

Before the Secretary
United States of America
Nuclear Regulatory Commission
Before the Commission

In the Matter of
Exelon Generation Company, LLC;
Exelon Corporation; Exelon
Fitzpatrick, LLC, Nine Mile Point
Nuclear Station, LLC; R.E. Ginna
Nuclear Power Plant, LLC; and,
Calvert Cliffs Nuclear Power Plant, LLC

Docket Nos.

Braidwood Station, Units 1 and 2; Byron
Station, Unit 1 and 2; Calvert Cliffs
Nuclear Power Plant, Units 1 and 2; Clinton
Power Station, Unit 1; Dresden Nuclear
Power Station, Units 1, 2, and 3; James
FitzPatrick Nuclear Power Plant; LaSalle
County Station, Units 1 and 2; Limerick
Generating Station, Units 1 and 2; Nine Mile
Point Nuclear Station, Units 1 and 2; Peach
Bottom Atomic Power Station, Units 1, 2, and
3; Quad Cities Nuclear Power Station, Units 1
and 2; R. E. Ginna Nuclear Power Plant;
Salem Nuclear Generating Station,
Units 1 and 2; Three Mile Island Nuclear
Station, Unit 1; Zion Nuclear Power Station,
Units 1 and 2; and the Associated
Independent Spent Fuel Storage Installations

STN 50-456, STN
50-457, 72-73, STN
50-454, STN 50-455
72-68, 50-317, 50-318
72-8, 50461, 72-1046,
50-10, 50-237,
50-249, 72-37,
50-233, 72-12,
50-373, 50-374,
72-70, 50-352, 50-353
72-65, 50-220,
50-410, 72-1036,
50-171, 50-277
50-278, 72-29
50-254, 50-265,
72-53, 50-244
72-67, 50-272
50-311, 72-48
50 289, 72-77
50-295, 50-234,
and 72-1037 - LT

Dated: July 19, 2021.

Reply of Eric Joseph Epstein and Three Mile Island
Alert, Inc. to Exelon's Answer Opposing the Petition
of Eric Joseph Epstein and Three Mile Island Alert,
Inc. for Leave to Intervene and for a Hearing

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Reply of Eric Joseph Epstein and TMI-Alert, Inc. to Exelon's Answer Opposing the Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing

I. Introduction

Pursuant to 10 C.F.R. § 2.309, Eric J. Epstein on behalf of himself and as Chairman of Three Mile Island Alert, Inc. (“TMI,” and collectively, with Mr. Epstein, “Petitioners”) submit this Reply to Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC (“NMP LLC”); R. E. Ginna Nuclear Power Plant, LLC (“Ginna LLC”); and Calvert Cliffs Nuclear Power Plant, LLC (“Calvert LLC”) (collectively “Exelon”) Answer opposing the Petition for Leave to Intervene and for a Hearing (“Petition”) filed by Eric J. Epstein on behalf of himself and as Chairman of Three Mile Island Alert, Inc. filed on June 14, 2021. (1)

Petitioners requested a hearing and seek to intervene in the proceeding associated with Exelon Generation's February 25, 2021, license transfer application (“LTA” or “Application”). (2) The Petition contained two contentions that focus exclusively on Exelon Generation's nuclear plants located in New Jersey and Pennsylvania.

1 Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing (June 14, 2021) (ML21165A196) (“Petition”).

2 See Letter from J. Bradley Fewell, Exelon Generation Company, LLC, to NRC Document Control Desk, “Application for Order Approving License Transfers and Proposed Conforming License Amendments,” Encl. 1 (Feb. 25, 2021) (ML21057A272) (Proprietary Version) (ML21057A273) (Non-Proprietary Version) (“LTA”).

Exelon's Answer Opposing the Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing was filed on July 12, 2019.

Mr. Epstein and TMI-Alert filed a timely Reply to Exelon's Answer Opposing the Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing on July 19, 2021. As explained below, both of Petitioners' contentions are admissible because they satisfy the six elements in 10 C.F.R. § 2.309(f)(1). The proposed contentions correctly allege that the LTA imperils Exelon's nuclear decommissioning trust funds for Three Mile Island Unit-1 ("TMI-1"), and Limerick, Peach Bottom, and Salem. (3)

