

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of West Penn :
Power Company d/b/a Allegheny :
Power, Trans-Allegheny Interstate:
Line Company and FirstEnergy :
Corp. for a Certificate of Public : A-2010-2176520
Convenience Public Utility Code : A-2010-2176732
approving A change of under :
Section 1102(a)(3) of the control :
of West Penn Power Company & :
Trans-Allegheny Interstate Line :
Company :

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Letter of Information
Re: Nuclear Regulatory Commission's Decision To
Review Shortfall of Decommissioning Funding of
\$347 at FirstEnergy's Three Mile Island
Nuclear Generating Station Unit 2

November 18, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

I. Introduction.

Eric Joseph Epstein (“Epstein” or “Mr. Epstein”) hereby submits an original and three (3) copies of a Letter of Information and relevant enclosures from the Nuclear Regulatory Commission (“NRC”) in the above-captioned proceeding.

II. Background.

According to the NRC, (1) FirstEnergy’s Decommissioning Trust Fund for TMI-2 is grossly underfunded: “The current radiological decommissioning cost estimate is \$831.5 million. The current amount in the decommissioning trust fund is \$484.5 million, as of December 31, 2008.” (2)

The initial estimate to decommission Three Miles Island was \$104.7 million. (3)

The NRC reported the cost to decommission TMI-2 has increased by \$26.5 million in less than three years while the Decommissioning Trust Fund’s assets have decreased by \$116.5 million during the same period.

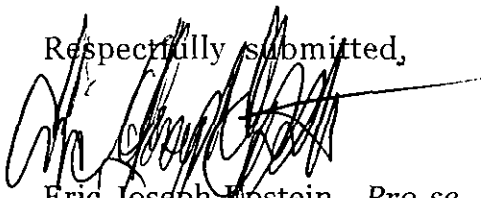
Three Mile Island Unit-2 has been defueled, but the plant has not been decontaminated or decommissioned. At the time of the core-melt accident in March, 1979, there was no money set aside for decommissioning.

This Letter serves to Inform the Pennsylvania Public Utility Commission and Interested Parties to the above-referenced proceeding of developments at the NRC that may have a material adverse impact on matters before the Commission relating to the proposed merger of FirstEnergy and Allegheny Energy, and matters that may come before the Commission after the consummation of the merger.

III. Conclusion

FirstEnergy's proposed merger with Allegheny Energy could endanger a fragile and underfunded protocol. At a minimum, the proposed merger should be held in abeyance until FirstEnergy complies with the enclosed Demand For Information, and demonstrates that it has adequate funding in place to decommission Three Mile Island Unit-2 in 2036 - 57 years after the core-meltdown and loss-of-coolant accident.

Respectfully submitted,



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

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Enclosures:

1 Per 10 CFR 50.75(f)(1), licensees for shutdown reactors are required to report annually on the status of decommissioning funding by March 31 (in the following year).

2 NRC website: <http://www.nrc.gov/info-finder/decommissioning/power-reactor/three-mile-island-unit-2.html>.

3 On January 18, 1994, at the NRC's Advisory Panel meeting, GPU's President Robert E. Long stated that the Company had \$104.7 million on hand to decommission TMI-2. GPU's spokesperson, Mary Wells said, "We have a detailed plan in place to make sure that the money is going to be there."

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery or electronic transmission in accordance with the requirements of Section 1.54.

Chairman
James H. Cawley
Pa PUC
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Vice Chairman
Tyrone Christy
Pa PUC
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Commissioner
Wayne E. Gardner
Pa PUC
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, Pa 17120

Commissioner
John F. Coleman
Pa PUC
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17120

Commissioner
Robert F. Powelson
Pa PUC
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, Pa 17120

Honorable Wayne L. Weismandel
Pennsylvania Public Utility Commission
Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

Honorable Mary D. Long
Pennsylvania Public Utility Commission
Piatt Place
301 Fifth Avenue
Room 220
Pittsburgh, PA 15222

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Thomas J. Sniscak, Esquire
Todd S. Stewart, Esquire
Hawke, McKeon & Sniscak
100 N. Tenth Street
P.O. Box 1778
Harrisburg, Pa 17101

Susan E. Bruce, Esquire, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Gary A. Jack, Esquire
Michael W. Hasell, Esquire
Duquesne Light
411 Seventh Avenue, 16-4
Pittsburgh, Pa 15219

Randall Palmer, Esquire
Allegheny Energy, In
800 Cabin Hill Drive
Pittsburgh, Pa , PA 15601

Darryl Lawrence, Esquire
Tanya McCloskey Esquire
Office of Consumer Advocate
555 Walnut Street
Office of Consumer Advocate
Harrisburg, PA 17101-1921

Pa DEP
Kurt Klapowski, Esquire
Scott Perry, Esquire
Assistant Counsel
RCSOB, 9th Floor,
400 Market Street
Harrisburg, PA 17101-2301

Ted Robinson, Esquire
Citizen Power
2121 Murray Street
Pittsburgh, PA 19103

Divesh Gupta, Esquire
Constellation Energy
11 Market Street, Suite 500
Baltimore, MD 21202

Thomas P. Gadsen, Esquire
MLB
1701 Market Street
Philadelphia, PA 19102

Derrick Price Williamson, Esquire,
Spilman, Thomas & Battle
1100 Bent Creek Blvd.
Suite 101
Mechanicsburg, PA 17050

Allison Kaster, Esquire
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

John K. Baille, Esquire
Penn Future
425 6th Avenue, Suite 2770
Pittsburgh, Pa 15219

Daniel Asmus, Esquire
Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Joseph Otis Minot, Esquire
CAC, Suite 300
135 S. 19th Street
Pittsburgh, PA 15217

Scott Strauss, Esquire
Spiegel & McDiarmid
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Regina Matz, Esquire
Thomas, Long, Niesen et al
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500

