

United States of America
Nuclear Regulatory Commission

Certificate of Service

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

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

Docket Nos.

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

United States Nuclear Regulatory Commission

Office of Commission Appellate Adjudication

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Washington, DC 20555-0001

Office of the Secretary of the Commission

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

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

Docket Nos.

Braidwood Station, Units 1 and 2; Byron
Station, Unit 1 and 2; Calvert Cliffs
Nuclear Power Plant, Units 1 and 2; Clinton
Power Station, Unit 1; Dresden Nuclear
Power Station, Units 1, 2, and 3; James
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3; Quad Cities Nuclear Power Station, Units 1
and 2; R. E. Ginna Nuclear Power Plant;
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and 72-1037 - LT

Dated: June 14, 2021.

Petition of Eric Joseph Epstein
and Three Mile Island Alert, Inc.
for Leave to Intervene and for a Hearing

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I. Introduction

The Nuclear Regulatory Commission (“NRC”) is considering the issuance of an order under 10 CFR 50.80 and 72.50 approving the indirect transfer of control of Renewed Facility Operating License Nos. NPF-72 and NPF-77 for Braidwood Station (“Braidwood”), Units 1 and 2, respectively; Renewed Facility Operating License Nos. NPF-37 and NPF-66 for Byron Station (“Byron”), Unit Nos. 1 and 2, respectively; Renewed Facility Operating License Nos. DPR-53 and DPR-69 for Calvert Cliffs Nuclear Power Plant (“Calvert Cliffs”), Units 1 and 2, respectively; Facility Operating License No. NPF-62 for Clinton Power Station (“Clinton”), Unit No. 1; Facility Operating License No. DPR-2 and Renewed Facility Operating License Nos. DPR-19 and DPR-25 for Dresden Nuclear Power Station (“Dresden”), Units 1, 2, and 3, respectively; Renewed Facility Operating License No. DPR- 59 for James A. FitzPatrick Nuclear Power Plant (“FitzPatrick”); Renewed Facility Operating License Nos. NPF-11 and NPF-18 for LaSalle County Station (LaSalle), Units 1 and 2, respectively; Renewed Facility Operating License Nos. NPF-39 and NPF-85 for Limerick Generating Station (“Limerick”), Units 1 and 2, respectively; Renewed Facility Operating License Nos. DPR-63 and NPF-69 for Nine Mile Point Nuclear Station (“NMP”), Units 1 and 2, respectively; Facility Operating License No. DPR-12 and Subsequent Renewed Facility Operating License Nos. DPR-44 and DPR-56 for Peach Bottom Atomic Power Station (“Peach Bottom”), Units 1, 2, and 3, respectively; Renewed Facility Operating License Nos. DPR-29 and DPR-30 for Quad Cities Nuclear Power Station (“Quad Cities”), Units 1 and 2, respectively; Renewed Facility Operating

License No. DPR-18 for R. E. Ginna Nuclear Power Plant (“Ginna”); Renewed Facility Operating License Nos. DPR-70 and DPR-75 for Salem Nuclear Generating Station (“Salem”), Unit Nos. 1 and 2, respectively; Renewed Facility License No. DPR-50 for Three Mile Island Nuclear Station Unit-1 (“TMI-1”), Unit 1; Facility Operating License Nos. DPR-39 and DPR-48 for Zion Nuclear Power Station (“Zion”), Units 1 and 2, respectively; Renewed Materials License No. SNM-2505 for the independent spent fuel storage installation (“ISFSI”) at Calvert Cliffs; and the general licenses for the ISFSIs at the other sites (collectively, “the licenses”). These reactor units and associated ISFSIs are collectively referred to as “the facilities.” The NRC is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

The application dated February 25, 2021 (ADAMS Accession No. ML21057A273), as supplemented by letter dated March 25, 2021 (ADAMS Accession No. ML21084A165), requests that the NRC consent to the indirect transfer of control of the licenses to support a proposed transaction in which Exelon Corporation will transfer its 100 percent ownership of EGC to a newly-created subsidiary that will then be spun off to Exelon Corporation shareholders, becoming EGC’s new ultimate parent company. Once the spin transaction is completed, the new ultimate parent company, EGC, and its subsidiaries will no longer be affiliated with Exelon Corporation. EGC will remain the same Pennsylvania limited liability company as before the proposed transaction and will continue to own and/or operate the facilities, as applicable, and hold the licenses, but it will be renamed and reorganized. The name of the new ultimate parent company and the renamed EGC are yet to be determined; therefore, the application refers to these companies as HoldCo and SpinCo, respectively.

The application also requests that the NRC consent to the indirect transfer of control of the licenses for the FitzPatrick, NMP, and Ginna facilities (i.e., the reactor units and associated ISFSIs) to support the reorganization of EGC.

According to the application, EGC (operating under a new and unidentified name) would continue to operate Braidwood, Units 1 and 2; Byron, Unit 1 and 2; Calvert Cliffs, Units 1 and 2; Clinton, Unit 1; Dresden, Units 1, 2, and 3; FitzPatrick; LaSalle, Units 1 and 2; Limerick, Units 1 and 2; NMP, Units 1 and 2; Peach Bottom, Units 1, 2, and 3; Quad Cities, Units 1 and 2; Ginna; TMI, Unit 1; and the associated ISFSIs. Although operation of the Dresden, Unit 1; Peach Bottom, Unit 1; and TMI, Unit 1 reactors are no longer authorized, EGC (operating under a new and unidentified name) would continue to perform certain activities (e.g., decommissioning and other undefined activities) at these facilities, as authorized by NRC regulations and the licenses for these facilities.

According to the application, EGC (operating under a new and undefined name) would continue to be the full or partial direct owner of Braidwood, Units 1 and 2; Byron, Units 1 and 2; Clinton, Unit 1; Dresden, Units 1, 2, and 3; LaSalle, Units 1 and 2; Limerick, Units 1 and 2; Peach Bottom, Units 1, 2, and 3; Quad Cities, Units 1 and 2; Salem, Units 1 and 2; TMI, Unit 1; and their ISFSIs.

The February 25, 2021, application, as supplemented, describes additional proposed changes, including the reorganization of EGC, that would affect the ownership and operation of the FitzPatrick, Calvert Cliffs, NMP, and Ginna facilities, (i.e., the reactor units and associated ISFSIs). Currently, the FitzPatrick facilities are directly owned by Exelon

FitzPatrick, LLC, which is a fully owned subsidiary of EGC. The Calvert Cliffs, NMP, and Ginna facilities are directly owned, in full or in part, by Calvert LLC, NMP LLC, and Ginna LLC, respectively, which are indirectly owned by EGC. According to the application, Exelon FitzPatrick, LLC (operating under a new and unidentified name), Calvert LLC, NMP LLC, and Ginna LLC, would continue to own and hold the licenses for the FitzPatrick, Calvert Cliffs, NMP, and Ginna facilities, respectively.

The application, as supplemented, requests that the NRC consent to the indirect transfer of Exelon FitzPatrick, LLC's, NMP LLC's, and Ginna LLC's respective ownership interests in the FitzPatrick, NMP, and Ginna facilities, whereby these entities and, as applicable, parent entities, would become subsidiaries of a newly-created, unidentified wholly-owned subsidiary of Spin Co. The name of this new subsidiary is yet to be determined; therefore, the application, as supplemented, refers to this subsidiary as New York HoldCo. Additionally, Exelon FitzPatrick, LLC will be renamed. The new name for Exelon FitzPatrick, LLC is yet to be determined; therefore, the application, as supplemented, refers to it as New FitzPatrick, LLC.

