

May 18, 2009

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Rulemaking and Adjudications Staff

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
16th Floor  
One White Flint North  
11555 Rockville Pike,  
Rockville, Maryland 20852  
Attn: Rulemaking and Adjudications Staff

**Eric Joseph Epstein's, Pro se , Petition for Leave to Intervene,  
Request for Hearing, and Contentions with  
Supporting Factual Data  
Re: PPL Bell Bend LLC:  
Combined License Application for the Bell Bend  
Nuclear Power Plant Docket No. 52-039; NRC-2009-0112  
Adams Accession No. ML082140630**

Dear Sir or Madam:

Please find enclosed for filing in the above captioned matter Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Contentions with Supporting Factual Data.

Thank you for your attention to this matter.

Respectfully submitted,

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

cc: See attached Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that on this eighteenth (18) day of May, 2009 a copy of Eric Joseph Epstein's, Pro se, Petition for Leave to Intervene, Request for Hearing, and Contentions with Supporting Factual Data Re: PPL Bell Bend LLC: Combined License Application for the Bell Bend Nuclear Power Plant Docket No. 52-039; NRC-2009-0112, Adams Accession No. MLO82140630 was sent via electronic docket utilizing the digital ID certificate issued by the NRC pursuant to the Secretary of the Nuclear Regulatory Commission, Annette L. Vietti-Cook's, "Nuclear Regulatory Commission, PPL Bell Bend, LLC Combined Operating License Application for the Bell Bend Nuclear Power Plant , Docket No. 52-039, Notice of Hearing, Opportunity To Petition for Leave to Intervene, and Associated Order," (NRC-2009-0112; Adams Accession No. MLO82140630, March 12, 2009, pp. 3-4). A copy of Eric Joseph Epstein's, Pro se, Petition for Leave to Intervene, Request for Hearing, and Contentions with Supporting Factual was also sent by electronic mail and by overnight delivery with tracking numbers to:

Office of the Secretary  
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11555 Rockville Pike,  
Rockville, Maryland 20852  
Attn: Rulemaking and Adjudications Staff

Office of the Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Rulemaking and Adjudications Staff

Office of the General Counsel c/o  
Robert Weisman, Esquire  
US NRC  
Washington, DC 20555-0001

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Winston & Strawn  
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In the matter of  
**Re: PPL Bell Bend LLC:**  
**Combined License Application for the Bell Bend**  
**Nuclear Power Plant Docket No. 52-039;**  
**NRC-2009-0112**  
**Adams Accession No. MLO82140630**

Eric Joseph Epstein's Petition  
for Leave to Intervene, Request for Hearing,  
and Presentation of Contentions with  
Supporting Factual Data

Date: May 18, 2009

## **I. Introduction.**

Eric Joseph Epstein (“Mr. Epstein” or “Epstein”), pursuant to 10 C.F.R. § 2.309 (d) and (e), Petitions for Leave to Intervene, Request for Hearing, and Contentions, Re: PPL Bell Bend LLC, Combined License Application for the Bell Bend Nuclear Power Plant Docket No. 52-039. (NRC-2009-0112 , Adams Accession No. MLO82140630).

Pursuant to the Secretary of the Nuclear Regulatory Commission, Annette L. Vietti-Cook’s, “Nuclear Regulatory Commission, PPL Bell Bend, LLC Combined Operating License Application for the Bell Bend Nuclear Power Plant , Docket No. 52-039, Notice of Hearing, Opportunity To Petition for Leave to Intervene, and Associated Order,” (NRC-2009-0112; Adams Accession No. MLO82140630), Mr. Epstein requested a digital ID certificate and the creation of an electronic docket for this Proceeding on May 4, 2009. Mr. Epstein’s request for a digital ID was approved on May 7, 2009.

Mr. Epstein also requests a hearing consistent with 10 C.F.R. § 2.309(a). Pursuant to 10 C.F.R. § 2.309(o), Epstein should be granted leave to intervene because he has standing; and, hereby submits four (4) admissible contentions.

## **II. History of Proceeding**

PPL Bell Bend, (“PPL” or “the Applicant”) LLC submitted a Combined License Application for the Bell Bend Nuclear Power Plant (“BBNPP” or “Bell Bend” ) on October 13, 2008.

October 29, 2008, the Nuclear Regulatory Commission (“NRC” or “the Commission”) has made available to the public the combined license application for a new reactor at the Bell Bend site near Berwick, Pennsylvania.

On December 22, 2008 the Nuclear Regulatory Commission accepted PPL Bell Bend LLC, (1) Combined License Application (“COL” or "COLA") for an Evolutionary Power Reactor (“EPR”) at the Bell Bend Nuclear Power Plant Docket No. 52-039.

PPL Bell Bend is seeking approval to build and operate an EPR at the site, approximately seven miles northeast of Berwick. The EPR is an Areva-designed pressurized water reactor, with a nominal output of approximately 1,600 megawatts of electricity.

March 18, 2009, the NRC announced the opportunity for public participation in a hearing on a Combined License application for a new reactor at the Bell Bend site near Berwick. The site is adjacent to the existing two-reactor Susquehanna Steam Electric Station.

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<sup>1</sup> **PPL Bell Bend, LLC’s** parent is **PPL Energy Supply, LLC**, which will provide the parent financial guarantee method adopted by PPL Bell Bend, LLC, consistent with the requirements of 10 CFR 50.75(e) (iii)(B) (CFR,2007). PPL Energy Supply will also provide an ultimate guarantee that decommissioning costs will be paid in the event the PPL Bell Bend is unable to meet its decommissioning obligations at the time of decommissioning. (BBNPP, 1-12, Rev. 1)

**PPL Energy Supply LLC**, is a subsidiary of PPL Energy Funding and the parent of PPL Generation, PPL Energy Plus , PPL Global and other subsidiaries.

**PPL Energy Funding Corporation** is a subsidiary of PPL and the parent company of PPL Energy Supply.

**PPL** is the parent holding company of PPL Electric, PPL Energy Funding and other subsidiaries.

PPL Electric is a **regulated utility** subsidiary of PPL that transmits and distributes electricity in its service territory and provides electric supply to retail customers in this territory as a Provider of Last Resort (“PLR”), (PPL 2008 Annual Report, p. i.)

PPL Bell Bend submitted the COL application and associated information on October 10, 2008, seeking approval to build and operate an Evolutionary Power Reactor at the site, approximately six miles northeast of Berwick. The NRC is currently reviewing the EPR for possible certification.

The NRC staff has determined that the application contains sufficient information for the agency to formally “doCKET,” or file, the application and begin its technical review. Docketing the application does not preclude additional requests for information as the review proceeds; nor does it indicate whether the Commission will issue the license. The docket number established for this application is 52-039.

The NRC issued in the Federal Register a notice of opportunity to intervene in the proceeding on the application. The deadline for requesting a hearing was established as May 18, 2009, 11: 59 p.m. "To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date" Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets criteria set out in the NRC's regulations.

### **III. Timeliness**

(b) Timing. Unless otherwise provided by the Commission, the request and/or petition and the list of contentions must be filed as follows:

(3) In proceedings for which a Federal Register notice of agency action is published (other than a proceeding covered by paragraphs (b)(1) or (b)(2) of this section)...

Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing and Presentation of Contentions and Supporting Factual Data was submitted to all identified entities in a timely manner as identified by the NRC's official posting: "The NRC has issued in the Federal Register a notice of opportunity to intervene in the proceeding on the application, and the deadline for requesting a hearing is May 18. Petitions may be filed by anyone whose interest may be affected by the proposed license, who wishes to participate as a party in the proceeding, and who meets criteria set out in the NRC's regulations." (NRC Announces Opportunity to Participate in Hearing On New reactor Application for Bell Bend Site," No. 09-051, March 18, 2009.)

