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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

December 2, 2010

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
400 North Street
Harrisburg, PA 17105-3265

Re: Joint Application of West Penn Power Company doing business as Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience Under Section 1102(A)(3) of the Public Utility Code Approving a Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520, A-2010-2176732

Dear Secretary Chiavetta:

Enclosed for filing on behalf the Joint Applicants in the above-referenced proceeding are an unbound original and three copies of the **Motion Of West Penn Power Company, Trans-Allegheny Interstate Line Company, And FirstEnergy Corp. For Leave To Respond To The "Letter Of Information" Filed By Eric Joseph Epstein ("Motion For Leave")**. That Motion requests leave of the Pennsylvania Public Utility Commission to file the Motion To Strike and Answer that are annexed to the Motion For Leave as Attachments 1 and 2, respectively.

As evidenced by the enclosed Certificate of Service, copies of the Motion For Leave have been served upon the active parties to the above-referenced proceeding and upon Mr. Epstein, who is not a party.

Rosemary Chiavetta, Secretary
December 2, 2010
Page 2

Morgan Lewis
COUNSELORS AT LAW

We have also enclosed an additional copy of this letter and the Motion For Leave, which we request that you date-stamp and return to us in the stamped, pre-addressed envelope provided.

Sincerely,



Thomas P. Gadsden

TPG/tp
Enclosures

c: Per Certificate of Service

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT APPLICATION OF WEST PENN
POWER COMPANY doing business as
ALLEGHENY POWER, TRANS-
ALLEGHENY INTERSTATE LINE
COMPANY AND FIRSTENERGY CORP.
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE UNDER SECTION
1102(A)(3) OF THE PUBLIC UTILITY CODE
APPROVING A CHANGE OF CONTROL OF
WEST PENN POWER COMPANY AND
TRANS-ALLEGHENY INTERSTATE LINE
COMPANY**

**DOCKET NOS. A-2010-2176520
A-2010-2176732**

**MOTION OF
WEST PENN POWER COMPANY, TRANS-ALLEGHENY INTERSTATE LINE
COMPANY, AND FIRSTENERGY CORP.
FOR LEAVE TO RESPOND TO THE "LETTER OF INFORMATION"
FILED BY ERIC JOSEPH EPSTEIN**

On or about November 18, 2010, Eric Joseph Epstein filed at the above-referenced dockets a document styled as "Letter of Information Re: Nuclear Regulatory Commission's Decision to Review Shortfall of Decommissioning Funding of \$347 (*sic*) at FirstEnergy's Three Mile Island Nuclear Generating Station Unit 2" (hereafter "Letter of Information"). The Letter of Information purports to raise an issue for consideration by the Pennsylvania Public Utility Commission ("PUC" or the "Commission"), namely, the alleged "underfunding" of the Three Mile Island Unit No. 2 ("TMI-2") decommissioning trust, and requests that the Commission hold "in abeyance" the proposed merger of Allegheny Energy Inc. and FirstEnergy Corp. ("FirstEnergy") (the "Merger") until FirstEnergy demonstrates to the satisfaction of the United States Nuclear Regulatory Commission ("NRC") that there is "adequate funding in place to decommission Three Mile Island Unit 2."

The Letter of Notification does not conform to any cognizable form of pleading permitted by the Commission's Rules of Administrative Practice and Procedure. 52 Pa. Code Chapters 1-5. Additionally, the Commission has not notified West Penn Power Company ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo"), and FirstEnergy Corp. ("FirstEnergy") (collectively, the "Companies" or "Joint Applicants") of how it intends to deal with the Letter of Information or if a response thereto is either required or permitted. Accordingly, for those reasons, and pursuant to 52 Pa. Code §§ 1.2 and 5.103, the Joint Applicants request leave to respond to the Letter of Information and, specifically, that they be permitted to file the Motion To Strike annexed hereto as Attachment 1 and the Answer annexed hereto as Attachment 2.

In view of the averments made in the Letter of Information and the request for relief contained therein, which could needlessly disrupt the orderly progress of this proceeding and introduce extraneous issues, the Commission should consider the attached Motion To Strike and Answer before taking any action – other than summary dismissal – with respect to the Letter of Notification.

WHEREFORE, for the reasons set forth above, the Commission should grant the Joint Applicants' Motion For Leave To Respond to the Letter of Information and should accept for filing the Motion To Strike and Answer annexed hereto.

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*Counsel for West Penn Power
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Date: December 2, 2010

Respectfully submitted,



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ATTACHMENT 1

MOTION TO STRIKE

The "Letter Of Information" Filed By Eric Joseph Epstein

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOINT APPLICATION OF WEST PENN :
POWER COMPANY doing business as :
ALLEGHENY POWER, TRANS- :
ALLEGHENY INTERSTATE LINE :
COMPANY AND FIRSTENERGY CORP. :
FOR A CERTIFICATE OF PUBLIC :
CONVENIENCE UNDER SECTION :
1102(A)(3) OF THE PUBLIC UTILITY CODE :
APPROVING A CHANGE OF CONTROL OF :
WEST PENN POWER COMPANY AND :
TRANS-ALLEGHENY INTERSTATE LINE :
COMPANY :

DOCKET NOS. A-2010-2176520
A-2010-2176732

MOTION OF
WEST PENN POWER COMPANY, TRANS-ALLEGHENY INTERSTATE LINE
COMPANY, AND FIRSTENERGY CORP.
TO STRIKE THE "LETTER OF INFORMATION"
FILED BY ERIC JOSEPH EPSTEIN

Pursuant to 52 Pa. Code §§ 5.101 and 5.103, West Penn Power Company ("West Penn"), Trans-Allegheny Interstate Line Company ("TrAILCo"), and FirstEnergy Corp. ("FirstEnergy") (collectively, the "Companies" or "Joint Applicants") hereby move to strike the document filed by Eric Joseph Epstein on or about November 18, 2010 at the above-referenced dockets and styled as "Letter of Information Re: Nuclear Regulatory Commission's Decision to Review Shortfall of Decommissioning Funding of \$347 (*sic*) at FirstEnergy's Three Mile Island Nuclear Generating Station Unit 2" (hereafter "Letter of Information").