The February 25, 2021 application, as supplemented, also requests NRC approval to replace existing nuclear operating services agreements and financial support agreements associated with the ownership and operation of the Calvert Cliffs, NMP, Ginna, and FitzPatrick facilities. The application requests NRC approval to transfer the qualified and non-qualified trusts for FitzPatrick from Exelon Generation Consolidation, LLC (a subsidiary of EGC) to New FitzPatrick, LLC. The application, as supplemented, requests amendments to the Calvert Cliffs, Units 1 and 2;

NMP, Units 1 and 2; and Ginna licenses to delete conditions referencing the Constellation Energy Nuclear Group, LLC (a subsidiary of EGC at the time of the proposed transaction) Board and its operating agreement to reflect the internal reorganization of EGC described in the application.

By order dated November 26, 2019 (ADAMS Accession No. ML19228A130), as modified by order dated October 21, 2020 (ADAMS Accession No. ML20259A469), the NRC authorized the direct transfer of Facility Operating License Nos. DPR-39 and DPR- 48 for Zion, Units 1 and 2, respectively, and the generally licensed Zion ISFSI from *ZionSolutions*, LLC to EGC. Prior to completing the Zion license transfer, *ZionSolutions*, LLC must complete the decommissioning of Zion, Units 1 and 2. Once the Zion license transfer is completed, EGC will hold the licenses for Zion, Units 1 and 2, and own, operate, and hold the license for the Zion ISFSI. According to the February 25, 2021, application, the Zion license transfer will be completed prior to the spin transaction; therefore, following the spin transaction, EGC (operating under a new name) would continue to hold the licenses for Zion, Units 1 and 2, and own, operate, and hold the license for the Zion ISFSI.

The NRC's regulations at 10 CFR 50.80 and 72.50 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

II. Opportunity to Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application.

III. Opportunity to Request a Hearing and Petition for Leave to Intervene.

The Atomic Energy Act ("AEA") requires that the NRC offer an opportunity for a hearing on a license transfer. (1) These rules cover any direct or indirect license transfer for which NRC approval is required, including those transfers that require license amendments and those that do not. (2) Section 2.1315 codifies the Commission's generic determination that any conforming amendment to an operating license that only reflects the license transfer action involves a "no significant hazards consideration." (3) That same regulation provides that "[a]ny challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer." (4)

¹ AEA § 189.a(1)(A) (codified as amended at 42 U.S.C. § 2239(a)(1)(A)) ("In any proceeding under this chapter, for . . . application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.").

² Subpart M Rule, 63 Fed. Reg. at 66,727.

³ C.F.R. § 2.1315(a).

⁴ *Id* § 2.1315(b).

Within 20 days after the date of publication of the Federal Register notice, any persons (petitioner) whose interest may be affected by the proposed action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR, Part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a Petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

On May 20, 2021, the Environmental Law and Policy Center filed an extension of the deadline for filing all requests for hearing and petitions for leave to intervene in the captioned matter.

On May 21, 2021, the Nuclear Information and Resource Service, and the State of Illinois asked an extension of the deadline for filing all requests for hearing and petitions for leave to intervene in the captioned matter .

On May 21, 2021, Exelon Generation Company, LLC, on behalf of itself and Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC; R. E. Ginna Nuclear Power Plant, LLC; and Calvert Cliffs Nuclear Power Plant, LLC, opposed an extension.

On May 24, 2021, pursuant to the authority vested under 10 C.F.R. § 2.346(b), Richard J. Laufer Acting Secretary of the Commission, extended the time for filing hearing requests and petitions to intervene until June 14, 2021.

The NRC's regulations at 10 CFR 50.80 and 72.50 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended ("the Act"), and the Commission's regulations.

IV. Reactor License Transfers.

Under Section 184 of the Atomic Energy Act of 1954, as amended (“AEA”), (5) an NRC reactor license, or any right under it, may not be “transferred, assigned[,] or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of [the] license to any person,” unless the NRC first gives its consent in writing. (6) This statutory requirement is codified in 10 C.F.R. § 50.80 and applies to both direct and indirect license transfers. (7)

Transferring control may involve either the licensed operator or any individual licensed owner of the facility. Before approving a license transfer, the NRC reviews, among other things, the technical and financial qualifications of the proposed transferees. (8)

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

⁶ Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended at 42 U.S.C. §§ 2011, *et seq.*).

⁷ See NRC Backgrounder, “Reactor License Transfers,” at 1-2 (Jan. 2020) (ML040160803). A direct license transfer occurs when an entity seeks to transfer a license it holds to a different entity (*e.g.*, when a plant is to be sold or transferred to a new licensee in whole or part). See *id.* An indirect license transfer takes place when there is a transfer of “control” of the license or of a license holder (*e.g.*, as a result of a merger or acquisition at high levels within or among corporations. See *id.*)

⁸ See 10 C.F.R. §§ 50.80(b)(1)(i), (c)(1); see also NUREG-1577, “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” Rev. 1 (Feb. 1999) (ML013330264) (“NUREG-1577”).

The transfer review focuses on the “potential impact on the licensee’s ability both to maintain adequate technical qualifications and organizational control and authority over the facility[,] and to provide adequate funds for safe operation and decommissioning.” (9)

To grant a license transfer application, the NRC must find a “reasonable assurance” of financial qualifications. (10) Based on the paucity of information contained in the filing documents, the Application fails to address the applicable financial standards to provide “reasonable assurance” of financial qualification for either HoldCo or SpinCo to operate or decommission nuclear generating stations.

The transfer review focuses on the “potential impact on the licensee’s ability both to maintain adequate technical qualifications and organizational control and authority over the facility[,] and to provide adequate funds for safe operation and decommissioning.” (11) Among other things, the technical and financial qualifications of the proposed transferees of HoldCo or SpinCo have not been demonstrated and arise from a corporation smoldering in financial ruin. Both corporations are fictional constructs based on the self-inflicted hardships of Exelon. (12)

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

10 10 C.F.R. § 50.33(f)(2).

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

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

The financial structure and necessary assurances, guarantees, and sureties are lacking in the proposed License Transfer Application (“LTA”). PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. PECO is also bound by 50.76, and has failed to provide legal justification to “spin” a rate, regulated utility into a private collection agency for NDCA tariffs Peach Bottom, Limerick, and Salem. (13)

Exelon seeks approval to transfer all of its ownership interests in these nuclear power plants to a currently non-existent holding company. The series of transactions that will create “Spin Co” – a new corporate entity – is complicated and opaque. Yet the eventual outcome appears straightforward: Exelon will shed any and all liabilities and decommissioning obligations for its nuclear fleet by parking them with a new legal entity for which Exelon bears no future responsibility. (14)

The License Transfer Application seeks to unilaterally abrogate and dissolve the Settlement Agreement negotiated with Mr. Epstein and other parties. (14) The LTA is a thinly veiled attempt by PECO Energy to extract itself from future decommissioning obligations for Limerick, Peach Bottom, and Salem nuclear generating stations.