### **IV. Standing**

Standing Under the Atomic Energy Act ("AEA") (42 U.S.C. Sections 2011 et seq.)

A petitioner's right to participate in a licensing proceeding derives from Section 189a of the AEA. That section provides for a hearing "upon the request of any person whose interest may be affected by the proceeding. 42 U.S.C. Section 2239(a)(1)(A). Under 10 C.F.R. Section 2.309(d), the NRC's regulation implementing Section 189a, a licensing board must determine whether the petitioner has an interest potentially affected by the proceeding by considering: (1) the nature of the petitioner's right under AEA or the National Environmental Policy Act of 1969 ("NEPA") (42 U.S.C. Sections 4321 et seq.) to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and, (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest. 10 C.F.R. Section 2.309(d)(1).

When assessing whether a petitioner has set forth a sufficient interest to intervene, licensing boards generally use judicial concepts of standing. See, Entergy Nuclear Vermont Yankee, L.L.C., & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LPB-04-28, 60 NRC 548, 552 (2004). Such concepts require the petitioner to show that: (1) he or she has personally suffered or will personally suffer a distinct and palpable harm that constitutes injury in fact; (2) the injury can fairly be traced to the challenged action; and, (3) the injury is likely to be redressed by a favorable decision. See, Allen v. Wright, 468 U.S. 737, 751 (1984). In addition, the petitioner must meet the "prudential" standing requirement by showing that the asserted interest arguably falls within the zone of interests protected by the governing law. See, Federal Elections Commission v. Akins, 524 U.S. 11, 20 (1998).

"For construction permit and operating license proceedings, the Commission generally has recognized a presumption in favor of standing for those persons who have frequent contacts with the area near a nuclear power plant." Cleveland Electric Illuminating Company, (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 (1993) (citing Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). In particular, "Commission case law has established a 'proximity presumption,' whereby an individual may satisfy ..standing requirements by demonstrating that his or her residence or activities are within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant." Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 65 NRC 41, 52 (2007).

In the Present case, Mr. Epstein has established individual standing.

## **A. Eric Joseph Epstein Meets Proximity Standing Requirements.**

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

The Commission's "rule of thumb" in reactor licensing proceedings is that "persons who reside or frequent the area within a 50-mile radius of the facility" are presumed to have standing. *Sequoyah Fuels Corp.*, 40 NRC 64. 75 n.22 (1994); See also, *Duke Energy Corp.*, 48 NRC 381, 385 n.1 (1998).

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

In the CFC Logistics proceeding, the Atomic Safety and Licensing Board (ASL&B) "hasten[ed] to add...that the 'obvious potential' aspect of 'proximity-plus' standing is not a concept that can be applied with engineering or scientific precision..." 60 NRC 475, 485 (2004), p. 487.

"[A] minor exposure to radiation, even one within regulatory limits, is sufficient to state an injury in fact" for standing purposes. *Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility)*, LBP-01-35, 54 NRC 403, 417 (2001), *rev'd on other grounds*, CLI-02-24, 56 N.R.C. 335

(2002) (citing Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 247-48 (1996)); see also *id.* at 420 (standing inquiry does not require precision regarding probability of petitioner receiving unwanted dose of radiation). The asserted harm – injury to the health and safety – is clearly encompassed by the health and safety interests protected by the Atomic Energy Act. *Id.* at 417; see also 42 U.S.C. § 2013.

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

Mr. Epstein established standing during the relicensing of the Susquehanna Steam Electric Station. (PPL Susquehanna, LLC, Susquehanna Steam Electric Station Units 1 and 2 , Docket Nos. 50-387-LR & 50-388-LR; ASLBP No. 07-851-01-LR.) The NRC Atomic Safety and Licensing Board Panel’s Memorandum and Order stated:

We do, however find that the petitioner Epstein has made a sufficient showing to establish standing for himself under the “proximity presumption.” Mr. Epstein admits that he resides more than 50 mile from the plant. However, significant contacts with an affected area can be sufficient to establish standing, been when full-time residence within the 50 mile radius is not shown. While not all intermittent contacts are sufficient to establish standing, the regularity of Mr. Epstein’s trips to the area around the plant, for a number of years, weigh in his favor. In addition he resides six miles outside the area in question and therefore can be expected to continue conduct business there in the future. Because of this pattern of regular contacts with the 50-mile radius around the plant, we find that Mr. Epstein has standing on his own behalf. (2)

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<sup>2</sup> US Nuclear Regulatory Commission, Atomic Safety and Licensing Panel, Before Administrative Judges: Ann Marshall Young, Chair; Dr. Kaye. D. Lathrop; and, Dr. William W. Sager, PPL Susquehanna, LLC, Susquehanna Steam Electric Station Units 1 and 2, Docket Nos. 50-387-LR & 50-388-LR; ASLBP No. 07-851-01-LR, In the Matter of PPL Susquehanna, LLC, Susquehanna Steam Electric Station Units 1 and 2, Docket Nos. 50-387-LR & 50-388-LR; ASLBP No. 07-851-01-LR, **Memorandum and Order**, pp. 10-11 (**Ruling on the Standing and Contentions of Petitioner Eric Joseph Epstein**).

Mr. Epstein routinely pierces the 50-mile proximate rule during his day-to-day activities simply by traveling to Lebanon, Schuylkill and northern and Dauphin counties. The proposed Bell Bend plant is actually closer in proximity to Mr. Epstein business and professional interests than the Susquehanna Steam Electric Station (“the SSES”).

Mr. Epstein has represented East Hanover Township as a contracted advocate since 2008. His livelihood is directly related to the well being and safety of East Hanover’s residents, property, and infrastructure. Portions of the township or within the 50-mile radius of Bell Bend and include the township's most substantial real estate located north of Grantville (48 miles from Bell Bend), and include the Penn National racetrack, Hollywood Casino, and Holiday Inn.

In addition, his commute to the township building in Grantville and site visits occur at a minimum of once a week.

Mr. Epstein has been a member of the Board of Directors of the Sustainable Energy Fund of Central Eastern Pennsylvania since its inception in 1999. Epstein is a member of the non-profit's Finance and the Human Relations Committee.

Mr. Epstein is also a director of GreenConnexions, Inc. since 2006, and serves as the for-profit corporations vice president. Both corporations are based in Allentown have a 29-county constituency that mimics PPL’s residential customer base. (3)

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3 PPL Electric Utilities Corporation engages in the transmission and distribution of electricity to retail customers in eastern and central Pennsylvania. It also supplies electricity to retail customers. As of December 31, 2008, the company provided services to approximately 1.4 million customers in a 10,000 square mile territory in 29 counties of eastern and central Pennsylvania. (*Business Week*, May 12, 2009)

His commute to the SEF office in Allentown, and meetings at off site locations, must necessarily pierce the 50-mile proximity zone for substantial periods of time. Mr. Epstein's meeting schedule for this calendar year includes Berwick, Fogelsville, Hazleton, and Kingston. (4)

The SEF's program related investments are substantial and include loans in close proximity to Bell Bend: the Diocese of Scranton (\$207,532); CEI-Wind Park, Bear Creek, Pa (\$1,028,613); Juanita County School District (\$756,258); Shazaam Reality, Kingston (\$122,163); Pine Hurst Acres, Danville (\$110,000); Town of Bloomsburg (\$6,200); Borough of Hamburg (\$8,109); Muhlenburg Township (\$27,972); City of Pottsville (\$38,614); Minersville Borough (\$15,905); Shenandoah Borough (\$16,464); the Borough of Mt. Carmel (\$5,750); and, Children's Wonderland Child Care Center, Sugarloaf (\$4,000). (5)

Mr. Epstein has well-established business, professional interests "within a 50-mile radius of the facility." The issues in the Bell Bend COL application are germane to Mr. Epstein's health, safety and well being, and his intervention is necessary to protect against the potential adverse health and safety consequences, loss of business revenue, and security harms associated with the proposed Bell Bend Nuclear Power Plant.