Daniel Clearfield, Esquire
Direct Energy
Eckert & Seamans, et al
213 Market Street, Floor 8
P.O. BOX 1248
Harrisburg, PA 17101

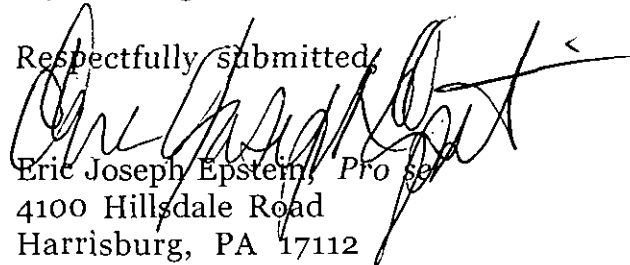
Benjamin Wiley, Esquire
Suite 300
7272 Wisconsin Avenue,
Bethesda, M D 20814

Thomas Niesen, Esquire
West Penn SEF
Thomas, Long, Niesen et al
Harrisburg, PA 17108-9500

PREA c/o
Thomas, Long, Niesen et al
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500

Alan Michael Seltzer, Esquire
Ryan & Russell, et al
1150 Berkshire Blvd.
Suite 210
Wyomissing, PA 19610-1208

Respectfully submitted,


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

Stephen Jordan, Esquire
Rothman & Gordon
Grant Building, Floor 3
Pittsburgh. PA 15219

Scott Rubin, Esquire
IBEW
333 Oak Lane
Bloomsburg, PA 17815

David Fein, Esquire
Constellation Energy
550 West Westinghouse Blvd., Suite
Suite 300
Chicago, Illinois 60661

David Dulsik,, Esquire
PREA
212 Locust Street
Harrisburg, PA 17101

Wendy Stark, Esquire
FirstEnergy
2800 Pottsville Pike
PO BOX 1601
Reading, PA 19612

Benjamin Wiley, Esquire
7272 Wisconsin Avenue
Suite 300
Bethesda, MD 20814

Robert Strickler, Esquire
Griffith & Strickler, et al
110 S. Northern Way
York, PA 17402

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Enclosure 1



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 9, 2010

Mr. Eric J. Epstein
4100 Hillsdale Rd.
Harrisburg, PA 17112

Dear Mr. Epstein:

Your petition dated September 30, 2010, and addressed to Stephen Burns, Office of the General Counsel, has been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. You request that the Commission take enforcement action in the form of a Demand for Information from FirstEnergy relating to inadequate financial assurance for Three Mile Island Unit-2's (TMI-2) decommissioning. As the basis for your request, you note that the current radiological decommissioning cost estimate is \$831.5 million and the current amount in the decommissioning trust fund is \$484.5 million, as of December 31, 2008. Further, you state that FirstEnergy's decommissioning report is inadequate, and fails to account for the special status of TMI-2, the current level of underfunding, or the fact that decommissioning rate recovery for Metropolitan Edison and Pennsylvania Electric cease per Pennsylvania Public Utility Commission Orders on December 31, 2010.

I would like to express my sincere appreciation for your effort in bringing these matters to the attention of the U.S Nuclear Regulatory Commission. In that regard, you met with our Petition Review Board (PRB), via teleconference, on October 19, 2010, to discuss your petition. The results of that discussion have been considered in the PRB's determination regarding your request for additional information from FirstEnergy. The PRB determined that your request meets the criteria for accepting a petition for enforcement pursuant to 10 CFR 2.206. As provided by Section 2.206, we will take action on your request within a reasonable time. I have assigned John Buckley to be the petition manager for your petition. Mr. Buckley can be reached at 301-415-6607.

I have enclosed for your information a copy of the notice that is being filed with the Office of the Federal Register for publication. I have also enclosed for your information, a copy of NUREG/BR-0200, "Public Petition Process," prepared by the NRC Office of Public Affairs.

Sincerely,

A handwritten signature in cursive script that reads "Charles L. Miller".

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Docket: 50-320

Enclosures:

1. Federal Register Notice
2. NUREG/BR-0200

cc: TMI-2 Service List

Three Mile Island - Unit 2 Service List

cc:

Mr. James H. Lash
President & Chief Nuclear Officer
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Mr. Eric Epstein
EFMR Monitoring Group
4100 Hillsdale Road
Harrisburg, PA 17112

Mr. Wythe Keever
The Patriot
812 Market Street
Harrisburg, PA 17105

U.S. Environmental Protection Agency
Region III Office
ATTN: Mr. B. Hoffman
EIS Coordinator
3ES30
1650 Arch Street
Philadelphia, PA 17103

Ms. Jane Lee
183 Valley Road
Etters, PA 17319

Mr. Walter W. Cohen, Consumer Advocate
Department of Justice
Strawberry Square, 14th Floor
Harrisburg, PA 17127

Mr. Mark E. Ford
Manager PDMS
Exelon Generation Company LLC
P.O. Box 480
Middletown, PA 17057

Mr. Jerome Boyd
PDMS Supervisor
Exelon Generation Company LLC
P.O. Box 480
Middletown, PA 17057

Mr. Bill Noll
Site Vice President, TMI-1
Exelon Generation Company LLC
P.O. Box 480
Middletown, PA 17057

Mr. David W. Jenkins, Esq.
First Energy Legal Department
76 South Main St.
Akron, OH 44308

Chairperson
Dauphin County Board of Commissioners
Dauphin County Courthouse
Front and Market Streets
Harrisburg, PA 17120

Mr. Ad Crable
Lancaster New Era
8 West King Street
Lancaster, PA 17601

Director
Bureau of Radiation Protection
Department of Environmental Protection
13th Floor, Rachel Carson State Office Bldg.
P. O. Box 8469
Harrisburg, PA 17105-8469

Senior Resident Inspector (TMI-1)
U.S. Nuclear Regulatory Commission
P.O. Box 311
Middletown, PA 17057