Mr. Epstein is not a party to this proceeding; has not filed a Petition to Intervene; is not a customer of either West Penn or any Pennsylvania electric utility subsidiary of FirstEnergy; has not alleged that he has standing to participate in this proceeding and, in fact, does not have standing; purports to submit information for the Pennsylvania Public Utility Commission's ("PUC" or the "Commission") consideration and requests specific relief long after the deadline

for submitting testimony; and, in any event, is attempting to raise an issue that is within the exclusive jurisdiction of the United States Nuclear Regulatory Commission (“NRC”)¹, as evidenced by the averments of the Letter of Information itself and its accompanying Enclosures 1 and 2.² Accordingly, the Letter of Information should be stricken from the docket and Mr. Epstein’s request that the merger of Allegheny Energy, Inc. (“Allegheny”) and FirstEnergy (“Merger”) “be held in abeyance” should be rejected. Notably, the Chairman of the NRC’s Petition Review Board for Mr. Epstein’s Petition indicated that the NRC does not intend to hold the Merger “in abeyance.” *See* NRC’s transcript of the October 19, 2010 teleconference between Mr. Epstein and NRC staff (Appendix A to this Motion). Thereafter, Mr. Epstein turned to this Commission with his request that the Merger be “held in abeyance.”

In further support of their Motion, the Joint Applicants state as follows:

I. THE RELEVANT PROCEDURAL HISTORY

1. This proceeding was initiated on May 14, 2010, when the Companies filed a Joint Application for approval under Chapters 11 and 28 of the Public Utility Code for a change in control of West Penn and TrAILCo. At the Commission’s direction, a Notice of the filing of the Joint Application was published in the *Pennsylvania Bulletin* on May 29, 2010. In that Notice, the Commission established June 14, 2010 as the last day for filing formal protests and petitions to intervene. 40 *Pa. Bulletin* 2843.

¹ *See Re Petition of Metropolitan Edison Co.*, 65 Pa. P.U.C. 190, 197 (1987) (“The federal government has occupied the field of nuclear safety via the Atomic Energy Act, thus preempting state regulation of the same subject matter.”)

² Mr. Epstein avers that the purpose of the Letter of Information is to notify the Commission of “developments at the NRC,” which the NRC has already determined are within its jurisdiction (*see* Enclosure 1).

2. The Commission assigned this case to Administrative Law Judges Wayne L. Weismandel and Mary D. Long (the “ALJs”). A Prehearing Conference was held on June 22, 2010, at which a schedule was established for the submission of testimony and the conduct of hearings. See *Scheduling And Briefing Order* issued June 23, 2010. Direct, supplemental direct, rebuttal, supplemental rebuttal and surrebuttal testimony was served in accordance with the *Scheduling And Briefing Order*. Evidentiary hearings were held in Harrisburg on October 12 through 15, 2010.

3. All but four of the parties to this proceeding entered into a Joint Petition For Partial Settlement (“Joint Petition” or “Settlement”), which was filed with the Commission on October 25, 2010 and served on the ALJs and all active parties. Statements in Support of the Joint Petition were filed on or about October 29, 2010.

4. Main and Reply Briefs were filed on November 3 and November 15, 2010 addressing the Settlement and the issues raised by the non-settling parties.

II. MR. EPSTEIN IS NOT A PARTY TO THIS CASE AND HAS NOT FILED A TIMELY PETITION TO INTERVENE

5. Mr. Epstein is not a party to this case, and he has not filed a Protest or Petition to Intervene. Accordingly, his participation should be denied and the Letter of Information stricken on those grounds alone.

6. Although there is no valid basis for doing so, if Mr. Epstein’s Letter of Information were deemed to include an implicit protest or request to intervene, it should nonetheless be stricken because the time for filing protests or petitions to intervene (June 14, 2010) has long passed. Moreover, there is no valid basis – nor has Mr. Epstein alleged any – for

the Commission to allow such a late intervention, particularly in this instance, where Mr. Epstein's intervention would introduce extraneous issues and significantly delay the orderly progress of the case. *See Joint Application of Pennsylvania-American Water Company and Thames Water Aqua Holdings GmbH*, Docket Numbers A-212285F0096; A-230073F0004, 2002 Pa. PUC LEXIS 15 (May 9, 2002) (Denying a request for intervention after the established deadline.) As previously explained, the deadlines for submission of testimony and other evidence have long passed, evidentiary hearings were concluded in mid-October, and Main and Reply Briefs to the ALJs were filed on November 3 and 15, 2010. Consequently, entertaining the Letter of Information for any purpose would significantly and unnecessarily disrupt the administrative process and would introduce a new issue that was not previously raised by the parties. (As explained below, there was ample justification for the parties not to address that issue since it is not within the Commission's jurisdiction and, therefore, is outside the scope of this proceeding.)

7. Because Mr. Epstein is not a party and cannot achieve party status, his attempted filing of the Letter of Information in this case should be rejected and the Letter of Information should be stricken.

III. MR. EPSTEIN DOES NOT HAVE – NOR HAS HE EVEN ALLEGED THAT HE HAS – STANDING TO PARTICIPATE IN THIS CASE

8. Mr. Epstein's Letter of Information does not allege that he has standing to participate in this proceeding. Accordingly, the Letter of Information, even if it were treated as a petition or other form of pleading recognized under the Commission's Rules of Administrative Practice and Procedure, is deficient in both form and substance because it fails to state any alleged basis for Mr. Epstein's participation in this case. *See e.g.*, 52 Pa. Code § 5.52 (Protest

must “set forth the facts establishing the protestant’s standing to protest.”); 52 Pa. Code § 5.73(a)(1) (Petition to intervene must set forth “the facts from which the alleged intervention right or interest of the petitioner may be determined.”)

9. Mr. Epstein does not, in fact, have standing to participate in this proceeding. He is not a customer of West Penn, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”) or Pennsylvania Power Company (“Penn Power”) and does not have any other interest in the outcome of this proceeding that would confer standing under the test for standing established by the Pennsylvania Supreme Court in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975), which this Commission has adopted. *Municipal Authority of the Borough of West View v. Pennsylvania-American Water Co.*, Docket No. C-2010-2153062 (July 16, 2010), p. 4 (“Standing requires that an aggrieved party have an interest which is substantial, direct and immediate.”); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, Docket No. C-000934801 (June 8, 1993), 1993 Pa. PUC LEXIS 54. Therefore, Mr. Epstein does not have standing to file the Letter of Information or to request that the Commission take any action based on that Letter. Indeed, Mr. Epstein’s attempt to intervene in another electric utility merger proceeding was rejected on that basis. *Joint Application Of PECO Energy Company And Public Service Gas And Electric Company For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into Exelon Corporation*, Docket No. A-110550F0160, Initial Decision (April 25, 2005), affirmed by Commission Opinion and Order entered July 18, 2005 (hereafter “*PECO/PSE&G*”)³:

As Mr. Epstein has failed to establish the direct and immediate interest necessary to permit his intervention in this proceeding, he

³ A copy of the Initial Decision is attached hereto as Appendix B.

also has failed to establish that he has standing to file a protest. As explained above, he is not a customer of PECO, is not an energy marketer with customers in PECO's service territory and does not live in its service territory.

