nuclear decommissioning trust funds presently maintained by PSEG Nuclear, i.e., the funds currently held by PSEG Nuclear will be transferred to EGC's existing decommissioning trusts for the subject units. Both PSEG and EGC at present maintain decommissioning funds for their respective interests in the subject plants in external, sinking fund decommissioning trusts in accordance with 10 CFR 50.75(e)(1)(ii). Once the transfers are effected, EGC will be responsible for all of the decommissioning funds for Peach Bottom, Hope Creek, and Salem.

The NRC staff analyzed the transfer applications, the applicants' biennial decommissioning funding status reports submitted to the NRC in March 2005, and the 2006 annual status reports as required by 10 CFR 50.75(f)(1) for plants involved in mergers or acquisitions. Based on the information presented in those documents, the NRC staff has determined that each of the Peach Bottom, Hope Creek, and Salem units were fully funded as of the end of both 2004 and 2005, using a 2-percent earnings credit on fund balances, and would continue to be fully funded after the transfers, based on the transfer of all of PSEG Nuclear's decommissioning trust funds to EGC. Moreover, EGC will continue to make additional deposits to the decommissioning trust funds for Salem from non-bypassable charges approved by the Pennsylvania Public Utility Commission (PUC) authorizing PECO Energy Company to continue to collect decommissioning funds for EGC (see EGC's Biennial Decommissioning Funding Report dated March 24, 2005.) Also, according to EGC's application dated March 3, 2005, EGC "is continuing to make collections" for Peach Bottom, notwithstanding being fully funded as of the end of 2004.

The NRC staff finds that the arrangements discussed above adequately demonstrate that EGC will be able to provide reasonable assurance that funds will be available for decommissioning Peach Bottom, Hope Creek, and Salem. Since this finding is based, among other things, on the applications' representations that PSEG Nuclear will transfer all of its accumulated decommissioning funds to EGC, the following is to be made a condition of the Order approving the direct license transfers regarding the above-noted units to EGC as well as corresponding license conditions appropriately worded in each of the licenses:

At the time of the closing of the transfer of the license(s) from PSEG Nuclear to EGC, PSEG Nuclear shall transfer to EGC all of PSEG Nuclear's respective decommissioning funds accumulated as of such time, and EGC shall deposit such funds in an external decommissioning trust established by EGC for the respective unit.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

The NRC staff notes that the conforming license amendments for Peach Bottom, Hope Creek, and Salem are being proposed under which the current specific license conditions relating to the terms and conditions of the decommissioning trust agreements will be deleted. The NRC staff finds these changes acceptable on the basis that EGC will be responsible for all decommissioning funding and the requirements of 10 CFR 50.75(h)(1) regarding decommissioning trust agreement provisions will apply.

**TABLE 1. EXELON GENERATION COMPANY
PROJECTED INCOME STATEMENT (\$M) (1)**

	2006	2007	2008	2009	2010 (2)
Operating Revenues (3)	[]	[]	[]	[]	[]
Operating Expenses (4)					
Purchased Power	[]	[]	[]	[]	[]
Fuel	[]	[]	[]	[]	[]
Operation & Maintenance	[]	[]	[]	[]	[]
Depreciation & Amortization	[]	[]	[]	[]	[]
Administrative & Other	[]	[]	[]	[]	[]
Total Operating Expenses	[]	[]	[]	[]	[]
Operating Income (Loss)	[]	[]	[]	[]	[]
Other Income (Deductions)	[]	[]	[]	[]	[]
Income before Income Taxes	[]	[]	[]	[]	[]
Income Taxes	[]	[]	[]	[]	[]
Total Extraordinary Items		[]			
Net Income (Loss)	[]	[]	[]	[]	[]

Note 1: The applicant stated that the Projected Income Statement does not reflect the effect of its market power mitigation plan to divest 5,500 MW (MegaWatts) of capacity, as such plan has not been finalized. Even with the mitigation plan effective, change to the Projected Income Statement will not be material.

Note 2: The applicant stated that the detailed long range planning for EGC covered the period from 2006 to 2009; projected Net Income in 2010 is the same as 2009 based on the assumption of no projected growth.

Note 3: The applicant stated that revenue is calculated based on owned asset generation output multiplied by sales prices [] plus revenue from Purchased Power []. Sales prices are based on Purchase Power Agreements [] with counter parties (market participants) or from reverse auction contracts. Sales are predominately [] with Exelon Electric and Gas subsidiaries: Come, PECO, and PSE&G. In addition, miscellaneous revenues from fuel trading, purchase accounting adjustments, and merger synergies is included [].

Note 4: The applicant stated that Purchased Power includes non-owned generation purchased on the spot market through Purchase Power Agreements. Fuels expense includes coal, oil, natural gas, and amortization of nuclear fuel (including spent fuel fee). Operation and Maintenance expense includes labor, pension, and benefits, parts and materials, services and outage costs. Depreciation and amortization costs are on Genco assets (plant, property, equipment, and software). Administrative and Other expenses include corporate center costs allocated to EGC, including headquarters cost, information technology, supply, human resources and finance.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

**TABLE 2. EXELON GENERATION COMPANY- KEY ASSUMPTIONS
FOR PROJECTED INCOME STATEMENT**

	2006	2007	2008	2009	2010
Generation (GWh)					
Fossil & Hydro	[]	[]	[]	[]	[]
Nuclear	[]	[]	[]	[]	[]
Subtotal	[]	[]	[]	[]	[]
Purchases from Other Suppliers	[]	[]	[]	[]	[]
Total Supply (GWh)	[]	[]	[]	[]	[]
Market Sales (GWh)	[]	[]	[]	[]	[]
Average Market Price (\$/Mwh) (5)	[]	[]	[]	[]	[]
Scheduled Nuclear Refueling Outages	[]	[]	[]	[]	[]

Note 5: The applicant stated that average market price is based on a conservative estimate of the future around-the-clock market prices as of the third quarter of 2004. Revenue estimates are calculated using actual Purchase Power Agreements prices [] in 2006.

4.3 Antitrust

The Atomic Energy Act, as amended (the Act), does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the applications postdate the issuance of the subject operating licenses, no antitrust review is required or authorized. The NRC staff notes that there are no existing antitrust license conditions in any of the subject licenses. Accordingly, there are no antitrust-related issues to resolve with respect to proposed conforming license amendments.