Dr. Judith H. Johnsrud
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, PA 16803-3477

Mr. Dave Atherholt
Site Regulatory Assurance Manager, TMI-1
Exelon Generation Company LLC
P. O. Box 480
Middletown, PA 17057

Mrs. Karen Fili
Vice President GPU Nuclear Fleet
Oversight
76 South Main Street
Akron, OH 44308

Mr. Michael J. Casey
GPU Nuclear Responsible Engineer TMI-2
FirstEnergy Nuclear Operating Company
Mail Stop: A-GO-14
76 South Main Street
Akron, OH 44308

NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-320

LICENSE NO. DPR-73

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated September 30, 2010, Mr. Eric J. Epstein has requested that pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206, "Requests for Action under this Subpart," the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Three Mile Island Unit-2 (TMI-2) Nuclear Power Station. Mr. Epstein requests that the Commission take enforcement action in the form of a Demand for Information from FirstEnergy relating to inadequate financial assurance provided by the licensee for TMI-2's nuclear decommissioning fund prior to the consummation of FirstEnergy's proposed merger with Allegheny Energy. As the basis for this request, the petitioner states that the current radiological decommissioning cost estimate is \$831.5 million and the current amount in the decommissioning trust fund is \$484.5 million, as of December 31, 2008. Further, the petitioner states that FirstEnergy's decommissioning report is inadequate, and fails to account for the special status of TMI-2, the current level of underfunding, or the fact that decommissioning rate recovery for Metropolitan Edison and Pennsylvania Electric cease per Pennsylvania Public Utility Commission Orders on December 31, 2010.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Federal and State Materials and Environmental Management Programs (FSME). As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with FSME's Petition Review Board (PRB), via teleconference, on October 19, 2010, to discuss the petition.

The results of that discussion have been considered in the PRB's determination regarding the petitioner's request for additional information from FirstEnergy and in establishing the schedule for the review of the petition.

Copies of the petition are available to the public from the NRC's Agencywide Documents Access and Management System (ADAMS) in the public Electronic Reading Room on the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession No. ML103010328, and are available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Dated at Rockville, Maryland this 9th day of November 2010.

FOR THE NUCLEAR REGULATORY COMMISSION



Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

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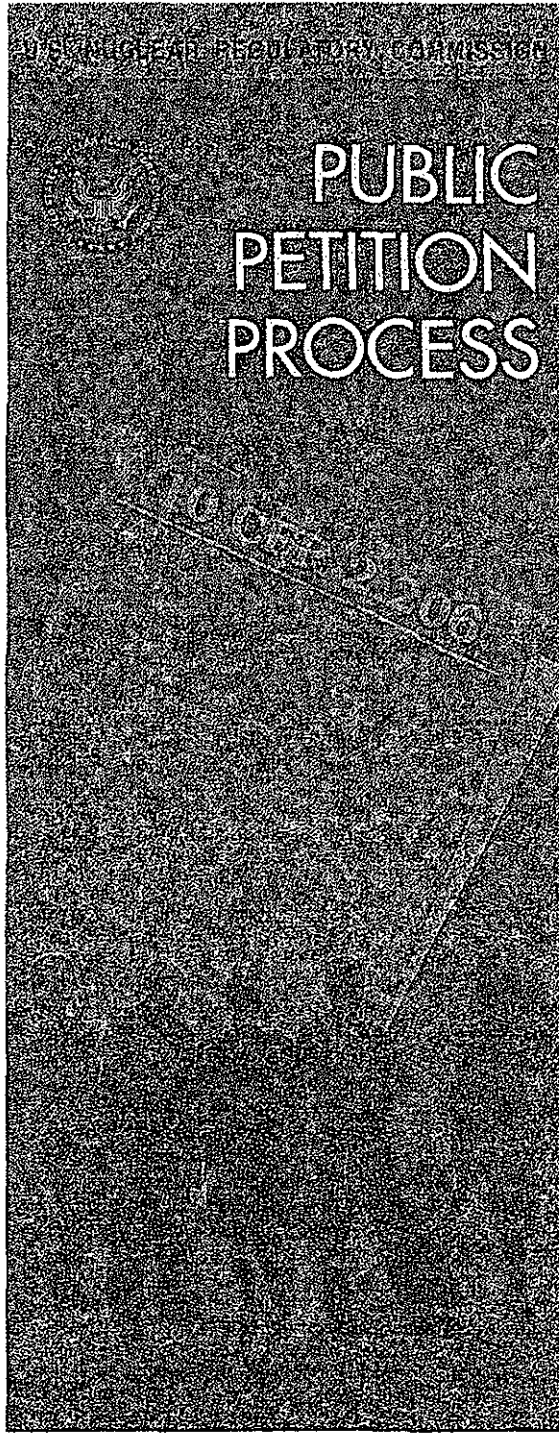
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Enclosure 2

U.S. FEDERAL REGULATORY COMMISSION



PUBLIC PETITION PROCESS



Introduction

The U.S. Nuclear Regulatory Commission (NRC) was established in 1975 to protect public health and safety in the civilian use of nuclear power and materials in the United States. As part of its responsibilities, NRC assesses all potential health and safety issues related to licensed activities and encourages members of the public to bring safety issues to its attention.

Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) describes the petition process—the primary mechanism for the public to request enforcement action by NRC in a public process.* This process permits anyone to petition NRC to take enforcement action related to NRC licensees or licensed activities. Depending on the results of its evaluation, NRC could modify, suspend, or revoke an NRC-issued license or take any other appropriate enforcement action to resolve a problem. Requests that raise health and safety issues without requesting enforcement action are reviewed by means other than the 2.206 process.