13 50.76. Licensee's change of status; financial qualifications. An electric utility licensee holding an operating license (including a renewed license) for a nuclear power reactor, no later than seventy-five (75) days prior to ceasing to be an electric utility in any manner not involving a license transfer under § 50.80, shall provide the NRC with the financial qualifications information that would be required for obtaining an initial operating license as specified in § 50.33(f)(2). The financial qualifications information must address the first full five years of operation after the date the licensee ceases to be an electric utility. [69 FR 4448, Jan. 30, 2004]

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

There is no statutory basis for a non-regulated business entity to collect tariffs from Pennsylvania rate payers. In addition to Mr. Epstein, the Office of Consumer Advocate, Office of Trial Staff, and the Pennsylvania Energy Industrial Users Group have not agreed to dissolve the Settlement or PECO obligation to adhere to the terms of the 5% and \$50 million agreement related to nuclear decommissioning trust funds . (15) The LTA would unilaterally abrogate the terms of the Settlement without seeking the express approval of the signatories or the Pennsylvania Public Utility Commission. (16)

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

15 The Stake holders to the Settlement last met on November 20, 2020 to discuss the nuclear decommissioning terms of the Settlement.

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

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

Pursuant to 10 C.F.R. §§ 2.323(c), 2.1325(b), and 2.307, Exelon Generation Company, LLC (“Exelon Generation”), on behalf of itself and Exelon Corporation, but exclusive of the Pennsylvania Public Utility Commission and the signatories for the Joint Petition to Settlement regulating to NDCA obligations, seeks to transfer power they do not possess, and “spin” their licenses into non-regulated, rate collection entities. (17) This proposed regime is counter to Pennsylvania statute, seeks to bypass the Pennsylvania Public Utility Commission, and imposes illegal and unaccountable protocol on hostage rate payers in Pennsylvania. There is no statutory basis for a non-regulated business entity to collect tariffs from Pennsylvania rate payers.

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

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

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

IV. Standing.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

17 (Continued)

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

In Paragraph 15, per the Terms and Conditions, PECO and the Joint Petitioners also, "agree that if the actual expenditures necessary to accomplish the full decommissioning of PECO's Pre-Existing Nuclear Interests are less than the full balance of PECO's Pre-Existing Nuclear Interest Funds, PECO is entitled to obtain release of such funds for the purpose of sharing the amount between customers and shareholders. In the event of such release, PECO will be permitted to retain for its own benefit (1) the first \$50.0 million of the net after tax released amount and (2) 5.0% of the remaining net after-tax released amount. The balance of the released funds not retained by PECO shall be returned to retail customers in a manner to be directed by the Commission."

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

Eric Joseph Epstein (“Epstein” or “Mr. Epstein”) has standing to intervene as an individual in this proceeding, and Three Mile Island Alert Inc., (“TMIA” or “TMI-Alert”) has standing in a representational capacity. Petitioners should also be granted discretionary intervention under 10 C.F.R. § 2.309(e). (1)

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

A. Legal Standards For Standing.

To determine whether a petitioner presents a cognizable interest to intervene in a proceeding, the Commission applies contemporaneous judicial concepts of standing. (18) The petitioner bears the burden to provide facts sufficient to establish standing. (19) As relevant here, a petitioner may satisfy that burden in one of three ways.

18 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-15-25, 82 NRC 389, 394 (2015) (citation omitted).

262 *See U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-5, 51 NRC 90, 98 (2000)).

19 *See U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-5, 51 NRC 90, 98 (2000)).

1. Traditional Standing: First, a petitioner may demonstrate traditional standing. This requires a showing that a person or organization has suffered or might suffer a concrete and particularized injury that is: (1) fairly traceable to the challenged action; (2) likely redressable by a favorable decision; and (3) arguably within the zone of interests protected by the “chain of causation is plausible.” (20) These criteria are known as injury-in-fact, causality, and redressability. Although a petitioner need not show that the injury flows directly from the challenged action, it must still show that the “chain of causation is plausible.”(21) Finally, a petitioner must show that “its actual or threatened injuries can be cured by some action of the tribunal.” (22)

An organization seeking to intervene in its own right must satisfy the same standing requirements as an individual. To address the injury requirement, an organization such as TMIA must show that the license transfer “would constitute ‘a threat to its organizational interests.’”

20 *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-01-2, 53 NRC 9, 14 (2001). *see also Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009).

21 *FirstEnergy Nuclear Operating Co.* (Beaver Valley Power Station, Units 1 & 2; Davis-Besse Nuclear Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1), CLI-20-5, 92 NRC, (Apr. 23, 2020) (slip op. at 5) citing *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 411 [(2007)].

22 *Id.* (slip op at 5-6) (quoting *Crow Butte Res., Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 18 (2014); *Ga. Inst. of Tech.* (Ga. Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *see also Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001).

2. Representational Standing: Finally, an organization may seek to establish representational standing based on the standing of one or more individual members. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994); *see also Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009). To establish representational standing, an organization must: (1) show that the interests it seeks to protect are germane to its own purpose; (2) identify at least one member who qualifies for standing in his or her own right; (3) show that it is authorized by that member to request a hearing on his or her behalf; and (4) show that neither the claim asserted nor the relief requested require an individual member's participation.

3. Proximity-Based Standing: A petitioner may use the proximity presumptions the Commission has created to simplify standing requirements for individuals who reside within or have frequent contact with a geographic zone of potential harm. The petitioner has the burden to show that the proximity presumption applies. (23) To establish proximity standing, a petitioner must provide “fact-specific standing allegations, not conclusory assertions,” as the Commission “cannot find the requisite ‘interest’ based on . . . general assertions of proximity.” (24)

23 *Energy Seabrook, LLC*, (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 75 (2017).

24 *Palisades*, CLI-07-18, 65 NRC at 410.

4. Discretionary Intervention: Pursuant to 10 C.F.R. § 2.309(e), the Commission may consider a request for discretionary intervention where a party lacks standing to intervene as a matter of right under 10 C.F.R. § 2.309(d)(1). Discretionary intervention may be granted only when at least one petitioner has established standing and at least one contention has been admitted for hearing. (25) In addition to addressing the factors in 10 C.F.R. § 2.309(d)(1), a petitioner who seeks intervention as a matter of discretion (if it is determined that standing as a matter of right is not demonstrated) must specifically address in his or her initial petition the six factors set forth in 10 C.F.R. § 2.309(e), which the Commission will consider and balance. (26) Of the six factors, primary consideration is given to the first factor - assistance in developing a sound record. (27)

25 10 C.F.R. § 2.309(e). *See also PPL Susquehanna LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), LBP-07-10, 66 NRC 1, 21 n.14 (2007) (“[D]iscretionary standing [is] only appropriate when one petitioner has been shown to have standing as of right and [there is an] admissible contention so that a hearing will be conducted.”).

26 Factors weighing in favor of allowing intervention include: (i) the extent to which the petitioner’s participation would assist in developing a sound record; (ii) the nature of petitioner’s property, financial or other interests in the proceeding; and (iii) the possible effect of any decision or order that may be issued in the proceeding. *See* 10 C.F.R. § 2.309(e)(1)(i)-(iii). Conversely, factors weighing *against* allowing intervention include: (i) the availability of other means whereby the petitioner’s interest might be protected; (ii) the extent to which petitioner’s interest will be represented by existing parties; and (iii) the extent to which petitioner’s participation will inappropriately broaden the issues or delay the proceeding. *See id.* § 2.309(e)(2)(i)-(iii).