For the above stated reasons and supporting evidence, Eric Joseph Epstein satisfies the NRC's proximity standing requirements.

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4 Meetings will likely be scheduled as at the he SEF's counsel counsel - Hourigan, Kluger & Quinn, PC - located in Kingston (28 miles from Berwick), .

5 Sustainable Energy Fund, (Docket # M-00031715 FO03), "Annual Report to Pa PUC and Joint Petitioners," For the period July 1, 2007-June 30 2008, Program Related Investments pp. 10-11, Dated: October 22, 2008.

## **V. Eric Joseph Epstein Submits Four (4) Admissible Contentions**

### **A. Explanation of Basis for Contentions and Legal Requirements**

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

This rule ensures that "full adjudicatory hearings are triggered only by those able to proffer ... minimal factual and legal foundation in support of their contentions." See, In the Matter of Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999). Moreover, the Commission has clarified that "an intervener need not ... prove its case at the contention stage. The factual support necessary to show a genuine dispute exists need not be in affidavit or formal evidentiary form, or be of the quality necessary to withstand a summary disposition motion." In the Matter of Georgia Institute of Technology, CLI-95-12, 42 N.R.C. 111, 118 (1995). In short, the Commission has indicated that where petitioners make technically meritorious contentions based upon diligent research and supported by valid information and expert opinion, the requirement for an adequate basis is more than satisfied.

Proposed contentions must satisfy six requirements of 10 C.F.R. § 2.309(f)(1). This rule is intended to ensure that "full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions." Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), 49 N.R.C. 328, 334 (1999)(emphasis added). Sections (1) through (6) below summarize the requirements of Section 2.306(f)(1).

Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised...

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report...

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and,

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

## **Contention #1:**

(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

PPL has stated in Part 1 of the General Information section of its Bell Bend COL Application that PPL Bell Bend, LLC will use a parent company guarantee from PPL Energy Supply, LLC to provide reasonable assurance of decommissioning funding as required by 10 CFR 50.75. Part 1: General Information 1.6.2. The Decommissioning Funding Assurance (6) described in the Application is grossly inadequate to provide “assurance” that PPL can provide “minimum certification amounts” or “assure sufficient funds will be available” to fully decontaminate and decommission Bell Bend. The Applicant must submit prepayment for more than “minimum certification amount,” and the proposed certified amount must be adjusted upward to account for: PPL’s declining financial performance; PPL’s mismanagement of the Susquehanna Steam Electric Station’s current decommissioning fund; Financial Accounting Standards Board (“FASB”) accounting methods; increased low-level radioactive waste costs; and, cost escalator percentages associated with labor, provided by Applicant’s contractor - TLG, Inc. - should supplant the generic estimates provided by the U.S. Department of Labor, Bureau of Labor Statistics.

### **6 1.6.1 Decommissioning Estimate**

"Therefore, PPL Bell Bend, LLC certifies that financial assurance for decommissioning BBNPP will be provided in the amount of \$398.6 million (in 2008 dollars) consistent with the minimum funding amount requirements established by 10 CFR 50.75(c) (CFR, 2007j). This financial assurance will be provided, using a parent guarantee, as described below. (BBNPP, 1-11, Rev. 1) "...The parent company guarantee method adopted by PPL Bell Bend, LLC, consistent with the requirements of 10 CFR 50.75(e) (iii)(B) (CFR,2007), will provide an ultimate guarantee that decommissioning costs will be paid in the event the Applicant is unable to meet its decommissioning obligations at the time of decommissioning. (BBNPP, 1-12, Rev. 1) “PPL Energy Supply, LLC, will provide the parent guarantee.” (BBNPP, 1-12, Rev. 1)"

### **PPL Bell COL Application Part 3: Environmental Report**

#### **5.9 Decommissioning**

##### **5.9.1 NRC Generic Environmental Impact Statement Re: Decommissioning**

##### **5.9.2 Decommissioning Cost Analysis Summary**

##### **5.9.3 References**

#### **Appendix A, Rev. 1, 1-28.**

(ii) Provide a brief explanation of the basis for the contention.

The Applicant's financial information is dated, and does not reflect PPL's declining financial position, decommissioning losses, or the absence of rate relief as a safety net. (7) PPL Energy Supply can **not** underwrite construction and operating through "initial capitalization and equity", supply capital transfers, and concurrently provide "an ultimate guarantee that decommissioning costs will be paid in the event the Applicant is unable to meet its decommissioning obligations at the time of decommissioning." (Application, 1-10 to 1-11)

Neither PPL Bell Bend or PPL Energy Supply; either individually or jointly, can guarantee adequate decommissioning funding will be in place based on recent developments in the following areas:

1) The financial performance of PPL Bend Bend, LLC's guarantor, PPL Energy Supply (8), necessitates a capital transfer well beyond the proposed minimum amount of \$398.6 million;

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7 Beginning on January 1, 2009, PPL's rate caps will be lifted in Pennsylvania and PPL's residential customers will be paying an estimated average increase of at least 32%. The Company's traditionally rate base of 1.4 million customers will decline and further inhibit PPL's earning potential.

8 "The continued downturn in financial markets has generally made obtaining new sources of bank and capital markets funding more difficult and costly. (PPL 2008 Annual Report, Liquidity, p. 30)

"Declines in the market price of debt and equity and securities resulted in the unrealized losses that have reduced asset values of PPL Energy Supply's investments in its nuclear decommissioning trust funds experienced negative investment returns during 2008." (PPL Annual Report, Securities Price Risk, p. 57)

"In January 2009, S&P completed a review of PPL Energy Supply, upon which it revised its outlook to negative from stable and affirmed the BBB issuer rating. As a result of the negative outlook, S&P lowered PPL Energy Supply's commercial paper rating from a-3 to A-2. S&P stated in its press release that the revision in the outlook for PPL Energy Supply is based primarily on lower than expected cash flows for 2008 combined with concerns over further pressure on financial metrics in 2009."

2) PPL's mismanagement of the SSES decommissioning fund resulted in significant impaired losses, and there is no guarantee that PPL will not use the same trustee to manage the decommissioning fund with same asset allocation (percentage of equities and fixed income), and investment policies (9);

8 *Continued:* "At the request of PPL Energy Supply, Fitch in January 2009, and Moody and S&P's in February 2009, each withdrew their commercial paper rating from PPL Energy Supply." (PPL 2008 Annual Report, Credit Ratings, p. 69)

"At December 31, 2008, PPL Energy Supply had credit exposure of \$2.6 billion to energy trading partners, excluding the effects of netting arrangements. As a result of netting arrangements and collateral, PPL Energy Supply's credit exposure was reduced to \$571 million...PPL Energy Supply has credit exposure to PPL Electric under the long term contract for PPL EnergyPlus to supply PPL Electric PLR load. (PPL 2008 Annual Report, Credit Concentration, p. 188)

9 PPL's Annual Retirement Obligations ("ARO") posted large losses in 2008. "At December 31, 2008, PPL Energy Supply had ARO's totaling \$389 million recorded on the balance sheet. Of this amount, \$322 million, or 83%, relates to, PPL Energy Supply's nuclear decommissioning ARO." (PPL 2008 Annual Report, 6) Asset Retirement Obligations, p. 80)

Current nuclear decommissioning AROs (\$332 million) are almost as much as PPL Energy Supply purports to also guarantee as the "parent company guarantee" for PPL Bell Bend - \$398.6 (Bell Bend Application, 1.6.2)

PPL one year decommissioning losses are staggering by any standard. "The fair value of investments that are legally restricted due to the decommissioning of the Susquehanna Nuclear plant was \$446 million and \$555 million in at December 31, 2008 and 2007..." (PPL 2008 Annual Report, Nuclear Decommissioning, p. 191)

PPL lost \$109 million from the fund in one year and now has **\$446 million** out of projected **\$936 million** (2002 dollars) needed to decommission its operating nuclear units.