Questions of interconnected state and federal laws and regulations fall squarely within the the Nuclear Regulatory Commission's ("NRC") jurisdiction and the scope of this proceeding, and parallels the coordinated implementation of the Agreement State Program. The merger between PECO and Com Ed was conditioned on the terms of the Settlement at the heart of TMIA's material dispute. The NRC does not have the authority to compel rate recovery. This LTA would undermine the very principal of "reasonable assurance" by attacking the financial foundation on which the Nuclear Decommissioning Cost Adjustment ("NDCA") is collected. **The collection rate is based on the Settlement. Mr. Epstein is specifically named as party to this funding mechanism.**

3 The Joint Petitioners agree that the PECO Pre-Existing Nuclear Interests consist of a 100% ownership interest in Peach Bottom Unit 1, a 42.49%, ownership interest in Peach Bottom Units 2 and 3, a 42.59% ownership interest in Salem Units 1 and 2, and a 100% ownership interest in Limerick Units 1 and 2. (PA PUC, Docket, #A-110550F0147, March 23, 2000.)

The Petitioner’ support their contentions with factual information and reasoned explanations, and clearly demonstrate a genuine dispute with any specific portion of the LTA. Because Petitioners submitted two admissible contentions, the Petition must be accepted. The Petitioners have demonstrated standing. The Petition claims that Mr. Epstein is entitled to standing as an individual and that TMIA is entitled to representational standing on behalf of its members.

Petitioners also demonstrated “traditional” standing,” and request the Commission to grant them discretionary intervention, and have provided a convincing and compelling justification.

Each contentions satisfy all six admissibility criteria in 10 C.F.R. § 2.309(f)(1). Petitioners have demonstrated standing. Accordingly, pursuant to 10 C.F.R. § 2.309(a), the Commission must accept the Petition.

II. Reactor License Transfers.

Under Section 184 of the Atomic Energy Act of 1954, as amended (“AEA”), (4) an NRC reactor license, or any right under it, may not 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 NRC first gives its consent in writing. (5)

4 Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended at 42 U.S.C. §§ 2011, *et seq.*).

5 Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended at 42 U.S.C. §§ 2011, *et seq.*).

This statutory requirement is codified in 10 C.F.R. § 50.80 and applies to both direct and indirect license transfers. (6)

Transferring control may involve either the licensed operator or any individual licensed owner of the facility. Before approving a license transfer, the NRC reviews, among other things, the technical and financial qualifications of the proposed transferees. (7)

The transfer review focuses on the “potential impact on the licensee’s ability both to maintain adequate technical qualifications and organizational control and authority over the facility[,] and to provide adequate funds for safe operation and decommissioning.” (8) The *raison d’être* for the “spin” is to remove Exelon as a financial backstop, which is clearly stated in the License Transfer Application. Exelon unequivocally declared its attention to “spin off” its liabilities, and reduce shareholder exposure:

6 See NRC Backgrounder, “Reactor License Transfers,” at 1-2 (Jan. 2020) (MLO40160803). A direct license transfer occurs when an entity seeks to transfer a license it holds to a different entity (*e.g.*, when a plant is to be sold or transferred to a new licensee in whole or part). *See id.* An indirect license transfer takes place when there is a transfer of “control” of the license or of a license holder (*e.g.*, as a result of a merger or acquisition at high levels within or among corporations. *See id.*)

7 See 10 C.F.R. §§ 50.80(b)(1)(i), (c)(1); *see also* NUREG-1577, “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” Rev. 1 (Feb. 1999) (MLO13330264) (“NUREG-1577”).

8 Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997).

In the LTA, Exelon Generation stated that the name of the new holding company is yet to be determined and therefore is described using the generic name “HoldCo.” Exelon Corporation will then spin-off HoldCo and its subsidiaries (including Exelon Generation/SpinCo) as a publicly-held company. At the time of the spin-off, the shareholders of HoldCo will be the same as the shareholders of Exelon Corporation. After the spin-off, HoldCo and its subsidiaries will no longer be affiliates of Exelon Corporation.

To grant a license transfer application, the NRC must find a “reasonable assurance” of financial qualifications. (9) Based on the paucity of information contained in the filing documents, the Application fails to address the applicable financial standards to provide “reasonable assurance” of financial qualification for SpinCo to decommission nuclear generating stations. In fact the Application creates substantial reasonable doubt about the NDT’s chain of custody. This transaction would unmoor PECO from Exelon, and leave the decommissioning funds without a safe harbor.

The transfer review focuses on the “potential impact on the licensee’s ability both to maintain adequate technical qualifications and organizational control and authority over the facility[,] and to provide adequate funds for safe operation and decommissioning.” (10) Among other things, the technical and financial qualifications of the proposed transferees of HoldCo or SpinCo have not been demonstrated and arise

9 10 C.F.R. § 50.33(f)(2).