4.4 Foreign Ownership, Domination, or Control

Sections 103d and 104d of the Act prohibit the NRC from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” These restrictions are also embodied in the NRC’s regulations at 10 CFR 50.38, “Ineligibility of certain applicants.”

The proposed transferee, EGC, already holds 10 CFR Part 50 licenses issued under the Act for Salem and Peach Bottom, as well as for other nuclear facilities. EGC is wholly-owned by Exelon Ventures Company, LLC (EV), which in turn is wholly-owned by Exelon which is a widely-held corporation. Exelon was incorporated in Pennsylvania and has its principal

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

executive offices in Chicago, Illinois, according to its latest Form 10-K on file with the Securities and Exchange Commission (SEC). EV is a Delaware limited liability company doing business in Illinois, while EGC is a Pennsylvania limited liability company headquartered in New Jersey, with its nuclear organization headquartered in Pennsylvania. According to the applications, the majority or all of the directors of Exelon, and the principal officers of each of the foregoing entities, are or will be U.S. citizens.

With respect to the ultimate parent company of EGC, three entities have filed 13G Schedules with the SEC, and own from 5 to 7 percent each of the common stock of Exelon, according to Exelon's most recent Form 10-K filing. By reason of the filing of 13G Schedules, the stock is being held for investment purposes, with no intention by the beneficial owners to exercise control over Exelon. The Form 10-K filing disclosed no 13D Schedules.

The applications assert that EGC will not become owned, controlled, or dominated by foreign interests as a result of the merger between EGC and PSEG. The NRC staff does not know or have reason to believe otherwise.

4.5 Indemnity Insurance

EGC, as a current licensee for Salem and Peach Bottom, is already subject to the requirements under the Price-Anderson Act (Section 170 of the Act) and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," to provide primary insurance and participate in the secondary retrospective insurance pool with respect to EGC's interests in those units. At the time of the closing of the proposed license transfers, EGC will be subject to the foregoing requirements with regard to the 100-percent interests in Peach Bottom and Salem that EGC will hold, as well as the 100-percent interest in Hope Creek that EGC will be acquiring. EGC will also be required to provide property insurance to the extent specified in 10 CFR 50.54(w) with respect to its entire interests in Peach Bottom, Hope Creek, and Salem. The information in the applications concerning EGC's financial qualifications shows that EGC will be able to pay deferred premiums in an amount of \$15 million for each reactor, in accordance with 10 CFR 140.21, "Licensee guarantees of payment of deferred premiums."

Consistent with NRC practice, EGC will be required to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended licenses reflecting EGC as the exclusive operator and possessor of Peach Bottom, Hope Creek, and Salem. Thus, the Order approving the license transfers are to be subject to essentially the following condition:

Before completion of the transfer of the subject facilities to it, EGC shall provide to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that EGC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

5.0 TECHNICAL QUALIFICATIONS

5.1 Peach Bottom

The Peach Bottom license transfer does not result in a transfer of operating authority. EGC's request states, in part, the following:

EGC Generation will continue to possess the technical and financial qualifications to own and operate these facilities...the referenced facilities will continue to be operated by the EGC Generation Nuclear Group following the merger, the proposed license transfers will not impact the technical qualifications of the operating licensees...The EGC Generation organizations and personnel presently responsible for all of the referenced nuclear stations will continue to operate and support the stations with no change. Likewise, EGC Generation's programs, procedures, and conduct of operations will not be altered for these facilities as a result of the merger.

Based on the above statements, the NRC staff concludes that EGC will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation of the plant under both normal and off-normal conditions after the transfer of PSEG Nuclear's non-operating ownership interest in Peach Bottom. The transfer will not involve any change to the management or technical organization or qualifications of the staff responsible for operating and maintaining Peach Bottom, nor will it require any change in the numbers and qualifications of EGC personnel who operate Peach Bottom. The NRC staff concludes that EGC's request for transfer of ownership adequately addresses the relevant requirements of 10 CFR 50.40(b), "Common standards," and 10 CFR 50.80.

5.2 Hope Creek and Salem

For the transfers of the Salem and Hope Creek licenses, the operating authority will transfer from PSEG Nuclear to EGC. The NRC staff evaluated the transfers of operating authority to ensure that the proposed corporate management is involved with, informed of, and dedicated to the safe operation of the plants and that sufficient, qualified technical resources will be provided to support safe plant operation and maintenance; and to evaluate proposed changes to the operating organization that may occur as a result of the license transfer. The NRC staff used the following regulations and guidance during the technical qualification evaluation: 10 CFR 50.40(b), 10 CFR 50.80; Standard Review Plan (SRP) NUREG-0800, Section 13.1.1, "Management and Technical Support Organization," and Sections 13.1.2 - 13.1.3, "Operating Organizations."

5.2.1 Management and Technical Support Organization

The NRC staff reviewed PSEG Nuclear's submittal to determine the acceptability of the proposed corporate management and technical support organization. The NRC staff evaluated the submittal using the applicable acceptance criteria contained in SRP Section 13.1.1.

In its submittal dated March 4, 2005, PSEG Nuclear states, "The technical qualifications of Exelon Generation to carry out its responsibilities as the licensed operator of the nuclear plants will meet or exceed the technical qualifications of the present PSEG Nuclear operating organization." In addition, "When the merger and proposed transfers become effective...employees of PSEG Nuclear at the nuclear plants and at other locations will become employees of Exelon Generation or a wholly-owned subsidiary of Exelon Generation."

PSEG Nuclear further states, "The NOSC [Nuclear Operating Services Contract] is in place and in effect there will be no significant change in the day-to-day management and operations of the plants. Current nuclear personnel and the existing organizations will continue to support the nuclear plants. Organization changes will occur as combined areas of expertise are integrated."

Based on the March 4, 2004 submittal, PSEG Nuclear has shown and described its organization for managing and its means for providing technical support to the plant staff that will be essentially equivalent to the current qualifications of the PSEG Nuclear management and technical support organization. Accordingly, the NRC staff concludes that the proposed EGC organization for managing and its means of providing technical support for the continued operation of Salem and Hope Creek under both normal and off-normal conditions are in accordance with SRP Section 13.1.1.

