

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD PANEL  
BEFORE THE LICENSING BOARD**

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In the Matter of	)	Docket No. 50-320-LA-2
	)	
TMI-2 SOLUTIONS, LLC	)	ASLBP No. 23-977-02-LA-BD01
	)	
(License Amendment Request for Three	)	January 18, 2023
Mile Island Nuclear Station, Unit 2)	)	
_____	)	

**PETITIONER ERIC EPSTEIN’S MOTION FOR LEAVE TO FILE NEW  
CONTENTIONS**

Pursuant to 10 C.F.R. § 2.309(c), Petitioner Eric Epstein, through undersigned counsel, hereby files his Motion for Leave to File New Contentions based on information that was not previously available. Specifically, the Susquehanna River Basin Commission (“SRBC”) issued an order that, effective January 1, 2023, limited the supply of water to Three Mile Island Nuclear Station, Unit 2 (“Unit 2”) to an “incidental” supply, and did not approve a supply of water to TMI-2 for “consumptive use.” Because TMI-2 Solutions, LLC (“TMI-2”) submitted its License Amendment Request (“LAR”) for Unit 2 prior to the issuance of the SRBC’s order, the LAR failed to consider the consumptive use restrictions on Unit 2.

**I. PROCEDURAL BACKGROUND.**

TMI-2 submitted its LAR on February 19, 2021, and subsequently supplemented it through May 16, 2022. The Nuclear Regulatory Commission (“NRC”) issued a preliminary determination that the LAR involved no significant hazards consideration under 10 C.F.R § 50.92(c) on August 22, 2022. On November 4, 2022, Mr. Epstein filed *pro se* a timely Petition for Leave to Intervene and Hearing Request (“Petition”). NRC and TMI-2 filed their Answers on

November 28, 2022, after which Mr. Epstein filed his Reply on December 6, 2022. On December 12, 2022, the Atomic Safety and Licensing Board Panel issued a Scheduling Order and set oral argument on Mr. Epstein's Petition for January 29, 2023.

## **II. FACTUAL BACKGROUND.**

Three Mile Island Nuclear Station, Unit 1 is the source of water for Unit 2. *See* Letter from P. Ballaron, SRBC, to E. Epstein, at 2-3 (Jan. 10, 2022) (without attachments) (attached as "Exhibit 1"). Constellation Energy Generation, LLC ("Constellation") owns Unit 1, and Exelon Generation Co., LLC ("Exelon") operates Unit 1, whereas TMI-2 owns Unit 2.

On December 15, 2022, after briefing closed on Mr. Epstein's Petition, the SRBC issued an order on Exelon's applications for renewed approval for the withdrawal of ground water and surface water to support the decommissioning of Unit 1. *See* Susquehanna River Basin Comm'n, Three Mile Island Generating Station, Unit 1, Docket No. 20221203, at 1 (attached as "Exhibit 2"). Specifically, the SRBC allowed Exelon to continue withdrawing ground and surface water, and to use these sources for consumption at Unit 1, albeit at reduced rates, as Unit 1 "is in the process of decommissioning, [and] the facility water demand has decreased." *Id.*

Specifically, in Section 5 of the SRBC's order, it set forth surface water withdrawal limitations of 44,000 mg in peak day withdrawal and 34,6000 gpm for instantaneous withdrawal rate. *Id.* § 5. It also limited the withdrawal of ground water to 0.099 for a thirty-day average. *Id.* The SRBC further set forth a 6,000 mgd peak day limit on consumptive use. *Id.* § 6.

SRBC expressly stated that any supply of this water by Unit 1 to Unit 2 would be "incidental" and limited to a thirty-day average of 0.020 mgd. *Id.* ¶ 24. Moreover, the SRBC specifically explained that its order did not approve consumptive use at Unit 2, the approval process for which required separate SRBC review and approval. *Id.* The SRBC's prior

groundwater withdrawal approvals expired on December 31, 2022, and its new order went into effect on January 1, 2023. *Id.* §§ 25-26.

TMI-2’s LAR failed to consider the ground water, surface water, and consumptive-use restrictions imposed by the SRBC’s December 15, 2022 order. In fact, to Petitioner’s knowledge, there exists no publicly available document that sets forth the water requirements for decommissioning Unit 2—including for the decontamination process, the source of the required water, or where the water will be disposed after use. These considerations are essential elements of a clean-up plan that TMI-2 should have addressed in its LAR, as a lack of available water can delay the clean-up process.

Further, TMI-2’s failure to plan adequately for the clean-up process also casts doubt on the consideration it afforded to other aspects of its LAR, including its claims that criticality “is not possible.”<sup>1</sup>

Because the SRBC issued its order after briefing on Mr. Epstein’s Petition closed, Mr. Epstein seeks leave to add the following contentions:

3. The LAR Fails to Consider the Ground Water, Surface Water, and Consumptive-Use Restrictions Imposed by the Susquehanna River Basin Commission’s December 15, 2022 Order.
4. TMI-2’s Failure to Consider the Ground Water, Surface Water, and Consumptive-Use Restrictions Casts Doubt on Its Assertion that Criticality “is not possible.”

### **III. LEGAL ARGUMENT.**

#### **A. The Board Should Grant Mr. Epstein’s Motion for Leave to File New Contentions.**

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<sup>1</sup> See TMI-2, Answer Opposing Pet. for Leave to Intervene and Hearing Req., at 21 (Nov. 28, 2022).

Pursuant to 10 C.F.R. § 2.309(c), Petitioner may seek leave to file new contentions after the filing deadline has expired, if he demonstrates good cause by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(1)(i)-(iii).

In the instant case, the information upon which this filing is based—the SRBC’s December 15, 2022 order, was not available when Mr. Epstein filed his Petition on November 4, 2022, or his Reply on December 6, 2022.

Further, the SRBC’s order, which prohibits Unit 1’s provision of more than an “incidental” amount of water to Unit 2, and which declines to extend any consumptive-use rights to Unit 2, is materially different from the information previously available. Indeed, as the SRBC’s order noted, the SRBC significantly reduced the amounts of groundwater, surface water, and consumptive-use water available to Unit 1, based on its decommissioning. As a result, the amount of “incidental” water available to Unit 2 also decreased.

Moreover, Mr. Epstein has filed the foregoing motion in a timely fashion, based on the availability of the SRBC’s recent order. Specifically, the SRBC issued the order on December 15, 2022, and it went into effect on January 1, 2023. For the majority of this case, Mr. Epstein was a *pro se* litigant, as undersigned counsel did not enter an appearance until January 10, 2023. Only eight days after counsel entered an appearance, seventeen days after the SRBC order’s effective date, and prior to oral argument on his Petition, Mr. Epstein seeks to add his new contentions.

**B. The Board Should Permit Mr. Epstein to File Additional Evidence of His Standing.**

In further support of Mr. Epstein’s Petition, he seeks leave to file 1992 and 1999 settlement agreements, which expressly acknowledge his special interest in overseeing Unit 2. *See* Settlement Agreement between E. Epstein, NRC Staff, and GPU Nuclear Corporation (1992) (attached as “Exhibit 3”); Settlement Agreement between E. Epstein and AmerGen Energy Company, LLC. (1999) (attached as “Exhibit 4”).

As a preliminary matter, Mr. Epstein submitted his Petition and Reply *pro se* before he was represented by counsel. At the time he submitted his filings, he could not locate the prior settlement agreements. However, after Mr. Epstein engaged Bernabei & Kabat, his counsel subsequently located the agreements.

Indeed, “*pro se* petitioners are held to less rigid pleading standards, so that parties with a clear -- but imperfectly stated -- interest in the proceeding are not excluded.” *In the Matter of Nextera Energy Seabrook, LLC (Seabrook Station, Unit 1)*, 86 N.R.C. 59, 77 (2017).

The 1992 Agreement concerned an application to amend the license for Unit 2 from an operating license to a possession-only license and provide for Post-Defueling Monitored Storage, as well as Mr. Epstein’s petition to intervene in that proceeding. The Settlement Agreement, to which the NRC was a signatory, specifically acknowledged that Mr. Epstein was a person with a “special interest.” *See* Ex. 3 ¶ 4(a). Thus, although the NRC Staff now contends that Mr. Epstein lacks standing, it expressly admitted that he had a “special interest” in the conditions of TMI in 1999.

Similarly, the 1999 Agreement concerned GPU Nuclear Corporation’s proposed sale of Unit 1 to AmerGen and the associated license transfer. The 1999 Agreement also acknowledged Mr. Epstein’s “interest in the continued safe operation” of the facility. *See* Ex. 4, Recitals ¶ (C).

**IV. CONCLUSION.**

For the foregoing reasons, Petitioner Eric Epstein respectfully requests that the Licensing Board grant his Motion for Leave to File New Contentions.

Dated in Washington, D.C.

January 18, 2023

Respectfully submitted,

*/s/ Lynne Bernabei*

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*Counsel for Petitioner Eric Joseph Epstein*

**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305(c), I hereby certify that on January 18, 2023, I served a true and correct copy of the foregoing Petitioner Eric Epstein's Motion for Leave to File New Contentions through the Electronic Information Exchange in the above-captioned matter.

*/s/ Signed electronically by Eric Epstein*

Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
tel. (717) 635-8615  
Email: [epstein@efmr.org](mailto:epstein@efmr.org)

# **Exhibit 1**





SUSQUEHANNA RIVER  
BASIN COMMISSION

4423 N. Front Street | Harrisburg, PA 17110-1788 | 717.238.0423 | [srbc.net](http://srbc.net) | [@SRBCnews](https://twitter.com/SRBCnews)

NY • PA • MD • USA

January 10, 2022

Mr. Eric Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

Dear Mr. Epstein:

This letter is in response to your correspondence dated November 30, 2021. Your correspondence asks a series of questions regarding prior e-mails and other communications from the Susquehanna River Basin Commission (Commission) concerning activities surrounding the former nuclear power plant at Three Mile Island (TMI). Many of your questions center around the application for water withdrawals at TMI-1 by Exelon Generation Company, LLC, as well as the potential for water use at TMI-2 for decommissioning. Accordingly, your letter will be treated as correspondence commenting on an active application before the Commission and be made part of the application file and considered as part of the Commission's review of the application. Your correspondence also contains some questions that can be fairly regarded as requests for records, and those will be handled in accordance with 18 CFR § 801.14 and a part of this response as well.