10 “Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry,” 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997).

from a corporation smoldering in financial ruin. Both corporations are fictional constructs based on the self-inflicted hardships of Exelon. (11)

The financial structure and necessary assurances, guarantees, and sureties are lacking in the proposed License Transfer Application (“LTA”). PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. PECO is also bound by 50.76, and has failed to provide legal justification to “spin” a rate, regulated utility into a private collection agency without a financial backstop or a parent available to provide fiduciary oversight and resources necessary assurances, guarantees, and sureties for the Nuclear Trust Funds (“NDT”). Three Mile Unit-1’s is also endangered, and raided. (12)

Exelon seeks approval to transfer all of its ownership interests in these nuclear power plants to a currently nonexistent holding company. The series of transactions that will create “SpinCo” – a new corporate entity – is complicated and opaque. Yet the eventual outcome appears straightforward: Exelon will shed any and all liabilities and decommissioning obligations for its nuclear fleet by parking them with a new legal entity for which Exelon bears no future responsibility. (13)

11 “S&P Global Market Intelligence,” (May 20, 2021).

12 50.76. Licensee's change of status; financial qualifications. An electric utility licensee holding an operating license (including a renewed license) for a nuclear power reactor, no later than seventy-five (75) days prior to ceasing to be an electric utility in any manner not involving a license transfer under § 50.80, shall provide the NRC with the financial qualifications information that would be required for obtaining an initial operating license as specified in § 50.33(f)(2). The financial qualifications information must address the first full five years of operation after the date the licensee ceases to be an electric utility. [69 FR 4448, Jan. 30, 2004.]

13 “Motion to Extend Deadline,” Environmental Law and Policy Center, May 20, 2021.

The License Transfer Application seeks to unilaterally abrogate and dissolve the Settlement Agreement negotiated with Mr. Epstein and other parties. (13) The stake holders to the Settlement last met on November 20, 2020 to discuss the nuclear decommissioning terms of the Settlement. Neither HoldCo or SpinCo were topics of discussion. The LTA is a thinly veiled attempt by PECO Energy to extract itself from future decommissioning obligations for Limerick, Peach Bottom, Salem, and Three Mile Island nuclear power plants.

There is no statutory basis for a non-regulated business entity to collect tariffs from Pennsylvania rate payers. Mr. Epstein, the Office of Consumer Advocate, Office of Trial Staff, and the Pennsylvania Energy Industrial Users Group have not agreed to dissolve the Settlement or PECO's obligation to adhere to the terms of the 5% and \$50 million agreement related to nuclear decommissioning trust funds. (14)

The proposed LTA would unilaterally abrogate the terms of the nuclear decommissioning Settlement without seeking the express approval of the signatories or the Pennsylvania Public Utility Commission thereby undermining the financial pillar that ensures adequate nuclear decommissioning savings.

14 “The Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation, PA PUC, Application Docket No. A-110550F0147, March 23, 2000.”

PECO Energy, and its parent, Exelon are responsible for decommissioning and funding for their generating interests in the NDCA sites. The LTA is an end-around the Settlement, and an illegal attempt to void the terms of the Settlement Agreement, and allowing a to-be-determined entity to become a rate collection agency.

Pursuant to 10 C.F.R. §§ 2.323(c), 2.1325(b), and 2.307, Exelon Generation Company, LLC (“Exelon Generation”), on behalf of itself and Exelon Corporation, but exclusive of the Pennsylvania Public Utility Commission and the signatories for the Joint Petition to Settlement regulating to NDCA obligations, seeks to transfer power they do not possess, and “spin” their licenses into an isolated rate collection entity without any parental, financial guarantees. This proposed regime is counter to Pennsylvania statute, seeks to bypass the Pennsylvania Public Utility Commission, and imposes illegal and unaccountable protocol on hostage rate payers in Pennsylvania. Moreover, this proposal undermines the NRC’s charge to ensure reasonable “financial assurances.”

There is no statutory basis for a non-regulated business entity to collect tariffs from Pennsylvania rate payers, and the NRC can not approve the LTA that undermines the terms of the Settlement since the NDCA is the sole fixture in place guaranteeing “reasonable assurance.” The only other financial assurance attached to this “reasonable assurance stool” is Exelon’s parental relationship. If you remove the guardrails and eliminate parental guarantees, the baby SpinCo will seek financial coverage from the federal government. In fact, the essence of the LTA is to divest liabilities, and assign decommissioning assurances to taxpayers.