27 *See Gen. Pub. Utils. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 160 (1996).

B. Mr. Epstein Has Demonstrated Standing; Neither HoldCo or SpinCo Have Satisfied Statutes That Would Allow An Unidentified and Unregulated Entity to Collect Tariffs.

Mr. Epstein has individual standing because he lives and operates a business in close proximity to Three Mile Island, serves as a local school board member, and has a fiduciary obligation for students in the Central Dauphin School District which is proximate to Three Mile Island. Epstein intervened in the defueling of TMI-2 (1992) (28), the TMI-1 license transfer application (2008), proposed TMI-2 license transfer application (2020), as well as numerous proceedings relating to TMI before the NRC.

Mr. Epstein's "economic stake as a business owner, homeowner, and taxpayer are impacted by allowing a non-regulated amorphous company to maintain the decommissioning funds. Additional radioactive releases from dry casks, spent fuel pools (29), or unusual weather events (30), as well as converting Three Mile Island into a permanent, high-level radioactive waste site as planned by Exelon, HoldCo and SpinCo, would be harmful to Mr. Epstein's health and financial interests.

28 The NRC is a signatory to the Settlement Agreement between Eric Epstein and GPU Nuclear relating to Post-Defueling Monitored Storage, 1992.

29 The proposed cask storage are will be located on the former parking lot and does not conform to Hardened On-Site Storage standards. (Three Mile Island License Amendment Request, July 1, 2019, ADAMS Accession No. ML19182A182).

30 The spent fuel pools at TMI-1 lacked sufficient spent fuel capacity. AmerGen and Exelon were forced to re-rack spent fuel cells to accommodate off-core fuel loads creating a high-density arrangement. (AmerGen and Exelon Meeting at the Three Mile Island, January 23, 2003).

Mr. Epstein's arguments underscore his historic contributions to NRC proceedings, and the Commission's predilection to confer standing on Mr. Epstein to intervene in licensing and licensing transfer proceedings at Bell Bend, Susquehanna Electric Steam Station, Peach Bottom Atomic Power Stations, and Three Mile Island Unit-1 and Three Mile Island Unit-2. Epstein's and TMLA's participation are indispensable and relevant, as documented by TMLA's intervention in licensing proceedings dating back to the original license of Three Mile Island Unit-2.

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

This License Transfer Application is entirely about changed circumstances brought about by self-inflicted voodoo economics. The consistent theme is that the Petitioners continue to endure adverse outcomes - through no fault of their own - due to the decided fiscal mismanagement of the corporate critical mass known as Exelon. Therefore, the same "freshness" standard must apply to entities in the direct and indirect license transfers who seek to deflect liabilities, and transfer assets to an unidentified and non-regulated corporate shell.

Mr. Epstein is conferred “fresh” and immediate standing in this proceeding based on the Applicant’s contract with Mr. Epstein, i.e. , “The Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation, PA PUC, Application Docket No. A-110550Fo147, March 23, 2000. Mr. Epstein also has an address, a substantial stake in the community, and an unblemished record of accountability.

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

Mr. Epstein’s standing was reaffirmed in a telephonic conference with PECO’s representatives to discuss the binding terms of the Settlement, and the role and rights of Mr. Epstein’s assignees on February 2, 2021. (31)

³¹ Conference call with Michael J. Trzaska, (PECO), Ward L. Smith, Esquire (PECO, and Benjamin Yin, (PECO). Re: NDCA Settlement Discussion, Tuesday, February 2, 2021.

If Mr. Epstein and TMI-Alert are denied standing, then the proposed HoldCo and SpinCo should be denied access to decommissioning fund until this amorphous, fluid, and ill-defined corporate creature establishes a “fresh” standing as a legitimate corporate incarnation. There is no legal basis in Pennsylvania that would allow this proposed rootless corporate creature to raid regulated decommissioning funds.

In the alternative, HoldCo and SpinCo could resubmit their Application, and explain how their proposed illusive corporate body comports to the NRC’s legal definition of an “electric utility.”

The information required by 10 C.F.R. § 2.309(d) is straight forward, and states that a petition for leave to intervene “must” state: (1) the name, address, and telephone number of the requester or petitioner; (2) the nature of the petitioner’s right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner’s property, financial or other interest in the proceeding; and (4) the possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest.

³¹ Conference call with Michael J. Trzaska, (PECO), Ward L. Smith, Esquire (PECO, and Benjamin Yin, (PECO). Re: NDCA Settlement Discussion, Tuesday, February 2, 2021.

C. Eric Joseph Epstein Meets Standing Requirement 1.

(1) The name, address, and telephone number of the requester or Petitioners.

Eric Epstein,
4100 Hillsdale Road,
Harrisburg, PA 17112
(717)-635-8615

Three Mile Island Alert, Inc.
315 Peffer Street
Harrisburg, PA 17102
(717)-33-7897.

(2) The nature of the petitioner's right under the Act to be made a party to the proceeding;

(3) The nature and extent of the petitioner's property, financial or other interest in the proceeding; and,

(4) The possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest.

D. Eric Joseph Epstein Meets Standing Requirements 2,3, and 4.

Eric Joseph Epstein ("The Petitioner," "Mr. Epstein" or "Epstein") is a resident of Harrisburg, Pennsylvania, and lives and operates a business in "close proximity" to the Three Mile Island Nuclear Generating Station. He is also a signatory to the Exelon merger settlement. which confers contractual obligation that are being threatened and undermined by the proposed License Transfer Agreement.

Mr. Epstein has taught, worked, and raised a family in the Harrisburg area dating back to 1982. Epstein has a direct, immediate, and proximate interest in the proposed application to directly transfer the NRC Possession-Only License No. DPR-73 for TMI-2, currently held by the FirstEnergy Companies.

Mr. Epstein has lived within the shadow of TMI continuously since Peach Bottom and Three Mile Island began operations. Personal and professional obligations pierce the five mile veil around TMI on a regular basis. Epstein's economic stake as a business owner, homeowner, and taxpayer are immediately impacted by lack of funding managed by a unidentified corporate entity located at an unspecified address.

Additional radioactive releases - planned and unplanned - as well as converting the Peach Bottom Atomic Power Stations and Three Mile Island into high-level radioactive waste sites on the Susquehanna River is harmful to Mr. Epstein's and TMIA members' and financial interests. (32)

Mr. Epstein monitored the defueling of Three Mile Island Unit-2, and was an active participant in the NRC's TMI Advisory Panel. He has a vested interest in making sure the TMI-2 decommissioning fund is adequate to complete a full and complete decommissioning. TMI-2 is the site of a defueling process that was brought to an abrupt halt in 1993 despite public opposition, as evidenced at the Nuclear Regulatory Commission's TMI Advisory Panel meetings.

32 The Susquehanna watershed encompasses 27,510 square miles and extends from New York to Pennsylvania to the Chesapeake Bay in Maryland – where nearly 4 million people live...Of the 1,400 communities in the river basin, 1,160 have residents who live in flood-prone areas.” (“7th Annual Susquehanna River Symposium,” Bucknell University, October 12-13, 2012).