## RECORDS REQUEST

The following questions have been determined to be requests for records and the responses to those requests are below:

- **Requests 1 and 1b:** Citations to the regulations were provided in our August 6, 2021, correspondence. Additional insight may be gained by reviewing the application instructions for the various withdrawal applications with the Commission. Sample functional application templates may be found on the Commission's website, [www.srbc.net](http://www.srbc.net): go to "Regulatory," then "Application Process," where you will find links to functional sample templates. In addition, the Commission is providing some examples from previous applications. Those documents are attached to this correspondence.
- **Request 7:** Outside of the regulations at 18 CFR § 806.31(e), which reads in pertinent part:

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission docket approval . . . , the existing approval will be deemed extended until such time as the

Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provides otherwise.

There are no other documents related to the extension of the term of the docket and no “contract.” The regulation stands on its own and speaks for itself.

- Request 9: No documents exist as referenced in this request.
- Request 10b: No documents exist as referenced in this request.
- Requests 11c and 11d: The Commission’s regulations are available on our website at [www.srbc.net](http://www.srbc.net). The situation with TMI-1 and TMI-2 appears unique to the Commission, and the Commission continues to gather information and evaluate the application before it, as well as evaluate whether additional applications need to be made. As a courtesy, the Commission is providing e-mail correspondence representing this information gathering process. Those documents are attached to this correspondence.
- Requests 12, 12a, and 12b: Based on the Commission’s understanding of what is being requested, dockets may be transferred in the case of ownership changes and reissued in the case of name changes or changes to corporate form that do not constitute a change in ownership. These provisions are in the regulations at 18 CFR §§ 806.3, 806.4, and 806.6. These provisions existed in various prior iterations of the regulations as well. The Commission also refers back to its response to Requests 11c and 11d above.

### **QUESTIONS REGARDING THE COMMISSION’S PROCESS AND APPLICATIONS BEFORE IT**

The remaining questions are not records requests, but are more interrogatory in nature concerning the application before the Commission. As such, your correspondence will be included with the Commission’s application review file. In addition, the Commission will notify you when the application is subject to the public hearing and any potential action at a future Commission meeting.

The information provided to the Commission to date indicated that TMI-1 will be a source of water for use by TMI-2. It has been reported to the Commission that TMI-2 is not currently using water. In addition, the facility does not have any consumptive use approval with the Commission.

The Commission is seeking clarification as a part of this application process to determine how much water TMI-1 needs from both its surface water and groundwater sources, whether TMI-1’s sources will also supply TMI-2, and what the consumptive use will be for TMI-1 and TMI-2. It is possible, and even likely, that if TMI-2 consumptively uses water over the Commission’s jurisdictional threshold in 18 CFR § 806.4, then TMI-2 may also need to submit a separate application with the Commission for Commission review and, if appropriate, approval prior to it initiating any water use. It is not uncommon that during review of a project’s applications that the Commission identifies and informs the project that additional application(s)

are needed. The question of how much water will be used at TMI-1 and TMI-2 is one that must be answered through the application review process.

The Commission does not regulate water quality, including thermal discharges and pollutant loads of any wastewater effluent. Water quality is regulated by other agencies and a standard condition of any Commission docket is the requirement to obtain and maintain all other needed governmental permits. The Commission coordinates with its member jurisdictions on other required permits and can take appropriate limiting actions regarding not only applications, but also on already approved projects, based on the denial of any other permits per 18 CFR § 806.21. This coordination can include drought restrictions.

Thank you for your interest in the Commission and your comments on the applications before the Commission.

Sincerely,



Paula B. Ballaron, P.G.  
Manager, Policy Implementation and Outreach

**Attachments**

cc: Todd Eaby, P.G. – Susquehanna River Basin Commission  
Andrew Gavin – Susquehanna River Basin Commission  
Curt Sebastian – Susquehanna River Basin Commission

## **Exhibit 2**



# SUSQUEHANNA RIVER BASIN COMMISSION

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**Docket No. 20221203**

**Approval Date: December 15, 2022**

## **CONSTELLATION ENERGY GENERATION, LLC FACILITY: THREE MILE ISLAND GENERATING STATION, UNIT 1**

**Surface Water Withdrawal (Peak Day) of up to 44.000 mgd from the Susquehanna River; Groundwater Withdrawals (30-Day Averages) of 0.072 mgd from Well A, 0.044 mgd from Well B, and 0.045 mgd from Well C; Combined Groundwater Withdrawal Limit (30-Day Average) of 0.099 mgd from Wells A, B, and C; and Consumptive Use (Peak Day) of up to 6.000 mgd from Wells A, B, and C, and the Susquehanna River**

### **Section 1. Approval**

After review of the record, including the technical findings of Susquehanna River Basin Commission (Commission) staff, the Commission has determined that no significant adverse impacts are anticipated by the operation of this project as described and conditioned herein, the project is physically feasible, and does not conflict with or adversely affect the Commission's Comprehensive Plan. Accordingly, the Commission hereby approves the renewal and modification of the project described herein in accordance with the conditions set forth below.

The project sponsor maintains and operates a water supply system for a former electric generation facility that includes three groundwater sources (Wells A, B, and C) and one surface water source (Susquehanna River). Based on information provided by the project sponsor, no other sources are operated by the project. The project operates two potable supply wells (OSF Well and Building 48 Well) that are used for potable supply and not subject to Commission regulation.

The Commission previously approved the withdrawal of 0.225 million gallons per day (mgd) from Wells A, B, and C; a surface water withdrawal of up to 122.800 mgd from the Susquehanna River; and the consumptive use of up to 19.200 mgd for electric generation processes under Commission Docket No. 20110610. Because electric generation has been discontinued and the facility is in the process of decommissioning, the facility water demand has decreased. The project sponsor submitted groundwater withdrawal renewal applications requesting approval to withdraw up to 0.099 mgd, combined, from Wells A, B, and C, and indicated that a surface water withdrawal of 44.000 mgd and consumptive use up to 6.000 mgd is necessary to support decommissioning operations. This approval authorizes continued withdrawals and consumptive use at the reduced rates established in this approval.

Commission staff has coordinated with the Pennsylvania Department of Environmental Protection (PADEP) and the Pennsylvania Fish and Boat Commission (PFBC) during review of this project.

### Section 2. Project Information

Information concerning the project sponsor, water use type, and location are set forth in the table below.

Project Information	
<b>Project Sponsor:</b>	Constellation Energy Generation, LLC
<b>Facility:</b>	Three Mile Island Generating Station, Unit 1
<b>Approval Types:</b>	Surface Water Withdrawal, Groundwater Withdrawal, and Consumptive Use
<b>Previous Docket No.:</b>	20110610
<b>Authorized Water Use Purpose:</b>	Decommissioning of Thermoelectric Power Generation Facility and Related Incidental Uses at Unit 1, and Supply of Water to TMI 2 Solutions (Unit 2) Limited up to 0.020 mgd (30-Day Average)
<b>Municipality:</b>	Londonderry Township
<b>County:</b>	Dauphin County
<b>State:</b>	Pennsylvania

### Section 3. Source Information

Information concerning the sources of water from which the withdrawals will be made is set forth in the tables below.

Surface Water Source Information	
<b>Approved Source:</b>	Susquehanna River
<b>Subbasin:</b>	Lower Susquehanna
<b>Watershed Boundary Dataset (WBD):</b>	0205030510 (Susquehanna River)
<b>Withdrawal Location (degrees)*:</b>	Lat: -- Long: --
<b>Site Flow Statistics (cfs)†:</b>	Q7-10 = 2,780; Average Daily Flow = 36,100
<b>Drainage Area (square miles)†:</b>	24,945
<b>Aquatic Resource Class**†:</b>	6
<b>Special Flow Protection Required:</b>	No
cfs – cubic feet per second	
* Specific location information concerning discrete water-related project features has been withheld for security reasons.	
** Refer to Commission Policy No. 2012-01 (Low Flow Protection Policy Related to Withdrawal Approvals).	
† Based on the anticipated point of impact to surface water.	

Groundwater Source Information		
<b>Approved Sources:</b>	Wells A, B, and C	
<b>Subbasin:</b>	Lower Susquehanna	
<b>Watershed Boundary Dataset (WBD):</b>	0205030510 (Susquehanna River)	
<b>Withdrawal Locations (degrees)*:</b>		
Well A	Lat: --	Long: --
Well B	Lat: --	Long: --
Well C	Lat: --	Long: --
<b>Special Flow Protection Required:</b>	No	
* Specific location information concerning discrete water-related project features has been withheld for security reasons.		

#### Section 4. Aquifer Testing

Commission staff determined that sufficient data is available to complete the necessary hydrogeologic evaluation and approved Alternative Hydrogeologic Evaluations (AHEs) for Wells A, B, and C on November 21, 2022. In support of the AHEs, the project sponsor provided the required groundwater availability analysis, historical withdrawal and water level data, the results of historical aquifer testing, professional reports, and analysis and comparison of current operational data to historical testing results. Commission staff determined that the withdrawals from Wells A, B and C at the recommended individual and combined withdrawal rates should not cause permanent loss of aquifer storage, render competing supplies unreliable, or cause adverse impacts to the water resources of the basin.

#### Section 5. Approved Withdrawal Quantities and Limitations

The withdrawals approved hereunder are subject to the quantitative limits and restrictions set forth in the tables below.