The Company can not recover any additional decommissioning costs after December 31, 2008. "Beginning in January 1999, in accordance with the PUC Final Order approximately \$130 decommissioning costs are being recovered from PPL Electric customers through the CTC over the 11-year life of the CTC rather than the remaining life of the Susquehanna plant." (PPL 2008 Annual Report, Nuclear Decommissioning, p. 192)

3) Financial Accounting Standards Board accounting rule changes (10) have determined that PPL's impaired nuclear assets will not be able to recover their value;

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9 *Continued:* Based on conservative estimates and the NRC's investment restrictions, even with a 20 year license extension, PPL's current decommissioning fund is underfunded by several hundred million dollars.

In addition, PPL has argued in the past that the Electric Competition Act completely deregulated generation in Pennsylvania. However, the Commission has found that it still can oversee reliability in PA and in 1999 ruled that it retains the authority to approve generation plant retirements as provided for under 66 Pa. C.S. Section 521 (a), despite the subsequent passage of the Electric Competition Act. It then approved the retirement of Holtwood 17 on the facts presented in the proceeding. The Commission's authority over financial issues concerning generation plants is directly linked to Bell Bend's "reliability" and may further require additional financial promissory notes.

10 "In November 2005, the FASB issued FSP FAS 115-1 and FAS 124-1, which was effective for PPL and PPL Energy Supply beginning January 1, 2006. Among other things, FSP FAS 115-1 and FAS 124-1 indicated that existing guidance, particularly SAB Topic 5M, should be used to determine if a declining security's value is other than temporary.

Clarification related to applying the guidance SAB Topic 5M has established the ability to hold an investment until it recovers its value as a required element in determining if an individual security is other than temporarily impaired. Based on this clarification and as a result of NRC requirements that nuclear decommissioning trusts be managed by independent investment managers, with discretion to buy and sell securities in trusts, **PPL Susquehanna has concluded that it is unable to demonstrate the ability to hold an impaired asset until it recovers its value.** (Bold face type added) (PPL Annual Report, Nuclear Decommissioning, p. 192)

4) PPL's record keeping commitments are undermined by their recent litigation to circumvent to accounting reporting information (11);

5) PPL assumptions regarding low level waste isolation are dated (12), based on miscalculations and do not reflect the closure of the Barnwell site; and

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1 1 PPL sought to publicly hide the extent their decommissioning loses in affidavit the Company submitted to the NRC on March 26, 2009. The NRC responded on April 14, 2009: "We have reviewed your application in accordance with 10 CFR 2.390 (a)(4) and 10 CFR 9.17 (a) (4), and have concluded that the financial information your application sought to be withheld from public disclosure is related to the the requirements of 10 CFR 50.75 9f)(1), "Reporting and record keeping for decommissioning planning: It does not meet the requirements of 10 CFR 2.390(a)(4) and as such, cannot be withheld from public disclosure. In particular, the information presented in Attachment 2 is merely a year-b-year mathematical calculation of the factors presented in your nonproprietary Attachment 1...Therefore our request to withhold information sought ot be withheld from public disclosure is denied." (Bhalchandra K. Vaidya, Project Manager, Plant Licensing Branch I-1, Division of Operator Reactor Licensing, NRR, p. 2)

1 2 PPL's last site specific decommissioning study was performed by TLG in 2002 when Barnwell was open to members of the Appalachian Compact.

PPL's 10-K acknowledged, "The Barnwell facility stopped receiving most wastes, including Pennsylvania in June 2008. PPL will send most of its low-level radioactive waste to the Clive Utah facility and the remainder will be stored at the Susquehanna storage facility. In the event the Clive site closes or other emergent disposal options become unavailable or are no longer-cost effective , low level radioactive waste will be stored onsite at Susquehanna...PPL Susquehanna cannot predict the the future availability of independently operated low-level waste disposal facilities or the cst of disposal at such facilities."

PPL Bell Bend's decommissioning assumptions have not been updated to reflect the closure of Barnwell, and the Barnwell site was actually used for "bounding" purposes. ( BBNPP ER, 5.11.3.3)

PPL's insistence on relying waste vendors for of low level radioactive waste ("LLRW") is unrealistic and needs to be revised (Application 1.6.1) and reconciled with Corporate waste disposal conclusions contained in the 10 K under Low Level Radioactive Waste.

6) Decommissioning costs should be aligned to match PPL's decommissioning consultant - TLG's - cost escalators (13) percentages associated with labor and should supplant the generic estimates provided by the U.S. Department of Labor, Bureau of Labor Statistics. (14)

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12 *Continued:* PPL's 2008 Annual Report" undermines the Application's LLRW conclusions and assurances found in the Application, Rev. 3.5 **Radwaste Systems and Source Terms**, 3.8 **Transportation of Radioactive Materials**, 5.9 **Decommissioning**, and 5.11 **Transportation of Radioactive Materials**. The Annual Report states, "The risk of nuclear generation generally include: the potential harmful effects on the environment and human health from the operation of nuclear facilities and the storage, handling and disposal of radioactive materials....uncertainties in respect to the technological and financial aspects of decommissioning nuclear plants at the end of their licensed lives. ( Risk Factors 1A), p. 16)

13 Thomas S. LaGuardia, PPL's nuclear decommissioning consultant testified that cost escalation is a certainty "as has been seen in virtually every nuclear power plant in the U.S. due to waste disposal costs, labor cost increases, regulatory changes, and stake holder mandated additional requirement for radiological clearance and site remediation." (Rebuttal Testimony of Thomas S. LaGuardia, Met-Ed/Penelec Statement No. 9-R, Pa Public Utility Commission, "Merger Savings Remand," Docket Nos. A-110300FOO 95; A-110400FOO40, August 8, 2006, p. 3, Lines: 20-23)

"Early cost estimates and those of the NRC's decommissioning cost estimating contractor Battelle pacific Northwest Laboratories, included a 25% contingency applied to the total cost of the project. More recent models apply contingencies on a line-item basis, yielding a weighted average contingency for estimate. This is the approach used by TLG which yielded a 19.6% contingency estimate." (p. 5, Lines: 9-14)

14 Application, 1.11.

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

This issue is squarely within the scope of this proceeding since Applicants must demonstrate compliance with 10 CFR Part 20; 10 CFR 50.30; 10 CFR 50.33 (CFR, 2007a), 10 CFR 9a) 50.75; 10 CFR 50.75; 10 CFR 50.75 (b) & (b) (1); 10 CFR 50.75 (c) (1) & (c) (2) (CFR, 2007j); 10 CFR 50.75 (d); 10 CFR 50.75 (e) & (e) (1) (iii) & 10 CFR 50.75 (e) (1) (iii) (B) & (e) (1)(v); 10 CFR 50.75 (g); and, 10 CFR 50.75 (f), and 10 CFR 50.75 (k).

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

This issue is material because in order to receive a construction permit and/or license to operate a nuclear reactor, the Applicant must demonstrate that it can provide Decommissioning Funding Assurance referenced in 1.6 (10 CFR 50.33 (CFR, 2007a), provide certification of a decommissioning cost estimate referenced in 1.6.1 (10 CFR 50.75 (c) (1) & (2) (CFR, 2007j); select a Decommissioning Funding Mechanism referenced in 1.6.2 (10 CFR 50.75 9b) & 10 CFR 50.75 (c) (1) & (c) (2) and 10 CFR 50.75 (e) (1) (iii) (B); submit Decommissioning Costs and Funding Status reporting as referenced in 1.6.3 (10 CFR 50.75 (b) (c) (e) (e) (1) (V) (f); and, maintain Recordkeeping Plans related to Decommissioning Funding referenced in 1.6.4 (10 CFR 50.75(g) (k)

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

The contention refers to documents and other authorities which support Mr. Epstein's representations and can be found in the BBNPP Application, Appalachian Low Level Waste Compact, PPL Corporation 2008 Annual Report, PPL 2008 10 K; Financial Accounting Standards Board, Nuclear Regulatory Commission; and, Pennsylvania Public Utility Commission.