Mr. Epstein has served as the Spokesperson or Chairman for Three Mile Island Alert continuously since 1984. Mr. Epstein is the Chairman of Three Mile Island Alert, Inc., a safe-energy organization based in Harrisburg, Pennsylvania and founded in 1977. TMIA monitors Peach Bottom, Susquehanna, and Three Mile Island nuclear generating stations. A description of the organization can be found at:

<http://www.tmia.com/about>

Epstein is also the Coordinator of the EFMR Monitoring group, a nonpartisan community based organization established in 1992. EFMR monitors radiation levels at Three Mile Island, invests in community development, and sponsors remote robotics research.

In September, 1992, GPU and the NRC agreed to a negotiated settlement on the Post-Defueling Monitored Storage (“PDMS”) of TMI-2 with Eric Epstein. The Agreement stipulates GPU Nuclear will provide equipment and resources to independently monitor radioactive levels at TMI-2; \$700,000 for remote robotics research to assist in the cleanup and minimize worker exposure; and, guarantees that TMI-2 will never operate or serve as a radioactive waste repository for any radioactive waste generated off the Island.

EFMR has undertaken educational activities relating to energy production in Pennsylvania, initiated advocacy actions on behalf of the safety of nuclear plant neighbors, including the evacuation of day care centers in emergency preparedness plans, and the distribution of potassium iodide pills to the general public. EFMR has intervened at the Pennsylvania Public Utility Commission to protect the economic interests of Pennsylvania rate payers.

EFMR has worked with Carnegie-Mellon University, Dickinson College, Exelon, the Environmental Protection Agency, GPU , Los Alamos National Laboratories (SWOOPE Program), the Nuclear Regulatory Commission, Peach Bottom REMP Program, Pennsylvania Center for Environmental Education, and the University of Tennessee, as well as other national and international organizations. A description of the organization can be found at: <https://www.efmr.org>

- EFMR won an agreement from both PECO and AmerGen not to store spent fuel or radioactive waste from any other nuclear facilities at Peach Bottom or Three Mile Island during the terms of the agreement. First Energy, the new owner of the plants, also agreed.
- In two separate agreements, EFMR negotiated \$900,000 in remote robotics research from GPU and \$500,000 from PECO. These programs have significantly reduced worker exposure at both the TMI and Peach Bottom Plants
- PECO agreed not to use mixed uranium oxide fuel at Peach Bottom, Limerick, and Salem nuclear plants.
- The following monies were expended for 2001 robotics research as determined by the EFMR & Exelon/PECO Energy Company Nuclear Decommissioning and Waste Monitoring Agreement: Services: \$1,131,600; Parts and Materials: \$169,000; and, Research and Development: \$350,000. The Mid Atlantic Region Operator Group (“MAROG”) includes Peach Bottom and Three Mile Island, as well as Limerick and Oyster Creek, benefited from the following advances in robotics:

underwater robotic core verification; mini-sub surveillance; robotic crawler used for surveillance and steam leak examination; remote camera deployment for reactor head inspection and fuel floor diving; robotic vacuuming; fiber optic scoping and remote monitoring. The estimated Person-Rem savings for MAROG was 108 as opposed to the 40 Person Rem savings for Midwest Reactor Group employees.

Eric Epstein has been a school board director for the Central Dauphin School District (“Central Dauphin” or ‘the District’) since 2013. Central Dauphin School District has 95,000 residents and 12,300 students. The school district is the 9th largest school district in the Commonwealth and is the largest of the 10 school districts located in the county. Encompassing an area of 118.2 square miles, the district is comprised of three boroughs (Dauphin, Paxtang and Penbrook) and four townships (Lower Paxton, Middle Paxton, Swatara, and West Hanover). Students attend one of thirteen elementary schools, four middle schools and two high schools; and are transported from urban, suburban, and rural areas.

The District is located within ten miles of Three Mile Island. Board members, families, staff, residents and students live within the 10-mile zone that might be affected by a release of fission products into the environment during decommissioning.

Moreover, Central Dauphin School District and Penn State Harrisburg (which is located in Lower Swatara Township) have a cooperative agreement, whereby students attending the Penn State Middletown Campus intern as student teachers in the Central Dauphin School District. The campus is three miles from Three Mile Island.

As the Commission has applied this standard, an individual demonstrates an interest in a licensing proceeding sufficient to establish standing by showing that their residence is within the geographical area that might be affected by an accidental release of fission products. This "proximity approach" presumes that the elements of standing are satisfied if an individual lives within the zone of possible harm from the source of radioactivity. *See Virginia Elec. And Power Co.*, 9 NRC 54, 56 (1979) ("close proximity [to a facility] has always been deemed to be enough, standing alone, to establish the requisite interest" to confer standing).

The Commission's "rule of thumb" in reactor licensing proceedings is that "persons who reside in or frequent the area within a 50-mile radius of the facility" are presumed to have standing. *Sequoyah Fuels Corp.*, 40 NRC 64.75 n.22 (1994); *See also, Duke Energy Corp.*, 48 NRC 381, 385 n.1 (1998).

In *Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2)*, LBP-93-5, 37 NRC 96 (1993), *aff'd*, CLI-93-16, 38 NRC 25 (1993), the Nuclear Regulatory Commission approved standing for a petitioner living 35 miles from the plant one week per month.

In the CFC Logistics proceeding, the Atomic Safety and Licensing Board ("ASL&B") "hasten[ed] to add...that the 'obvious potential' aspect of 'proximity-plus' standing is not a concept that can be applied with engineering or scientific precision..." (NRC 475, 485 (2004), p. 487.)

Mr. Epstein has established an immediate, proximate and long standing stake in the Three Mile Island community as well as a direct charge for numerous family members, staff, students, and taxpayers.

“[A] minor exposure to radiation, even one within regulatory limits, is sufficient to state an injury in fact” for standing purposes. Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 417 (2001), rev’d on other grounds, CLI-02-24, 56 N.R.C. 335 (2002) (citing Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI- 96-7, 43 NRC 235, 247-48 (1996)); see also *id.* at 420 (standing inquiry does not require precision regarding probability of petitioner receiving unwanted dose of radiation). The asserted harm – injury to the health and safety – is clearly encompassed by the health and safety interests protected by the Atomic Energy Act. *Id.* at 417; see also 42 U.S.C. § 2013.

This proceeding is unique in so much of the community has already been exposed to radiation releases from fission products, subsequent illegal krypton venting, and an extended evaporation of accident generated tritiated water.

The standing requirements for Nuclear Regulatory Commission adjudicatory proceedings derive from the Atomic Energy Act which requires the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding." (42 U.S.C. 2239(a)(1)(A)).

Mr. Epstein also has over thirty six years of experience in publishing, researching and actively intervening before the Nuclear Regulatory Commission, the Pennsylvania Public Utility Commission, and the Susquehanna River Basin Commission on the cleanup, defueling and decommissioning of Three Mile Island. Clearly, his participation would add insight, institutional memory, and perspective.

Mr. Epstein should be granted standing because his participation may reasonably be expected to assist in developing a sound record, as he has demonstrated by his participation in numerous NRC proceedings at the Peach Bottom Atomic Power Station, Susquehanna Electric Steam Station, and the Three Mile Island Nuclear Generating Station.

Pursuant to 10 C.F.R. § 2.309(f), Mr. Epstein has standing and should be granted leave to intervene because his “interest[s] may be affected by the proceeding.” Those interests will not be adequately represented in this action if he is denied intervention.