5.2.2 Operating Organization

The NRC staff reviewed the PSEG Nuclear submittal to determine the acceptability of the Salem and Hope Creek operating organizations and to evaluate changes to the proposed operating organizations as a result of the license transfer. The existing Salem and Hope Creek operating organizations were determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organizations should have been evaluated with an appropriate methodology. Therefore, the existing operating organizations remain acceptable. The NRC staff's review focused on evaluating any changes to the proposed operating organizations as a result of the license transfers. The NRC staff evaluated the PSEG Nuclear's submittal using the applicable acceptance criteria contained in SRP Sections 13.1.2 - 13.1.3.

In its March 4, 2005, submittal, PSEG Nuclear stated:

The Nuclear Plants operating organizations will be integrated into the Exelon Generation nuclear organization, reporting to the Exelon Generation Chief Nuclear Officer (CNO). Exelon Generation will also integrate the support functions for the stations. These organizations and personnel will be located and assigned with clear and unambiguous responsibilities and reporting relationships. Technical support in particular will be integrated under the Senior Vice President, Engineering and Technical Support and the Senior Vice President, Operations Support. This includes support for: engineering, fuels, project management, outages, training, security, operations, maintenance/work control, chemistry, radwaste, radiation protection, and industrial safety. These functions will not be diminished at the Nuclear Plants... Technical support will continue to be available, and will be enhanced...

Since substantially all of the operating organizations and personnel now responsible for the operation and maintenance of Salem and Hope Creek will be transferred to EGC, the NRC staff concludes that EGC's onsite organizations established to operate and maintain Salem and Hope Creek under both normal and off-normal conditions are in accordance with SRP Sections 13.1.2 - 13.1.3.

5.2.3 Conclusions

The NRC staff concludes that EGC will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation of the plants under both normal and off-normal conditions after the transfers of licensed operating authority from PSEG Nuclear to EGC. The PSEG Nuclear submittal adequately addresses the relevant requirements of 10 CFR 50.40(b) and 10 CFR 50.80. Accordingly, the NRC staff concludes that EGC will be technically qualified to hold the operating authority under the Salem and Hope Creek licenses.

6.0 Written Comments in Response to Federal Register Notice

On August 2, 2005, the NRC staff published notices in the *Federal Register* of its consideration of issuance of an Order under 10 CFR 50.80 approving the direct transfer of the facility operating licenses for the Peach Bottom, Hope Creek, and Salem units. The *Federal Register* notices provided an opportunity to request a hearing within 20 days of publication of the notices by anybody who may be affected by the NRC's action, or submit written comments within 30 days.

On August 21, 2005, Mr. Eric Joseph Epstein requested a hearing regarding the action on Peach Bottom. Mr. Epstein's request included 11 contentions. On October 7, 2005, Mr. Epstein submitted a Supplemental Filing containing additional concerns about emergency planning. On October 26, 2005, the Commission issued Memorandum and Order, CLI-05-26, denying Mr. Epstein's claim of standing and consequently dismissed the proceeding. The Commission directed the NRC staff to consider Mr. Epstein's contentions and Supplemental Filing as if they were written comments under 10 CFR 2.1305. The NRC staff's response to Mr. Epstein's contentions and Supplemental Filing are as follows:

6.1 Comment 1 (Contention 1)

6.1.1 Statement of Comment 1

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

6.1.2 NRC Staff Response to Comment 1

In support of Comment 1, Mr. Epstein argues that before EGC may fulfill the "virtual divestiture" commitment made to the Federal Energy Regulatory Commission (FERC) in connection with that agency's approval of the acquisition of PSEG Nuclear by EGC, the NRC must analyze and approve such commitment. Mr. Epstein cites 10 CFR 50.33, 50.38, and 50.80 as the regulatory bases for his assertion.

The NRC staff understands that the virtual divestiture commitment involves only the sale of energy from nuclear capacity. This is separate from another commitment that was made by the applicants to FERC to actually divest the assets of 4,000 MW of intermediate and peaking generation non-nuclear facilities, located primarily in eastern PJM Interconnections [Pennsylvania New Jersey Maryland Interconnection LLC].

The regulations at 10 CFR 50.80 require that NRC approval must be obtained before the authority under an NRC license to possess or operate a nuclear facility is transferred. The purchase and sale of energy generated from nuclear facilities, however, does not require authorization under an NRC license. In particular, if a buyer of electricity, about whom Mr. Epstein appears to be most concerned, is not in possession of or operating the facility generating the electricity, the NRC is not required or authorized to issue a license to the buyer. Thus, the NRC will not perform a review of a potential buyer of electricity under 10 CFR 50.33, 50.38, or 50.80 in connection with any approval of the proposed Peach Bottom license transfer.

6.2 Comment 2 (Contention 2)

6.2.1 Statement of Comment 2

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

6.2.2 NRC Response to Comment 2

In support of Comment 2, Mr. Epstein argues that the NRC should "investigate the implication of an auction manager with ties to foreign governments selling a pool of Exelon assets to unidentified buyers."

Under Sections 103 and 104 of the Act, the NRC is prohibited from granting a license for a nuclear power plant to a corporation or other entity that is owned, controlled, or dominated by foreign interests. Mr. Epstein does not explain how this prohibition would apply to an auction manager whose role, according to Mr. Epstein, is "to coordinate the sale of nuclear generating assets." (As noted above, there does not appear to be any required sale of nuclear assets, but merely the sale of output from nuclear facilities.) There is no indication that the auction manager would have any authority to possess or operate any nuclear power plant, or engage in any other activity for which an NRC license is required. Accordingly, there is no foreign control issue under the Act, or under 10 CFR 50.38 of the NRC's regulations, that arises in connection with EGC's use of an independent auction manager.

As noted in this SE, the NRC staff has considered whether there are any problematic foreign control issues relating to EGC's acquisition of the PSEG Nuclear interests in Peach Bottom and EGC's holding the licenses with respect to those interests. The NRC staff concluded that it does not know or have reason to believe that EGC will be owned, controlled, or dominated by foreign interests as a result of the subject transaction giving rise to the license transfers. Mr. Epstein's assertions do not affect the NRC staff's conclusion.

6.3 Comment 3 (Contention 3)

6.3.1 Statement of Comment 3

Exelon [sic] will not continue to own, operate, and market power from Peach Bottom.