The Settlement Agreement contractually stipulates PECO's payment for: 1) \$50 million of the next after-tax amount; and, (2) Five percent of the net after-tax amount of released funds for nuclear decommissioning costs. The Nuclear Decommissioning Cost Adjustment ("NDCA") tariff provides for the recovery of nuclear decommissioning costs related to PECO's ownership of nuclear generation interests in Limerick, Peach Bottom and Salem. "The NDCA shall be charged to all customers taking service under this Tariff." (15)

In addition, "...PECO agrees that if and when it seeks to increase its annual nuclear decommissioning expense allowance above the base \$29.162 million annual accrual level used for the purpose of calculating its Nuclear Decommissioning Cost Adjustment Charge ("NDCAC"), it will, under specifically defined circumstances as set forth in the Distribution Tariff attached as Appendix A, voluntarily forego recovery of (1) \$50 million of its total decommissioning cost obligations, plus (2) 5% of any additional increase in the annual accrual level above the base \$29.162 million annual accrual level, ("Terms and Conditions," Paragraph, 13.)

15 The binding Settlement Agreement also states: "To the extent permitted under applicable law, separate decommissioning trust funds, or sub-funds, shall be established for the decommissioning liability associated with any nuclear generating plant, or any fractional interest in a nuclear generating plant, that is not included in the definition of PECO's Pre-Existing Nuclear Interests ("Acquired Nuclear Interests"). To the extent permitted under applicable law, each Acquired Nuclear Interest fund or sub fund shall be maintained separately and apart from the decommissioning funds established and existing for PECO's Pre-Existing Nuclear Interests." ("PECO's Pre- Existing Nuclear Interest Funds"). (Terms and Conditions, Paragraph, 14.)

The NRC can not approve the License Transfer Application, which would undermine the Terms and Conditions of Paragraph 15. The binding Settlement is between, PECO - not HoldCo or SpinCo -and the Joint Petitioners. PECO agreed:

that if the actual expenditures necessary to accomplish the full decommissioning of PECO's Pre-Existing Nuclear Interests are less than the full balance of PECO's Pre-Existing Nuclear Interest Funds, PECO is entitled to obtain release of such funds for the purpose of sharing the amount between customers and shareholders. In the event of such release, PECO will be permitted to retain for its own benefit (1) the first \$50.0 million of the net after tax released amount and (2) 5.0% of the remaining net after-tax released amount. The balance of the released funds not retained by PECO shall be returned to retail customers in a manner to be directed by the [Pennsylvania Public Utility] Commission.

Based on the nuclear shell game embedded in the License Transfer Application, it is crystal clear that SpinCo cannot provide assurance of decommissioning funding. In 2019, Callan Institute concluded that Exelon's decommissioning funds were between \$1.5 billion and \$7.4 billion short of the amounts needed for decommissioning. The company will have no other sources of decommissioning funding than the decommissioning trust funds. Because the reactors themselves are unprofitable and dependent on temporary, out-of-market subsidies to continue operating, SpinCo will not be able to make up for decommissioning fund shortfalls and cost overruns.

III. Eric Joseph Epstein and Three Mile Island Alert, (“the Petitioners”) Have Demonstrated Standing.

Eric Joseph Epstein (“Epstein” or “Mr. Epstein”) has standing to intervene as an individual in this proceeding, and Three Mile Island Alert Inc., (“TMIA” or “TMI-Alert”) has standing in a representational capacity. Petitioners should also be granted discretionary intervention under 10 C.F.R. § 2.309(e). (16)

Mr. Epstein nor TMIA have established standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d). The Petitioners clearly have the ability to “assist in developing a sound record” due to the “unavoidable and extreme circumstances”— and offer extensive support and justification for the requested extension. The Petitioners have also established Proximity-Based Standing.

Post-deregulation corporate entities - like Exelon’s proposed HoldCo and SpinCo - seek to erase the past, but capture historic rate contributions from hostage rate payers. Exelon seeks to evolve into companies to be identified-at-a later-date, than they must present a “fresh” demonstration to justify their changed corporate circumstances. Clearly, this proposed corporate jellyfish is the very definition of fluid circumstances that “change from one proceeding to the next.”