In Pebble Springs, (4 NRC at 614-617. See *Infra*, § II. A.5.) the Commission also held that even if a petitioner for intervention could not satisfy the strict judicial standing test, intervention could still be allowed as a matter of discretion.

Mr. Epstein also qualifies for the presumption of injury-in-fact for persons residing within that zone (see *Houston Lighting & Power Co. (South Texas Project, Units 1 & 2)*, LBP-79-10, 9 NRC 439, 443 (1979); *Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2)*, LBP-79-1, 9 NRC 73, 78 (1979); and *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station)*, LBPO6-23, 64 NRC 257, 270 (2006). That presumption is well-founded here.

Mr. Epstein, as a private citizen and Chairman of TMI-Alert, has an indisputable interest in ensuring that Limerick, Peach Bottom, Salem, the Three Mile Island sites are maintained, operated, and provide financial assurances that the sites will be cleaned up to the NRC-established Greenfield standard.

For the above stated reasons, and with the accompanying supporting evidence, Eric Joseph Epstein satisfies the NRC's proximity, presumption of injury-in-fact requirements, and because his participation will assist in developing a sound record.

Finally, and beyond disputation, PECO is contractually bound and obligated to abide by the terms of "The Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company, and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation, PA PUC, Application Docket No. A-110550F0147." (34) Mr. Epstein is a signatory to the Settlement. Mr. Epstein should be granted standing because his participation may reasonably be expected to assist in developing a sound record, as he has demonstrated by his participation in the Com Ed and PECO merger.

33 PECO Energy is subject to the jurisdiction of the Pennsylvania Public Utility Commission ("PA PUC"). The standard for approval is whether the transaction is necessary and proper for the service, accommodation, convenience or safety of the public. This standard has been applied by the Pennsylvania Public Utility Commission to require that applicants demonstrate that the transaction will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

In addition, under provisions enacted as part of Pennsylvania's electric and natural gas restructuring legislation, the PaPUC must consider whether a proposed transaction is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which would prevent retail electric or natural gas customers in Pennsylvania from obtaining the benefits of a properly functioning and workable competitive retail electric or natural gas market.

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

This proposed LTA would unilaterally abrogate the Settlement, and harm Mr. Epstein's contractual interests.

E. Three Mile Island Alert, Inc. Has Standing to Participate in this Proceeding

(2) The nature of the petitioner's right under the Act to be made a party to the proceeding;

(3) The nature and extent of the petitioner's property, financial or other interest in the proceeding; and (4) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest; and,

(4) The possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest.

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

Three Mile Island Alert, Inc. ("TMIA" or "TMI-Alert") has standing to participate in this proceeding through its members, whose interests will be affected by the transfer of control of Three Mile Island Unit-1 and Peach Bottom, Units 1, 2 and 3.

Three Mile Island Alert, Inc. meets the requirements of 10 C.F.R. §2.309(d). TMIA is a non-profit citizens' organization located at 315 Peffer Street in Harrisburg, Pennsylvania. Many of its members live and work in close proximity to the Peach Bottom Atomic Power Station, and the Three Mile Island Nuclear Generating Station.

Eric Joseph Epstein has been spokesperson or Chairman of Three Mile Island Alert, Inc. since 1984. Mr. Epstein is charged with representing the interests of TMIA: <http://www.tmia.com/about>.

TMI-Alert has representational standing to intervene in this license proceeding, for several reasons. TMI-Alert's members live within geographical zone that might be affected by a release of fission products into the environment during or after decommissioning. The TMI operators have a history of illegally releasing radiation into the environment. (34) Peach Bottom was shut down due to corporate malfeasance, and investigated by the Federal Bureau of Investigation in 1987.

TMIA is entitled to the presumption of injury-in-fact for persons residing within that zone (see Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 443 (1979); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979); and Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBPO6-23, 64 NRC 257, 270 (2006)).

34 In June-July, 1980, for 11 days, Met Ed illegally vented 43,000 curies of radioactive Krypton-85, and other radioactive gases directly into the environment without having scrubbers in place. The United States Court of Appeals for the District of Columbia ruled that the krypton venting (June-July, 1980) was illegal in a decision issued in November, 1980.

Between July 24-27, 1984 during, the reactor head lift, GPU vented radioactive gases into the environment despite pledges by the Company and the NRC that no releases would occur. GPU was fined \$40,000 by the NRC for this violation. That presumption of harm is well-founded here.

The interests of TMIA's members extend to all aspects of decommissioning. (35) The proposed license transfer raises significant environmental, financial, health, and public safety concerns for Mr. Epstein and TMIA members. (36)

35 Exelon's SEC's 2020 filing, recorded a substantial material decommissioning realignment under Asset Retirement Obligations.

"The net \$864 million increase in the ARO during 2019 for changes in the amounts and timing of estimated decommissioning cash flows was driven by multiple adjustments throughout the year, some with offsetting impacts. These adjustments primarily include: An increase of approximately \$780 million for changes in the assumed retirement timing probabilities for sites including certain economically challenged nuclear plants and the extension of Peach Bottom's operating life, and, an increase of approximately \$490 million for other impacts that included updated cost escalation rates, primarily for labor, equipment and materials, and current discount rates. (Note 10, . 283.)

36 Specifically, the application, as supplemented, requests that the NRC consent to the indirect transfer of control of the licenses to support a proposed transaction in which Exelon Corporation will transfer its 100 percent ownership of EGC to a newly-created subsidiary that will then be spun off to Exelon Corporation shareholders, becoming EGC's new ultimate parent company. Once the spin transaction is completed, the new ultimate parent company, EGC, and its subsidiaries will no longer be affiliated with Exelon Corporation. EGC will remain the same Pennsylvania limited liability company as before the proposed transaction and will continue to own and/or operate the facilities, as applicable, and hold the licenses, but it will be renamed and reorganized. (Blake A. Purnell, Project Manager Plant Licensing Branch III Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation, May 26, 2021.)

TMIA and its members will be at risk if there is a shortfall in the Decommissioning Trust Fund (“DTF”) that prevents the site from being fully cleaned up and restored to the original site status. The radiological risk to their health and safety, and to their environment, if the site is not fully cleaned up, has been ongoing for 41 years. The threat of radiological contamination of land that will be released for public use, and the threat of radiological runoff into Susquehanna River and drinking water is not an experience TMIA’s members should have to endure again. (37) The zone of injury for TMIA members includes south central Pennsylvania. Public health, safety and economic impact will result from actual/measured contamination above acceptable limits, and from the public’s perceived or reasonably feared contamination, irrespective of actual readings.

Eric Joseph Epstein, as Chairman of Three Mile Island Alert is authorized, to represent his members’ interests in this proceeding.

As detailed below, TMIA’s members have intergenerational ties inextricably bound to Central Pennsylvania. Their interests in the area in the future would be adversely affected by an “ineffectual cleanup” of the site by HoldCo’s or SpinCo’s subsidiaries. *Yankee Atomic Electric Co.*, 48 N.R.C. at 208 (finding standing where “‘ineffectual cleanup’ of a reactor site could result in adverse health effects, loss of aesthetic enjoyment, and diminished property values”).

³⁷ In 1980, The Susquehanna Valley Alliance, based in Lancaster, successfully prevented GPU/Met Ed from dumping 700,000 gallons of radioactive water into the Susquehanna River.