6.3.2 NRC Response to Comment 3

In support of Comment 3, Mr. Epstein asserts that EGC and PSEG Nuclear have made material false statements in their applications by stating that EGC will continue to own, operate, and market power from Peach Bottom, arguing that a July 1, 2005, FERC Order is contingent upon EGC transferring ownership of its nuclear generating assets. Similarly, Mr. Epstein contends that EGC and PSEG Nuclear made misleading or material false statements in their applications by stating, "Exelon Generation will continue to own, operate, and market power from a diverse portfolio of nuclear, fossil, and hydroelectric generating units."

The NRC staff understands that the FERC order requires the virtual divestiture by EGC of the output of 2,600 MW of unspecified nuclear capacity. The virtual divestiture commitment involves only the sale of energy from nuclear capacity, not any transfer of ownership of nuclear plants. The applicants represented that EGC will have the above-identified diverse portfolio from which to demonstrate its financial qualifications to safely operate and provide security for all of its plants after the merger. The NRC staff notes that the diversity of the assets is not material to the NRC staff's findings of financial qualifications.

Mr. Epstein also states that, consistent with his discussion in Comment 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.

Based on EGC's projected income statement after the merger, the NRC staff found EGC to be financially qualified to hold the licenses for Peach Bottom and other plants which require license transfer approvals. In the application, EGC stated that its projected income statement does not reflect the effect of its market power mitigation plan to divest 5,500 MW of capacity (original divestiture plan), as such plan was not finalized at the time the transfer application was submitted to the NRC. EGC stated that even with the (original) mitigation plan effective, change to the income statement will not be material. Pursuant to 10 CFR 50.9, "Completeness and accuracy of information," EGC would be required to update its projected income statement if the final divestiture plan of 6,600 MW of capacity were determined to have a material effect on the income statement; EGC has not provided any such update and the NRC staff has no information to indicate that there has been any change. Moreover, Mr. Epstein did not explain how or why either the original divestiture plan or the final divestiture plan would have a material effect on EGC's projected income statement.

Mr. Epstein further argues that the NRC must examine the veracity of the applicants' assertion that EGC expects to have an investment grade bond rating.

The financial projections and other information presented by the applicants satisfied NRC's requirements under 10 CFR 50.33 for the determination of financial qualifications. Based on

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

that information, the NRC staff found EGC to be financially qualified to hold the licenses for Peach Bottom and other plants which require license transfer approvals. While EGC also presented information on its financial ratings, noting that they are investment grade, and stated that it expects to have an investment grade bond rating after the merger, Mr. Epstein did not show why such information is material to the NRC staff's findings.

6.4 Comment 4 (Contention 4)

6.4.1 Statement of Comment 4

The technical qualifications of Exelon [sic] will be affected by the proposed license transfers.

6.4.2 NRC Response to Comment 4

In support of Comment 4, Mr. Epstein stated that the technical qualifications of Exelon [sic] will be affected by the proposed license transfers. Mr. Epstein elaborated that the status quo will not guarantee technical qualifications that did not exist prior to the indirect and direct license transfer. Mr. Epstein further stated that there are no guarantees that EGC possesses the requisite capabilities to operate an additional corporate structure of "virtually divested" assets along with an ailing infrastructure.

The NRC staff evaluated the technical qualifications of EGC to operate the five PSEG facilities and found them to be acceptable. EGC's technical qualifications related to the "virtually divested" infrastructure is addressed in responses to Comments 1 and 3.

Further, Mr. Epstein asserts, "The Joint Applicants acknowledge in response to discovery [in a FERC proceeding] 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 [Three Mile Island] 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."

There are no applications for power uprates for the plants involved in this transfer matter pending before the NRC. Therefore, the comments regarding a projected increase in capacity, i.e., power uprate, not currently before the NRC in any application, is premature, and is not relevant to the transfer.

Mr. Epstein stated, "According to the Pennsylvania Department of Resources, there is a nexus between the Exelon Way and TMI's training woes..." Mr. Epstein further states, "According to the data provided by Exelon, similar staffing reductions have taken place at Peach Bottom since the PECO/Com Ed merger was approved and implemented."

Mr. Epstein stated that, "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."

To clarify the actual date, the TMI operations training program was placed on probation on December 15, 2004. The training programs placed on probation were reactor operator, senior operator, licensed operator requalification, shift technical advisor, non-licensed operator, and shift supervisor.

By placing a training program on probation, the NNAB is informing the facility that their training program does not meet the accreditation renewal standards established by the NNAB and needs improvement. When a training program is placed on probation, the facility is given a set period of time, typically 4 to 6 months, to attain the NNAB standards. To make these improvements, facilities typically contract with training specialists and invest substantial amounts of money in the training programs and the training process.

When training programs are placed on probation, regional personnel review the Accreditation Self Evaluation Report (ASER) to evaluate the safety significance of the probationary status. Safety significance and continuing to meet the regulations were evaluated/confirmed for the TMI operations training programs by having Region I personnel review the ASER with Accreditation Team comments.

TMI renewed accreditation of the operations training programs at the June 15, 2005, meeting of the NNAB. Consequently its training program is presently accredited. A review of the Human Factors Information System for the period January 1, 2003 through December 31, 2004 did not identify any human performance areas of concern for TMI.

With regard to Peach Bottom, Mr. Epstein argued, "Poor oversight and declining performance have also plagued Peach Bottom since the Unicom merger." He further asserted, "The NRC must examine the impact of License Transfers on the ability of Exelon to adequately train, staff and operate Peach Bottom. The NRC should be mindful of the impact of staffing cuts on the performance of Peach Bottom 2 and 3."

The NRC does not regulate or monitor the size of the total workforce at nuclear facilities. The NRC regulates and monitors the number of operators needed to operate the facility (10 CFR 50.54(m)). The NRC will evaluate training programs when something happens at a plant that is determined to have a training cause. Region based examiners and inspectors evaluate operator training programs on a biennial basis. The site resident inspectors observe operator training on a quarterly basis. A review of the Human Factors Information System for the period January 1, 2003, through December 31, 2004, does not identify any human performance operational issues for TMI and Peach Bottom.

6.5 Comment 5 (Contention 5)

6.5.1 Statement of Comment 5

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

6.5.2 NRC Response to Comment 5

In support of Comment 5, Mr. Epstein made the following statements:

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

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.