Approved Surface Water Withdrawal Quantities and Limitations	
<b>Peak Day Withdrawal Amount (mgd):</b>	44.000 (Not to Exceed)
<b>Maximum Instantaneous Withdrawal Rate (gpm):</b>	34,600 (Not to Exceed)
<b>Flow Protection Type:</b>	No
gpm – gallons per minute	

Approved Groundwater Withdrawal Quantities and Limitations			
	Well A	Well B	Well C
<b>30-Day Average Withdrawal (mgd):</b>	0.072	0.044	0.045
<b>Maximum Instantaneous Withdrawal Rate (gpm) (Not to Exceed):</b>	70	46	40
<b>Peak Day Withdrawal (mgd):</b>	0.101	0.066	0.058
<b>Combined Withdrawal Limit – Wells A, B, and C (30-Day Average) (mgd):</b>	0.099		

The withdrawals are also subject to all other conditions set forth in this docket approval.

**Section 6. Approved Consumptive Use Quantities and Limitations**

The consumptive use approved hereunder is subject to the quantitative limits and restrictions set forth in the table below.

<b>Approved Consumptive Use Quantities and Limitations</b>	
<b>Sources for Project Consumptive Use:</b>	1. Wells A, B, and C 2. Susquehanna River
<b>Peak Day Consumptive Use Amount (mgd):</b>	6.000 (Not to Exceed)
<b>Authorized Project Consumptive Uses:</b>	1. Evaporative Cooling 2. Evaporation 3. Related Incidental Uses
<b>Consumptive Use Mitigation Type:</b>	Release of water from surface water storage for flow augmentation (see Special Condition 23)

The consumptive use is also subject to all other conditions set forth in this docket approval.

**Section 7. Grandfathering Determination – Withdrawals and Consumptive Use**

All withdrawals and consumptive uses by the project have Commission approval.

**Section 8. Standard Conditions**

1. The project sponsor shall comply with all Commission regulations, 18 CFR Parts 801, 806, and 808. This project is subject to the Annual Compliance and Monitoring fee as specified in the Commission’s Regulatory Program Fee Schedule, which may be modified over the term of the approval.

2. The project sponsor shall adhere to the metering plan reviewed and approved by Commission staff. Any modifications proposed for the metering plan shall be submitted for review and, if appropriate, approval by Commission staff in accordance with 18 CFR § 806.30. Modifications shall not be made until the project sponsor receives written approval of the amended plan.

3. The project sponsor shall maintain the totalizing meter and other flow and volume measuring devices, accurate to within five (5) percent, so as to provide an accurate record of withdrawals and consumptive use, and certify to the Commission once every five (5) years, or as otherwise requested, the accuracy of all measuring devices and methods to within five (5) percent of actual flow.



4. The project sponsor shall adhere to the groundwater elevation monitoring plan reviewed and approved by Commission staff for the sources listed in Section 3. The project sponsor shall maintain and monitor the accuracy of the measuring devices in accordance with the manufacturer's specifications.

5. The project sponsor shall keep daily records of the project's withdrawals and consumptive use for the sources and consumptive uses listed in Sections 3 and 6, and groundwater elevations for the sources listed in Section 3, and shall report the data to the Commission quarterly, and as otherwise required, in the form and manner as prescribed by Commission staff. Quarterly monitoring reports shall be submitted online and are due within thirty (30) days after the close of the preceding quarter. Any alternative measuring, monitoring, or accounting procedure, and any modifications proposed for the groundwater elevation monitoring plan, shall be submitted for review and approval by Commission staff in accordance with 18 CFR § 806.30. Modifications shall not be made until the project sponsor receives written approval of the amended plan. All data collected and submitted as required under this approval shall be maintained by the project sponsor for the duration of the approval and all subsequent renewals.

6. The project sponsor or any other person representing the project sponsor shall allow authorized employees or agents of the Commission, without advance notice, at any reasonable time and upon presentation of appropriate credentials, and without delay, to have access to and to inspect all areas where the project is being constructed, operated, or maintained, or otherwise exercise all investigative powers authorized under 18 CFR § 808.12.

7. In accordance with 18 CFR § 806.30(b)(2), the project sponsor shall report violations of any withdrawal limits and any conditions of this approval within five (5) days of such violation or report loss of measuring or recording capabilities required under 18 CFR § 806.30(a)(1) within five (5) days after any such loss.

8. In accordance with 18 CFR § 806.6, if ownership of the project changes or if the project sponsor undergoes a name change, the project sponsor shall submit application for transfer or reissuance of all approvals to the Commission within ninety (90) days of the change in ownership or project sponsor name change.

9. The project sponsor shall comply with the water conservation requirements specified in 18 CFR § 806.25.

10. This approval is conditioned on the project sponsor maintaining legal access to the withdrawal locations for the duration of the approval.

11. The project sponsor shall register with the appropriate agency all surface water and groundwater sources described herein, as may be required by regulations of the member jurisdiction.

12. If the project sponsor fails to comply with the provisions of the Susquehanna River Basin Compact or any rule, regulation, or order of the Commission, or any term or condition of this docket, the project sponsor is subject to enforcement actions pursuant to 18 CFR Part 808.

13. Commission approval shall not be construed to exempt the project sponsor from obtaining and maintaining all necessary permits and/or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. All such permits and/or approvals shall be obtained prior to the withdrawal of water. The Commission may modify, suspend, or revoke this approval if the project sponsor fails to obtain or maintain such permits and/or approvals.

14. The Commission may at any time reopen any project approval or issue such additional orders, as may be necessary, to mitigate or avoid adverse impacts or otherwise to protect public health, safety, welfare, or the environment, pursuant to 18 CFR § 806.32.

15. Commission approval confers no property rights upon the project sponsor. The securing of all rights necessary and incident to the project sponsor's development and operation of the project shall be the sole and exclusive responsibility of the project sponsor, and this approval shall be subject thereto.

16. This project is approved for inclusion in the Commission's Comprehensive Plan for the Water Resources of the Susquehanna River Basin.

17. The project sponsor is required to apply for and obtain approval prior to any increase in withdrawal or consumptive use that would exceed the amounts listed herein or to add a source used for consumptive use that is not listed in Sections 3 or 6.

18. If the Commission determines that the operation of the project's groundwater withdrawals adversely affect any existing groundwater or surface water withdrawal, the project sponsor shall be required to provide, at its expense, an alternate water supply or other mitigating measure.

## **Section 9. Special Conditions**

19. The date of the last meter certification was March 11, 2021; therefore, the next meter certification is due no later than March 11, 2026. Certification of meter accuracy shall be provided to the Commission no less frequent than once every five (5) years from the date of the last certification.

20. Prior to supplying water for any use not authorized pursuant to Sections 2 or 6 of this approval, the project sponsor shall first submit a minor modification application under 18 CFR § 806.18(c)(4) for such new use to the Executive Director. The project sponsor shall not supply water for such use unless and until such authorization is granted, and pursuant to any supplemental terms and conditions contained in such approval.

21. The Commission previously adopted several resolutions prior to the approval of Commission Docket No. 20110610, including Commission Resolution Nos. 82-5, 83-1, 89-12, 90-02, and 91-2, related to mitigation of consumptive use at the project. All provisions of those resolutions not inconsistent herewith shall remain effective. If the surface water or consumptive use approvals contained herein are rescinded, the attendant resolutions shall be null and void.

22. The project sponsor shall notify the Commission when withdrawals and consumptive use at the facility are, and will remain, below the Commission's regulatory thresholds. Commission staff will review reported water use and may rescind approvals for the facility, if appropriate.

23. The project's consumptive use is subject to mitigation requirements, as per 18 CFR § 806.22(b). To satisfy the Commission's current mitigation requirements for consumptive use, the project sponsor shall continue to comply with the terms set forth in the contract with the Commission for water supply storage at the Cowanesque Reservoir and make quarterly payments for consumptive use as specified in the agreement.

24. The project sponsor has indicated that incidental supply of water to nearby a facility (TMI 2 Solutions) may occur. This approval authorizes the project sponsor to supply water to the TMI 2 Solutions facility limited up to 0.020 mgd (30-day average). Nothing in this approval shall be construed to suggest approval of consumptive use at the TMI 2 Solutions facility. Consumptive use at the TMI 2 Solutions facility would require separate Commission review and approval prior to exceeding the Commission's regulatory threshold of 0.020 mgd (30-day average) and a minor modification of this docket would be required to change the authorized water use purpose.

## **Section 10. Term**

25. The Commission previously approved consumptive use, surface water withdrawal and groundwater withdrawal at the facility under Commission Docket No. 20110610. The groundwater withdrawal approvals contained in Commission Docket No. 20110610 remain effective until December 31, 2022, whereupon they shall expire. Conditions and approvals contained within Commission Docket No. 20110610 regarding the surface water withdrawal and consumptive use are hereby superseded, effective December 31, 2022.

26. This approval shall be effective January 1, 2023, and shall remain effective until April 19, 2034. This approval date coincides with other regulatory approval expirations. As specified in 18 CFR § 806.31(e), if the project sponsor submits an application on or before October 19, 2033, the project sponsor may continue operation of this project pursuant to the terms and conditions of this approval until such time as the Commission acts on such application, or until otherwise notified by the Executive Director.



## **Exhibit 3**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made between Eric J. Epstein ("Epstein"), GPU Nuclear Corporation ("GPU Nuclear") and the United States Nuclear Regulatory Commission ("NRC") Staff ("NRC Staff"), and is based on the following recitals, all of which are hereby agreed to be true:

### RECITALS

A. GPU Nuclear is the holder of Facility Operating License No. DPR-73 for the Three Mile Island Nuclear Station Unit 2 ("TMI-2" or "the plant") located in Dauphin County, Pennsylvania.

B. GPU Nuclear has filed with the NRC an application to amend the TMI-2 license so as to change the current TMI-2 operating license to a "possession-only" license and modify the current TMI-2 Technical Specifications to allow for long-term storage of the facility, to be known as Post-Defueling Monitored Storage or "PDMS." For purposes of this Agreement, this GPU Nuclear license amendment application, as amended, will be referred to as the "PDMS Amendment."