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

Mr. Epstein's contention satisfies each element of Section 2.309(f)(1), with references to the Application and statute, and outlines the Applicants' inability to provide financial assurances that PPL can provide "minimum certification amounts" or "assure sufficient funds will be available" to fully decontaminate and decommission Bel Bend.

PPL has stated in Part 1 of the General Information section of its Bell Bend COL Application that PPL Bell Bend, LLC will use a parent company guarantee from PPL Energy Supply, LLC to provide reasonable assurance of decommissioning funding as required by 10 CFR 50.75. Part 1: General Information 1.6.2. In addition, PPL Bell Bend has omitted damaging financial information that undermines the Company's ability to provide financial assurances: "The application fails to contain information on a relevant matter as required by law...and [provides] the supporting reasons for the petitioner's belief." For a contention of omission, the the petitioner's burden is only to show the facts necessary to establish that the application omits information that should have been included.

Contention #2:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

The Application to build and operate Bell Bend violated the National Environmental Policy Act (“NEPA”) and NRC COLA guidelines by failing to demonstrate that the site has the capability to store Class B and C low level radioactive waste (“LLRW”) during the entire operating life of the plant and beyond in the event Barnwell remains closed to PPL, Clive, Utah operated by Energy Solutions “no longer becomes cost effective,” (15) or no other waste disposal options are developed or available.

Bell Bend Environmental Report (“ER”) is deficient in discussing its plans for management of Class B and C wastes. In light of the current lack of a licensed offsite disposal facility, and the uncertainty of whether a new disposal facility will become available during the license term, the ER must either describe how Applicant will store Class B and C wastes onsite and the environmental consequences of extended onsite storage by transferring its Class B and C wastes to another facility for storage of LLRW.

(ii) Provide a brief explanation of the basis for the contention.

The Applicant's Environmental Report is deficient by omission and fails to offer a realistic plan for the disposal of Class B and C low level radioactive waste with the closure of Barnwell to Appalachian Compact dates and the potential “economic” barriers to disposing of said waste at Energy Solution in Clive, Utah.

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15 PPL’s 10-K acknowledged, “The Barnwell facility stopped receiving most wastes, including Pennsylvania in June 2008. PPL will send most of its low-level radioactive waste to the Clive Utah facility and the remainder will be stored at the Susquehanna storage facility. **In the event the Clive site closes or other emergent disposal options become unavailable or are no longer-cost effective , low level radioactive waste will be stored onsite at Susquehanna...PPL Susquehanna cannot predict the the future available of disposal at such facilities.**” (Boldface type added)

The closure of the LLRW facility at Barnwell has significantly limited available waste disposal options. Bell Bend must offer a plan that details how it will safely dispose of LLRW or safely store waste on site for during the operational life of the plant, and for an indefinite period of time following cessation of operations). Those details have been omitted or not sufficiently presented in Bell Bend's Application (Application, ER, Rev. 3.5 **Radwaste Systems and Source Terms**, 3.8 **Transportation of Radioactive Materials**, 5.9 **Decommissioning**, and 5.11 **Transportation of Radioactive Materials**.)

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

This issue is squarely within the scope of this proceeding since applicants must demonstrate compliance with NEPA and NRC COLA guidelines

The Commission has no "waste confidence rule" in play for low-level radioactive waste and stated, "we do not rule out that, in a future COL proceeding, a petitioner could proffer an application-specific contention suitable for litigation on the subject of onsite storage of low level radioactive waste...[t]he questions of the safety of the and environmental impacts of onsite low-level waste storage are, in our view, largely site specific and design-specific, and appropriately decided in an individual licensing proceeding, provided the litigants proffer properly framed and supported contentions." (16)

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16 US NRC ASLBP, In the Matter of Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC (COL) Docket No. 52--16-COL, ASLBP No. 09-874--02-COL-BDO1, Memorandum and Order, March h 24, 2009, p. 65.

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

This issue is material because in order to receive a construction permit and/or license to operate a nuclear reactor the applicant must demonstrate how low-level waste will be safely disposed during the operation of Bell Bend. PPL's plan is vague limited; and could at the most, provide only interim storage:

In the event that no offsite disposal facility is available for Class B and C waste from the BBNPP when it commences operation, additional waste minimization measures would be implemented to reduce or eliminate the generation of Class B and C waste, these measures could include reducing the service run length for resin beds, short loading media volumes in ion exchange vessels, and other techniques discussed in the EPRI Class B/C Waste Reduction Guide (Nov. 2007) and EPRI Operational Strategies to Reduce Class B/C Wastes (April 2007). These measures could extend the capacity of the Radioactive Waste Processing Building to store Class B and C waste to over ten years. This would provide ample time for offsite disposal capability to be developed or additional onsite capacity to be added." (Application, ER, Rev. 1 Solid Waste Storage System, 3.5.4.3, 3-59.)

PPL's "no plan" plan option relies on speculation, the magical "elimination" of waste generation, and an unsubstantiated hope that a disposal site will be developed by an unidentified vendor (8) at an undisclosed site in the future.

Moreover, PPL presumes (without support documentation) that additional storage would occur under applicable NRC guidance, and "would be located in a previously undisturbed area in the vicinity of the power block, and in a location that would not affect wetlands. the impacts of constructing such a facility would be minimal." (Application, ER, Rev. 1 Solid Waste Storage system, 3.5.4.3, 3-60.

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17 PPL's insistence on relying waste vendors for of low level radioactive waste disposal is unrealistic, and needs to be revised (Application 1.6.1) and reconciled with Corporate waste disposal conclusions contained in the 10 K under Low Level Radioactive Waste. (Please refer to footnote 15)

PPL enclosed no supporting evidence to support this low level option. Certainly a Company that has “authorized up to \$90 million on the COLA and other permits” (PPL Annual Report, Development, p. 148) process can prepare and provide a plan with empirical evidence to demonstrate how it will isolate and dispose of radioactive waste.

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

The contention refers to documents and other authorities which support Mr. Epstein's argument that PPL has failed to demonstrate that Bell Bend has the capability to store Class B and C low level waste during the entire operating life of the plant and beyond in the event Barnwell remains closed to PPL, Clive, Utah “no longer becomes cost effective”, or no other waste disposal options are developed or available.

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

Mr. Epstein's contention refers to the failure to provide a plan of action to dispose of the low level radioactive waste. This omission and lack of supporting factual data to support a realistic storage alternative, constitute deficiencies in the applicant's pursuant to NEPA and NRC COLA guidelines, indicating a genuine dispute exists as to a material issue of law or fact.

Contention #3:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

PPL Bell Bend claims that PPL Corporation is the ultimate parent for all PPL's generation assets (fossil, renewable and nuclear), generating operating companies, marketing and trading activities and distribution companies. (Final Safety Analysis Report, Chapter 1, 1.4.1.7) However, PPL identifies UniStar Nuclear Services, LLC as a contractor/participant (1.4.2). UniStar Nuclear (18) is owned 50 percent by Constellation Energy ("Constellation"), and 50 percent by the French company Électricité de France ("EDF"), which is 84.85 percent owned by the government of France. (19)

Section 103 (d) of the Atomic Energy Act 42 U.S.C. § 2133 (d) is explicit:

No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance if a license to such person would be inimical to the common defense and security or to the health and safety of the public.

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18 Électricité de France owns 9.51 percent of Constellation Energy and is the second largest stockholder in the corporation based on information provided in Form SC 13 D, General Statement of Beneficial Ownership, US SEC, September 8, 2008, (Exhibit 11).