In its effort to improve public confidence, the NRC periodically reassesses the 2.206 petition process to enhance its effectiveness, timeliness and credibility. As part of these reassessments, the NRC seeks feedback from petitioners and other stakeholders through public meetings and workshops, surveys and *Federal Register* notices, as well as from its own staff experience. Specific improvements to the 2.206 process resulting from these initiatives include:

- Offering petitioners two opportunities to discuss the petition with the NRC's petition review board (PRB). The first is to allow the petitioner to provide elaboration and clarification of the petition

*The NRC also has an allegation process in which individuals who raise potential safety concerns for NRC review are afforded a degree of protection of their identity. Other processes for public involvement are listed at the end of this pamphlet.

before the PRB meets to discuss the petition. The second opportunity comes after the PRB has discussed the merits of the petition and allows the petitioner to comment on the PRB's recommendations regarding acceptance of the petition and any requests for immediate action.

- Offering an opportunity for a staff-petitioner-licensee meeting to discuss the details of the issue during the course of the review.
- Providing better, more frequent communications between the staff and petitioner, throughout the process.
- Providing copies of all pertinent petition-related correspondence and other documents to the petitioners.
- Providing a copy of the proposed director's decision on the petition, both to the petitioner and the affected licensee for comments, and considering such comments before issuing the decision in final form.

The Petition Process

The 2.206 process provides a simple, effective mechanism for anyone to request enforcement action and obtain NRC's prompt, thorough, and objective evaluation of underlying safety issues. It is separate and distinct from the processes for rulemaking and licensing, although they too allow the public to raise safety concerns to NRC.

Under the 2.206 process, the petitioner submits a request in writing to NRC's Executive Director for Operations, identifying the affected licensee or licensed activity, the requested enforcement action to be taken, and the facts the petitioner believes provide sufficient grounds for NRC to take enforcement action. Unsupported assertions of "safety problems," general opposition to nuclear power, or identification of safety issues without seeking enforcement action are not considered sufficient grounds for consideration as a 2.206 petition.

After receiving a request, NRC determines whether the request qualifies as a 2.206 petition. If the request is accepted for review as a 2.206 petition, the NRC sends an acknowledgment letter to the petitioner and a copy to the appropriate licensee and publishes a notice in the *Federal Register*. If the request is not accepted, NRC notifies the petitioner of its decision and indicates that the petitioner's underlying safety concerns will be considered outside the 2.206 process.

On the basis of an evaluation of the petition, the appropriate office director issues a decision and, if warranted, NRC takes appropriate enforcement action. Throughout the evaluation process, NRC sends copies of all pertinent correspondence to the petitioner and the affected licensee. NRC places all related correspondence in its Public Document Room (PDR) in Rockville, Maryland, and in the agency document control system. However, the agency withholds information that would compromise an investigation or ongoing enforcement action relating to issues in the petition. The NRC also sends the petitioner other information such as pertinent generic letters and bulletins.

The NRC notifies the petitioner of the petition's status every 60 days, or more frequently if a significant action occurs. Monthly updates on all pending 2.206 petitions are available on NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/petitions-2-206/index.html>, and in the PDR.

Petition Technical Review Meeting

A petition technical review meeting serves not only as a source of potentially valuable information for NRC to evaluate a 2.206 petition, but also affords the petitioner substantive involvement in the review and decision-making process through direct discussions with NRC and the licensee. Such a meeting will be held whenever the staff believes that it would be beneficial to the review of the petition. Note that the meeting can be offered at any time during NRC's review of a petition and is open to public observation.

Director's Decision

The NRC's official response to a 2.206 petition is a written decision by the director of the appropriate office that addresses the concerns raised in the petition. The agency's goal is to issue a proposed decision for comment within 120 days from the date of the acknowledgment letter. However, additional time may be needed to conduct an investigation, complete an inspection, or analyze particularly complex technical issues. If the goal is not met, the NRC staff will promptly inform the petitioner of a schedule change.

The director's decision includes the professional staff's evaluation of all pertinent information from the petition, correspondence with the petitioner and the licensee, information from any meeting, results of any investigation or inspection, and any other documents related to petition issues. Following resolution of any comments received on the proposed decision, the director's decision is provided to the petitioner and the licensee, and is posted to NRC's web site and made available in the PDR. A notice of availability is published in the *Federal Register*.

Director's decisions may be issued as follows:

- A decision granting a petition, in full, explains the basis for the decision and grants the action requested in the petition (e.g., NRC issuing an order to modify, suspend, or revoke a license).
- A decision denying a petition, in full, provides the reason for the denial and discusses all matters raised in the petition.
- A decision granting a petition, in part, in cases where the NRC decides not to grant the action requested, but takes other appropriate enforcement action or directs the licensee to take certain actions that address the identified safety concerns.
- A partial director's decision may be issued by the NRC in cases where some of the issues associated with the petition can be completed promptly but significant schedule delays are anticipated before

resolution of the entire petition. A final director's decision is issued at the conclusion of the effort.

The Commission will not entertain requests for review of a director's decision. However, on its own, it may review a decision within 25 calendar days.

NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," contains more detailed information on citizen petitions. For a free copy of the directive, write to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082, or call 202-512-1800.

Electronic Access

Those parts of the monthly status report on 2.206 petitions that are not of a sensitive nature, as well as recently issued director's decisions, and Management Directive 8.11, are placed on the NRC's web site at <http://www.nrc.gov/reading-rm/doc-collections/petitions-2-206/index.html> and in the agency's Public Document Room.

Other Processes for Public Involvement

In addition to the 2.206 petition process, NRC has several other ways that permit the public to express concerns on matters related to the NRC's regulatory activities.

- The NRC's *allegation process* affords individuals who raise safety concerns a degree of protection of their identity.
- Under the provisions of 10 CFR 2.802, NRC provides an opportunity for the public to petition the agency for a *rulemaking*.
- The NRC's *licensing process* offers members of the public, who are specifically affected by a licensing action, an opportunity to formally participate in licensing proceedings. This process

applies not only to the initial licensing actions but also to license amendments and other activities such as decommissioning and license renewals.