10. Mr. Epstein may assert that residing in proximity to Three Mile Island Unit No. 2 ("TMI-2") should be sufficient to confer standing because health and safety concerns could be harbored by those living near that site whether or not they are customers of West Penn, Met-Ed, Penelec or Penn Power. However, even if there were a valid basis for such health and safety concerns – and the Joint Applicants submit that there is not – those concerns relate entirely to matters within the primary and exclusive jurisdiction of the NRC and do not present any issue within the jurisdiction of the PUC, as explained further in Section IV, *infra*.

IV. MR. EPSTEIN IS ATTEMPTING TO INTRODUCE ISSUES THAT ARE OUTSIDE THE JURISDICTION OF THE PUC AND, THEREFORE, OUTSIDE THE SCOPE OF THIS PROCEEDING

11. In his letter to Secretary Chiavetta, Mr. Epstein alleges that (1) "FirstEnergy's Decommissioning Trust Fund for TMI-2 is grossly underfunded"; (2) the Letter of Information is being filed to alert the Commission to "developments at the NRC" that relate to alleged "underfunding"; and (3) there is an NRC funding "protocol" that allegedly could be affected, in some undefined way, by the Merger. Based on these averments, Mr. Epstein asks that "the proposed merger be held in abeyance" until FirstEnergy demonstrates to the NRC's satisfaction that there is "adequate funding in place to decommission Three Mile Island Unit 2 in 2036."

12. Mr. Epstein's allegation that "FirstEnergy's Decommissioning Trust Fund for TMI-2 is grossly underfunded," which is the fundamental premise for his filing, is factually incorrect, as FirstEnergy explains in the Answer the Joint Applicants are requesting leave to file, as a cautionary measure, in the event the Commission does not strike the Letter of Information as

requested herein.⁴ Additionally, and contrary to what Mr. Epstein suggests in the second paragraph of his letter, the NRC has not made any finding that the decommissioning trust fund for TMI-2 is “underfunded.”

13. As evidenced by the principal averments of Mr. Epstein’s filing, his request to lodge the Letter of Information with the Commission and his request that the “proposed merger be held in abeyance” represent an attempt to introduce into this proceeding the issue of whether the NRC-mandated decommissioning trust for TMI-2 is adequately funded under the criteria used by the NRC to make that determination. As such, Mr. Epstein’s letter is asking this Commission to address an issue that is within the primary and exclusive jurisdiction of the NRC. Indeed, Mr. Epstein concedes that the Letter of Information is intended to “[i]nform the Pennsylvania Public Utility Commission and Interested Parties to the above-reference proceeding of *developments at the NRC*” (emphasis added). Furthermore, what Mr. Epstein proposes to bring to the Commission’s attention involves a matter he initiated *at the NRC*, as evidenced by the “Petition” attached as Enclosure 2 to the Letter of Information. In response to that filing, the NRC staff agreed that Mr. Epstein’s Petition satisfied the criteria set forth in 10 CFR 2.206 to be accepted for consideration. The NRC staff will, therefore, undertake a review of TMI-2 decommissioning funding. (*see* Enclosure 1 to Letter of Information). As previously

⁴ In summary, Mr. Epstein assumes that the principal of the decommissioning trust fund today should equal the estimated cost to decommission TMI-2 even though decommissioning will not commence until many years in the future. That assumption is entirely incorrect because it ignores earnings (and the compounding of such earnings) that will accrue on the balance in the decommissioning trust fund over time. When reasonable estimates of such earnings are taken into account, the decommissioning trust fund balance, as of the expected start of decommissioning in 2043 – not 2036 as Mr. Epstein erroneously alleges – will be sufficient to fully fund the estimated cost of decommissioning as of that date. This was clearly demonstrated in the report filed by GPU Nuclear, Inc. on March 29, 2010, pursuant to the annual reporting requirement imposed by the NRC under 10 CFR 50.75(f)(1), which is on file at the NRC.

explained, the Chairman of the NRC's Petition Review Board for Mr. Epstein's Petition indicated that the NRC does not intend to hold the Merger "in abeyance."

14. Issues concerning the adequacy of decommissioning trust funds or other financial assurances to provide for the full decommissioning of a nuclear reactor relate to matters of reactor operations and safety that are within the jurisdiction of the NRC and, therefore, outside the jurisdiction of the PUC. In *Pacific Gas & Electric Co. v. State Energy Resource Conservation and Development Commission*, 461 U.S. 190, 52 P.U.R. 4th 169 (1983), the United States Supreme Court held:

But as we view the issue, Congress, in passing the 1954 [Atomic Energy] act and in subsequently amending it, intended that the federal government should regulate the radiologic safety aspects involved in the construction and operation of a nuclear plant, but that the states retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns.⁵

This Commission has long recognized that its "traditional responsibility" does not authorize it to address the kinds of issues Mr. Epstein is attempting to interject into this proceeding and, in fact, the Commission has repeatedly rejected such attempts in the past. Thus, in *Pa. P.U.C., v. Metropolitan Edison Co.*, 54 Pa. P.U.C., 276 (1980), the Commission held:

This record contains many allegations concerning Met Ed's responsibility for the construction, maintenance, operation and cleanup of the Three Mile Island nuclear units. To the extent that these allegations relate to the safety of the people of Pennsylvania, *this commission is required to recognize that the federal government has completely preempted the states in the licensing and regulation of the commercial use of nuclear reactors and in*

⁵ The "traditional" state regulatory function as to all generation has been removed from the Commission's jurisdiction by the Electricity Generation Customer Choice and Competition Act. See 66 Pa. C.S. § 2802(14) ("The generation of electricity will no longer be regulated as a public utility function . . .")

the protection of the public from radiologic hazards. Northern States Power Co. v. Minnesota, (CA8th 1971) 90 P.U.R. 401, 447 F.2d 1143, affd mem (1972) 405 U.S. 1035. (Emphasis added.)

Similarly in *Re Petition of Metropolitan Edison Co.*, 65 Pa. P.U.C. 190, 197 (1987), the Commission reiterated its lack of jurisdiction in the area of nuclear operations, safety and decommissioning:

[T]he various proposals for an independent inspector are troublesome, particularly since this Commission has no jurisdiction over the safety aspects of the Saxton decommissioning program. The federal government has occupied the field of nuclear safety via the Atomic Energy Act, thus preempting state regulation of the same subject matter. *Pacific Gas & Electric Co. v. State Energy Resource Conservation And Development Commission*, 461 U.S. 190, 212-213 (1983).