16 Please refer to the “Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing.” filed on June 14, 2021, for a detailed discussion on standing from pages 15 -31 . Exelon’s Answer in Opposition not only supports the Petitioners Argument, but attempts to revise history, and take a scalpel to facts. Exelon posits that a historical circular firing squad is the only way to separate out Mr. Epstein and TMI from the reactor communities.

This License Transfer Application is entirely about changed circumstances brought about by self-inflicted voodoo economics. The consistent theme is that the Petitioners continue to endure adverse outcomes due to the fiscal mismanagement. The Petitioners have made their case. Exelon's undocumented "needle in a haystack" attack on the Petitioners," is the party making unsubstantiated conclusory assertions while submitting a dearth of evidence. (17) The proposal to "spin" nuclear hay into fool's gold - like the child's fairy tale - will create a Rumpelstiltskin ending with SpinCo plunging reactor communities into chaos and tearing itself in two. The ending for Exelon can not be a nuclear fairy tale, but must be a reckoning with "market forces" after decades of bailouts, guaranteed returns on investments, and stranded cost recoveries.

Exelon places a premium on fairy tales, and argues that history doesn't matter, that precedent is immaterial, and Mr. Epstein's and TMIA's intervention for over forty years has no value. History, according to Exelon, should be made-up by a faceless, nameless, addressless corporate concoction cooked-up within the last year.

The NRC can not selectively distance itself from its statutory mission "to protect public health and safety," erase history, and fail to "protect the environment." Not only does TMIA provide the only connective tissue to the body of nuclear power operations at Exelon's Pennsylvania nuclear plants, but the organization's presence and active litigation predates Exelon's ownership of these reactors. Exelon's selective desire to vacuum out people, places and events, is an effort to rewrite history and minimize the Company's inglorious history and whitewash historical "events" like

17 Answer in Opposition to Epstein,. p. 12.

the core melt down at TMI in 1979 or the forced shut down of Peach Bottom in 1987. Folks that don't live and work proximate to these reactors, are in a position to pass judgment from the safety of their COVID bunkers. While the reactors are older and the radioactive waste is greater at these sites, the reality is that Mr. Epstein's and TMIA's experiences predate the creation of Exelon, and Petitioners possess a unique and indispensable lens to view this proposed transaction.

This proceeding is unique in that much of the community has been exposed to radiation releases from fission products at Three Mile Island in 1979, and/or the forced shut down at Peach Bottom in 1987 due to operator incompetence. Many of TMIA's members have endured rate shock at Limerick due to poor planning and cost overruns. Mr. Epstein and TMIA's experiences and perspectives are crucial to understanding the corporate evolution went from Philadelphia Electric to Exelon to SpinCo. Mr. Epstein and TMI-Alert are the only participants in this proceeding who intervened, litigated, and participated in the challenges and issues embedded in the proposed license Transfer Application.

Mr. Epstein is the Chairman of TMI-Alert represents the interests of its members. His filing is his attestation. Please refer to the "Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing" filed on June 14, 2021, for a detailed discussion on standing from pages 15 -41. (Refer to Enclosure 1).

This proposed LTA seeks to unilaterally abrogate the terms of the nuclear decommissioning Settlement, harm Mr. Epstein's contractual interests, and endanger the health and safety of TMIA members who live, recreate and work proximate to the affected nuclear power plants.

IV. Contentions.

There are specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the basis for the contention and a concise statement of the alleged facts which supports the contention on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents which will support the petitioner's position. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

In order to bring a contention before the Commission, Mr. Epstein and TMI-Alert must "[p]rovide a specific statement of the issue of law or fact to be raised or controverted. 10 C.F.R. Section 2.309(f)(1)(i). At this preliminary stage, Mr. Epstein need not submit admissible evidence to support his contention, rather he has to "[p]rovide a brief explanation of the basis for the contention," 10 C.F.R. Section 2.309(f)(1)(ii), and "a concise statement of the alleged facts which support the...petitioner's position." 10 C.F.R. Section 2.309(f)(1)(v).

This rule ensures that "full adjudicatory hearings are triggered only by those able to proffer... minimal factual and legal foundation in support of their contentions." See, *In the Matter of Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2 and 3)*, CLI-99-11, 49 N.R.C. 328, 334 (1999). Moreover, the Commission has clarified that "an intervener need not...prove its case at the contention stage. The factual support necessary to show a genuine dispute exists need not be in affidavit or formal evidentiary form, or be of the quality necessary to withstand a summary disposition motion."