- For major regulatory actions involving preparation of environmental impact statements, NRC offers separate opportunities for public participation in its *environmental proceedings*.
- The public can attend a number of *meetings* including open Commission and staff meetings, periodic media briefings by Regional Administrators, and special meetings held near affected facilities to inform local communities and respond to their questions.

More information on these activities can be found in NRC's pamphlet entitled, "Public Involvement in the Nuclear Regulatory Process," NUREG/BR-0215.

Office of Public Affairs
U. S. Nuclear Regulatory
Commission
Washington, DC 20555-0001
Telephone 301-415-8200 or
1-800-368-5642

NUREG/BR-0200, Rev. 5
February 2003

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PA PUBLIC UTILITY COMMISSION
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Enclosure 2

**- Petition Pursuant to 10 CFR 2.206 -
Demand for Information
Proposed Merger between FirstEnergy
and Allegheny Energy
Re: The Impact on Three Mile Island Unit-2's
Nuclear Decommissioning Trust Fund**

Stephen Burns, General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

September 30, 2010

I. Introduction

Pursuant to §2.206 of Title 10 of the Code of Federal Regulations, Eric Joseph Epstein (“Epstein” or Mr. “Epstein”) hereby petitions the Nuclear Regulatory Commission (“NRC” or “the Commission”) to take enforcement action in the form of a Demand for Information from FirstEnergy (“FENOC”, “the Company” or “the licensee”) relating to inadequate financial assurances provided by the licensee for Three Mile Island Unit-2’s (“TMI-2”) nuclear decommissioning fund (1) **prior** to the consummation of FirstEnergy’s proposed merger with Allegheny Energy.

According to the NRC, (1) FirstEnergy’s Decommissioning Trust Fund for TMI-2 is grossly underfunded: “The current radiological decommissioning cost estimate is \$831.5 million. The current amount in the decommissioning trust fund is \$484.5 million, as of December 31, 2008.” (2) However, the **level of rate recovery** for the Trust Fund has been set by the Pennsylvania Public Utility Commission (“PUC”). The proposed merger with Allegheny Energy will endanger an already fragile funding protocol.

1 Per 10 CFR 50.75(f)(1), licensees for shutdown reactors are required to report annually on the status of decommissioning funding by March 31 (in the following year).

2 NRC website: <http://www.nrc.gov/info-finder/decommissioning/power-reactor/three-mile-island-unit-2.html>. 1

According to the NRC, the cost to decommission TMI-2 has **increased by \$26.5 million in less than three years** while the Decommissioning Trust Fund's assets have **decreased by \$116.5 million** during the same period. The NRC determined in 2007, "The current radiological decommissioning cost estimate is \$805 million and \$27 million for non-radiological funds. The current amount in the decommissioning trust fund is \$601 million, as of December 31, 2007." (3)

Mr. Epstein seeks enforcement action in the form of a Demand for Information ("DFI") requiring FirstEnergy to provide the NRC with site-specific information and financial guarantees that demonstrate and verify the licensee has adequate funding in place to decommission and decontaminate TMI-2, and that the proposed merger will not place additional financial pressures on FirstEnergy's ability to satisfy its decommissioning obligations in 2036.

FirstEnergy's decommissioning report is inadequate, and fails to account for the special status of TMI-2, the current level of underfunding, or the fact that decommissioning rate recovery for Metropolitan Edison (4) and Pennsylvania Electric cease per PUC Orders on December 31, 2010. (5)

The decommissioning trusts of JCP&L and the Pennsylvania Companies are subject to regulatory accounting, with unrealized gains and losses recorded as regulatory assets or liabilities, since the difference between investments held in trust and the decommissioning liabilities will be recovered from or refunded to customers. NGC, OE and TE recognize in earnings the unrealized losses on available-for-sale securities held in their nuclear decommissioning trusts as other-than-temporary impairments. On June 18, 2009, the NRC informed FENOC that its review tentatively concluded that a shortfall existed in the decommissioning trust fund for Beaver Valley Unit 1. On November 24, 2009, FENOC submitted a revised decommissioning funding calculation using the NRC formula

3 NRC website: <http://www.nrc.gov/info-finder/decommissioning/power-reactor/three-mile-island-unit-2.html>.

4 Metropolitan Edison (Docket No. R-00974008) and Penn Electric (Docket No. R-00974009).

5 Penn Elec's final TMI-2 collection for \$7.817 million occurred in 2009.

method based on the renewed license for Beaver Valley Unit 1, which extended operations until 2036. FENOC's submittal demonstrated that there was a de minimis shortfall. On December 11, 2009, the NRC's review of FirstEnergy's methodology for the funding of decommissioning of this facility concluded that there was reasonable assurance of adequate decommissioning funding at the time permanent termination of operations is expected. FirstEnergy continues to evaluate the status of its funding obligations for the decommissioning of these nuclear facilities. (6)

The Company acknowledged, "The values of FirstEnergy's nuclear decommissioning trusts fluctuate based on market conditions. If the value of the trusts decline by a material amount, FirstEnergy's obligation to fund the trusts may increase. Disruptions in the capital markets and its effects on particular businesses and the economy in general also affects the values of the nuclear decommissioning trusts."

However, FirstEnergy's rate recovery opportunities in Pennsylvania are restricted after December 31, 2010. Three Mile Island Unit-2 will no longer receive rate payer funding for decommissioning after December 31, 2010 when Metropolitan Edison and Penn Elec's "rate caps" are lifted. (Please refer to Enclosure 1)

This is a settled issue at the Pennsylvania Public Utility Commission. (7) TMI-2's decommissioning funding was litigated in both Met Ed and Penn Elec's Restructuring Cases as well as the 2006 Distribution base rate case at the PUC. As part of the Restructuring Settlement, Met Ed and Penn Elec are collecting TMI-2 decommissioning expenses through the Competitive Transition Cost ("CTC") as a stranded cost through December 31, 2010. In the 2006 Distribution base rate case; however, Met Ed sought an increase in the TMI-2 decommissioning expense as part of its CTC revenue requirement. The claim was made as part of a request for a specific exception to the generation rate cap that was allowed under the restructuring settlement. (8)

6 *FirstEnergy 2009 Annual Report*, p. 44.