As previously explained, in 2005, Mr. Epstein tried to intervene in another electric utility merger proceeding before this Commission. He was denied intervention because, in addition to lacking standing, he sought to raise issues pertaining to the “operation or safety of nuclear facilities or the impact of extension of operating licenses” that are “within the exclusive jurisdiction of the NRC.” *PECO/PSE&G* (Initial Decision, p. 4).

In a 2000 merger proceeding also involving PECO Energy Company, one of the protestants attempted to raise issues concerning the operation, safety and monitoring of the nuclear generating facilities then owned by PECO Energy. *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* at Docket No. A-00110550F0147 (the *PECO-Unicom Proceeding*). The presiding Administrative Law Judge in that proceeding also ruled that such issues were outside the scope of the proceeding and

outside the scope of the PUC's jurisdiction. *PECO-Unicom Proceeding, supra*, Recommended Decision (June 1, 2000) pp. 46-48 ("The Pennsylvania Public Utility Commission has recognized that the NRC has exclusive jurisdiction over nuclear safety issues.") The Recommended Decision was approved by the Commission in its final Order entered on June 22, 2000.

15. Because the issue Mr. Epstein proposes to raise by his Letter of Information is not within the jurisdiction of the PUC and, therefore, not within the scope of this proceeding, his filing should be stricken. Moreover, the Chairman of the NRC's Petition Review Board for Mr. Epstein's Petition indicated that the NRC does not intend to hold the Merger "in abeyance." Therefore, there is no valid basis for the Commission to grant Mr. Epstein's request to delay the Merger until FirstEnergy demonstrates to the NRC's satisfaction that there is "adequate funding in place to decommission Three Mile Island Unit 2 in 2036."

V. CONCLUSION

WHEREFORE, for the reasons set forth above, the Letter of Information filed by Eric Joseph Epstein on or about November 18, 2010 should be stricken.

Respectfully submitted,



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SECRETARY'S BUREAU

Counsel for FirstEnergy Corp.

Date: December 2, 2010

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SECRETARY'S BUREAU

APPENDIX A

To Joint Applicants' Motion To Strike

NRC Transcript Of The October 19, 2010
Teleconference Between Eric Joseph Epstein and NRC Staff

Excerpt from NRC transcript – Epstein petition

NRC to issue the DFI.

3 MR. MCCONNELL: Okay. Thank you for that.

4 I would like to ask a clarifying question,

5 specifically about what action you're requesting the

6 NRC take. Is it only a demand for information?

7 MR. EPSTEIN: Yes, at this point.

8 MR. MCCONNELL: Okay. I mean, we did note

9 that on page six, as it's identified the way it's

10 paginated on our system here, that you say "at a

11 minimum, the proposed merger must be held in

12 abeyance." Are you talking about -- I guess this is

13 the merger between FirstEnergy and Allegheny Power?

14 MR. EPSTEIN: Yes, but I don't think the

15 NRC has the ability to do that, since it's my

16 understanding that FirstEnergy has not filed any

17 formal applications with the Agency.

18 MR. MCCONNELL: That's correct. And we

19 just wanted to make it clear that, in the absence of

20 any request, we wouldn't be taking action in that

21 matter.

22 MR. EPSTEIN: Yes, however I would not

23 oppose the NRC if they decided to initiate such an

24 action.

25 MR. MCCONNELL: Okay. Just to be clear,

1 it's not our intent to do that.

2 MR. EPSTEIN: I understand.

3 MR. MCCONNELL: Okay. Any other questions

4 from any of the board members?

5 (Pause)

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX B

To Joint Applicants' Motion To Strike

Initial Decision (April 25, 2005)

*Joint Application Of PECO Energy Company And Public Service Gas And Electric Company
For Approval Of The Merger Of Public Service Enterprise Group Incorporated With And Into
Exelon Corporation, Docket No. A-110550F0160*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of PECO Energy Company :
and Public Service Electric and Gas Company :
for Approval of the Merger of Public Service : A-110550F0160
Enterprise Group Incorporated with and into :
Exelon Corporation :

INITIAL DECISION

Before
Marlane R. Chestnut
Administrative Law Judge

HISTORY OF THE PROCEEDING

On February 4, 2005, PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) (collectively, joint applicants) filed with the Pennsylvania Public Utility Commission (Commission) a Joint Application requesting that the Commission issue an order approving, to the extent necessary, the merger of Public Service Enterprise Group Incorporated (PSEG), PSE&G's corporate parent, with and into Exelon Corporation (Exelon), PECO's ultimate parent corporation.

Notice of the Joint Application was published in the *Pennsylvania Bulletin* on February 19, 2005 and numerous entities filed Protests or Petitions to Intervene. Eric Joseph Epstein (Epstein) filed both a Protest and Petition to Intervene on March 7, 2005. On March 24, 2005, the joint applicants filed an Answer in opposition to the Petition to Intervene and a Motion to Dismiss the Protest, alleging lack of standing and issues that are outside the scope of this proceeding and outside the Commission's jurisdiction.

Mr. Epstein addressed the outstanding Answer and Motion at the prehearing conference which was held on March 29, 2005 in Philadelphia, PA. At that time, I took the Answer

and Motion under advisement, and permitted Mr. Epstein to participate in the proceeding pending resolution of the Answer and Motion.

On or about April 18, 2005, Mr. Epstein filed and served a Response to the joint applicants' Answer and Motion.

As discussed in more detail below, the Answer and Motion will be granted. Mr. Epstein is not a customer of PECO, does not live in PECO's service territory, is not an energy marketer within PECO's service territory and therefore lacks standing to participate in this proceeding as either an intervener or protestant. In addition, many of the issues he identified are outside the scope of this proceeding.

FINDINGS OF FACT

1. On February 4, 2005, PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) (collectively, joint applicants) filed with the Pennsylvania Public Utility Commission (Commission) a Joint Application requesting that the Commission issue an order approving, to the extent necessary, the merger of Public Service Enterprise Group Incorporated (PSEG), PSE&G's corporate parent, with and into Exelon Corporation (Exelon), PECO's ultimate parent corporation.

2. On March 7, 2005 Eric Joseph Epstein (Epstein) filed both a Protest and Petition to Intervene.

3. Eric Joseph Epstein is not a customer of PECO, does not live in PECO's service territory and is not a marketer of electricity or gas in PECO's service territory.

4. In January 2001, with the Commission's approval, PECO transferred all of its generation (including its interest in the Nuclear Monitoring and Waste Storage Agreement) to Exelon Generation Company LLC.