19 BALTIMORE, Dec. 19, 2007/PRNewswire-FirstCall/ -- UniStar Nuclear Energy (UNE), a strategic joint venture between Constellation Energy and the EDF Group, today announced an agreement with an affiliate of PPL Corporation to prepare and submit to the U.S. Nuclear Regulatory Commission (NRC) a Combined License Application (COLA) for a potential third reactor near PPL's Susquehanna nuclear power plant near Berwick, Pa.

"We are pleased that PPL has joined UniStar and recognizes the tremendous value added and certainty we bring through our standardized approach to building new nuclear reactors to meet the nation's growing energy needs," said George Vanderheyden, president and chief executive officer of UNE.

(ii) Provide a brief explanation of the basis for the contention.

The Atomic Energy Act prohibits foreign ownership, control or domination of a nuclear power plant (42 U.S.C. Section 2133(d)). The NRC's Final Standard Review Plan on Foreign Ownership, Control, or Domination (August 31, 1999) also prohibits the issuance of a power reactor license to an Applicant if the Commission knows or has reason to believe that the Applicant is an alien or is owned, controlled, or dominated by an alien or by a foreign corporation or foreign government.

PPL has consistently stated that it will proceed with a new reactor “only in a joint venture arrangement,” (Nuclear News, July 2007, p. 17) and “would not proceed to construction absent a joint arrangement with other interested parties.” (PPL 2008 Annual Report, Development, p 148).

In other words, absent a corporate mask provided by a foreign corporation, Bell Bend is not viable for PPL. In addition, Électricité de France may be using French taxpayer money to subsidize construction, operating, and licensing of a nuclear plant on American soil at the same time the European Commission is investigating EDF for market share violations. (11)

Électricité de France is also being investigated for engaging in espionage. “An EDF security executive, who previously worked as a police commander, is being investigated for conspiring to hack into Greenpeace France's computer system. Judges are investigating whether state-owned EDF, the world's biggest nuclear-reactor operator, hired a private detective agency run by a former member of the French secret services to illegally spy on environmentalists and infiltrate their ranks.” (*Guardian*, London, April 1, 2009) The head of Kargus

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20 On March 10th [2009] the European Commission’s antitrust authorities raided EDF’s headquarters in Paris looking for evidence that it had abused its dominant market position to inflate electricity prices in France.” (The Economist, April 23, 2009)...Consultants Thierry Lorho, a former member of the French secret services, and computer expert Alain Quiros were charged by a French court. “On April 10th EDF said it would temporarily suspend the two senior executives, Pierre François and his superior, Pascal Durieux, while the investigation went forward.” (*The Economist*, April 23, 2009)

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

This issue is squarely within the scope of this proceeding since an Applicant must demonstrate compliance with 42 U.S.C. Section 2133(d), and the NRC's Final Standard Review Plan on Foreign Ownership, Control, or Domination (August 31, 1999).

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

This issue is material because in order receive a construction permit and/or license to operate a nuclear reactor the applicant must demonstrate that the Applicant is not an alien or owned, controlled, or dominated by an alien or by a foreign corporation or foreign government. (21)

UniStar Nuclear is owned 50 percent by Constellation Energy, of which 9.51 percent is owned by Électricité de France, making EDF the second largest stockholder. The other half of UniStar is owned by the French company Électricité de France which is 84.85 percent owned by the government of France.

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21 “Another PPL subsidiary contracted with UniStar Nuclear Services, LLC, an affiliate of of UniStar Nuclear Energy, LLC, a joint venture between Constellation Energy Nuclear Group, LLC, and EDF Development, Inc., to prepare the application.” (PPL 2008 Annual Report, Development, p. 148)

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

PPL's weakened financial situation coupled with its declared policy of "joint arrangement" provides Constellation with the opportunity to "control, dominate, and subjugate" PPL Bell Bend.

The AmerGen transfer of existing nuclear licenses at Clinton, Oyster Creek, and Three Mile Island -1 took place in 1999 between PECO and the management of British Energy - a "friendly" ally - which ultimately sold its share back to PECO/AmerGen.

Électricité de France's parent, the nation of France, has consistently and recently taken military, political, (22) and diplomatic (23) positions that insulate itself with nations and organizations that support state sponsored terrorism which could undermine the defense and national security of the Untied States.

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22 The sinking of the "Rainbow Warrior," code named "Opération Satanique" was an operation by the "action" branch of the French foreign intelligence services, the "Direction Générale de la Sécurité Extérieure," carried out on July 10, 1985. The flagship of the Greenpeace fleet, the "Rainbow Warrior," was attacked in the port of Auckland, New Zealand.

23 France has an aggressive, coordinated and well documented campaign in place to transfer nuclear technology, and has established a footprint in the Middle East. France enjoys cordial relations with Iran and Syria which are listed on the U.S. State Department's list of nations sponsoring terrorism. Iran and Syria have announced aggressive intentions to acquire nuclear weapons and atomic energy which would pose a direct national security threat to American troops in the Middle East, to NATO allies Turkey and Greece as well as Egypt, Israel, Jordan and Saudi Arabia.

The contention refers to documents and other authorities which support Mr. Epstein's representations, and can be found in the American Nuclear Society, the BBNPP Application, Constellation Energy, Électricité de France, European Commission, French Foreign Ministry, North Atlantic Treaty Organization, Nuclear Regulatory Commission, Pennsylvania Public Utility Commission, PPL Corporation 2008 Annual Report, PPL 2008 10 K, UniStar Nuclear Energy, LLC, U.S. Department of Justice, U.S. Federal Energy Regulatory Commission, U.S. Departments of State, and U.S. Securities and Exchange Commission.

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

The Atomic Energy Act prohibits foreign ownership, control or domination of a nuclear power plant (42 U.S.C. Section 2133(d)). The NRC's Final Standard Review Plan on Foreign Ownership, Control, or Domination (August 31, 1999) also prohibits the issuance of a power reactor license to an Applicant if the Commission knows or has reason to believe that the Applicant is an alien or is owned, controlled, or dominated by an alien or by a foreign corporation or foreign government.

Contention #4:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

Conclusions in PPL's Application, Part 3: Environmental Report, Rev. 1, Chapter 4 and 5, relating to **Socio Economic Impacts: Labor Force Availability and Possible Composition** 4.4.2.2.1., **Employment and Income** 5.8.2.2.3 and **Police, EMS and Fire suppression Services** 2.5.2 and 4.4.2., are based on flawed assumptions and specious conclusions, and have omitted key data and statistics that undermine the Applicant's determinations.

Pennsylvania is the third oldest state in the nation and its fastest growing population segment is octogenarians. An aging population base has unique and sensitized needs that were not factored, considered, or analyzed in the licensee's Application. Columbia and Luzerne Counties (24) are two of six counties in the 29-county rate base "above the system average percentage of the poverty level." The data PPL uses is supplied by the Census Bureau and PA PUC's Bureau of Consumer Services, and indicate that 22.8 percent of the Luzerne County and 23 percent of the Columbia County populations qualify as "low-income households" eligible for energy assistance, i.e., living at or below the federal poverty levels.

An aging population affects staffing, offsite support staffing, response times, emergency planning, and social services. These human components are critical ingredients in the infrastructure of any large industrial complex. The ripple impact was not discussed in the Application.

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24 Columbia and Luzerne Counties are identified as the "Two County Region of Influence" as identified PPL's Application, Part 3: Environmental Report, Rev. 1, Chapter 4 and 5.

In Luzerne County, the population declined 1.8 percent between 2000 and 2003, and Columbia experienced a .9 percent increase. The U.S. Census Bureau reported that the average population per county of 65 years or older is 12.4 percent. However, the percent in Luzerne is 19.7 percent and in Columbia it is 15 percent. In Salem Township, host to the nuclear plant, the percentage of residents over 65 years of age is 19.6 percent.