TMIA's members have lived and worked in reactor communities for generations. If Limerick , Peach Bottom, Salem, and Three Mile Island are not properly decommissioned, Mr. Epstein and his members, who he is charged to protect, will be exposed to environmental, financial, health, and public safety risks.

Neither Exelon, HoldCo, SpinCo, PECO Energy or the Nuclear Regulatory Commission have conducted any outreach or scoping meetings. TMIA members are concerned that the licensee's lack of accountability will be part of the corporate culture that will also affect subsidiaries who are responsible for decommissioning TMI-2.

As a result, members fear that decommissioning funds may be mismanaged, and the cleanup of the sites may be inadequate. If the funds were to be mismanaged or diverted to uses other than decommissioning, the fund will be depleted prematurely. TMI-1 has already syphoned off decommissioning funds for unintended purposes. (38)

38 Exelon Generation's April 12, 2019 Exemption Request, which the NRC granted on October 16, 2019, allows Exelon Generation to use TMI-1 decommissioning funds for spent management fuel costs without prior NRC notification. However, the on-site storage casks are not in operation.

The U.S. Nuclear Regulatory Commission has issued exemptions in response to an April 12, 2019, request from Exelon Generation Company, LLC (Exelon, the licensee). One exemption permits the use of the Three Mile Island Nuclear Station, Unit 1 ("TMI-1") Decommissioning Trust Fund ("DTF") for spent fuel management activities based on the TMI-1 post-shutdown decommissioning activities report ("PSDAR") and site-specific decommissioning cost estimate ("DCE"). The other exemption permits the licensee to make withdrawals from the DTF for spent fuel management activities without prior notification of the NRC.

TMIA members' economic interests will also be negatively affected by an incomplete or improper decommissioning. They have already paid, been taxed or tithed to build and defuel the site. That risk is also financial to the Commonwealth - there is no guarantee that Pennsylvania taxpayers, including TMIA members, will not become the payers of last resort if the Nuclear Decommissioning Trust Funds managed by HoldCo or SpinCo fall short. (39)

Eric Joseph Epstein and TMI-Alert have as area residents, rate payers, and taxpayers, an indisputable interest in ensuring that HoldCo and SpinCo provide financial assurances that Limerick, Peach Bottom, and Three Mile Island will be fully decontaminated, decommissioned, and restored, and spent fuel properly managed.

The License Transfer Application and its Supplements are insufficient and threadbare. If the NRC were to approve the license transfer without first resolving the Petitioners' environmental, financial, health, and public safety concerns, that approval would result in an unacceptable risk to the environment, and would jeopardize the health, safety, welfare, and economic interests of Three Mile Island Alert's members who live, conduct business and own property within the areas likely to be impacted by the License Transfer Application.

39 SUNSI information as described in the Protective Order, Re: Paragraph 2.a. provides scant information to justify the license transfers. (May 21, 2021)

The information in the Application exposes the lack of sufficient financial assurances, guarantees, or sureties to justify a license transfer to a nondescript corporation. In fact, the LTA disassembles the current financial safety nets in place, and increases hostage rate payers to onerous rate increases.

The problem is exacerbated by the fact that nuclear generation stations - which have already been devalued by Public Utility Real Estate Tax Assessments - will likely remain a repository for spent nuclear fuel for an indeterminable period of time, many decades into the future and perhaps indefinitely, after decommissioning itself is complete. TMI-2 successfully sued Dauphin County, and pays no real estate taxes, but insisted on, and received a refund from the community, including TMIA's members. (40)

Any additional diminution of property value is by definition an economic injury. Moreover, if the site is not restored fully and safely cleaned-up, it cannot be redeveloped and the community will not benefit from tax revenues associated with the site. This land use "scheme" negatively impacts Mr. Epstein and TMIA's members. This is the scenario envisioned by Exelon in their LAR relating to the decommissioning of the TMI-1, i.e., "defueled EAL scheme."

40 "Unit 2 was pronounced worthless by FirstEnergy in a lawsuit against Dauphin County. The deal means the plant will be exempt from property taxes after the assessment on the reactor and its contaminated site was reduced from \$16.2 million to zero...First Energy Spokesman Scott Shields said the company considers Unit 2 useless and has absolutely no plans for building on the land." ("Nuclear Engineering International," April 1, 2005).

The NRC recently granted a license transfer at TMI-2 from FirstEnergy to TMI-2 Solutions. TMI-2 Solutions, which pays no property taxes, explicitly stated they wanted to use the reactor site as a high-level radioactive waste repository for accident-generated fuel debris. (41)

A delayed or postponed decommissioning, either separately or in concert with an abandoned or improperly managed cleanup, will leave these nuclear sites unusable, will diminish all nearby property values, and negate any opportunity to reuse the site per the Commonwealth of Pennsylvania "Greenfield" standards.

The standing requirements for Nuclear Regulatory Commission adjudicatory proceedings derive from the Atomic Energy Act, which requires the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding." (42 U.S.C. 2239(a)(1)(A)).

Pursuant to 10 C.F.R. § 2.309(f), Eric Epstein and TMIA have standing and should be granted leave to intervene because Mr. Epstein, and TMIA and its members' "interest[s] may be affected by the proceeding." Those interests will not be adequately represented in this action if Mr. Epstein and TMI-Alert are denied intervention.

41 Please refer to Programmatic Environmental Impact Statement related to decontamination and disposal of radioactive wastes resulting from March 28, 1979 accident, Three Mile Island Nuclear Station, Unit-2, Docket No. 50-320, Final Supplement Dealing with Post-Defueling Monitored Storage and Subsequent Cleanup, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, August, 1989, A-77.

Mr. Epstein, as Chairman of TMI-Alert, represents its members. Epstein, as an individual, and TMIA have established representational standing. The economic, environmental, and health injuries he and TMIA's members have already endured, and may likely continue to be exposed to, if the license transfers are granted, as described herein, provide the basis for standing under the Atomic Energy Act, 33 USC § 2239(a)(1)(A); under NRC's regulations, 10 CFR § 2.309(d); and the case law. *See Yankee Atomic*, 48 N.R.C. at 208.

V. Contentions.

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

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

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

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

The Commission has indicated that where petitioners make technically meritorious contentions based upon diligent research and supported by valid information, the requirement for an adequate basis is more than satisfied. Both Mr. Epstein and TMI-Alert meet this standard.

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

(i) Under Pa PUC, the proposed License Transfer violates The Electric Competition Act of 1996. PECO' Electric Service Tariff, Supplement No, 48 to Electric PA P.C.C., No 6, Tariff, Effective April 1, 2021, and creates a corporate vehicle for a non-regulated entity to collected a non-bypassable tariff. There is no statutory basis for a non-affiliated, non-regulated business entity to collect tariffs from Pennsylvania rate payers.

(ii) The proposed license transfer application is silent on rate payer collections for non-regulated licensees operating in the Commonwealth of Pennsylvania. There is no statutory basis for and, non-regulated business entity to collect tariffs from Pennsylvania rate payers. (41)

41 The License Transfer Application fails to acknowledged the authority of the PUC, and refused to file an Affiliated Interest Agreement Between Peco Energy and HoldCo and SpinCo for approval as an affiliated interest contract pursuant to Section 2102 of the Public Utility Code.

(iii) This issue is squarely within the scope of this proceeding since applicants must demonstrate compliance to fund Nuclear Decommissioning Trusts at Limerick, Peach Bottom, and Salem consistent with the information contained in (v).

