

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**In the Matter of the Application for All)
Approvals Necessary for the Transfer of)
Ownership and Operational Control of the)
Point Beach Nuclear Plant from Wisconsin)
Electric Power Company (d/b/a We Energies))
to FPL Energy Point Beach, LLC, a)
subsidiary of FPL Group Capital, Inc.)
)**

Docket No. 6630-EI-113

**Direct Testimony of
David A. Schlissel
Synapse Energy Economics, Inc.**

**On Behalf of
Wisconsin Citizens Utility Board
and
Clean Wisconsin**

PUBLIC VERSION

May 4, 2007

1 **Q. Mr. Schlissel, please state your name, position and business address.**

2 A. My name is David A. Schlissel. I am a Senior Consultant at Synapse Energy
3 Economics, Inc., 22 Pearl Street, Cambridge, MA 02139.

4 **Q. On whose behalf are you testifying in this case?**

5 A. I am testifying on behalf of the Wisconsin Citizens Utility Board (“CUB”) and
6 Clean Wisconsin.

7 **Q. Please describe Synapse Energy Economics.**

8 A. Synapse Energy Economics (“Synapse”) is a research and consulting firm
9 specializing in energy and environmental issues, including electric generation,
10 transmission and distribution system reliability, market power, electricity market
11 prices, stranded costs, efficiency, renewable energy, environmental quality, and
12 nuclear power.

13 Synapse’s clients include state consumer advocates, public utilities commission
14 staff, attorneys general, environmental organizations, the federal government,
15 state and local governments and utilities.

16 **Q. Please summarize your educational background and recent work experience.**

17 A. I graduated from the Massachusetts Institute of Technology in 1968 with a
18 Bachelor of Science Degree in Engineering. In 1969, I received a Master of
19 Science Degree in Engineering from Stanford University. In 1973, I received a
20 Law Degree from Stanford University. In addition, I studied nuclear engineering
21 at the Massachusetts Institute of Technology during the years 1983-1986.

22 Since 1983 I have been retained by governmental bodies, publicly-owned utilities,
23 and private organizations in 28 states to prepare expert testimony and analyses on
24 engineering and economic issues related to electric utilities. My recent clients
25 have included the New Mexico Public Regulation Commission, the General Staff
26 of the Arkansas Public Service Commission, the Staff of the Arizona Corporation

1 Commission, the U.S. Department of Justice, the Attorneys General of the States
2 of New York, Massachusetts and Michigan, state consumer advocates, and
3 national and local environmental organizations.

4 I have testified before state regulatory commissions in Arizona, New Jersey,
5 Connecticut, Kansas, Texas, New Mexico, New York, Vermont, North Carolina,
6 South Carolina, Maine, Illinois, Indiana, Ohio, Massachusetts, Missouri, Rhode
7 Island, Wisconsin, Iowa, South Dakota, Georgia, Minnesota, Michigan and
8 Florida and before an Atomic Safety & Licensing Board of the U.S. Nuclear
9 Regulatory Commission.

10 A copy of my current resume is attached as Exhibit ___ (DAS-1).

11 **Q. Have you previously submitted testimony before the Public Service**
12 **Commission of Wisconsin (“PSCW” or “the Commission”)?**

13 A. Yes. I have previously testified in PSCW Docket Nos. 6630-CE-197, 6690-UR-
14 115, 05-EI-136, and 6690-CE-187.

15 **Q. Have you evaluated the proposed sales of other nuclear power plants?**

16 A. Yes. I have evaluated the reasonableness of the proposed sales of the Vermont
17 Yankee, Millstone, Seabrook, Palisades and Duane Arnold nuclear power plants.
18 As part of these evaluations, I also have looked in detail at the sales of other
19 nuclear power plants such as Nine Mile Point Units 1 and 2, Indian Point Unit 2
20 and 3, Fitzpatrick, Pilgrim, Three Mile Island, Oyster Creek, Clinton, and Ginna.

21 **Q. What is the purpose of your testimony?**

22 A. Synapse was retained by CUB and Clean Wisconsin to evaluate whether the
23 proposed sale of the Point Beach Nuclear Plant to FPL Energy Point Beach, LLC,
24 is in the interest of the ratepayers of Wisconsin Electric Power Company
25 (“WEPCO” or “the Company”). This testimony and that of my colleagues
26 Michael Mullett and Ralph Smith present the results of our investigation of this
27 issue.

1 **Q. Please explain how Synapse conducted its investigations and analyses.**

2 A. We completed the following tasks as part of this investigation:

- 3 1. Reviewed the testimony submitted by WEPCO and FPLE Point Beach.
- 4 2. Reviewed the responses to the data requests submitted by CUB, the
5 Commission Staff and other active parties.
- 6 3. Examined materials in Synapse’s files related to nuclear power plant costs
7 and performance, other nuclear power plant sales, nuclear power plant
8 decommissioning, and to issues related to the ownership of nuclear power
9 plants by subsidiaries of multi-tiered holding companies.
- 10 4. Examined materials available in the U.S. Nuclear Regulatory
11 Commission’s public docket files related to the Point Beach nuclear power
12 plant and to nuclear plant performance, license renewal, power uprates,
13 decommissioning issues and sales.
- 14 5. Reviewed other publicly available materials concerning nuclear power
15 plant costs, performance, license renewal, steam generator replacements,
16 power uprates, decommissioning issues related to sales and
17 decommissioning related plans and cost issues.