5. Parties permitted to participate in this proceeding include inter alia the Office of Consumer Advocate, Office of Small Business Advocate, Office of Trial Staff, the Pennsylvania Department of Environmental Protection, the City of Philadelphia, the Philadelphia Area Industrial Energy Users Group and the Exelon Utility Coordinated Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers.

DISCUSSION

Essentially, two grounds were alleged by the joint applicants in opposing the Protest and Petition to Intervene filed by Mr. Epstein. The first was the failure to establish a direct, immediate or substantial interest in the proceeding that provides standing to protest or to intervene; the second was that the issues raised by Mr. Epstein's Protest and Petition to Intervene are outside the scope of this proceeding. Each of these issues is addressed below.

A. Standing to Intervene or Protest

Eligibility to intervene in a proceeding before the Commission is addressed in the regulations promulgated by the Commission. Specifically, §5.72 provides in relevant part that:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

Allowance of intervention is a matter within the discretion of the Commission. City of Pittsburgh v. PA Public Utility Comm'n, 153 Pa.Super. 83, 33 A.2d 641(1943), N.A.A.C.P., Inc. v. PA Public Utility Comm'n, 5 Pa.Comm.w. 312, 290 A.2d 704(1972). "The interest of a petitioner seeking intervention must be direct and immediate." Re Pennsylvania Power & Light Company, 50 Pa. PUC 38, 40(1976).

Mr. Epstein claims that he is eligible to intervene pursuant to subsections (2) and (3) above. Primarily he relies on his assertions that he has participated in prior proceedings involving PECO (specifically, as a signatory to the Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Docket No. A-110550F0147, the PECO-Unicom proceeding), and that he has a signed agreement with PECO relating to the operation of the company's Peach Bottom nuclear facility (Nuclear Monitoring and Waste Storage Agreement).¹ He also alleges that his participation is in the public interest because he "represent[s] dedicated interests managed and administered by Mr. Epstein for ratepayers, citizens and communities in South Central Pennsylvania." Response, Paragraphs 20 and 21. Finally, he states that he should be permitted to intervene because he is a shareholder of Exelon Corporation (PECO's parent), and has developed expertise in the area of nuclear power economics.

None of these assertions rise to the level of an interest which is "directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding."

First, the fact that he participated in prior PECO proceedings is irrelevant. Unlike issues involving jurisdiction, for example, which cannot be waived by the parties, standing is waivable. Simply because PECO allowed Mr. Epstein, who is not a customer, to participate in other PECO proceedings or to enter into monitoring agreements, is insufficient by itself to confer a direct and immediate interest in this particular proceeding. In this connection, it should be noted that since the conclusion of the PECO-Unicom merger proceeding, PECO's generating assets (including its

¹ Although Mr. Epstein references Three Mile Island Alert, Inc. and the EFMR Monitoring Group in his Petition to Intervene, both the Petition to Intervene and Protest were filed by Mr. Epstein as an individual.

interest and obligations pursuant to the Nuclear Monitoring and Waste Storage Agreement) were transferred to Exelon Generation Company, LLC.

Second, it is beyond argument that even if Mr. Epstein as an individual had a direct, immediate and substantial interest which may be directly affected in this proceeding, that interest certainly can be adequately represented by existing participants. All customer groups – as well as the public interest generally – are represented in this proceeding and, as noted by Mr. Epstein in his Response, have identified issues related to nuclear power generation in their respective Prehearing Memoranda. These parties are the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Office of Trial Staff (OTS), the Philadelphia Area Industrial Energy Users Group (PAIEUG), as well as the Pennsylvania Department of Environmental Protection (DEP). Other parties representing either employees, individual customers or groups of customers include the Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now and Tenants' Action Group (Action Alliance et al.), Citizens for Pennsylvania's Future, Joy Bergey and Lisa Z. Leighton (PennFuture), the City of Philadelphia, the New Jersey Large Energy Users Coalition (NJLEUC, PECO customers only), the Energy Coordinating Agency of Philadelphia, Inc. (ECA), and the Exelon Utility Coordinated Council, Locals 614 and 777 of the International Brotherhood of Electrical Workers and Frank Kuders (Labor Parties). To the extent relevant, any of these parties can address issues relating to prior agreements entered into by PECO in other proceedings.

As the Commonwealth Court stated in Mid-Atlantic Power Supply Ass'n v. Pennsylvania Public Util. Comm'n, 746 A.2d 1196, 2000 Pa. Commw. LEXIS 86, *11-12:

PECO does not represent the interests of its ratepayers. A party may not claim standing to vindicate the rights of a third party who has the opportunity to be heard. Pennsylvania Dental Assoc. v. Comm. of Pa., Dept. of Health, 461 A.2d 329 (Pa. Cmwlth. 1983). Additionally, Section 902-A of the Administrative Code statutorily provided for the OCA to represent the interests of customers before the PUC, and the OCA, as intervenor, submitted its brief in support of the PUC's Final Order. PECO was not aggrieved by the order to release specified customers information to all licensed suppliers of electricity and therefore lacks standing.

It must be remembered that Mr. Epstein is an individual, and his Petition to Intervene and Protest were filed on that basis. There is no aspect of the public interest that requires intervention on his part. He is not a customer of PECO, is not a gas or electric marketer in PECO's service territory, does not live in PECO's service territory, has no direct, immediate or substantial interest in this proceeding that cannot be represented by any other party, and will not be aggrieved in any way as the result of the Commission's final order.

Third, his status as a shareholder of Exelon Corporation is insufficient to confer any direct, immediate or substantial interest in this proceeding. It is a corporation's board of directors that represents shareholder interests; a shareholder's interest has been characterized by the Commission as "indirect." See, American Society of Utility Investors v. Pennsylvania Public Utility Commission, 54 Pa. PUC 560, 1980 Pa. PUC LEXIS 3, *2: "[a]n injury to a corporation may, to be sure, result in injury to the corporation's stockholders. Such injury, however, is regarded as 'indirect,' and insufficient to give rise to a direct cause of action by the stockholders. Kelly v. Thomas (1912) 234 Pa 419, 428, 83 Atl. 307."

Finally, the fact that Mr. Epstein "has been recognized as an expert witness before the Commission on nuclear economics" and "has worked cooperatively with AmerGen, FirstEnergy, PPL, PECO Energy, PPLICA, PAIEUG, the OCS and the OTS to resolve nuclear tariffs" (Response, Paragraphs 25 and 26) is completely irrelevant.