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

Mr. Epstein further stated:

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

As discussed in the response to Comment 4, the NRC does not regulate nor monitor the size of the total workforce at nuclear facilities. The NRC staff reviewed, evaluated, and approved the corporate level management and technical support organization and the operating organization submitted by EGC and PSEG Nuclear on March 3, 2005. The NRC regulates and monitors the number of operators needed to operate the facility (10 CFR 50.54(m)). The NRC may become involved in workforce size if the size of the workforce resulted in unsafe operation of a plant or where the cause of an event could be proven or is suspected to be a result of the size

of the workforce. Even then, the NRC would probably not dictate any specific size workforce. A review of the Human Factors Information System for the period of January 1, 2003, through December 31, 2004, does not identify any human performance areas of concern for Peach Bottom.

6.6 Comment 6 (Contention 6)

6.6.1 Statement of Comment 6

Exelon's [sic] programs, procedures, and conduct of operations will be altered for these facilities as a result of the merger.

6.6.2 NRC Response to Comment 6

In support of Comment 6, Mr. Epstein stated, "The NRC must investigate not only staffing levels and organizational infrastructure at Peach Bottom, but the NRC 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."

The Peach Bottom licensee is required to seek prior NRC approval for any reductions in commitments and effectiveness for Quality Assurance, Security and Emergency Preparedness programs per 10 CFR 50.54, "Conditions of a license," and maintain quality assurance per 10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," for programs, procedures and conduct of operations throughout the merger. Any plant related changes are required to meet the criteria of 10 CFR 50.59, "Changes, tests and experiments," for acceptable changes, which are verified by NRC inspectors through the Reactor Oversight Process. The Reactor Oversight Process and facility licenses are designed and implemented to ensure that facility programs, procedures and the conduct of operations are properly maintained and implemented.

6.7 Comment 7 (Contention 7)

6.7.1 Statement of Comment 7

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

6.7.2 NRC Response to Comment 7

In support of Comment 7, Mr. Epstein stated:

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

AmerGen and EGC 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.

Mr. Epstein provided an excerpt from a document identified only as “Section 4.16 Operations of Nuclear Power Plants (a)(i).” This excerpt provided, in part, “The operations of the nuclear generation stations currently owned, in whole or in part, by the Company or any of its Affiliates... are and have been conducted in compliance with all applicable laws... except for such failures to comply that would not... be expected to have a Material Adverse Effect on the Company. Each of the Company Nuclear Facilities maintains, and is compliance with, (i) emergency plans designed to respond to an unplanned release of a Hazardous Substance therefrom of radioactive materials...”

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

The NRC staff has identified the source of this document to be the “Agreement and Plan of Merger between Exelon Corporation and Public Service Enterprise Group,” a document generated by the parties involved in the proposed merger. Compliance with the provisions of this agreement is an issue only for the parties to the agreement; it is not a matter within the regulatory purview of the NRC. This document does not, in any sense, supersede or modify the existing regulations and requirements that are applicable to the operations at Peach Bottom as a condition of the license issued by the NRC. In as much as this discussion does not substantiate any failure to comply with the NRC’s regulations, the discussion is beyond the scope of, and is not material to, this license transfer review and will not be considered further.

Preparedness for a radiological emergency at Peach Bottom is provided for by emergency planning performed by the licensee, state and local government officials, and by administrators of public and private facilities such as schools and hospitals. Before an initial operating license for a nuclear power reactor may be issued, the NRC must make a finding that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC bases its determination on whether the licensee’s emergency plans are adequate and are capable of being implemented, and on a review of the FEMA⁽²⁾ findings on whether the State and local emergency plans are adequate and capable of being implemented. If, after licensing, the NRC finds that the state of emergency preparedness does not provide reasonable assurance, and the deficiencies are not corrected within 4 months, the NRC will determine whether the reactor should be shut down or whether other enforcement action is appropriate. As with initial licensing, the NRC will base its determination on whether the licensee’s emergency plans are adequate and capable of being implemented, and on a review of FEMA findings whether the State and local emergency plans are adequate and capable of being implemented.

(2) FEMA is in the process of re-organization at this time. When this re-organization is complete, FEMA’s Radiological Emergency Preparedness Section, Nuclear and Chemical Hazards Branch, will be separated from FEMA and will report to the Assistant Secretary for Infrastructure Protection, Department of Homeland Security, as the Chemical and Nuclear Preparedness and Protection Division. In the interest of minimizing confusion, the traditional “FEMA” acronym will be used herein.

Emergency planning is an ongoing regulatory requirement, subject to evaluation under the Reactor Oversight Process. At the present time, EGC owns 50 percent of Peach Bottom, and is the licensed operator. After the transfer, EGC will be the sole owner and will continue to be the operator. Both before and after the transfer, EGC is required to meet all the applicable requirements of 10 CFR 50.47, 50.54 and 10 CFR Part 50, Appendix E. No changes to the EP have been proposed by EGC in the transfer application. The NRC has previously determined that there is reasonable assurance that adequate protective measures can and will be taken to protect the public in the event of a radiological emergency at Peach Bottom. Therefore, Mr. Epstein's assertion that the ORO planning has failed to include daycare facilities is not substantiated.

In summary, the assertion made in Comment 7 that EGC's training programs, procedures, and conduct of operations for emergency planning are in violation of Federal regulations is not substantiated and need not be considered further within this license transfer review.

6.8 Comment 8 (Contention 8)

6.8.1 Statement of Comment 8

The proposed license transfers will adversely impact Exelon's [sic] off-site emergency preparedness program.

6.8.2 NRC Response to Comment 8

In support of Comment 8, Mr. Epstein stated that the proposed license transfers would adversely impact EGC's offsite emergency preparedness program. Mr. Epstein provided additional discussion purported to support this comment. For the purposes of responding to Mr. Epstein's comment, the NRC staff will discuss it as two separate comments:

- (a) The proposed license transfer will adversely affect EGC's offsite emergency preparedness because of the integration of Hope Creek and Salem into the EGC/AmerGen fleet.
- (b) The proposed license transfer will exacerbate problems caused by the consolidation of the TMI and Peach Bottom emergency operations facility (EOF).

6.8.2.1 Re-phrased Comment 8(a)

With regard to the re-phrased Comment 8(a), Mr. Epstein stated:

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

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

Mr. Epstein did not provide any substantiation for the assertion that the offsite emergency preparedness within the emergency planning zones (EPZs) of the EGC sites was adversely impacted by the December 2000 merger. Since FEMA continues to have reasonable assurance that adequate measures can and will be taken to protect the public in the event of a radiological emergency, and since Mr. Epstein has provided no specific information to the contrary, the assertion is unsubstantiated.