The standing requirements for NRC hearings derive from the Atomic Energy Act, which requires the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding." 42 U.S.C. § 2239(a)(1)(A). See also *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), 48 N.R.C. 185, 195 (1998). In determining whether a petitioner has established the "necessary 'interest'" under the statute, the NRC "has long looked for guidance to judicial concepts of standing." *Id.* (Citing *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 N.R.C. 111, 115 (1995)).

The Commission has indicated that where petitioners make technically meritorious contentions based upon diligent research and supported by valid information, the requirement for an adequate basis is more than satisfied.

Both Mr. Epstein and TMI-Alert have met this standard.

Contention 1 Is Admissible:

The License Transfer Agreement Violates The Electric Competition Act of 1996. PECO's Electric Service Tariff, Supplement No, 48 to Electric PA P.C.C., No 6, Tariff, Effective April 1, 2021, and creates a corporate vehicle for a non-regulated entity to collected a non-bypassable tariff.

Please refer to the “Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing.” filed on June 14, 2021, for a detailed discussion on Contention 1 from pages 43 to 47.

Exelon's Answer in Opposition actually supports the Petitioners Argument, but it attempts to dismisses the content of the Contention by misrepresentations and strategic omissions.

The Applicants intermixed other vague arguments and conclusory assertions about the Petitioners Request for Leave to Intervene and Hearing in Exelon's Answer Opposing the Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing.

These specious arguments are as follows:

- “Such a claim is fundamentally incorrect. Exelon Generation has not proposed any change to the existing decommissioning funding mechanism for the Former PECO Units. Thus, the proposed contention is wholly without basis and therefore inadmissible in this proceeding.” (Answer, p. 12)
- “But Petitioners never *explain* how these references support the proposed contention or are relevant to the LTA or the NRC's review.” (Answer, p. 14)
- “But a petition that only states a conclusion, without reasonably explaining why the application is inadequate, cannot provide a basis for the contention.”

- “In other words, the scope of this proceeding is the LTA and its compliance with the applicable provisions of the AEA and NRC regulations. In contrast, Proposed Contention 1 goes far beyond this narrow scope, purporting to raise issues regarding Pennsylvania law and PA PUC requirements.” (Answer, p. 15)
- “Simply put, these state regulatory issues are far beyond the scope of this AEA-based proceeding, which ‘is simply not the appropriate forum’ for litigating questions under state-law.” (Answer, p. 16)
- “In short, the state law issues raised by Petitioners are immaterial to the NRC’s review of the LTA and beyond the scope of this proceeding.” (Answer p. 17)
- “The LTA does not seek any change to this funding mechanism, nor is any change necessary to consummate the Spin Transaction as described in the LTA. At bottom, Petitioners’ baseless assertions are unsupported and factually incorrect.” (Answer, p. 18)

Contrary to Exelon’s assertions and linguistic juggling act, PECO is removing the very financial pillar that “reasonable assurance” is predicated. This LTA severs parental financial foundation between PECO and Exelon. The intent and objective of the Spin is to shield Exelon’s shareholders from nuclear liabilities, and expose Pennsylvania rate payers to another bailout.

PECO’s Settlement with parties relating to the NDCA tariff is a binding contract under state and federal law, which was supported by the full force of Exelon, the parent guarantor. The Spin is unabashed nuclear jingo, and creates short-term financial value for Exelon, while permanently crippling PECO/Spin Co’s ability to service underfunded nuclear trust funds.

The Applicant fails to acknowledge the critical link in nuclear decommissioning: The NRC sets the lowest minimum levels to maintain reasonable assurance, but the Pennsylvania Public Utility Commission sets the rates through the NDCA tariff. The LTA seeks to dissolve financial assurances embedded the modified NDCA Settlement. SpinCo is not an “electric utility.” Mr. Epstein was one of the authors and lead negotiators in designing the modified NDCA tariff; which was constructed to ensure adequate decommissioning funding and protect hostage rate payers. The 5% and 50% million guarantees would have been been higher if Unicom - soon to be Exelon - was not the financial backstop for the NDCA nuclear units.

SpinCo’s specious legal logic is being advanced by folks who were not present in the Settlement negotiations. Moreover, there are no affidavits from any PECO or Exelon decommissioning staff supporting a revised reading of the NDCA tariff. This contention focuses on rate making which can not be separated from “reasonable assurances.” There is a direct nexus between state ratemaking and decommissioning funding. This is an issue of financial reserves , and the ability to provide “reasonable assurances” for decommissioning for an “electric utility, which SpinCo is not.