As Mr. Epstein has failed to establish the direct and immediate interest necessary to permit his intervention in this proceeding, he also has failed to establish that he has standing to file a protest. As explained above, he is not a customer of PECO, is not an energy marketer with customers in PECO's service territory and does not live in its service territory.

Standing means that a party has a sufficient stake in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. It is a concept utilized to

determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented.

The Commission has adopted the criteria used in Pennsylvania civil law practice to determine if a party has standing. Courier Express, Inc. v. F. L. Shaffer Company, Inc., Docket No. C-892462 (Order dated April 11, 1990); Wm. Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975) (Wm Penn); Landlord Service Bureau, Inc. v. Equitable Gas Company, 1993 Pa. PUC LEXIS 54.

Standing requires that an aggrieved party have an interest which is substantial, direct, and immediate. To have a substantial interest means that there must be some discernible adverse effect to some interest of the complaining party other than the abstract interest of all citizens in having others comply with the law. To have a direct interest means that the aggrieved party must show causation of the harm to his interest by the matter of which he complains. To have an immediate interest means that the nature of the causal connection between the action complained of and the injury to the person challenging it is sufficiently close to present a justiciable controversy. Wm Penn, supra; In Re Francis Edward McGillick Foundation, 537 Pa. 194, 642 A.2d 467 (1994); PECO-Unicom proceeding, Commission Opinion and Order entered June 22, 2000.

As explained above, Mr. Epstein lacks standing to protest the Joint Application. The fact that he may have participated in prior proceedings and that he has entered into nuclear plant monitoring agreements is insufficient to confer standing. First, as standing is waivable, his prior participation is irrelevant to determining his interest in this proceeding. In addition, as stated in PECO's Motion to Dismiss at Paragraph 5, PECO Energy is not the owner or operator of any nuclear facilities.

In this connection, it should be noted that Mr. Epstein's contention at Paragraph 30 of his Response that he "is the only party with a binding agreement with PECO Energy that ensures adequate staffing levels as nuclear generation becomes linked to a regionalized work force" is insufficient to constitute a direct interest in this proceeding. As explained in more

detail below, issues relating to nuclear plant operations are within the jurisdiction of the Nuclear Regulatory Commission (NRC). In addition, any claimed breach of the agreement, if properly before the Commission, would be addressed as a separate complaint proceeding, not in the course of this examination of the proposed merger.

B. Issues

Mr. Epstein identified various potential issues in his Petition to Intervene and Protest. All of these issues relate in some way to nuclear generation, and most therefore are either outside the scope of this proceeding or outside the Commission's jurisdiction.

There is no question that issues relating to the operation or safety of nuclear facilities or the impact of extension of operating licenses are within the exclusive jurisdiction of the NRC. This has long been recognized by the Commission. See, Pa. P.U.C. v. Metropolitan Edison Co., 54 Pa.PUC 276, (1980); Re: Petition of Metropolitan Edison Co., 65 Pa.PUC 190 (1987). Any relevant issues relating to the operation or safety of any nuclear facilities will be addressed by the NRC, which is reviewing the proposed merger.

In addition, the Commission no longer regulates the generation of electricity, Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S.A. §2802. With respect to generation issues, the Commission's role in this proceeding is to determine whether the proposed merger "is likely to result in anticompetitive or discriminatory conduct" pursuant to 66 Pa.C.S.A. §§2210(a), 2811(e). As recognized in PECO's Motion at Paragraph 11, "policing the operation of the wholesale generation market, including the appropriate remedies or sanctions for improper conduct, is primarily the role of the PJM Interconnection LLC and the Federal Energy Regulatory Commission (FERC) and, therefore involves matters outside the PUC's authority. Additionally, the entity to which Mr. Epstein's concerns are directed is not a utility and not otherwise subject to the jurisdiction of this Commission."

Therefore, even if Mr. Epstein had standing to intervene in this proceeding or to file a protest against the proposed merger, most if not all of the issues he raises are either outside the scope of this proceeding or not within the Commission's jurisdiction.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. Eric Joseph Epstein has failed to establish that he has an interest in this proceeding which is direct, immediate and substantial.
3. Eric Joseph Epstein lacks standing to intervene in this proceeding or to protest the proposed merger which is the subject of this proceeding.
4. The Commission is without jurisdiction to regulate the generation of electricity as a public utility function.
5. The Nuclear Regulatory Commission has exclusive jurisdiction over the operation of nuclear generating facilities.
6. The Federal Energy Regulatory Commission has exclusive jurisdiction over the wholesale generation market.

ORDER

THEREFORE

IT IS ORDERED:

1. That the Motion to Dismiss the protest of Eric Joseph Epstein filed by PECO Energy Company and Public Service Electric and Gas Company is granted;

2. That the Protest filed by Eric Joseph Epstein is dismissed; and

3. That the Petition to Intervene filed by Eric Joseph Epstein is denied.

Date: April 25, 2005

Marlane R. Chestnut
Administrative Law Judge

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SECRETARY'S BUREAU

ATTACHMENT 2

ANSWER

To The "Letter Of Information" Filed By Eric Joseph Epstein

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT APPLICATION OF WEST PENN	:	
POWER COMPANY doing business as	:	
ALLEGHENY POWER, TRANS-	:	
ALLEGHENY INTERSTATE LINE	:	
COMPANY AND FIRSTENERGY CORP.	:	
FOR A CERTIFICATE OF PUBLIC	:	DOCKET NOS. A-2010-2176520
CONVENIENCE UNDER SECTION	:	A-2010-2176732
1102(A)(3) OF THE PUBLIC UTILITY CODE	:	
APPROVING A CHANGE OF CONTROL OF	:	
WEST PENN POWER COMPANY AND	:	
TRANS-ALLEGHENY INTERSTATE LINE	:	
COMPANY	:	

**ANSWER OF
WEST PENN POWER COMPANY, TRANS-ALLEGHENY INTERSTATE LINE
COMPANY, AND FIRSTENERGY CORP.
TO AVERMENTS CONTAINED IN THE “LETTER OF INFORMATION”
FILED BY ERIC JOSEPH EPSTEIN**

On or about November 18, 2010, Eric Joseph Epstein filed at the above-referenced dockets a document styled as “Letter of Information Re: Nuclear Regulatory Commission’s Decision to Review Shortfall of Decommissioning Funding of \$347 (*sic*) at FirstEnergy’s Three Mile Island Nuclear Generating Station Unit 2” (hereafter “Letter of Information”). The stated purpose of the Letter of Information is to “[i]nform the Pennsylvania Public Utility Commission and Interested Parties to the above-referenced proceeding of developments at the NRC.”