Under 10 CFR 50.54(q), a nuclear power reactor licensee is required to follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements in 10 CFR Part 50 Appendix E. The licensee may make changes to the emergency plan without NRC approval if the changes do not decrease the effectiveness of the plans and that the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements in 10 CFR Part 50 Appendix E. EGC has not proposed changes to the emergency plan as part of the proposed license transfer. Although EGC may in time seek to further align the emergency plans of its licensed facilities in order to realize consistency and efficiencies in operations, EGC will need to evaluate such changes as provided in 10 CFR 50.54(q), and if the change would decrease the effectiveness of the plans, would be required to submit the proposed change for prior NRC approval. Additionally, baseline inspection procedures associated with the Reactor Oversight Process periodically evaluate emergency plan changes to ensure that the changes do not constitute an unidentified decrease in effectiveness.

Should EGC pursue future emergency plan changes that would decrease their effectiveness, the NRC would fully evaluate the impact of the proposed changes on the effectiveness of the emergency preparedness at the affected EGC plants. Since EGC has not proposed the changes raised by Mr. Epstein, the concerns raised in re-phrased Comment 8(a) are not ripe for consideration and, as such, are beyond the scope of, and not material to, this license transfer proceeding.

6.8.2.2 Rephrased Comment 8(b)

With regard to the re-phrased Comment 8(b), Mr. Epstein stated:

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

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

No EOF consolidation was proposed by EGC as part of the license transfer. Prior NRC approval⁽³⁾ would be required for any such consolidation that EGC may seek to pursue in the

(3) Prior NRC approval is required for any EOF located more than 25 miles away from the plant's technical support center. All of the consolidations discussed by Mr. Epstein exceed this criterion.

future. As such, the concerns raised in re-phrased Comment 8(b) are not ripe for consideration and, as such, are beyond the scope of, and not material to, this license transfer review.

Mr. Epstein asserted that the previous EOF consolidations have resulted in “negative fallout.” Mr. Epstein also identified staffing reductions due to the relocation of personnel assigned to the TMI and Peach Bottom dedicated EOFs to Coatsville, Pennsylvania, with the implication that further staffing reductions are possible and would have an adverse impact on emergency preparedness. Neither statement is substantiated. The Coatsville EOF has served both Peach Bottom and Limerick Generating Station (LGS) since 1992. In March 2003, the NRC approved the consolidation of the TMI EOF with the Coatsville, Pennsylvania EOF. In approving that consolidation, the NRC noted:

The NRC staff has determined that there is reasonable assurance that public health and safety will be maintained in the event of an emergency at TMI-1 and/or PBAPS and/or LGS with the integration of the TMI-1 EOF into the common EOF for PBAPS and LGS. The NRC also concludes that this action will not reduce the effectiveness of the emergency response capability for any of the three sites. The proposal to consolidate the TMI-1 EOF into the common EOF is a reasonable action for AmerGen, since the common EOF is already operating and has adequately fulfilled its function for PBAPS and LGS since 1992.

Evaluated biennial exercises were conducted for LGS, Peach Bottom, and TMI in 2003, 2004, and 2005, respectively. In each of these inspections, the NRC evaluated the adequacy of the performance of EGC’s emergency response organization and the overall adequacy of the emergency response facilities, including the EOF. No findings of regulatory significance were observed. Based on the above, the NRC finds Mr. Epstein’s statement to be unsubstantiated.

Mr. Epstein provided an excerpt drawn from testimony provided before the PUC, on the matter of the proposed merger, by the Director of the Commonwealth of Pennsylvania’s Bureau of Radiation Protection. The excerpt stated:

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

Since EGC has not proposed any changes in its license transfer request, none are under consideration as part of this review. As explained above, a licensee may make changes to its emergency plans without NRC approval only if those changes do not decrease the effectiveness of the approved plans. If the change under consideration would decrease the effectiveness of the plans, the licensee must obtain prior NRC approval. The license amendment process for such approvals requires that the licensee’s application be noticed in the *Federal Register* with the option for interested parties to request a hearing. As such, the Commonwealth would be provided the opportunity to intervene in any future application that EGC makes that would have the affect of decreasing the effectiveness of the approved plans.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

Mr. Epstein refers to testimony by the an official of the Commonwealth of Pennsylvania which referred to an NRC finding that approximately 50 percent (not 70 percent as cited) of TMI's ERO personnel had failed to complete required training in accordance with TMI procedures. As a result of the finding, the NRC issued a notice of violation (NOV) with low to moderate importance to safety (White). The NOV cited the licensee for having 50 percent of the ERO 5 months overdue for training committed to in the TMI emergency plan. Upon identification of this condition, EGC took immediate corrective action to restore the qualification of the affected personnel. EGC is currently in compliance with the NRC regulations regarding ERO training. Since the testimony addresses a condition that was the subject of enforcement action completed in July 2005, the statement is beyond the scope of, and is not material to, this license transfer review.

With regard to the alleged criminal behavior, Mr. Epstein provided the following:

On August 15, 2001 the NRC's Office of Investigation [OI] documented **criminal behavior** by two of Exelon's Emergency Preparedness personnel. The NRC found that the "**technicians fabricated siren testing maintenance records**, performed deficient siren tests on the off site EP response sirens and intentionally installed jumper wires in the siren boxes disabling important system functions."

Contrary to the excerpt, the NRC's OI staff did not document "criminal behavior;" no referral was made to the Department of Justice. EGC self-identified the cited events, conducted an internal evaluation, notified the NRC, and took corrective actions, including termination of the contract technicians involved. The OI's investigation, initiated by EGC's report to the NRC, substantiated that the contract technicians deliberately falsified siren testing maintenance records and that one of the technicians had knowingly installed jumper wires to bypass siren failure detection circuitry. The NRC subsequently cited EGC for two violations. Since the violations were caused by the willful actions of contractor personnel, these violations were categorized as a Severity Level III problem. EGC is currently in compliance with the NRC regulations regarding sirens. Since Mr. Epstein's statement addresses a condition that was the subject of enforcement action completed in 2001, the statement is beyond the scope of, and is not material to, this license transfer review.

Based on the above discussion, the assertion made in Comment 8 that the proposed license transfers would adversely impact Exelon's offsite emergency preparedness program is not substantiated and will not be considered further.