7 *FirstEnergy 2009 Annual Report*, p. 59.

8 *Metropolitan Edison and Pennsylvania Electric Company v. Pa. PUC No. 2404 C.D. 2003 (Pa. Cmwlth. 2006) (filed July 19, 2006).*

The Pennsylvania Public Commission stated:

The Commonwealth Court affirmed the Commission's order requiring Metropolitan Edison and Pennsylvania Electric Company (Electric Companies) to retroactively adjust their accounting entries for stranded cost recovery, as if their Settlement Stipulation had never been approved by the Commission. The Electricity Generation Customer Choice and Competition Act (Competition Act) allowed electric companies to recover stranded costs through a competitive transition charge (CTC), subject to a rate cap. Every electric company was also required to file a restructuring plan explaining its compliance with the Competition Act, subject to approval by the Commission. After the Commission approved the Electric Companies' merger, they sought a rate increase pursuant to the Competition Act, or an immediate rate cap increase of \$316 million per year. Interveners opposed the merger and Electric Companies' requests. The parties failed to reach a consensus, and the Electric Companies proposed a "Settlement Stipulation," which the Commission adopted in 2001. However, Commonwealth Court voided the Stipulation Settlement and reversed the Commission's order in *ARIPPPA v. Pa. PUC*, 892 A.2d 636 (Pa. Cmwlth. 2002) after multiple parties appealed. In response to the decision, the Commission ordered the Electric Companies to reverse any accounting changes made pursuant to the Settlement Stipulation.

The Commonwealth Court held that the Commission complied with its order directing the Electric Companies to return revenues collected for the distribution and transmission rates to the same levels that existed before the Settlement, thereby ensuring customers were placed back in the same position before the rate change occurred. Furthermore, the Commission guaranteed that when the amount of stranded costs they received was settled, the Electric Companies could collect for any deficiencies. The Court also disagreed with the Electric Companies that the Commission can only change approved rates prospectively and are not subject to retroactive adjustment, since the rates previously approved by the Commission were not legal. (9)

Additionally, long-standing Atomic Energy Commission and Nuclear Regulatory Commission precedent makes it clear that "once a regulation is adopted, the standards it embodies represent the Commission definition of what is required to protect the public health and safety."

9 Metropolitan Edison and Pennsylvania Electric Company v. Pa. PUC, No. 2404 C.D. 2003 (Pa. Cmwlth. 2006) (filed July 19, 2006).

By the same token, neither the applicant nor the staff should be permitted to challenge applicable regulations, either directly or indirectly, those parties should not generally be permitted to seek or justify the licensing of a reactor which does not comply with applicable standards. Nor can they avoid compliance by arguing that, although an applicable regulation is not met, the public health and safety will still be protected. For, once a regulation is adopted, the standards it embodies represent the Commission's definition of what is required to protect the public health and safety. In short, in order for a facility to be licensed to operate, the applicant must establish that the facility complies with all applicable regulations. If the facility does not comply, or if there has been no showing that it does comply, it may not be licensed. (9)

The NRC can not ignore or manipulate its own regulations relating to financial assurances for decommissioning

FirstEnergy recently acknowledged the embedded uncertainty and historic variability associated with "nuclear generation involves risks that include uncertainties relating to health and safety, additional capital costs, the adequacy of insurance coverage and nuclear plant decommissioning." (10) The Company's statement is underscored by the inability of TMI-2's management to predict decommissioning costs or funding levels over the past 25 years.

On January 18, 1994, at the NRC's Advisory Panel meeting, GPU's President Robert E. Long stated that the Company had \$104.7 million on hand to decommission TMI-2. GPU's spokesperson, Mary Wells said, "We have a detailed plan in place to make sure that the money is going to be there."

By February, 1997, GPU reported in its *1997 Annual Report* that the cost to decommission TMI-2 **doubled in four years**. The original \$200 million projection has been increased to \$399 million for radioactive decommissioning. An additional \$34 million will be needed for non-radiological decommissioning.

9 Vermont Yankee Nuclear Power Station), United States of America Atomic Energy Commission Atomic Safety & Licensing Appeal Board, Memorandum and Order, (ALAB-138) Docket No. 50-271, IV., p. 528, Section IV, Paragraph A., p. 528, July 31, 1973.

10 *FirstEnergy 2009 Annual Report*, p. 17.

The new funding “target” was **\$433 million or a \$328.3 million increase in just 48 months**. Ten years later, according to the NRC, the radiological decommissioning cost estimate was **\$779 million** and \$26 million for non-radiological funds. The amount in the decommissioning trust fund was \$559 million, as of December 31, 2006.

In 2007 the TMI-2 site summary on the NRC’s website stated as of December 31, 2007, “The current radiological decommissioning cost estimate is \$805 million and \$27 million for non-radiological funds. The current amount in the decommissioning trust fund is \$601 million, as of December 31, 2007.”

In 2008, according to the NRC, the radiological decommissioning cost estimate was \$831.5 million. The amount in the decommissioning trust fund was \$484.5 million as of December 31, 2008.

According to the NRC, the cost to decommission TMI-2 has **increased by \$26.5 million in less than three years** while FirstEnergy decommissioning trust fund’s assets has **decreased by \$116.5 million** during the same period.