C. Epstein has filed with the NRC a petition for leave to intervene ("Petition") in the NRC's consideration of the PDMS Amendment. GPU Nuclear and the NRC Staff have opposed Epstein's Petition. The NRC has designated an Atomic Safety and Licensing

Board ("Licensing Board") to rule on Epstein's Petition. For purposes of this Agreement, the Licensing Board proceeding with respect to Epstein's Petition will be referred to as the "PDMS proceeding."

D. Epstein and GPU Nuclear wish to settle the PDMS proceeding, and all possible claims and disputes of any nature between Epstein, on the one hand, and GPU Nuclear, on the other hand, relating in any way to any aspect of the PDMS Amendment as proposed by GPU Nuclear.

E. This Agreement is hereby established in order to, among other things, provide for the payment by GPU Nuclear of costs associated with certain Authorized Activities, as defined herein, in accordance with any statutory or regulatory requirements which are or may hereafter become applicable to this Agreement or GPU Nuclear.

NOW, THEREFORE, recognizing that it is in the public interest to provide mechanisms for the increased availability of information regarding TMI-2 and the ability of the community living or working in the vicinity of TMI-2 to monitor their environment, and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby represent, warrant and agree as follows:

1. Term of Agreement. Except as otherwise provided in this Agreement, the term of this Agreement, and the parties' rights and obligations under this Agreement, shall be seven (7) years, beginning on the date of Licensing Board dismissal of the PDMS proceeding, and ending with the end of the seventh fiscal year as defined in Section 4.b.(5)(e) of this Agreement.

2. Dismissal of PDMS Proceeding. Within fifteen (15) days after the execution of this Agreement, the parties will file with the Licensing Board a joint stipulation seeking the dismissal, with prejudice, of Epstein's Petition challenging the PDMS Amendment.

3. Absence of Contested Proceeding. All of GPU Nuclear's performances and obligations under this Agreement are absolutely conditioned upon the absence of any contested proceeding, either before the NRC or before any court or other agency, challenging any aspect of the PDMS Amendment as proposed by GPU Nuclear. Notwithstanding this Agreement, in the event that a hearing is otherwise ordered or a complaint initiating a lawsuit is filed in any court which seeks to challenge any aspect of the PDMS Amendment, this Agreement will become voidable at the option of GPU Nuclear. In the event this Agreement is voided by the filing of such a petition or complaint, as described above, by Epstein, GPU Nuclear may seek to recover any funds paid pursuant to Sections 4.b.(5) and 14 of this Agreement.



4. Community Involvement.

a. Formation of "Special Interest" Group.

(1) GPU Nuclear will consider Epstein and/or several designated associates to be persons with a "special interest" in PDMS. These persons will be recognized by GPU Nuclear, during the seven-year term of this Agreement, as a "special interest group," hereinafter referred to as the "Group."

(2) The Group will have a membership of between three (3) and five (5) persons.

(3) Group members will be proposed by members of the community living or working in the geographic vicinity of TMI-2. All Group members must live or work in the geographic vicinity of TMI-2 (i.e., within a twenty-five (25) mile radius of TMI-2). All Group members must be approved by GPU Nuclear. GPU Nuclear's approval of proposed Group members will not be unreasonably withheld.

(4) The Group will not be recognized or discussed in the TMI-2 Technical Specifications or FSAR or in any other NRC-authorized or NRC-licensed program.

(5) At the end of its seven-year term, the Group may recommend that GPU Nuclear continue its recognition of the Group. Based on any such recommendation, GPU Nuclear may choose,

in its absolute, unreviewable discretion, to continue recognition of the Group beyond the seven-year term of this Agreement.

b. Benefits to Which the Group is Entitled.

(1) The Group is not generally entitled to any special benefits or privileges not available to the general public. The only benefits and privileges available to the Group are those specified in this Agreement.

(2) Reports, Etc. The Group will be entitled to receive from GPU Nuclear copies of all GPU Nuclear reports and correspondence that relate to PDMS, that are filed with the NRC, and that would otherwise be available upon request to members of the public, including copies of GPU Nuclear's REMP report docketed at the NRC. All such reports and correspondence will be mailed to the Group within ten days of the filing of such reports and correspondence with the NRC. In addition, as described in Section 9 of this Agreement, the Group will be entitled to receive a yearly report on expenditures with regard to robotics research. As described in Section 5 of this Agreement, the Group will also be entitled to a copy of the information provided to area newspapers with respect to the results of its tritium monitoring program for the remaining period of accident-generated water evaporation. With the exception of the yearly report on expenditures with regard to robotics research, the Group will not be entitled to any reports or correspondence that would not

otherwise be generated by GPU Nuclear without regard to the existence of this Agreement.

(3) Exit meetings. GPU Nuclear will make a good faith effort to ensure that the Group receives timely prior notice of NRC exit meetings related to PDMS. Requests by the Group to attend exit meetings, as observers, shall be made to GPU Nuclear, which will not object to such a request if made promptly. The Group expects infrequently to request attendance. GPU Nuclear is solely responsible for making any necessary arrangements for the Group to observe the exit meetings. Nothing herein shall limit the right of the NRC to determine the time and place of such exit meetings, and whether, under specific circumstances, the Group or others may attend those meetings.

(4) Equipment. The Group will be entitled to the benefits discussed in Section 8 of this Agreement regarding the purchase of equipment. This paragraph is not intended to enlarge or expand the benefits described in Section 8 of this Agreement.

(5) Budget.

(a) GPU Nuclear will provide the Group with an annual budget to be used to defray the reasonable administrative expenses of the Group directly related to its expressed intent to monitor PDMS activities. The annual budget will consist of fifteen thousand dollars (\$15,000) for the Group's first

fiscal year, ten thousand dollars (\$10,000) for each of the Group's second through sixth fiscal years, and five thousand dollars (\$5,000) for the Group's seventh fiscal year. Reasonable administrative expenses would include, for example, reasonable expenses for the purchase of a portable computer, a printer, software, computer supplies, other office supplies (e.g., pencils, pens, paper clips, envelopes, letterhead, postage), a photocopying machine, a facsimile machine, a dedicated telephone line and answering machine, file cabinets, batteries, the maintenance and/or replacement of radalerts purchased under Section 8.b.(1) of this Agreement, service contracts for maintenance of the computer and printer purchased under Section 8.c.(1) of this Agreement and the computer purchased under Section 8.c.(2) of this Agreement, and reimbursement for reasonable fuel expenses incurred in traveling related to the Group's monitoring activities. Any use of the budget for reimbursement for fuel expenses must be supported by a written log including, at a minimum, the date of trip, the points of origination and destination, and odometer readings before and after the trip. This listing of examples of expenses that are or are not covered by the Group's budget is not intended to be exhaustive. However, no part of the budget shall be used for the payment of salaries, benefits or any other form of direct or indirect compensation for any member or agent of the Group or for the payment of legal fees or expenses, consultant fees or expenses, or expert fees or expenses. GPU

Nuclear reserves the right to determine whether specified expenses not listed above are reasonable administrative expenses. The Group will resolve any doubts regarding the allowance of any expense by seeking GPU Nuclear's approval of the expense in advance. The Group will use all funds paid to the Group under this Section 4.b.(5) and all earnings accumulated or to be accumulated thereon (the "Funds") for the purposes described in this paragraph (the "Authorized Activities"). Within thirty (30) days following the expiration of this Agreement, the Group will provide to GPU Nuclear any equipment purchased under this Agreement, with the exception of the Radalerts purchased under Section 8.b.(1) of this Agreement.

(b) Within thirty (30) days of the execution of this Agreement, GPU Nuclear will pay, in the form of a check made out to the Group, fifteen thousand dollars (\$15,000). In each succeeding year, GPU Nuclear will pay, in the form of a check made out to the Group, the amount called for in Section 4.b.(5)(a) of this Agreement, subject to receipt of a certificate, satisfactory in form and substance to GPU Nuclear as described in Section 4.b.(5)(c) below, and subject to any credit recognized pursuant to Section 4.b.(5)(e) below.

(c) The Group will provide to GPU Nuclear, not later than thirty (30) days prior to the completion of each

fiscal year, a certificate, signed by a duly authorized representative of the Group, which shall include the following:

(i) A statement that all Funds provided by GPU Nuclear were used for reimbursement of costs of Authorized Activities as described in the Agreement;

(ii) An identification (in sufficient detail to permit audit thereof in accordance with this Agreement) of the work services, materials and equipment and related costs performed, rendered or acquired in connection with the Authorized Activities which gave rise to the costs for which the Funds were used;

(iii) A cumulative year-by-year summary of the Funds, identifying original funds provided by GPU Nuclear and interest or other earnings.

(d) The Group shall maintain reasonable accounting and other records of the Funds and the expenditures made by the Group for the Authorized Activities which shall be made available for examination by GPU Nuclear or its duly authorized representative upon request.

(e) The Group's first fiscal year will commence on the date the funds are received from GPU Nuclear and will conclude on the last day of the same month plus one year. Subsequent fiscal years will be on a succeeding twelve (12) month

basis. Expenses incurred but not yet paid for can be reported in the year incurred or actually paid, provided the reporting of the expense is consistently applied across fiscal years. With the exception of reimbursement for expenses reported in the year incurred, any funds not spent in one fiscal year will be counted as a credit against the next year's payment of the Group's budget.

(f) At the end of the last fiscal year for which GPU Nuclear has agreed to recognize the Group, the Group will provide to GPU Nuclear the certificate described in Section 4.b.(5)(c) above. The Group will reimburse GPU Nuclear for any funds expended during the last fiscal year which are found not to relate to the Authorized Activities. All funds not spent by the Group will be returned to GPU Nuclear within forty-five (45) days following the end of such last fiscal year.