6.9 Comment 9 (Contention 9)

6.9.1 Statement of Comment 9

The proposed merger and proposed transfers will affect the financial qualifications of Exelon [sic] as the licensed owner and operator.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

6.9.2 NRC Response to Comment 9

In support of Comment 9, Mr. Epstein asserts that EGC, in developing its financial projections, has not taken into consideration a number of factors listed by Mr. Epstein. Such factors include, for example, the impact of increased capacity factors on wholesale or retail prices, the increased price of uranium and nuclear fuel, and the impact of the actual and virtual divestitures to be undertaken pursuant to FERC's order.

The applicants for the license transfer, of course, are required to provide information that is complete and accurate in all material respects, pursuant to 10 CFR 50.9. Beyond bare assertions, Mr. Epstein has not provided any supporting documentation or opinions of any expert that would cause the NRC staff to further question the information provided by the applicants regarding financial qualifications. According to Mr. Epstein, the applicants' financial assurances (in their applications) were based on the "original" plan for divestiture of certain generation capacity submitted to FERC in February 2005, but in May 2005 EGC made a commitment to FERC to divest and "virtually" divest certain generating assets totaling 6,600 MW. The original plan called for divestiture of approximately 5,500 MW. If by such newer commitment there was any material impact on the financial projections provided to the NRC by the applicants, the applicants would be under a regulatory obligation to revise such projections. The NRC staff notes that EGC specifically stated in its application and projected income statement that while the divestiture of approximately 5,500 MW of generation capacity was not factored in EGC's projected income statement, the market mitigation plan presented to FERC to divest approximately 5,500 MW of generation capacity would not result in any material changes to the financial projections provided to the NRC. Should the actual divestiture of 4,000 MW of non-nuclear generation capacity and "virtual" divestiture of 2,600 MW of nuclear generation capacity (for a total of 6,600 MW) tip the balance and have a material impact on EGC's financial projections, and specifically, on the positive net income projected over the next 5 years, the applicants would then be under an obligation to revise their projections. They have not done so and the NRC staff has no information that the financial projection has changed. Furthermore, Mr. Epstein has not shown with any particularity that the most recent commitment to FERC would have a material impact on the applicants' projections or lead to a reversal of the NRC staff's finding that EGC will be financially qualified. Therefore, the NRC staff has no basis on which to change its conclusions regarding financial qualifications.

6.10 Comment 10 (Contention 10)

6.10.1 Statement of Comment 10

The proposed indirect and direct license transfers affect the present decommissioning funding assurances provided by Exelon Generation [sic].

6.10.2 NRC Response to Comment 10

Mr. Epstein claims that the license transfers will result in there not being reasonable assurance of decommissioning funding. Among other things, Mr. Epstein questions capacity factor

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

statistics, cites the recent performance of EGC trust funds, questions the use of a 2-percent real rate of return on the trust assets, questions PECO's consultant's decommissioning cost estimates, suggests that PSEG Nuclear would better manage the trust funds than EGC, states that cost factors from NUREG-1307, "Report on Waste Burial Charges," need to be re-examined, asserts that the NRC must wait for an Internal Revenue Service (IRS) ruling concerning the transfer of decommissioning funds, and argues that the NRC should consult with the State of New Jersey as to who will receive the non-qualified decommissioning funds.

The NRC's decommissioning funding assurance regulations require that a licensee provide assurance of funding using certain methods that assure a minimum amount determined by use of the formulas contained in 10 CFR 50.75. The most recent version of NUREG-1307 is to be used for the escalation factors in the formulas. As the NRC staff discussed in its analysis of decommissioning funding assurance, EGC, following the license transfers, would have fully-funded prepaid decommissioning trusts for Peach Bottom, assuming the 2-percent real rate of return credit allowed by regulations. This conclusion is based on the NRC staff's calculations of the minimum cost estimates or funding amounts using the most recently available version of NUREG-1307 as of the close of the most recent biennial reporting year. Because the funds would be prepaid, there would be no reliance necessary on additional revenues that may be dependent upon capacity factors. And despite recent fluctuations in returns on investments, the NRC has already taken those fluctuations into account by rule in authorizing a 2-percent real rate of return credit for any prepaid licensee. Even if costs escalate, EGC is still subject to the receipt of additional nonbypassable charges in Pennsylvania for Peach Bottom.

Approval of the license transfers is conditioned upon the transfer of a certain minimum amount of funds to EGC. Should any IRS rulings result in taxes having to be paid upon the transfer of funds, the transfer approval still requires the transfer to EGC of the amount of funds currently held by PSEG Nuclear; tax payments, if any, would have to come from other sources. Thus, the EGC trusts would still be fully funded following the license transfers. Mr. Epstein has not presented anything that undermines the NRC staff's conclusion that EGC will be in compliance with NRC regulations on decommissioning funding assurance following the license transfers.

6.11 Comment 11 (Contention 11)

6.11.1 Statement of Comment 11

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

6.11.2 NRC Response to Comment 11

In support of this comment, Mr. Epstein argues that the NRC must (1) examine the financial impact that compliance with Section 316 (b) of the Clean Water Act will have on the proposed

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

license transfers, and (2) require a license amendment to accommodate the changes in the design and licensing basis, plant configuration, and operation of Peach Bottom.

In addition to meeting NRC's regulations, nuclear power plants must also comply with applicable Environmental Protection Agency and Pennsylvania regulations, including Section 316 (b) of the Clean Water Act. Additional plant design or operational modifications may be required for Peach Bottom, to comply with Section 316 (b); however, the Pennsylvania Department of Environmental Protection is responsible for that review, not the NRC. The modifications, if any are necessary, may require approval of a license amendment by NRC.

However, none of this is an issue for the proposed license transfers. Compliance with 316 (b) and approval of any license amendment that might be needed for continued operation will be required no matter what company owns and operates the plant.