The Letter of Information does not conform to any cognizable form of pleading permitted by the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Rules of Administrative Practice and Procedure. 52 Pa. Code Chapters 1-5. For that reason, among others, West Penn Power Company (“West Penn”), Trans-Allegheny Interstate Line Company (“TrAILCo”), and FirstEnergy Corp. (“FirstEnergy”) (collectively, the “Companies” or “Joint Applicants”) have requested leave to file a Motion to Strike the Letter of Information. However,

as a precautionary measure and because the Letter of Information contains various averments that are incorrect, incomplete or otherwise mischaracterize the facts Mr. Epstein purports to present, the Joint Applicants have requested leave to submit this Answer as well.

Accordingly, the Joint Applicants answer the Letter of Information as follows:

1. The first paragraph of the Letter of Information is a general introduction, to which an answer is not necessary.

2. The second paragraph of the Letter of Information alleges that “FirstEnergy’s Decommissioning Trust Fund for TMI-2 is grossly underfunded.” That allegation is followed by a quote from the 2008 Site Status Summary for Three Mile Island Unit No. 2 (“TMI-2”) available on the United States Nuclear Regulatory Commission’s (“NRC”) website (*see* Letter of Information, footnote 2) to the effect that the “current” decommissioning cost estimate for TMI-2 is \$831.5 million and the “current” amount in the decommissioning trust fund is \$484.5 million.¹ The juxtaposition of those two averments implies that the NRC has made a finding that the TMI-2 decommissioning trust is “underfunded.” That implication is entirely incorrect. The NRC did not make such a finding and, in fact, the TMI-2 decommissioning trust is not “underfunded.”

In further answer, Mr. Epstein assumes that the principal of the TMI-2 decommissioning trust today should equal the estimated cost to decommission TMI-2 even though decommissioning will not commence until many years in the future. That assumption is wrong because it ignores earnings (and the compounding of such earnings) that will accrue on the balance in the decommissioning trust fund over time. When reasonable estimates of such earnings are taken into account, the decommissioning trust fund balance, as of the expected start

¹ As explained below, it is not correct to characterize the 2008 figure as “current.”

of decommissioning in 2043 – not 2036 as Mr. Epstein erroneously alleges – will be sufficient to fully fund the estimated cost of decommissioning as of that date. This was clearly demonstrated in reports filed by GPU Nuclear, Inc. pursuant to the annual reporting requirement imposed by the NRC under 10 CFR 50.75(f)(1).

Moreover, Mr. Epstein chose to quote from the Site Status Summary for 2008. The Site Status Summary for 2009, which is also available on the NRC’s website, shows that, as of December 31, 2009, the decommissioning cost estimate for TMI-2 was \$836.9 million, and the balance of the decommissioning trust was \$576.8 million. (A copy of the 2009 Site Status Summary is attached as Appendix A.) As the Commission is aware, the balance of decommissioning trust funds will change based on the performance of the investments each time a “snapshot” of fund value is taken. Mr. Epstein chose to present the fund value at December 31, 2008, which reflected the precipitous decline in the value of many assets during the financial crisis that occurred in 2008 but before the significant rise in asset values that took place over the succeeding twelve months. Decommissioning funds are invested for the long term and, therefore, it is neither accurate nor fair to portray the funding status of such trusts based on a snapshot at a single point in time, as evidenced by the \$92.3 million increase in the TMI-2 decommissioning trust balance between December 31, 2008 and 2009.

3. The averment made in the third paragraph of the Letter of Information is denied. As evidenced by the reference provided in footnote 3 of the Letter of Information, \$104.7 million was the decommissioning trust fund balance at January 18, 1994.

4. The averments in the fourth paragraph of the Letter of Information are admitted. However, in further answer, Mr. Epstein has again focused on the performance of the

decommissioning trust fund during the period that included the financial crisis of 2008 – hence the decrease in the fund value noted by Mr. Epstein – while ignoring the performance of the fund during the rebound in the financial markets during the succeeding twelve months, as explained in Paragraph 2, above.

5. It is admitted that TMI-2 has been de-fueled but not decommissioned. It is also admitted that as of March 1979 it is likely that the decommissioning trust fund balance was negligible because TMI-2 only began commercial operation on December 30, 1978.

6. Paragraph 6 of the Letter of Information sets forth Mr. Epstein's alleged reasons for filing the Letter of Information. It is denied that any "developments at the NRC" could have "a material adverse impact on matters before the Commission." Furthermore, what Mr. Epstein proposes to bring to the Commission's attention involves a matter he initiated at the NRC, as evidenced by the "Petition" attached as Enclosure 2 to the Letter of Information. In response to that filing, the NRC staff agreed that Mr. Epstein's Petition met the criteria set forth in 10 CFR 2.206 to be accepted for consideration. The NRC staff will, therefore, undertake a review of TMI-2 decommissioning funding (*see* Enclosure 1 to Letter of Information). However, the Chairman of the NRC's Petition Review Board for Mr. Epstein's Petition indicated that the NRC does not intend to hold the proposed merger of *Allegheny Energy Inc. and FirstEnergy* (the "Merger") "in abeyance," as evidenced by the transcript of the October 19, 2010 teleconference between Mr. Epstein and NRC staff (Appendix B to this Motion). Thereafter, Mr. Epstein turned to this Commission to request that the Merger be held "in abeyance."

7. The averments of the seventh paragraph of the Letter of Information are denied. The alleged "fragile protocol" that Mr. Epstein refers to is undefined and unexplained. More

fundamentally, the Merger will not “endanger” the funding status of the TMI-2 decommissioning trust in any way. That trust is currently, and will remain, adequately funded, and Mr. Epstein’s averments to the contrary are based entirely on his erroneous assumptions, which were identified in Paragraph 2, *supra*. (The Company’s answer as set forth in Paragraph 2, *supra*, is incorporated herein by reference.) Moreover, the Chairman of the NRC’s Petition Review Board for Mr. Epstein’s Petition indicated that the NRC does not intend to hold the Merger “in abeyance.” Therefore, there is no valid basis for the Commission to grant Mr. Epstein’s request to delay the Merger until FirstEnergy demonstrates to the NRC’s satisfaction that there is “adequate funding in place to decommission Three Mile Island Unit 2 in 2036.”

WHEREFORE, for the reasons set forth above, if the Commission does not strike the Letter of Information filed by Eric Joseph Epstein, as requested by the Joint Applicants' contemporaneously filed Motion to Strike, then the Letter of Information should be disregarded, its averments should be rejected and its request that "the proposed merger be held in abeyance" until FirstEnergy demonstrates to the NRC's satisfaction that there is "adequate funding in place to decommission Three Mile Island Unit 2 in 2036" should be denied.