5. Tritium Monitoring Results. GPU Nuclear will publish in area newspapers, on a monthly basis, the results of its tritium monitoring for the remaining period of accident-generated water evaporation. In addition, GPU Nuclear will provide the Group with a copy of the information provided to area newspapers pursuant to the preceding sentence. "Accident Generated Water" is defined as that term is defined in the TMI-2 Technical Specifications.

6. In-Plant Monitoring. GPU Nuclear will install a temperature-sensing device into the TMI-2 reactor vessel in order to monitor the temperature in the reactor vessel on a periodic basis so as to ensure the stable, steady state of the environment inside the reactor vessel. Monitoring information from this device will be included with other plant information contained in the periodic plant status reports.

7. Unexpected Trends. As part of the routine monitoring program for PDMS, GPU Nuclear will monitor for unexpected trends resulting in unanticipated high radiation levels within the plant. As a general matter, GPU Nuclear will consider any significant deviations from the expected performance and radiation level projections for the plant set forth in the PDMS Safety Analysis Report prepared by GPU Nuclear and the PDMS Safety Evaluation Report prepared by the NRC Staff to be unexpected trends. If such an unexpected trend is discovered, GPU Nuclear will, in accordance with established systems and procedures, monitor the trend in order to determine its cause and will implement and document appropriate corrective action. GPU Nuclear will provide the Group with copies of all reports that relate to the monitoring, analysis or correction of such unexpected trends and that are both filed with the NRC and otherwise available to the public.



8. Equipment Purchases.

a. Subject to the exceptions noted in Sections 8.b. and 8.c. below, GPU Nuclear will make available a reasonable amount of funds to enable a fully-qualified third party or a fully-qualified supporting laboratory, agent, or contractor of such third party (hereinafter collectively referred to as the "third party") to:

(1) Purchase the monitoring equipment listed below for the use of the Group;

(2) Provide routine calibration and maintenance for the equipment, except as otherwise provided;

(3) Train members of the Group and/or community to use the equipment; and

(4) Provide the Group with technical expertise and advice on the equipment and its operation.

b. Equipment to be Purchased by Third Party. The following equipment will be purchased pursuant to Section 8.a. above:

(1) Sixty (60) Radalerts

(a) Full ownership in and title to these Radalerts will reside in the Group.

(b) Following this one-time purchase of sixty (60) Radalerts, GPU Nuclear will have no continuing obligation to replace or repair Radalerts which malfunction.

(c) GPU Nuclear will provide funds for the purchase of the Radalerts from International Medcom of Sebastopol, California, provided that GPU Nuclear testing of samples of the equipment demonstrates that they meet specifications, and provided further that the price of each Radalert will not exceed two hundred fifteen dollars (\$215.00).

(2) Five (5) continuous low volume air samplers.

c. Equipment to be Purchased by GPU Nuclear. In addition to funding the purchase of the equipment listed in Section 8.b. above by the qualified third party discussed in Section 8.d. below, GPU Nuclear will take reasonable steps to expeditiously:

(1) Furnish a computer, a data line, and a printer, at the location chosen by the Group, for the receipt of data from the GPU Nuclear real-time gamma radiation monitoring system ("Reuter-Stokes"). GPU Nuclear's commitment to supply such data will continue for the period of recognition of the Group by GPU Nuclear, or for so long as GPU Nuclear continues to utilize the gamma radiation monitoring system, whichever period is shorter. GPU Nuclear will provide for the maintenance of the

data line. The Group will provide for the maintenance of the computer and printer.

(2) Purchase for the Group a computer and an on-line subscription for National Weather Service meteorological data. The Group will provide for the maintenance of the computer and the costs associated with the use of a modem for purposes of the on-line subscription.

d. Third Party Selection and Duties.

(1) The third party will be selected by Epstein and/or the Group, within fifteen (15) days from the execution of this Agreement, from the following list of eligible candidates:

(a) Dickinson College

(b) Pennsylvania State University

(2) Utilization of the third party candidate selected by Epstein and/or the Group is contingent upon the negotiation of reasonable terms satisfactory to GPU Nuclear and the third party for the payment of the third party and the fulfillment of the duties and obligations of the third party.

(3) Any supporting laboratory, agent, or contractor utilized by the third party to perform any duties of the third party arising under this Agreement must be approved by GPU Nuclear and Epstein.

(4) The third party will ensure that all members of the community who will operate the equipment purchased pursuant to this Section or who will obtain readings from such equipment are trained to properly operate the equipment and to understand equipment readings. The third party will ensure that such members of the community have a proper understanding of background radiation and fluctuations in background radiation.

(5) The third party will collect weekly the filters and cartridges of the low volume air samplers for analysis. Analyses performed will include weekly gross beta and alpha measurements, monthly gamma isotopic analysis, weekly I-131 analysis, and semi-annual Sr-90 analysis.

(6) The third party will not be required to calibrate, maintain or repair the Radalerts purchased pursuant to Section 8.b.(1) of this Agreement.

(7) The third party will contemporaneously provide GPU Nuclear with copies of all reports and written analyses provided by the third party to the Group. The third party will provide to the Group and to GPU Nuclear quarterly reports regarding monitoring data with respect to the low volume air samplers discussed in section 8.b.(2) of this Agreement.

(8) The third party and any supporting laboratory, agent, or contractor will report only to the Group, to

GPU Nuclear and the NRC, upon its request, with respect to any activities within the scope of this Agreement. Neither the third party or any supporting laboratory, agent, or contractor will be authorized to issue press releases, hold news conferences, or report to other persons or groups with respect to any activities within the scope of this Agreement. However, nothing herein shall prevent any person or party from informing the NRC of the content of any report or of any activities within the scope of this Agreement, regardless of whether such communication is otherwise required.

9. Robotics Research. During the term of this Agreement, GPU Nuclear will each year provide one hundred thousand dollars (\$100,000) to Carnegie Mellon University or to another qualified institution, or will budget a like amount for GPU Nuclear personnel, or some combination thereof, for the purpose of tracking research in the field of robotics, studying the applicability of such research to the decommissioning of TMI-2, and influencing, if necessary, the course of such research. GPU Nuclear will provide the Group with a copy of a yearly report describing the foregoing expenditures on robotics research.

10. Storage of Spent Fuel/Radioactive Waste. GPU Nuclear agrees that, for the length of PDMS, GPU Nuclear will not store spent fuel or radioactive waste from the Oyster Creek Nuclear Plant or from any other facility at TMI-2, provided that GPU

Nuclear may store spent fuel and radioactive waste from Three Mile Island Unit 1 at TMI-2.

11. Decommissioning of TMI-2. GPU Nuclear agrees that, at the conclusion of PDMS, TMI-2 will enter decommissioning in accordance with NRC regulations. TMI-2 will not be refurbished as a nuclear plant electric generation facility.

12. Accident-Generated Water. GPU Nuclear will dispose of accident-generated water in accordance with the TMI-2 license and Technical Specifications. "Accident-Generated Water" is defined as that term is defined in the TMI-2 Technical Specifications. The TMI-2 Technical Specifications currently provide that "ACCIDENT GENERATED WATER shall be disposed of in accordance with NRC-approved procedures."

13. Bankruptcy and the Collection of Decommissioning Funds. GPU Nuclear agrees that, in the event that (a) GPU Nuclear or any of the TMI-2 owners should become the subject of proceedings under Chapter 11 of the Bankruptcy Code (or any statutory successor provisions), and (b) if permitted to do so, GPU Nuclear will call to the attention of the Bankruptcy Court the provisions of the TMI-2 Trust Agreements and the intent thereof and the settlement of the PDMS Proceeding.

14. Epstein's Counsel Fees. GPU Nuclear will pay the reasonable attorneys' fees and costs incurred by Epstein in

connection with efforts on this settlement in an amount not to exceed twenty-five thousand dollars (\$25,000) at usual and customary market rates. Epstein will not be reimbursed for any legal counsel fees incurred in connection with litigating the PDMS Proceeding. For purposes of this Section, legal counsel fees incurred in connection with reviewing pleadings filed in the PDMS proceeding in order to prepare for settlement negotiations, other forms of preparing for settlement negotiations, and actually participating in settlement negotiations are deemed to have been incurred in connection with settlement efforts. Legal counsel fees incurred in connection with preparing pleadings and affidavits and consulting with experts and technical consultants for purposes of preparing such pleadings and affidavits were not incurred in connection with settlement efforts. Within seven (7) days following the execution of this Agreement, Epstein will provide to GPU Nuclear an accounting of his legal counsel fees, including pertinent time records, in sufficient detail to enable GPU Nuclear to ensure that reimbursed fees are limited to those fees reasonably incurred in connection with settlement efforts. Within fifteen (15) days following its receipt of such an accounting, GPU Nuclear will provide the reimbursement of such fees that it has concluded were reasonably incurred in connection with settlement efforts.

15. NRC Staff as Signatory. Although GPU Nuclear and Epstein agree that the NRC Staff has no obligations or duties of

any kind whatsoever arising under the provisions of this Agreement, GPU Nuclear and Epstein have agreed to jointly recommend to the NRC Staff that the NRC Staff join GPU Nuclear and Epstein as signatory to this Agreement. GPU Nuclear and Epstein have further agreed that this Agreement shall not take effect unless and until the NRC Staff becomes a signatory to this Agreement. GPU Nuclear and Epstein further agree that the NRC has no obligation to implement, enforce or supervise any of the terms, conditions or duties created by this Agreement.

16. Press Release. GPU Nuclear and Epstein agree to issue a joint press release announcing this Agreement within forty-eight (48) hours after the execution of this Agreement.

17. Other Negotiations and Agreements. Epstein and GPU Nuclear agree that this Agreement shall not impact on the negotiations between community groups or individuals currently negotiating with the TMI Public Health Fund for radiation monitoring equipment.

18. Costs and Attorneys' Fees in Case of Default. In the event that either party initiates litigation seeking enforcement of or compliance with any term of this Agreement, the prevailing party in any such litigation shall be entitled to recover the reasonable attorneys' fees and costs from the other party. This Section applies only to Epstein and GPU Nuclear, and confers no rights or obligations on the NRC.



19. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no other agreement with regard to the matters herein shall be binding on the parties except by written amendment to this Agreement. Except for the terms and conditions enumerated in this Agreement, the parties hereby acknowledge and agree that none of the parties has made any other promises, warranties or representations to any other party hereto regarding any aspect of the settlement of the matters referred to in this Agreement, and that any such promises, warranties or representations that may be alleged to have been made are hereby merged herein.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

21. No Presumption Against the Drafters. This Agreement shall be deemed to have been drafted jointly by GPU Nuclear and Epstein and shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

22. No Admissions. Neither the drafting or execution of this Agreement nor anything contained herein is intended to be, or shall be deemed to be, an admission of fact by any party with respect to any matter relating to the PDMS Amendment.

23. Further Assurances. Epstein and GPU Nuclear will execute, after the execution of this Agreement, all documents reasonably necessary to effectuate the intent of this Agreement.

24. Successors, Assigns, Etc. This Agreement is binding upon and for the benefit of Epstein and GPU Nuclear and their respective heirs, executors, administrators, successors and assigns, wherever the context requires or admits.

25. Sole Benefit. Subject to the provisions of Section 24 of this Agreement, it is the intention of the parties that this Agreement and all of its conditions and provisions are for the sole benefit of Epstein and GPU Nuclear, and for the benefit of no other person. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than Epstein or GPU Nuclear any legal or equitable right, remedy, or claim under, or in respect to, this Agreement or any of its provisions.

26. Reservation of Rights. Notwithstanding any provision in this Agreement, nothing herein shall abridge the right or ability of any party to this Agreement, or any employee, member, consultant or contractor of any party, or any group or member of the public to appear before the NRC, and nothing herein shall abridge the right or ability of such party, person or group to communicate or to deal with the NRC, or with the Staff or any other part of the NRC. The NRC, in signing this Agreement, does

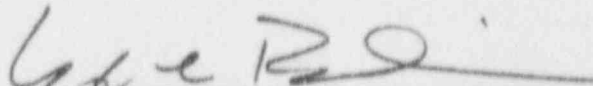
so solely as a vehicle to settle this proceeding and neither agrees or disagrees with its other terms or provisions as they are agreements between GPU Nuclear and Epstein. Further, nothing in this agreement shall be interpreted to in any way limit any right, duty, discretion, authority or regulatory responsibility of the NRC, its staff, contractors or consultants.

27. Severability. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions of this Agreement shall nevertheless remain in full force and effect and shall be binding upon the parties.

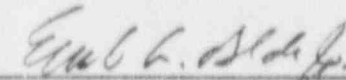
28. Authorizations. Each person signing this Agreement represents and warrants that he or she is duly authorized and empowered to act on behalf of and sign for the party for whom he or she has signed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of this 25<sup>th</sup> day of September, 1992.

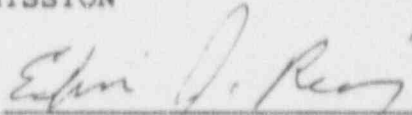
ERIC J. EPSTEIN

By: 

GPU NUCLEAR CORPORATION

By: 

UNITED STATES NUCLEAR REGULATORY  
COMMISSION

By: 

0138:116VJC.92

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DUCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

92 OCT -9 P1:34

In the Matter of )  
)  
GPU NUCLEAR CORPORATION ) Docket No. 50-320-OLA  
) (PDMS)  
(Three Mile Island Nuclear Station )  
Unit 2) )

OFFICE OF SECRETARY  
DUCKETING & SERVICE  
BRANCH

STATE OF SERVICE

I hereby certify that a copy of the foregoing "Joint Motion For Reconsideration" dated October 8, 1992, was served upon the following by deposit in the United States mail, first class, this 8th day of October, 1992:

Peter B. Bloch, Esq.  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Docketing and Service Branch  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Frank F. Hooper  
4155 Clark Road  
Ann Arbor, Michigan 48104

Adjudicatory File  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

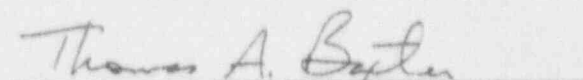
Dr. Charles N. Kelber  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

John T. Hull, Esq.  
Arlene A. Jorgensen, Esq.  
Mitzi A. Young, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mr. Eric J. Epstein  
2308 Brandywine Drive  
Harrisburg, PA 17110

Lynne Bernabei, Esq.  
Deborah Epstein, Esq.  
Bernabei & Katz  
1773 T Street, N.W.  
Washington, D.C. 20009

Mr. Robert E. Rogan  
TMI Licensing Director  
GPU Nuclear Corporation  
P. O. Box 480  
Middletown, PA 17057-0191

  
Thomas A. Baxter

## **Exhibit 4**

# AmerGen

A PECO Energy/British Energy Company

AmerGen Energy Company, LLC

Three Mile Island Unit 1

Route 441 South, P.O. Box 480

Middletown, PA 17057

Phone: 717-944-7621

February 16, 2000

5928-00-20028

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


SUBJECT: THREE MILE ISLAND, UNIT 1 (TMI UNIT 1)  
OPERATING LICENSE NO. DPR-50  
DOCKET NO. 50-289  
JOINT RECOMMENDATION THAT NRC STAFF ACKNOWLEDGE RECEIPT OF  
SETTLEMENT AGREEMENT

Dear Sir/Madam:

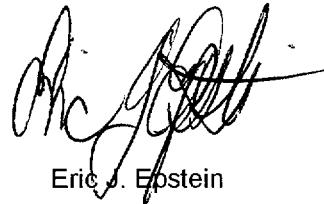
A Settlement Agreement (the "Agreement") has been made between Eric J. Epstein ("Mr. Epstein") and AmerGen Energy Company, LLC ("AmerGen"). Although AmerGen and Mr. Epstein agree that the NRC Staff will have no obligations or duties of any kind whatsoever arising under the provisions of this Agreement, the parties have agreed to jointly recommend to the NRC Staff that the NRC Staff acknowledge receipt of this Agreement upon the approval of the license transfer of TMI Unit 1. A copy of the Agreement is enclosed.

Please contact Adam Miller of TMI-1 Regulatory Engineering at (717) 948-8128 if you have any questions regarding this receipt acknowledgement.

Sincerely,



John B. Cotton  
Vice President, TMI Unit 1



Eric J. Epstein

AWM

Enclosure

cc: USNRC TMI Senior Resident Inspector  
USNRC TMI-1 Project Manager  
NRC Regional Administrator, Region I  
Sub File 00041

A001

January 9, 1999

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is made between Eric J. Epstein ("Mr. Epstein"), and AmerGen Energy Company, LLC ("AmerGen"), and is based on the following recitals, all of which are hereby agreed to be true:

### RECITALS

A. Metropolitan Edison Company, Jersey Central Power & Light Company and Pennsylvania Electric Company, d/b/a GPU Energy, and GPU Nuclear, Inc. (collectively "GPU") are the current holders of Facility Operating License No. DPR-50 issued by the United States Nuclear Regulatory Commission ("NRC") for the Three Mile Island Nuclear Station Unit 1 ("TMI-1") located in Dauphin County, Pennsylvania.

B. GPU has entered into an agreement with AmerGen to sell TMI-1 to AmerGen, and AmerGen and GPU have filed an application with the NRC to transfer the TMI-1 license to AmerGen and make certain conforming administrative amendments to the license in connection with this transfer.

C. Mr. Epstein has an interest in the continued safe operation of TMI-1 and is prepared to file a petition for leave to intervene in the NRC license transfer proceeding.

D. AmerGen wishes to resolve Mr. Epstein's concerns about the proposed license transfer, and settle all possible claims and disputes of any nature between Mr. Epstein, on the one hand, and AmerGen and GPU, on the other hand, relating in any way to the operation of TMI-1 and the proposed license transfer.

E. This Agreement is hereby established in order to, among other things, provide for the payment by AmerGen of costs associated with certain Authorized Activities, as defined herein, related to TMI-1 which will be undertaken by or on behalf of Mr. Epstein in accordance with any statutory or regulatory requirements which are or may hereafter become applicable to this Agreement.



NOW, THEREFORE, recognizing that it is in the public interest to provide for the timely dissemination and availability of information regarding the operation of TMI-1 and the ability of the community living or working in the vicinity of TMI-1 to monitor their environment, and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby represent, warrant and agree as follows:

1. Term of Agreement. Except as otherwise provided in this Agreement, the term of this Agreement, and the parties' rights and obligations under this Agreement, shall be for a period of five (5) years, commencing on the date the NRC license for TMI-1 is transferred to AmerGen, and ending on the fifth anniversary thereof, unless otherwise extended by mutual agreement of the parties hereto.
  
2. Status of Petition for Leave to Intervene. Upon the execution of this Agreement, Mr. Epstein represents and warrants that he will not file a petition for leave to intervene in the pending NRC license transfer proceeding for TMI-1, nor file a complaint or petition for leave to intervene in any other proceeding before any agency or court related to the proposed sale of TMI-1 to AmerGen, either on his own behalf or on behalf of any group with which he is affiliated.
  
3. Absence of Contested Proceeding. This Agreement and all of AmerGen's performance obligations under this Agreement are absolutely conditioned upon the absence of any contested proceeding, before the NRC or before any reviewing court, challenging any aspect of the proposed license transfer to AmerGen. Notwithstanding this Agreement, in the event that a hearing is otherwise ordered by the NRC or a complaint or petition for review initiating a lawsuit is filed in any court which seeks to challenge any aspect of the proposed license transfer, this Agreement will become voidable at the option of AmerGen.
  
4. Recognition of EFMR Monitoring Group
  - (1) AmerGen recognizes that Mr. Epstein and the EFMR Monitoring Group at Three Mile Island, hereinafter referred to as the "Group," have a special interest in the continued safe

operation of TMI-1. For the purposes of maintaining continuity and enhancing community awareness of TMI-1, during the term of this Agreement AmerGen will continue such recognition of the Group.