PPL Bell Bend is surrounded by an aging population with a significant portion of its residents living in (or around) 150 percent of federal poverty levels, many seniors on fixed incomes will be facing “rate shock” (25), increased health care premiums (26), and will continue to have to pay high property taxes (27).

If the Company can marshal \$90 million to seek approval for a COLA and increase its rates, then it can find the time and resources to prepare an analysis to assess the impact of Bell Bend on an aging, impoverished, and less ambulatory population base. Failure to survey the impacts of the COL on an aging community is a stunning indictment of PPL and Constellation’s inability to grasp that a stable and secure workforce and a solid community are interchangeable parts.

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125 By its own admission PPL’s plan to raise electric prices by at least 34.5 percent on January 1, 2010. “Rate shock” will devastate fixed-income and aging populations. (Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Program, Pa PUC, Docket No: P00062227, 2006)

Until PPL’s sixth and final POLR auction bid is completed, the total “rate shock” for residential customers is not certain. Their last purchase returned a less expensive rate, i.e., a 30 percent increase compared to an aggregate rate of 36 percent from the four prior bids. If PPL’s next purchase is cheaper than the first four, then their POLR rate may need to be adjusted to 28 percent. In other words, senior citizens and all PPL residential customers living in Luzerne and Columbia will face a minimal rate increase of at **least 28 percent** in January, 2010.

26 Effective January 1 through December 31, 2009, a 4 percent hike will kick in for Blue Care Senior Medical Plan for Blue Cross Northeastern PA without prescription coverage, and a 9.9 percent hike will kick in for Blue Care Senior Medical Plan for Blue Cross Northeastern PA with prescription coverage.  
[http://www.ins.state.pa.us/ins/lib/ins/rates/2008\\_secondhalf/bcnp\\_1412.pdf](http://www.ins.state.pa.us/ins/lib/ins/rates/2008_secondhalf/bcnp_1412.pdf)

27 PPL and the NRC also failed to note that millions of dollars in regulated tax revenues are recovered by charging rate payers, e.g., \$245 million (2007) and \$265 (2006). Both entities also ignored the “transition costs” or nuclear taxes PPL sucks out of the same rate payer, i.e., \$574 million (2007) and \$884 (2006). (PPL Corporation 2007 Annual Report,” Summary of Significant Accounting Policies, p. 64.)

(ii) Provide a brief explanation of the basis for the contention.

An aging population base has unique and sensitized needs that were not factored, considered, or analyzed in the Application

The Company has not anticipated or planned to address the hardships it has created for the 65+ community: “PPL Electric has conducted no polling to gauge residential customers’ awareness of rate caps and the impact that the removal of those caps would have on electric rates.” (PPL EU, Pa PUC, Bridge to Competition, 2006; PPL). “There are no programs specifically targeted to senior (28) citizens or that are available only to seniors. ... PPL Electric has no work papers, data or statistics on senior citizens (60 years of age or older). (PPL POLR, Response to Epstein Interrogatories, Set I, D.A. Krall, October 16, 2008).

More alarming is the fact that between January 1 and August 31, 2008, “PPL cut electricity to 28,561 customers” according to the Pennsylvania Public Utility Commission. “That's a boost of 111 percent over the number of PPL customers whose power was shut off during the same period in 2007. The number of people who've lost electricity statewide is up as well versus the same period last year, but only by 24 percent. (29)

This data is also absent from the Applicant’s review.

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28 Senior citizens’ benefits can be assigned by Social Security at age 62: “You can start to receive partial benefits at age 62 and persons who delay retirement beyond age 65 receive higher benefits. [Details from SSA]... In general, the sooner you apply for benefits after reaching age 62, the less you will receive. For details, refer to this chart: Social Security Full Retirement and Reductions by Age (By the year 2027, the age for receiving full benefits will increase from 65 to 67.)”

29 “PPL cutting off more customers (for) unpaid bills: The number losing power is up 111 percent over 2007, The Morning Call, September 24, 2008.

Moreover, the Application assumed that Bell Bend construction would occur in a vacuum, and failed to factor large construction projects scheduled for the same time period in a radius around Bell Bend. Such projects include: the Gilberton \$1 billion coal-to-oil project in Schuylkill County; a \$1.6 billion cargo airport planned in Humboldt, Luzerne County purported to create 161,1000 jobs; and, large scale construction and drilling in the Marcellus shale formation.

The Application, without providing supporting documentation or factoring age and and relative poverty levels of senior citizens, crooned:

Although an increase in population levels from the BBNPP construction workforce could place additional demands on area doctors and hospitals in Columbia County...it appears that two county ROI has enough capacity to accommodate the increased demand, and impacts from construction of the BBNPP would likely be SMALL. No impacts would occur to area political and social structures.” There is no discussion of how or who would provide police and fire services or who would staff and transport the EMS services. (4.4.2.8 Public Services, 4-64)

An aging population affects staffing, offsite support staffing, response times, emergency planning, and social services. (30) These human components are critical ingredients in the infrastructure of any large industrial complex.

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30 Presently, Luzerne County’s social services are challenged due to state and federal investigations relating to scandals involving County government and the juvenile justice system.

Former Luzerne County judges Mark Ciavarella and Michael Conahan pleaded guilty on February 12, 2009, to charges they accepted more than \$2.6 million in kickbacks in exchange for rulings that benefited the owners and builder of PA Child Care in Pittston Township and Western PA Child Care in Butler County.

Luzerne County has been without an elected Prothonotary since March, when Jill Moran resigned from the seat after seven years following an agreement she made with federal prosecutors. In addition to resigning, the stipulation requires her to provide complete and full cooperation in the investigation into alleged fraud at the county courthouse. (*Times Leader*, May 17, 2009)

Even PPL and Constellation concluded: “However, the increased population levels could place some **additionally daily demands on constrained police services, fire suppression and EMS services,** and schools.” (Bold face type added) (4.4.2.8 Public Services, 4-64 )

Yet, even after recognizing the problem the BBNPP would create, neither PPL or Constellation offered a solution.

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

This issue is squarely within the scope of this proceeding since a construction permit and/or license to operate a nuclear reactor by PPL and Constellation requires the Applicant to demonstrate that a sufficient labor pool exists to support Bell Bend. In addition, PPL and Constellation must demonstrate that the construction and operation of the BBNPP will not adversely impact police, fire, EMS, and other vital social services.

The Application submitted by PPL and Constellation relies on generic, incomplete, and insufficient data to support and substantiate the Applicant’s conclusions.

a) By its own admission, PPL and Constellation concluded: “Relatively recent studies have shown that the availability of qualified workers to construct the power plant might be an issue particularly if several nuclear power plants are being built concurrently nationwide (31)...A shortage of qualified labor appears to be a looming problem...The availability of labor for new nuclear plant construction in the U.S. is a significant concern. These workforce restrictions are

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3 1 Since the first complete COL was submitted in September 2007, the NRC has received 15 COL applications for up to 25 reactors through November 2008. To the north of the proposed BBNPP, an EPR application has been filed for Nine Mile Point, New York; and to the south, an EPR is currently being processed at Calvert Cliffs, Maryland.

most likely to occur to with ‘managers who tend to be older and close to retirement, and skilled workers in high-demand, high-tech jobs.’” (ER, Rev, 4.4.4.2.2.1, pp. 4-57-58).

In two of the oldest counties in the third oldest state where nuclear workers are already at a premium at Pennsylvania's five nuclear plants, PPL and Constellation conceded that, “Estimates about the composition of the BBNPP construction workforce (i.e., types of personnel needed) have not been developed for the power plant.” (ER, Rev., 4.4.4.2.2.1, p. 4-58).