There is a binding contract between the signatories and Exelon. The LTA is a breach of the contract. Breaking a contract is an “absolute” legal standard. There is no “reasonable doubt” that SpinCo is not Exelon. The LTA is the first bite of the nuclear pomegranate. What the Applicant ignores - and the NRC must factor - is the concept of “reasonable assurances,” and decommissioning rate making are inextricably bound.

1) The Settlement is crystal clear: Recovery of Nuclear Costs. “PECO agrees that it will not seek to recover through Pennsylvania retail electric distribution rates the costs associated with the ownership and operation of any nuclear generating plants, or any fractional interests in such nuclear generating plants, that it did not hold on December 31, 1999.” (“PECO's Pre-Existing Nuclear Interests, “Terms and Conditions,” Paragraph, 12.)

As admitted in the Applicant’s Answer, i.e., “PECO will continue to collect decommissioning funds for [Exelon Generation].” Nowhere is the term HoldCo or SpinCo mentioned. Furthermore, in the paragraph the Applicant confuses the Restructuring Preceding with the Unicom Merger Settlement. The NDCA contract for decommissioning required PECO to transfer those assets to Exelon Generation; not HoldCo or SpinCo. Moreover, should these generating assets be sold - which was the case at Beaver Valley and Susquehanna - there is no mechanism in place to collect decommissioning funds for anybody other than PECO.

2) The NDCA arrangement that was “reaffirmed,” according to the Applicant (Answer, p. 9), was predicated - as the Applicant correctly points out - on the “the formation of a holding company (Exelon) and merger with Unicom Corporation. “

The LTA seeks to dissemble this arrangement without the advise and consent of the signatory. The SpinCo concept or proposal has not been broached at any of the stake holder meetings. The NDCA is predicated on the foundation that a large holding company would “reasonably assure” the NDCA nuclear plants will have adequate decommissioning reserves. To remove Exelon is like removing the Federal Deposit Insurance Corporation from backing-up depository institutions.

Contention 2 Is Admissible:

The License Transfer Application Violates the Joint Petition for Negotiated Settlement of the Application of PECO Energy Company.

Please refer to the “Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing,” filed on June 14, 2021, for a detailed discussion on Contention 1 from pages 48 to 50.

Exelon’s Answer in Opposition not only supports the Petitioners’ Argument, it attempts to dismisses the content of the Contention by misrepresentations and strategic omissions. The Applicants intermixed of vague arguments and conclusory assertions about the Petitioners Request for Leave to Intervene and Hearing in Exelon’s Answer Opposing the Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing.

The Applicant merely reiterated the same argument in Contention 1: “However, this contention is inadmissible for all of the same reasons as Proposed Contention 1.” (Answer, p. 19.) Please refer to the Petitioners discussion in this document from pages 15 -20.

However, it must be pointed out that the foundation of the Applicant’s argument is the big lie: As discussed above, “ the PA PUC authorized PECO to collect decommissioning funds for its legacy decommissioning obligations and requires them to be deposited in the appropriate decommissioning trusts held by Exelon Generation (which will remain the same entity, but with a different name, after the Spin Transaction). (Answer, p. 20.)

If this assertion were true, there would be no reason to file for a License Transfer. If this twisted logic were followed to its logical conclusion, then Exelon is another name for PECO Energy, and PECO Energy is just an alias for Philadelphia Electric.

V. Conclusion.

The redacted application and unredacted supplemental data do not include any meaningful the information regarding financial qualifications section, and lacks substantiation and verifiable citations or foot notes. There is scant information on the corporate structure, and the LTA does not identify the address of structure of HoldCo or SpinCo.

The whole matter of decommissioning funding assurances is a red flag, given that the new entity will not be affiliated with a regulated utility company and is not defined by either the NRC or PUC as an “electric utility.” PECO is collecting decommissioning fund charges from hostage rate payers for Limerick, Peach Bottom, and Salem. There is no justification or statutory basis for a nonaffiliated, non-regulated, non-electric utility” to collect tariffs from Pennsylvania rate payers.

Mr. Epstein and TMI-Alert have extensive experience in Direct and Indirect License Transfers and license extensions at Peach Bottom and Three Mile Island. The Peach Bottom license renewal application contained 2,607 pages. The Three Mile Island Unit-2 license transfer was 234 pages, but included volumes of outdated reference materials. This Exelon LTA is a ransom note . the Application is “an order of magnitude smaller” - according to Exelon - without any meaningful substantiation, but and slapped together by the same personnel who were able to prepare a detailed Safety Analysis Report for TMI-1.