(2) The Group reports to a Board consisting of three (3) persons, and Mr. Epstein or his designee will be the Coordinator of the Group and the Board.

(3) All Group members must live or work in the geographic vicinity of TMI-1 (i.e., within a twenty-five (25) mile radius of TMI-1). Board members will be proposed by Mr. Epstein, AmerGen or other members of the community living or working in the geographic vicinity of TMI-1. All Board members must be approved by AmerGen and Mr. Epstein, but approval of proposed Board members will not be unreasonably withheld by either party.

(4) The Group will not be recognized or discussed in the TMI-1 Technical Specifications or FSAR or in any other NRC-authorized or NRC-licensed program.

(5) At the end of the initial five year term of this Agreement, the Board may recommend that AmerGen continue its recognition of the Group. Based on any such recommendation, AmerGen may choose, in its absolute, unreviewable discretion, to continue recognition of the Group beyond the initial five year term of this Agreement.

#### 5. Benefits to Which the Group is Entitled

(1) General Status. The Group is not generally entitled to any special benefits or privileges not available to the general public. The only benefits and privileges available to the Group are those specified in this Agreement.

(2) Reports, Etc. The Group will be entitled to receive from AmerGen copies of all AmerGen reports and correspondence relating to TMI-1 that are filed with the NRC and that would otherwise be available upon request to members of the public, as follows:

(a) AmerGen will forward copies, or otherwise arrange for delivery of hard or electronic copies to the Group, or access by the Group to hard or electronic copies, of all NRC Inspection Reports, Licensee Event Reports, Notices of Violation, Enforcement Actions, Non-Cited Violations, the Annual Radiation Environmental Operating Report and SALP Reports (or any NRC assessment that becomes the successor to SALP) within ten days of their issuance by AmerGen, or receipt by AmerGen, as applicable. AmerGen will also forward copies of the PECO Energy and British Energy Annual Reports on a timely basis.

(b) With respect to documents filed with the NRC not identified in Paragraph 5.(2)(a) immediately above, AmerGen will provide the Group with a list of such reports and correspondence, for each quarter, from the NRC's Bibliographical Retrieval System recording the documents placed on the TMI-1 docket. From this list, the Group shall designate the reports and correspondence which it wishes to receive copies of within ten days of receipt of such list. Copies of the designated reports and correspondence will be mailed to the Group within ten days of AmerGen's receipt of the request for copies. The costs of any quarterly request exceeding 500 pages will be paid for by EFMR at the rate charged by the NRC's Public Document Room. The Group will also be placed on a mailing list for receipt of copies of all AmerGen press releases related to TMI-1 and other information provided to the media relating to TMI-1 in a timely manner.

(3) Annual Briefing. AmerGen will provide the Group with an annual briefing related to TMI-1 operations at a mutually agreeable time and place. Within thirty days prior to the scheduled date of such briefing, the Group will provide AmerGen with a list of the specific topics which it wants AmerGen to cover at the briefing. AmerGen will provide a general overview of TMI-1 operations during the past year at the briefing and make a good faith effort to cover all of the designated topics, respond to specific questions at the briefing, and provide appropriate follow-up information to the Group.

(4) Certain NRC Meetings. Subject to applicable NRC restrictions and requirements, AmerGen will provide the Group with at least seventy-two hours advance notice of, and an opportunity to attend, any public meeting with the NRC with respect to TMI-1 regarding the following subject areas: (a) steam generator tubes or water chemistry; (b) radioactive waste issues, including but not limited to, low level waste, high level waste, and spent fuel issues; (c) security issues; and (d) radiation monitoring.

(5) Other Information in the Event of NRC Shutdown Order. In the event that the NRC issues an Order requiring the shutdown of TMI-1, other than a generic Order affecting all plants or all plants of a specific class or type, AmerGen agrees to provide the Group with access to the following information, subject to the terms and conditions set forth below:

(a) Within a reasonable time after receipt of a written request from the Group, AmerGen shall make available for review by Group representatives copies of any INPO Final

Site Evaluation Reports relating to TMI-1 or INPO Final Corporate Support Evaluation Reports relating to TMI-1 which were given to AmerGen during the prior twelve (12) month period. The Group may review such reports once during the calendar year. AmerGen will excise from INPO Final Corporate Support Evaluation Reports any references to plants other than TMI-1.

(b) Any review of INPO reports conducted by Group representatives pursuant to this Agreement shall be subject to the following conditions:

(i) Any review of INPO reports shall be made at AmerGen's offices in the presence of AmerGen representatives. The Group's representative(s) will not request copies of any or all of a report, but they may take notes while reviewing a report.

(ii) Any notes taken by the Group's representatives during a review of an INPO report may be viewed solely by Group personnel, and shall at all times remain in the physical custody, protection and control of the Group.

(iii) Neither the Group, nor the Group representative(s) who reviewed any INPO report, may disclose to any persons (other than members of the Group), or otherwise publicize any information obtained from any review of an INPO report. The Group, however, may make comments to the NRC which include factual information obtained from the review of an INPO report, may disseminate copies of any official written comments made to the NRC, and may publicly provide information necessary to explain those official written comments. The Group shall not, however, make statements paraphrasing conclusions or observations in any INPO report, nor otherwise reveal confidential information contained in any INPO report.

(iv) Notwithstanding any provisions in Paragraph 5.(5)(b)(iii) immediately above, neither the Group nor its representative(s) may disclose to any persons, other than the members of the Group or the NRC, the names of any persons contained in any INPO report or any information from which identification of such persons could reasonably be made. In the event any comments made to the NRC pursuant to Paragraph 5.(5)(b)(iii) immediately above include the names of any persons contained in any INPO report, or any information from which identification of such persons could reasonably be made, the Group shall (x) request in advance that the NRC keep such names or information confidential pursuant to 10 CFR §§ 2.790, 9.17, and (y) not release any copies of its official written comments without excising those names or such information from the comments.

(v) Before any representative of the Group may review any INPO report pursuant to this Agreement or view any notes taken in connection with such a review by any Group representative(s), such person shall first advise AmerGen in writing that he or she has read and understands Paragraph 5.(5) of this Agreement and all subparts thereof and agrees to be bound thereby.

(6) Certain Equipment and Services. The Group will be entitled to the benefits discussed in Section 8 of this Agreement regarding certain equipment and services to be provided by AmerGen. Costs allocated to AmerGen under Section 8 will not be charged to the Group's budget.

(7) Budget.

(a) AmerGen will provide the Group with an annual budget to be used to defray the reasonable administrative expenses of the Group directly related to its expressed intent to monitor TMI-1 activities. The annual budget will consist of ten thousand dollars per year (\$10,000.00), indexed to inflation as described in Paragraph 5.(7)(d). Reasonable administrative expenses would include, for example, reasonable expenses for payments for statistician and/or newsletter editorial services, the purchase of computers, computer upgrades, printers, software, computer supplies, photocopying machine, facsimile machine, a dedicated telephone line and answering machine, file cabinets, batteries, and other office equipment and supplies (e.g., pencils, pens, paper clips, envelopes, letterhead postage), service contracts for maintenance of such equipment, and reimbursement for reasonable expenses incurred in traveling related to the Group's monitoring activities. Any use of the budget for reimbursement for fuel expenses must be supported by a written log including, at a minimum, the date of trip, the points of origination and destination, and odometer readings before and after the trip. This listing of examples of expenses that are or are not covered by the Group's budget is not intended to be exhaustive. However, no part of the budget shall be used for the payment of salaries, benefits, or any other form of direct or indirect compensation for any member or agent of the Group or for the payment of legal fees or expenses, consultant fees or expenses, or expert fees or expenses, except that the Group may use part of the supplemental payment provided on February 1, 1999 pursuant to Paragraph 5.(7)(b) for the purpose of compensating Mr. Epstein for his time and reasonable expenses in negotiating this Agreement. AmerGen reserves the right to determine whether

specified expenses not listed above are reasonable administrative expenses. The Group will resolve any reasonable doubts regarding the allowance of any expense by seeking AmerGen's approval of the expense in advance. The Group will use all funds paid to the Group under this Section and all earnings accumulated or to be accumulated thereon (the "Funds") for the purposes described in this paragraph (the "Authorized Activities").

(b) On February 1, 1999, AmerGen will pay, in the form of a check made out to the Group in the amount of five thousand dollars (\$5,000.00), as a supplemental payment for purposes funding the Group's continuation of activities pursuant to the Settlement Agreement dated September 14, 1992 between Mr. Epstein and GPU, subject to the terms of this Agreement.

(c) Within thirty (30) days of the commencement of the initial term of this Agreement, AmerGen will pay, in the form of a check made out to the Group, the amount of ten thousand dollars (\$10,000.00). In each succeeding year on the anniversary date thereof, AmerGen will pay, in the form of a check made out to the Group, the amount of ten thousand dollars (\$10,000.00), increased for inflation as provided Paragraph 5.(7)(d) below, subject to receipt of a certificate, satisfactory in form and substance to AmerGen as described in Section 5.(7)(e) below, and subject to any credit recognized pursuant to Section 5.(7)(g) below.

(d) Following the first payment made after the commencement of the initial term of this Agreement, the annual budget in each year shall be increased from the budget in the prior year, to adjust for inflation, at the rate of the greater of (x) 5% per annum, or (y) the annual rate of inflation as represented by the Consumer Price Index published by the U.S. Bureau of Labor Statistics as of December 31 in the previous calendar year.

(e) The Group will provide to AmerGen, not later than thirty (30) days prior to the completion of each fiscal year, a certificate, signed by a duly authorized representative of the Group, which shall include the following:

(i) A statement that all Funds provided by AmerGen were used for reimbursement of costs of Authorized Activities as described in the Agreement;

(ii) An identification (in sufficient detail to permit audit thereof in accordance with this Agreement) of the work services, materials and equipment and related costs performed, rendered or acquired in connection with the Authorized Activities which gave rise to the costs for which the Funds were used; and

(iii) A cumulative year-by-year summary of the Funds, identifying original funds provided by AmerGen and interest or other earnings.