However, the owners of Three Mile island Unit-2 promised the NRC that delaying the cleanup would decrease cost and increase safety. Frank Standerfer GPU vice-president and director of TMI-2 told the NRC, “If we wait [to decommission TMI-2] there would be less risk to our workers and it would be more cost effective. He also told the NRC’s TMI Advisory Panel, “GPU will not have a problem finding funds to shut both reactors in the next century.” (11)

After 31 years of broken promises, faulty assumptions, and inaccurate projections, the NRC should hold FirstEnergy accountable and demand a site-specific funding plan at the site of the nation’s worst commercial nuclear accident. **At a minimum, the proposed Merger must be held in abeyance** until Three Mile Island-2 can demonstrate that it has adequate funding in place to decommission Three Mile Island Unit-2 in 2036 - 57 years after the Accident.

11 Transcript from the NRC’s TMI-2 Citizens Advisory Panel convened on May 27, 1988 in Harrisburg, PA.

II. Background

In July, 1969 Met Ed began construction on Three Mile Island-2 Unit 2, and the station came on line in December 1978. TMI-2 was grossly over budget and behind schedule. The plant had been on-line for just 90 days, or 1/120 of its expected operating life, before the March, 1979, accident. One billion dollars was spent to defuel the facility. Three months of nuclear power production at TMI-2 has cost close to \$2 billion dollars in construction and cleanup bills; or the equivalent of over \$10.6 million for every day TMI-2 produced electricity. The above mentioned costs do not include nuclear decontamination and decommissioning or restoring the site to "Greenfield. TMI-2 had no funds socked away at the time of meltdown for decontamination or decommissioning.

At the time of the core-melt, LOCA in March 1979, Three Mile Island I and 2 were owned three utilities operating in two states, i.e., Metropolitan Edison (50%), Jersey Central Power & Light (25%) and Pennsylvania Electric (25%). The companies were organized under the General Public Utilities holding company umbrella. The operator of both plants was Met Ed.

On March 25, 1980, Met Ed, blamed the plant's designer, Babcock & Wilcox (B&W) for the TMI accident, sue B&W for \$500 million. TMI's owners also filed an unsuccessful \$4 billion law suit against the NRC alleging that the Agency's negligence contributed to the TMI accident.

In September, 1980, Met Ed renamed itself GPU Nuclear. Met Ed continued to operate the plant and owned 50% of its assets.

On January 18, 1994 at the NRC's Advisory Panel meeting, GPU's President Robert E. Long stated that the Company had \$104.7 million on hand to decommission TMI-2. GPU's spokesperson, Mary Wells said, "We have a detailed plan in place to make sure that the money is going to be there."

On September 20, 1995, the Pennsylvania Supreme Court reversed a lower court's decision, and sided with GPU in allowing the Company to charge rate payers for the TMI-2 accident. One billion has been spent to defuel the plant, which now lays in idle shutdown, i.e., Post-Defueling Monitored Storage.

By February, 1997, GPU reported in its *1997 Annual Report* that the cost to decommission TMI-2 doubled in four years. The original \$200 million projection has been increased to \$399 million for radioactive decommissioning. An additional \$34 million will be needed for non-radiological decommissioning.

The new funding "target" was \$433 million or a \$328.3 million increase in just 48 months.

On July 17, 1998, AmerGen Energy announced that it reached an Agreement with GPU to purchase TMI-1 for \$100 million. The proposed sale includes \$23 million for the fuel inventory.

On July 21, 1999, GPU Nuclear received permission from the NRC to reduce the insurance at TMI-2 from \$1.06 billion to \$50 million.

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

On August 9, 2000, FirstEnergy and GPU announced a planned merger expected to be finalized by August 2001. FENOC would acquire GPU for approximately \$4.5 billion. Ownership of TMI-2 and liability for 1,990 health suits against GPU would be transferred to FirstEnergy.

In November, 2001, TMI-2 was formally transferred from GPU Nuclear to FirstEnergy. GPU Nuclear retains the license for TMI-2 and is owned by FirstEnergy Nuclear Operating Company.

In 2006, according to the NRC, the radiological decommissioning cost estimate was \$779 million and \$26 million for non-radiological funds. The amount in the decommissioning trust fund was \$559 million as of December 31, 2006.

In 2007 the TMI-2 site summary for 2007, the NRC's website, "The current radiological decommissioning cost estimate is \$805 million and \$27 million for non-radiological funds. The current amount in the decommissioning trust fund is \$601 million, as of December 31, 2007."

And in 2008, according to the NRC, the radiological decommissioning cost estimate for TMI-2 was \$831.5 million. The amount in the decommissioning trust fund was \$484.5 million as of December 31, 2008.

According to the NRC, the cost to decommission TMI-2 has increased by \$26.5 million in less than three years while FirstEnergy decommissioning trust fund's assets has decreased by \$116.5 million during the same period.

Winter-Spring, 2010, FirstEnergy and Allegheny Energy filed merger applications with various state and federal agencies, but made no such filing with the Nuclear Regulatory Commission.

On February 11, 2010, Standard & Poor's downgraded FirstEnergy's debt: "We downgraded FirstEnergy Corp. and subsidiaries to 'BBB-' from 'BBB' based on its intention to merge with lower-rated Allegheny Energy Inc."

IV. Site Status Summary.

The NRC's website stated on September 30, 2010:

"The Three Mile Island, Unit 2 (TMI-2) operating license was issued on February 8, 1978, and commercial operation was declared on December 30, 1978. On March 28, 1979, the unit experienced an accident which resulted in severe damage to the reactor core. TMI-2 has been in a non-operating status since that time. The licensee conducted a substantial program to defuel the reactor vessel and decontaminate the facility. All spent fuel has been removed except for some debris in the reactor coolant system. The plant defueling was completed in April 1990. The removed fuel is currently in storage at Idaho National Laboratory, and the U.S. Department of Energy has taken title and possession of the fuel. TMI-2 has been defueled and decontaminated to the extent the plant is in a safe, inherently stable condition suitable for long-term management. This long-term management condition is termed post-defueling monitored storage, which was approved in 1993. There is no significant dismantlement underway. The plant shares equipment with the operating TMI - Unit 1. TMI-1 was sold to AmerGen (now Exelon) in 1999. GPU Nuclear retains the license for TMI-2 and is owned by FirstEnergy Corp. GPU contracts with Exelon for maintenance and surveillance activities. The licensee plans to actively decommission TMI-2 in parallel with the decommissioning of TMI-1. The current radiological decommissioning cost estimate is **\$831.5 million**. The current amount in the decommissioning trust fund is **\$484.5 million**, as of December 31, 2008." (**Boldface type added.**) (12)

Estimated Date For Closure: 12/31/2036

¹² US, Nuclear Regulatory Commission, Three Mile Island - Unit 2, License No.: DPR-73 Docket No.: 50-320, License Status: Possession Only License.