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*Counsel for West Penn Power
Company and Trans-Allegheny
Interstate Line Company*

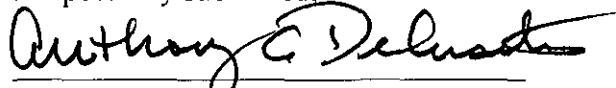
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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Date: December 2, 2010

Respectfully submitted,



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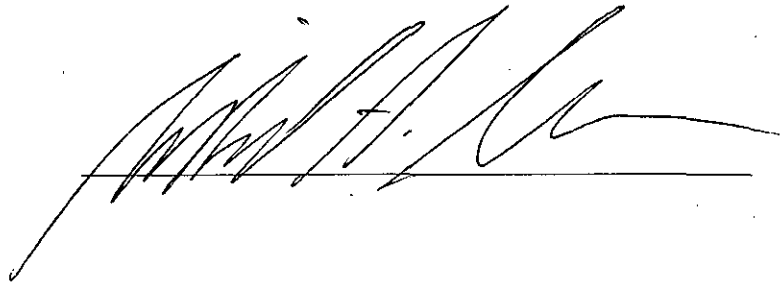
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Counsel for FirstEnergy Corp.

VERIFICATION

I, Richard A. D'Angelo , hereby state that I am Manager-Rates and Regulatory Affairs - Pennsylvania; that the facts set forth above in the foregoing Answer are true and correct to the best of my knowledge, information and belief; and that I expect to be able to prove the same at a hearing, if any, held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Richard A. D'Angelo', is written over a horizontal line.

Date: December 2, 2010

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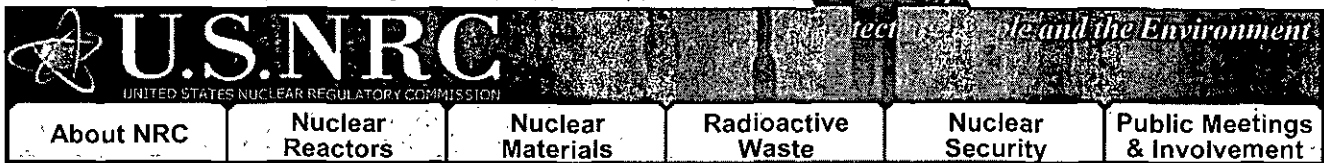
APPENDIX A

To Joint Applicants' Answer

NRC Site Status Summary -- 2009
Three Mile Island Unit No. 2

[Index](#) | [Site Map](#) | [FAQ](#) | [Facility Info](#) | [Reading Rm](#) | [New](#) | [Help](#) | [Glossary](#) | [Contact Us](#)[BrowseAloud](#)

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Three Mile Island - Unit 2

1.0 Site Identification

Type of Site: Power Reactor Facility
Location: Middletown, PA
License No.: DPR-73
Docket No.: 50-320
License Status: Possession Only License
Project Manager: Kristina Banovac

2.0 Site Status Summary

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 \$836.9 million. The current amount in the decommissioning trust fund is \$576.8 million, as of December 31, 2009.

3.0 Major Technical or Regulatory Issues

None

4.0 Estimated Date For Closure

12/31/2036

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Wednesday, October 20, 2010

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APPENDIX B
To Joint Applicants' Answer

NRC Transcript Of The October 19, 2010
Teleconference (Eric Joseph Epstein and NRC Staff)

Excerpt from NRC transcript -- Epstein petition

NRC to issue the DFI.

3 MR. MCCONNELL: Okay. Thank you for that.

4 I would like to ask a clarifying question,

5 specifically about what action you're requesting the

6 NRC take. Is it only a demand for information?

7 MR. EPSTEIN: Yes, at this point.

8 MR. MCCONNELL: Okay. I mean, we did note

9 that on page six, as it's identified the way it's

10 paginated on our system here, that you say "at a

11 minimum, the proposed merger must be held in

12 abeyance." Are you talking about -- I guess this is

13 the merger between FirstEnergy and Allegheny Power?

14 MR. EPSTEIN: Yes, but I don't think the

15 NRC has the ability to do that, since it's my

16 understanding that FirstEnergy has not filed any

17 formal applications with the Agency.

18 MR. MCCONNELL: That's correct. And we

19 just wanted to make it clear that, in the absence of

20 any request, we wouldn't be taking action in that

21 matter.

22 MR. EPSTEIN: Yes, however I would not

23 oppose the NRC if they decided to initiate such an

24 action.

25 MR. MCCONNELL: Okay. Just to be clear,

1 it's not our intent to do that.

2 MR. EPSTEIN: I understand.

3 MR. MCCONNELL: Okay. Any other questions

4 from any of the board members?

5 (Pause)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOINT APPLICATION OF WEST PENN :
POWER COMPANY doing business as :
ALLEGHENY POWER, TRANS- :
ALLEGHENY INTERSTATE LINE :
COMPANY AND FIRSTENERGY CORP. :
FOR A CERTIFICATE OF PUBLIC :
CONVENIENCE UNDER SECTION :
1102(A)(3) OF THE PUBLIC UTILITY CODE :
APPROVING A CHANGE OF CONTROL OF :
WEST PENN POWER COMPANY AND :
TRANS-ALLEGHENY INTERSTATE LINE :
COMPANY :

DOCKET NOS. A-2010-2176520
A-2010-2176732

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Motion Of West Penn Power Company, Trans-Allegheny Interstate Line Company, And FirstEnergy Corp. For Leave To Respond To The "Letter Of Information" Filed By Eric Joseph Epstein** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

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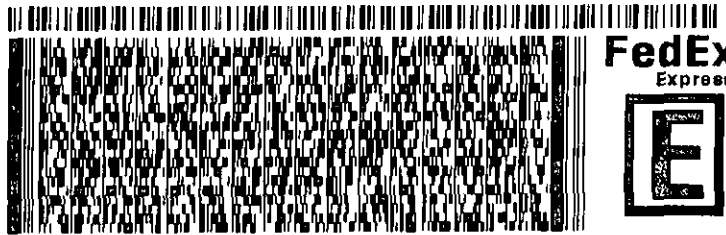
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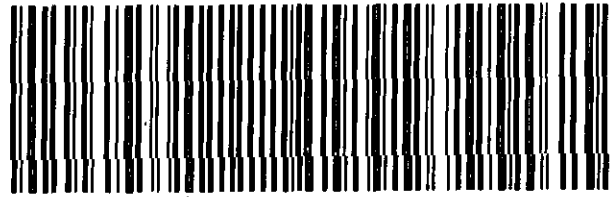


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