The Applicant has no plan to staff the plant; and to make matters worse, PPL is terminating employees and out-migrating workers at the same time they cannot predict where their nuclear employees will come from: “On February 24, 2009, PPL announced that a cost reduction initiative has resulted in the elimination of approximately 200 management and staff positions across PPL’s domestic operations, or approximately 6 percent of PPL’s non union, domestic workforce. Most of the affected employees have been separated.” (PPL 2008 Annual Report, Cost Reduction Initiative, p. 196)

b) Pennsylvania relies on off-duty, on-call workers to staff volunteer fire departments, and requires certified workers and employees for police and EMS departments.

PPL and Constellation relied on random anecdotal observations, e.g., “Salem Township Volunteer Fire Company representative suggested...” or unattributed quotes, e.g., “Berwick Fire Department representative suggested...” to surmise that the impacts on “Police, EMS and Fire Suppression Services” would be small. (ER, Rev., 5.8.2.7.1, p. 5-129.)

PPL and Constellation apparently have no idea of the demographic pool that EMS providers must draw from to staff their ranks.

In 2003, 16.2 million patients across the country arrived by ambulance for emergency department visits (14.2 percent). Or, about 31 ambulances arrived at an American emergency department every minute. Of ambulance-related visits, 39 percent were made by seniors, 68 percent were triaged as emergent or urgent, and 37 percent resulted in hospital-admission. (32)

The Bureau of Labor Statistics has calculated the average age and median years of tenure for persons in specific occupations in the United States. This data is useful for career planning, understanding turnover, and maintaining stability in volunteer recruitment. The average age of workers in EMT was 34.3 years old in 1998, compared to 38.0 years for all occupations in this country. (33)

PPL and Constellation have offered no staffing plan for Bell Bend, and provided no strategy to replenish police, fire, and EMS personnel.

This issue is material because in order to receive a construction permit and/or license to operate a nuclear reactor PPL and Constellation must demonstrate that a sufficient labor pool exists to support constructing and operating the BBNPP, and that the construct and operation of the plant will not adversely impact police, fire and EMS staffing levels and other vital social services.

The contention refers to documents and other authorities which support Mr. Epstein's representation that an aging population can not support and sustain massive construction projects at multi-sites concurrently and also maintain the same level, EMS, police, fire, and social services staffing.

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3 2 Data from the 2003 ED component of the National Hospital Ambulatory Medical Care Survey were used for the analysis. Data was provided by 405 participating EDs on 40,253 visits. Data from supplemental questionnaires to the hospital staff were used to describe volume and frequency of ambulance diversions.

3 3 The Occupational Outlook Handbook (2006-2007).

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

This issue is material because in order receive a construction permit and/or license to operate a nuclear reactor PPL and Constellation must demonstrate that a sufficient labor pool exists to support construction and operation of the BBNPP, and these activities must not adversely impact police, fire, EMS, and other vital social services.

The retirement of Baby Boomers will affect the U.S. economy, “possibly in dramatic ways. For example, output will suffer...payroll benefit costs will balloon to finance increasing retirement and health care.” For the power industry, “The situation is compounded by a shrinking supply of engineering graduates entering the utility industry...Given the likely preponderance of Baby Boomers among the current pool of 23,000 registered power engineers, the lack of graduates entering the workforce will exacerbate the problem.” (35)

The problem is especially acute for the nuclear industry. “The U.S. graduates about 70,000 engineers each year, yet only 1,900 of those were enrolled in an nuclear degree program in 2007...In contrast the same study found that about 35 percent of the current nuclear workforce will reach retirement age in the next five years, which is consistent with data describing the entire power generation industry.” (36)

PPL has spent \$58 million through December 31, 2008 “in costs associated with the licensing effort,” (PPL 2008 Annual Report, Development, p. 148), yet failed to adequately examine the impact of of the COL on aging human beings who live and work within the shadow of the plant, provide a plan to staff Bell Bend, or explain how it will replenish fire, police, and EMS personnel.

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35 Power, “The nuclear option,” p. 6, November, 2008.

36 “The Talent Bubble,” Public Utilities Fortnightly, February, 2004.

The contention refers to documents and other authorities which support Mr. Epstein's representations, and can be found in the BBNPP Application, Blue Cross Northeastern PA, Bureau of Labor Statistics, National Hospital Ambulatory Medical Care Survey, Nuclear Regulatory Commission, Occupational Outlook Handbook, Pennsylvania Bulletin, Pennsylvania Department of Economic and Community Development, Pennsylvania Departments of Labor, Pennsylvania Public Utility Commission, PPL Corporation 2008 Annual Report, PPL Corporation 2007 Annual Report, PPL 2008 10 K, the Pennsylvania State University, U.S. Census Bureau, U.S. Departments of Labor, and the U.S. Social Security Administration.

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

A genuine dispute exists as to demographics on the ground. An aging population affects staffing, offsite support staffing, response times, emergency planning, and social services. These human components are critical ingredients in the infrastructure of any large industrial complex.

People are not abstract hypotheticals that attorneys in Washington, D.C. can rework into a neat formula. Taken together, Columbia and Luzerne counties are housing older Pennsylvanians who are less likely to be absorbed into a nuclear work force. These senior citizens will be concurrently paying higher electric rates, and more in property taxes as a result of the operation of Bell Bend, and will have to rely on a declining levels of EMS, police and fire provides.

PPL and Constellation cannot fall back on another “no plan” labor strategy to staff Bell Bend, nor should the public be forced to accept that the 'Labor Fairy' will magically appear to solve an industrywide problem. The Applicant needs to come up with a plan to staff the plant without cannibalizing support services or the SSES.

PPL and Constellation have not responded to the following socioeconomic hardships it will create with the construction and operation of Bell Bend, nor answered these questions:

- 1) How did PPL and Constellation decide to ignore the impact of “rate shock” on senior citizens living on a fixed income?
- 2) Does PPL and Constellation believe that PPL’s creation of a hardship class of senior citizens is not a socioeconomic impact?
- 3) PPL and Constellation have failed to ask - let alone answer - who is going to staff an aging nuclear power plant in the future. Does PPL have a plan in place to retain a skilled and graying work force?
- 4) Who will transport and provide the emergency services for an economically distressed population in need of medical services? Who is going to take an aging population to the ER?
- 5) PPL has not anticipated or planned to address the hardships it has created for the 65+ community. Can Constellation identify similar demographics for any other reactor community?
- 6) If PPL can authorize the expenditure of \$90 million resources to seek approval for a COL, layoff workers and increase its rates, why can’t it find the time and resources to prepare an analysis to assess the impact of “rate shock” and property devaluations on the most vulnerable populations residing in its own backyard?

7) A boost of 111 percent in the number of PPL customers whose power was shut off from 2006 to 2007 should set off alarms from the NRC. Why is the steep rise in shutoffs excluded from the socioeconomic study?

8) What is the average age of the SSES workforce, and how does it compare to the industry average?

9) What is the average overtime logged by SSES employees and how does it compare to the industry average? (37)

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37 “The NRC staff determined in September 2001 that a violation occurred on several occasions [at the SSES] when on-shift staffing was below the minimum on-shift staffing requirements as defined in the plant's emergency plan. At the reduced on-shift staffing levels, certain emergency preparedness functions for an emergency at the site, including monitoring the unaffected unit for safety and operations support center coordination duties, would not be met.” (US NRC, May 6, 2002.)

## VI. Conclusion

### **§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.**

(a) General requirements. Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing. Except as provided in paragraph (e) of this section, the Commission, presiding officer or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section...

(1) Factors weighing in favor of allowing intervention--

(i) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record;

(ii) The nature and extent of the requestor's/petitioner's property, financial or other interests in the proceeding; and

(iii) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest;

Eric Joseph Epstein has met all for the requirements stated in “2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions”, and his Petition to Intervene should be granted and all four (4) contentions accepted.

Respectfully submitted,

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