(f) The Group shall maintain reasonable accounting and other records of the Funds and the expenditures made by the Group for the Authorized Activities which shall be made available for examination by AmerGen or its duly authorized representative upon request.

(g) The Group's first fiscal year will commence on the date the funds are received from AmerGen and will conclude on the last day of the same month plus one year. Subsequent fiscal years will be on a succeeding twelve (12) month basis. Expenses incurred but not yet paid for can be reported in the year incurred or actually paid, provided the reporting of the expense is consistently applied across fiscal years. With the exception of reimbursement for expenses reported in the year incurred, any funds not spent in one fiscal year will be counted as a credit against the next year's payment of the Group's budget.

(h) At the end of the last fiscal year for which AmerGen has agreed to recognize the Group, the Group will provide to AmerGen the certificate described in Section 5.(7)(e) above. The Group will reimburse AmerGen for any funds expended during the last fiscal year which are found not to relate to the Authorized Activities. All funds not spent by the Group will be returned to AmerGen within forty-five (45) days following the end of such last fiscal year.

(i) In the event this Agreement is not extended by a term of at least one year after the end of its initial five year term, AmerGen shall pay, in the form of a check made out to the Group, the amount of ten thousand dollars (\$10,000.00) for purposes of winding up the affairs of the Group. This amount is not subject to adjustment for inflation as provided in Paragraph 5.(7)(d) relating to the Group's annual budget.

6. Non-Proliferation and Peaceful Uses of Nuclear Energy. AmerGen supports cooperation between the United States and the United Kingdom involving the peaceful uses of nuclear energy. AmerGen and the Group are opposed to and will not participate in any arrangement involving the full or partial ownership of U.S. nuclear generating facilities by any foreign country, that is affiliated with state sponsored terrorism, that is subject to American technological or military boycotts, restrictions or sanctions, or that has refused to sign the Treaty on the

Non-Proliferation of Nuclear Weapons, or a foreign entity from any such country. AmerGen will address its compliance with its commitments under this Paragraph 5 at each Annual Briefing provided pursuant to Paragraph 5.(3).

7. Community Responsibility and Corporate Culture.

(1) AmerGen agrees that it will abide by applicable provisions of the Interim Code of Conduct approved by the Pennsylvania Public Utility Commission ("PaPUC") and imposed on Electricity Generation Suppliers ("EGS's") affiliated with PECO Energy and the applicable provisions of the Code of Conduct for EGS's which will be adopted in the pending Competitive Safeguards Rulemaking Proceeding before the PaPUC. AmerGen will also foster a culture of openness and enhanced environmental awareness, as exemplified by its Annual Briefing to the Group, its public meetings with other groups and interested members of the community, and its Annual Environmental Report.

(2) AmerGen is committed to corporate involvement and investment in the local community and will maintain levels of participation in the community commensurate with the existing practices of GPU Nuclear in connection with the safe operation of TMI-1.

(3) AmerGen will continue to participate in industry groups such as INPO and the B&W Owners' Group, to the extent such participation is consistent with good utility practices, as defined in the Asset Purchase Agreement.

(4) AmerGen also recognizes that the safe and reliable operation of TMI-1 requires the maintenance of a highly skilled and technically qualified workforce, and it is therefore committed to maintain a highly skilled and technically qualified workforce of sufficient number to be consistent with good utility practices as defined in the Asset Purchase Agreement, even if such numbers are in excess of the minimum number of personnel necessary to meet NRC requirements.

8. Decommissioning. Subject to the terms and definitions set forth in the TMI-1 Asset Purchase Agreement, dated as of October 15, 1998, upon the transfer of the NRC license for TMI-1, AmerGen will assume all liabilities and obligations of GPU related to the Decommissioning of TMI-1. As such, AmerGen acknowledges that in the event the



decommissioning funds provided pursuant to the Asset Purchase Agreement are insufficient to complete the decommissioning of TMI-1, AmerGen will be responsible for any such additional costs, and AmerGen will not seek recovery of such costs from ratepayers under the rate cap exception of Section 2804(4)(iii)(F) of the Public Utility Code, 66 Pa.C.S. § 804(4)(iii)(F).

9. Equipment.

(1) AmerGen will supply the Group with a new laptop personal computer, a docking station for such computer, including external monitor and keyboard, and a new printer for use in conducting the business of the Group. AmerGen will consult with Mr. Epstein and work in good faith to provide equipment agreeable to him and suitable for the Group's needs.

(2) AmerGen will maintain and/or supply the Group with the ability to access and print data from a real-time gamma radiation monitoring system for the TMI-1 site, such as the Reuter-Stokes system currently being operated by GPU or a technically equivalent substitute system. AmerGen will continue to maintain this system to the extent required by NRC and to the extent required by its agreements with the counties within the ten mile emergency planning zone for TMI-1 (Cumberland, Dauphin, Lancaster, Lebanon, and York). AmerGen's commitment to supply such data will continue for the period of recognition of the Group by AmerGen. AmerGen will also supply the Group with an Internet connection and applicable software to enable the Group to access National Weather Service meteorological data. The Group will provide for the maintenance of the computer and printer, and the costs associated with the Internet connection.

10. Storage of Spent Fuel/Radioactive Waste. AmerGen agrees that, during the term of this Agreement, AmerGen will not store spent fuel or radioactive waste from any nuclear reactor other than TMI-1 and TMI-2 at the TMI site.

11. Acknowledgment By NRC Staff. Although AmerGen and Mr. Epstein agree that the NRC Staff will have no obligations or duties of any kind whatsoever arising under the provisions of this Agreement, the parties have agreed to jointly recommend to the NRC Staff that the NRC Staff acknowledge receipt of this Agreement upon the approval of the proposed license transfer

by the NRC. Mr. Epstein further agrees that the NRC will have no obligation to implement, enforce, or supervise any of the terms, conditions, or duties created by this Agreement as a result of such acknowledgment.

12. Joint Press Release. AmerGen and Mr. Epstein agree that they will make no public announcements, statements, or other disclosure regarding any of the details of this Agreement until they release a joint press statement announcing this Agreement, the substance and timing of which will be agreed upon by the parties. Prior to the license transfer, the parties shall consult before issuing any public announcement, statement or other disclosure with respect to this Agreement.

13. Costs and Attorneys' Fees in Case of Default. In the event that either party initiates litigation seeking enforcement of or compliance with any term of this Agreement, the prevailing party in any such litigation shall be entitled to recover the reasonable attorneys' fees and costs from the other party. This Section applies only to Mr. Epstein and AmerGen, and confers no rights or obligations on the NRC.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties and no other agreement with regard to the matters herein shall be binding on the parties except by written amendment to this Agreement. Except for the terms and conditions enumerated in this Agreement, the parties hereby acknowledge and agree that none of the parties has made any other promises, warranties or representations to any other party hereto regarding any aspect of the settlement of the matters referred to in this Agreement, and that any such promises, warranties, or representations that may be alleged to have been made are hereby merged herein.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

16. No Presumption Against the Drafters. This Agreement shall be deemed to have been drafted jointly by AmerGen and Mr. Epstein and shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

17. No Admissions. Neither the drafting or execution of this Agreement nor anything contained herein is intended to be, or shall be deemed to be, an admission of fact by any party with respect to any matter relating to the proposed license transfer.

18. Further Assurances. Mr. Epstein and AmerGen will execute, after the execution of this Agreement, all documents reasonably necessary to effectuate the intent of this Agreement.

19. Successors, Assigns, Etc. This Agreement is binding upon and for the benefit of Mr. Epstein and AmerGen and their respective heirs, executors, administrators, successors, and assigns, wherever the context requires or admits.

20. Sole Benefit. Subject to the provisions of Section 18 of this Agreement, it is the intention of the parties that this Agreement and all of its conditions and provisions are for the sole benefit of Mr. Epstein and AmerGen, and for the benefits of no other person. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than Mr. Epstein or AmerGen any legal or equitable right, remedy, or claim under, or in respect to, this Agreement or any of its provisions.

21. Reservation of Rights. Notwithstanding any provision in this Agreement, nothing herein shall abridge the right or ability of any party to this Agreement, or any employee, member, consultant or contractor of any party, or any group or member of the public to appear before the NRC, and nothing herein shall abridge the right or ability of such party, person or group to communicate or to deal with the NRC or with the Staff or any other part of the NRC. The NRC Staff, in acknowledging this Agreement, does so solely to acknowledge the existence of this Agreement and the settlement between AmerGen and Mr. Epstein. The NRC Staff neither agrees

or disagrees with its other terms or provisions as they are agreements between AmerGen and Mr. Epstein. Further, nothing in this Agreement shall be interpreted to in any way limit any right, duty, discretion, authority or regulatory responsibility of the NRC, its staff, contractors, or consultants.

22. Binding Effect, Severability. This Agreement shall be binding upon Mr. Epstein and AmerGen in accordance with its terms even if the NRC Staff does not formally acknowledge this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions of this Agreement shall nevertheless remain in full force and effect and shall be binding upon the parties.

23. Authorizations. Each person signing this Agreement represents and warrants that he or she is duly authorized and empowered to act on behalf of and sign for the party for whom he or she has signed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of this 9th day of January, 1999.

Date: 1/1/99

Eric Joseph Epstein

By: *Eric Joseph Epstein*

AmerGen Energy Company, LLC

Date: Jan. 9, 1999

By: *Kevin P. Gallen*

*Counsel for AmerGen*

RECEIPT OF THIS AGREEMENT ACKNOWLEDGED by the Staff of the United States Nuclear Regulatory Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 1999.

United States Nuclear Regulatory  
Commission

Date: \_\_\_\_\_

By: \_\_\_\_\_