For the reasons stated, the Commission should grant Mr. Epstein and Three Mile Island Alert Inc.'s Petition to Intervene and associated request for a hearing.

Respectfully submitted,

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United States of America
Nuclear Regulatory Commission

Certificate of Service

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Answer Opposing Environmental Law & Policy Center’s Motion to Extend Hearing Request Deadline” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned documents.

In the Matter of
Exelon Generation Company, LLC;
Exelon Corporation; Exelon
Fitzpatrick, LLC; Nine Mile
Point Nuclear Station, LLC;
R.E. Ginna Nuclear Power Plant, LLC; and,
Calvert Cliffs Nuclear Power Plant, LLC,
(Braidwood Station, Units 1 and 2; Byron
Station, Unit Nos. 1 and 2; Calvert Cliffs
Nuclear Power Plant, Units 1 and 2; Clinton
Power Station, Unit 1; Dresden Nuclear
Power Station, Units 1, 2, and 3; James
FitzPatrick Nuclear Power Plant; LaSalle
County Station, Units 1 and 2; Limerick
Generating Station, Units 1 and 2; Nine Mile
Point Nuclear Station, Units 1 and 2; Peach
Bottom Atomic Power Station, Units 1, 2, and
3; Quad Cities Nuclear Power Station, Units 1
and 2; R. E. Ginna Nuclear Power Plant;
Salem Nuclear Generating Station,
Units 1 and 2; Three Mile Island Nuclear
Station, Unit 1; Zion Nuclear Power Station,
Units 1 and 2; and the Associated
Independent Spent Fuel Storage Installations)

Docket Nos.

STN 50-456, STN
50-457, 72-73, STN
50-454, STN 50-455
72-68, 50-317, 50-318
72-8, 50461, 72-1046,
50-10, 50-237,
50-249, 72-37,
50-233, 72-12,
50-373, 50-374,
72-70, 50-352, 50-353
72-65, 50-220,
50-410, 72-1036,
50-171, 50-277,
50-278, 72-29
50-254, 50-265,
72-53, 50-244
72-67, 50-272
50-311, 72-48
50 289, 72-77
50-295, 50-234,
and 72-1037 - LT

United States Nuclear Regulatory Commission

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Date: July 19, 2021.

Enclosure 1



Three Mile Island Alert (TMIA) is a non-profit citizens' organization formed in 1977 after the construction and licensing of Three Mile Island Unit-1 and after TMI-2 was constructed. TMIA is the largest and oldest safe-energy group in central Pennsylvania. TMIA has enjoyed widespread public and political support in its role as a watchdog of the Three Mile Island Nuclear Generating Station. In the spring of 1987, TMIA was recognized by the Pennsylvania House of Representatives for 10 years of community service. The House, along with the City of Harrisburg, formally applauded TMIA's efforts on behalf of the community at their 20th and 25th anniversaries.

Since the March 1979 accident at TMI-2, TMIA has been actively involved with many Three Mile Island related issues including: active intervenor before the Nuclear Regulatory Commission (NRC) in hearings involving safety, technical and managerial issues; monitoring and tracking chronic safety, technical and managerial problems at Unit-1 and Unit-2; tracking adverse health effects as a result of the TMI-2 accident and the normal operation of Unit-1 (since 1974); participating in two radiation monitoring networks; evaluating security problems at the Island; and, providing information, research and educational materials to the general public, media and elected officials.

TMIA also serves as regional clearinghouse on a broad spectrum of issues relating to nuclear power production including problems at Peach Bottom 1, 2 & 3, Susquehanna 1 & 2 and the proposed siting, licensing and construction of the Bell Bend Nuclear Power Plant in Berwick, Pennsylvania.

TMIA's policy is generated by a planning council which meets quarterly. TMIA meets regularly with the NRC and Pennsylvania Department of Environmental Protection to discuss issues and problems relating to TMI-1 and -2. The organization has two part-time volunteers who staff the office. In addition, several individuals write, edit and mail TMIA's newsletter. All of TMIA's funding comes from membership dues, private contributions and fund raising events.

TMIA's office is open Monday through Friday from 10:00 am to 6:00 pm. Weekend visits are available by appointment. The public and all interested parties are encouraged to stop by or contact the group by phone or mail or visit our website.