7.0 CONFORMING AMENDMENTS

7.1 Introduction

As stated previously, EGC and PSEG Nuclear requested approval of proposed conforming amendments to Facility Operating Licenses Nos. DPR-44, DPR 56, NPF-57, DPR-70, and DPR-75, for Peach Bottom, Hope Creek, and Salem, respectively. No physical or operating changes to the facilities are requested. Supplemental information received that was not specifically referenced in the *Federal Register* notices did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

7.2 Discussion

The changes to be made to the licenses are indicated in the conforming amendments in Enclosures 2 through 6 to the cover letter forwarding the NRC staff's Order regarding the subject transfers. The NRC staff notes that, as discussed in Section 4.2 of this SE, previous license conditions relating to decommissioning trust agreement provisions, inserted in connection with earlier license transfer actions are to be deleted. As discussed in Section 4.2, since EGC will be fully responsible for decommissioning funding assurance and the respective trusts, and since the corresponding provisions of 10 CFR 50.75(h)(1) will be applicable, the proposed deletion is acceptable. In addition, the NRC staff notes that the applicants propose to delete license conditions from the Hope Creek and Salem licenses relating to a funding commitment to PSEG Nuclear from PSEG Power, a subsidiary of PSEG. Because PSEG Nuclear will no longer be a licensee, and any such funding commitment will not be necessary following the license transfers since EGC projects to have sufficient revenue to cover fixed operating costs associated with a 6-month shutdown of one or more of the nuclear units, the NRC staff finds the proposed deletion of the funding commitment license conditions acceptable.

The changes proposed to the licenses essentially do no more than accurately reflect the approved transfers. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

7.3 State Consultation

In accordance with the Commission's regulations, the Pennsylvania and New Jersey State officials were notified of the proposed issuance of the amendments. The State officials had no comments.

7.4 Conclusion With Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

8.0 ENVIRONMENTAL CONSIDERATION

The subject applications are for approval of the transfers of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

9.0 CONCLUSION

Based on the foregoing, the NRC staff finds that EGC is qualified to hold the licenses for Peach Bottom, Hope Creek, and Salem to the extent proposed in the applications, and that the transfers of the licenses as described, subject to the conditions set forth above, are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributors: R. Uleck
S. Lavie
R. Pelton
R. Emch

Date: May 30, 2006

NOTE: OMITTED TEXT INDICATED BY BRACKETS ON PAGES 4, 7 AND 8 IS PROPRIETARY INFORMATION.

Peach Bottom Atomic Power Station, Unit Nos. 2 and 3

cc:

Site Vice President
Peach Bottom Atomic Power Station
Exelon Generation Company, LLC
1848 Lay Road
Delta, PA 17314

Assistant General Counsel
Exelon Generation Company, LLC
200 Exelon Way
Kennett Square, PA 19348

Plant Manager
Peach Bottom Atomic Power Station
Exelon Generation Company, LLC
1848 Lay Road
Delta, PA 17314

Regulatory Assurance Manager
Peach Bottom Atomic Power Station
Exelon Generation Company, LLC
1848 Lay Road
Delta, PA 17314

Resident Inspector
U.S. Nuclear Regulatory Commission
Peach Bottom Atomic Power Station
P.O. Box 399
Delta, PA 17314

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Mr. Roland Fletcher
Department of Environment
Radiological Health Program
2400 Broening Highway
Baltimore, MD 21224

Correspondence Control Desk
Exelon Generation Company, LLC
P. O. Box 160
Kennett Square, PA 19348

Director, Bureau of Radiation Protection
Pennsylvania Department of
Environmental Protection
Rachel Carson State Office Building
P.O. Box 8469
Harrisburg, PA 17105-8469

Board of Supervisors
Peach Bottom Township
545 Broad Street Ext.
Delta, PA 17314-9203

Mr. Richard McLean
Power Plant and Environmental
Review Division
Department of Natural Resources
B-3, Tawes State Office Building
Annapolis, MD 21401

Dr. Judith Johnsrud
National Energy Committee
Sierra Club
433 Orlando Avenue
State College, PA 16803

Manager-Financial Control & Co-Owner
Affairs
Public Service Electric and Gas Company
P.O. Box 236
Hancocks Bridge, NJ 08038-0236

Manager Licensing-Peach Bottom
Atomic Power Station
Exelon Generation Company, LLC
200 Exelon Way, KSA -3E
Kennett Square, PA 19348

Peach Bottom Atomic Power Station, Unit Nos. 2 and 3

cc:

Vice President - Licensing and Regulatory
Affairs
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Vice President-Operations Mid-Atlantic
Exelon Generation Company, LLC
200 Exelon Way, KSA 3-N
Kennett Square, PA 19348

Senior Vice President, Nuclear Services
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

Director-Licensing and Regulatory Affairs
Exelon Generation Company, LLC
200 Exelon Way, KSA 3-E
Kennett Square, PA 19348

Intervenor:

Mr. Eric Joseph Epstein, Pro se
4100 Hillsdale Road
Harrisburg, PA 17112

Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2

cc:

Mr. Dennis Winchester
Vice President - Nuclear Assessment
PSEG Nuclear
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. Thomas P. Joyce
Site Vice President - Salem
PSEG Nuclear
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. George P. Barnes
Site Vice President - Hope Creek
PSEG Nuclear
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. George H. Gellrich
Plant Support Manager
PSEG Nuclear
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. Carl J. Fricker
Plant Manager - Salem
PSEG Nuclear - N21
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. Michael J. Massaro
Plant Manager - Hope Creek
PSEG Nuclear
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. Darin Benyak
Director - Regulatory Assurance
PSEG Nuclear - N21
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. James Mallon
Manager - Licensing
200 Exelon Way, KSA 3-E
Kennett Square, PA 19348

Jeffrie J. Keenan, Esquire
PSEG Nuclear - N21
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. Michael Jesse
Manager, Regulatory Assurance, Hope Creek
P.O. Box 236
Hancocks Bridge, NJ 08038

Mr. Steven Mannon
Manager, Regulatory Assurance, Salem
P.O. Box 236
Hancocks Bridge, NJ 08038

Township Clerk
Lower Alloways Creek Township
Municipal Building, P.O. Box 157
Hancocks Bridge, NJ 08038

Mr. Paul Bauldauf, P.E., Asst. Director
Radiation Protection Programs
NJ Department of Environmental
Protection and Energy
CN 415
Trenton, NJ 08625-0415

Mr. Brian Beam
Board of Public Utilities
2 Gateway Center, Tenth Floor
Newark, NJ 07102

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Senior Resident Inspector
Salem Nuclear Generating Station
U.S. Nuclear Regulatory Commission
Drawer 0509
Hancocks Bridge, NJ 08038

Senior Resident Inspector
Hope Creek Generating Station
U.S. Nuclear Regulatory Commission
Drawer 0509
Hancocks Bridge, NJ 08038