(iv) This issue is material because in order to receive a license to operate a nuclear reactor or to , maintain and monitor externally and internally segregated decommissioning trust funds, the applicant must demonstrate how a non-regulated entity will collect, invest, and monitor a plan for site decontamination and decommissioning. Please refer to citations in (v). There is no statutory basis for a non-affiliated, non-regulated business entity to collect tariffs from Pennsylvania rate payers.

(v) The contention references the following statutes and tariff obligations:

1) “Electric Competition Act.” 1996 Act 138 Act of Dec. 3, 1996, P.L. 802, No. 138, Cl. 74: Session of 1996.

§ 2804. Standards for restructuring of electric industry.

The following interdependent standards shall govern the commission's assessment and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry:

(4) (f) The electric distribution utility seeks to increase its allowance for nuclear decommissioning costs to reflect new information not available at the time the utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transition charge or intangible transition charge, and such costs would not allow the utility to earn a fair rate of return.

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

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

The NDCA provides for the recovery of nuclear of decommissioning costs related to the Company's Ownership interest in Nuclear Generation at Limerick, Peach Bottom, and Salem as of December 31, 1999. The NDCA shall be charged to all customers taking service under this Tariff. The adjustment shall be a cents per kWh charge calculated to the nearest one hundredth of one cent.

**3) Supplement No. 48 to ELECTRIC PA P.U.C NO. 6
PECO Energy Company, Supplement No. 48 to Tariff Electric
Pa. P.U.C. No. 6 Forty-Eighth Revised Page No. 1
Supersedes Forty-Seventh Revised Page No. 1**

**Issued March 15, 2021
Effective April 1, 2021**

- PaPUC Authorized Decommissioning Expense Adjustment.
- PaPUC Authorized Decommissioning Expense Adjustment (Adjusted Annual Accrual - Base Accrual) x .95 = the Adjusted Annual Accrual.
- Gross Decommissioning Obligation - The total decommissioning cost obligation as approved by the Commission as expressed in escalated future dollars.

The Statutory Methodology for Calculating Expense is prescribed by the Pennsylvania Public Utility Commission:

The base period expense shall be based upon the decommissioning costs set forth in the table below. The Company shall use a sinking fund methodology to determine the appropriate level of decommissioning expense. The assumptions shall be consistent with NRC policy and requirements.

The annual expense shall be recalculated every five years. The Company shall adjust the NDCA to reflect the new expense level 60 days after filing the new study and the associated rate calculation with the PaPUC. The first calculation of the NDCA shall be considered to have taken place on January 1, 1998.

The Company shall use a sinking fund methodology to determine the appropriate level of decommissioning expense. The assumptions shall be consistent with NRC policy and requirements.

Frequency of Calculation:

The annual expense shall be recalculated every five years. The Company shall adjust the NDCA to reflect the new expense level 60 days after filing the new study and the associated rate calculation with the PaPUC. The first calculation of the NDCA shall be considered to have taken place on January 1, 1998.

The License Transfer Application fails to acknowledge or respect the Pennsylvania statutes, the Joint Settlement Agreement or the specific terms contained in Supplemental Tariff, #48. These authorities and other documents which support Petitioners' argument and that the License Transfer Application appear to be a strategic omission. The LTA failed to address rate and regulation issues in the Commonwealth of Pennsylvania, and created a vehicle for a non-regulated entity to collect tariffs from hostage rate payers.

This is a genuine and substantial dispute. Material issues of laws and facts exist and have been established for the proposed Application. They also pertain to possible changes in ownership at other Pennsylvania nuclear stations which have experienced license transfers such as the Beaver Valley Nuclear Generating Station and the Susquehanna Steam Electric Station. There is no statutory basis for a non-affiliated, non-regulated business entity to collect tariffs from Pennsylvania rate payers.

The harms foisted on Mr. Epstein and TMI-Alert by this proposed License Transfer Application are clear and present, and have been clearly and empirically verified in Contention 1.

Contention-2: The License Transfer Application Violates the Joint Petition for Negotiated Settlement of the Application of PECO Energy Company.

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

(ii) PECO Energy seeks to unilaterally abrogate and dissolve the terms of the Joint Petition for Negotiated Settlement which contractually stipulates PECO's payment for: 1) \$50 million of the next after-tax amount; and, (2) Five percent of the net after-tax amount of related funds for nuclear decommissioning costs. The Nuclear Decommissioning Cost Adjustment ("NDCA") tariff provides for the recovery of nuclear decommissioning costs related to PECO's ownership of nuclear generation interests at Limerick, Peach Bottom, and Salem. "The NDCA shall be charged to all customers taking service under this methodology to determine the appropriate requirements.

(iii) This issue is squarely within the scope of this proceeding since applicants must demonstrate compliance and enforce the terms "The Joint Petition for Negotiated Settlement of the Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & and 28 of the Public

Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation, PA PUC, Application Docket No. A-110550Fo147, March 23, 2000.

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

(iv) This issue is material because in order receive a construction permit and/or license to operate a nuclear reactor, the applicant must demonstrate compliance with the following conditions of the Joint Settlement and the ability to fund the decommissioning of Limerick, Peach Bottom, and Salem.

In the event that the actual expenditures necessary to accomplish full decommissioning of the PECO Interest are less than the full balance in the funds established for such purpose, PECO shall be entitled to a release of such funds to PECO for the purpose of sharing the amount between rate payers and shareholders. In the event that such release is granted, PECO's shareholders shall be entitled to retain: (1) the first \$50 million of the net after-tax amount; and (2) 5 percent of the remaining net after-tax amount of the released funds.

(v) The contention refers to documents and other authorities which support Mr. Epstein's representation, specifically the Settlement and tariff identified throughout the body of this Petition.

(vi) Mr. Epstein's contention refers to the applicant's attempt to abrogate the Joint Settlement. Therefore, a genuine dispute exists as to a material issue of law or fact.

There is no statutory basis for a non-affiliated, non-regulated business entity to collect tariffs from Pennsylvania rate payers. PECO can only complete decommissioning under rate regulated protocol:

In the event that the actual expenditures necessary to accomplish full decommissioning of the PECO Interest are less than the full balance in the funds established for such purpose, PECO shall be entitled to a release of such funds to PECO for the purpose of sharing the amount between rate payers and shareholders. In the event that such release is granted, PECO's shareholders shall be entitled to retain: (1) the first \$50 million of the net after-tax amount; and (2) 5 percent of the remaining net after-tax amount of the released funds.

The harms foisted on Mr. Epstein and TMI-Alert by this proposed License Transfer Application are clear and present, and have been clearly and empirically verified in Contention 2.

VI. Conclusion.

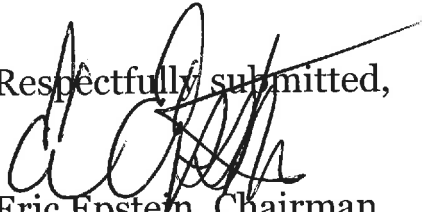
The redacted application and unredacted supplemental data do not include any meaningful the information regarding financial qualifications section, and lacks substantiation and verifiable citations or foot notes. There is scant information on the corporate structure, and the LTA does not identify the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

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

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric Epstein', written over the word 'submitted' in the preceding line.

Eric Epstein, Chairman
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