<http://www.nrc.gov/info-finder/decommissioning/power-reactor/three-mile-island-unit-2.html>.

V. Demand for Information.

Its prudent for the Commission to respond to Mr. Epstein's Petition requesting a Demand for Information in a expedited manner based on the timing of the proposed merger.

1) Mr. Epstein respectfully requests that the NRC Issue a Demand for Information to FirstEnergy for a **site-specific** decommissioning funding plan for TMI-2.

2) Mr. Epstein respectfully requests that the NRC Issue a Demand for Information to FirstEnergy requesting FENOC's site-specific funding plan for the TMI-2 decommissioning trust **after the rate caps expire** for Metropolitan Edison and Penn Elec on December 31, 2010.

3) The current radiological decommissioning cost estimate is **\$831.5 million**. As of December 31, 2008, the amount in the decommissioning trust fund was **\$484.5 million**.

This is not a de minimis shortfall.

Mr. Epstein respectfully requests that the NRC Issue a Demand for Information to FirstEnergy relating to FENOC's investment plan to make-up the current decommissioning **shortfall**.

4) Mr. Epstein respectfully requests that the NRC Issue a Demand for Information to FirstEnergy regarding FENOC's proposed **financial contribution** plan to make-up the current decommissioning shortfall.

5) The Company anticipates that the nuclear generating stations will operate at least until the end of their current licensed lives. In the event that any of the stations are retired early, the Company anticipates that funding will be adjusted to match any change in decommissioning schedule and/or cost scenario.

Mr. Epstein respectfully requests that the NRC Issue a Demand for Information to FirstEnergy relating to the Company's plan to **fund the** decommissioning trust for TMI-2, if TMI-1 is prematurely retired.

6) The Company anticipates that the nuclear generating stations will operate at least until the end of their current licensed lives. In the event that any of the stations are retired early, the Company anticipates that funding will be adjusted to match any change in decommissioning schedule and/or cost scenario.

Mr. Epstein respectfully requests that the NRC Issue a Demand for Information to FirstEnergy relating to the Company's **planned timing** for decommissioning TMI-2, if TMI-1 is prematurely retired.

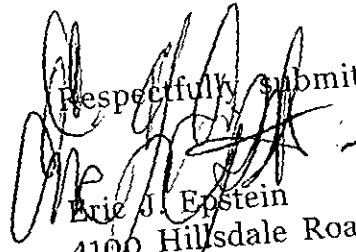
Additionally, Mr. Epstein requests that the Nuclear Regulatory Commission:

(a) Provide Eric Joseph Epstein with copies of all correspondence sent to First Energy regarding this Petition.

(b) Provide Mr. Epstein with advance notice of all public and private meetings conducted by the Agency with regarding this Petition.

(c) Provide Mr. Epstein with an opportunity to participate in all relevant phone calls between NRC staff and FirstEnergy regarding this Petition.

(d) Provide Mr. Epstein with copies of all correspondence sent to Members of Congress and/or industry organizations (e.g., the Nuclear Energy Institute, the Electric Power Research Institute, the Institute for Nuclear Power Operations, Commonwealth of Pennsylvania) Department of Justice, the Securities and Exchange Commission regarding this Petition.


Respectfully submitted,
Eric J. Epstein
4100 Hillsdale Road,
Harrisburg PA 17112
(717)-541-1101
lechambon@comcast.net

Enclosure

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Dated: September 30, 2010.

CERTIFICATE OF SERVICE

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

R. William Borchardt,
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary,
U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001
(Original plus two copies)
HEARINGDOCKET@nrc.gov

Mr. James H. Lash
President & Chief Nuclear Officer
FirstEnergy Corporation
76 South Main Street
Akron, OH 44308

Mr. David W. Jenkins, Esq.
First Energy Legal Department
76 South Main St.
Akron, OH 44308

Mrs. Karen Fili
Vice President GPU Nuclear Fleet Oversight
76 South Main Street
Akron, OH 44308

Mr. Michael J. Casey
GPU Nuclear Responsible Engineer TMI-2
FirstEnergy Nuclear Operating Company
Mail Stop: A-GO-14
76 South Main Street
Akron, OH 44308

Director,
Bureau of Radiation Protection
Department of Environmental Protection
13th Floor, Rachel Carson State Office Bldg
Harrisburg, PA 17105-8469

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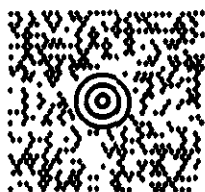
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ERIC EPSTEIN
(717) 641-1101
THE UPS STORE #2204
4075 LINGLESTOWN RD
HARRISBURG PA 17112-1020

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COMMONWEALTH KEYSTONE BUILDING
400 NORTH ST

HARRISBURG PA 17120-0200

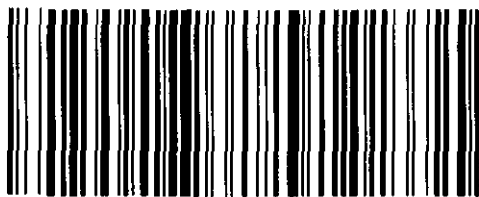


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