18 **Q. Please summarize your conclusions.**

19 A. My conclusions are as follows:

- 20 1. WEPCO overstates the value to ratepayers of the proposed Purchased
21 Power Agreement (“PPA”) with FPLE Point Beach by ignoring the fact
22 that the Company will be responsible for paying the Gross Receipts Taxes
23 incurred on the sales of power under the PPA and by ignoring the impact
24 of the monthly shaping factors in determining the actual prices that
25 WEPCO’s ratepayers will pay for power.

- 1 2. According to WEPCO, ratepayers would incur \$125.7 million, present
2 value, in additional taxes as a result of the requirement of Section 20.3(d)
3 of the proposed PPA which would require WEPCO, and consequently, its
4 ratepayers, to pay the Gross Receipts Taxes on the sale of power from
5 FPLE Point Beach.
- 6 3. The economic analyses and comparisons presented by WEPCO to justify
7 the PPA are misleading because they do not reflect this required double
8 payment of Gross Receipts Taxes.
- 9 4. The proposed PPA includes monthly Delivered Energy Charge Shaping
10 Factors to provide incentives to FPLE Point Beach to operate the plant
11 during peak months and hours. However, these incentives are not
12 necessary because there are other incentives in the PPA to encourage
13 FPLE Point Beach to maximize production during peak summer periods.
- 14 5. As a result of the application of these monthly shaping factors, the actual
15 prices that WEPCO’s ratepayers would pay for power from Point Beach
16 can be expected to be higher than the nominal annual prices specified in
17 the PPA.
- 18 6. WEPCO used an unreasonably low capacity factor when it calculated its
19 projected Costs of Continued Ownership (“CCO”). This led to
20 unreasonably high PPA prices.
- 21 7. If the proposed sale is closed, the PSCW would lose the authority to assure
22 that adequate funds are made available to and are prudently invested in
23 and used to maintain and operate Point Beach. The Commission also
24 would be unable to assure that funds that should be used to maintain and
25 operate Point Beach are not being improperly transferred to FPLE Point
26 Beach’s direct or indirect owners or affiliates. The conditions offered in
27 the ASA do not adequately compensate for this loss of regulatory
28 authority.

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1 8. The Commission should find that the proposed PPA is not in the public
2 interest and should not approve it.

3 9. If the sale is approved, the closing should be delayed until receipt of a
4 Private Letter Ruling from the U.S. Internal Revenue Service.

5 **Q. Would the proposed PPA provide power to WEPCO’s customers at prices**
6 **that are lower than or the same as the Company’s projected Cost of**
7 **Continued Ownership?**

8 A. No. There are several features of the proposed PPA that cause the prices that
9 WEPCO would pay FPLE Point Beach to be higher than even the Company’s
10 projected CCO. These include:

- 11 • the requirement that WEPCO pay the Gross Receipts Taxes on the power
12 purchased from FPLE Point Beach.
- 13 • the inclusion of monthly “shaping factors” in the determination of the
14 actual prices that WEPCO would pay for power from FPLE Point Beach.

15 In addition, the projected WEPCO CCO, on which the prices in the proposed PPA
16 are based, reflected the use of an unreasonably low capacity factor for the Point
17 Beach units. This inflated the prices in the proposed PPA.

18 **Q. What is the significance of the provision in the PPA that would require the**
19 **buyer of the power (that is, WEPCO) to pay the Gross Receipts Tax**
20 **applicable to the transaction?**

21 A. Under Section 20.3(d) of the proposed PPA, WEPCO and, consequently, its
22 ratepayers, and not FPLE Point Beach, would be required to pay the Gross
23 Receipts Tax on the purchases of power under the PPA. WEPCO’s ratepayers
24 also would be responsible for the Gross Receipts Taxes on the transaction in
25 which this same power is sold from WEPCO to its customers. Thus, ratepayers
26 would have to double pay the Gross Receipts Taxes on the power generated at
27 Point Beach.

1 **Q. How much will this double payment of the Gross Receipts Tax cost**
2 **WEPCO's ratepayers?**

3 A. According to the Company's calculations, under the Life-of-License PPA, the
4 present value of the incremental Gross Receipt Taxes that WEPCO's ratepayers
5 would have to pay as a result of this double taxation, would be \$125.7 million.¹
6 In nominal dollars, ratepayers would pay approximately *****BEGIN WEPCO**
7 **CONFIDENTIAL***** *****END WEPCO CONFIDENTIAL*****
8 during the years 2007-2033 in incremental (or additional) taxes as a result of this
9 required double payment of the Gross Receipts Taxes.²

10 **Q. Would the amount of the incremental Gross Receipts Taxes paid by**
11 **WEPCO's ratepayers change depending on how much power that the**
12 **Company actually buys from FPLE Point Beach under the PPA?**

13 A. Yes. The incremental taxes that WEPCO's ratepayers would pay as a result of the
14 double payment of the Gross Receipts Taxes would increase if the Company buys
15 more power under the PPA than WEPCO had assumed in the analyses discussed
16 in the Direct Testimony of WEPCO witness John Reed.

17 For example, FPLE has projected that it will sell *****BEGIN FPLE**
18 **CONFIDENTIAL***** *****END FPLE**
19 **CONFIDENTIAL***** under the PPA to WEPCO than the Company has
20 assumed. This is because FPLE projects that it will operate the Point Beach
21 plants at *****BEGIN FPLE CONFIDENTIAL*****
22 *****END FPLE CONFIDENTIAL***** capacity factor assumed
23 by WEPCO.³ Under these circumstances, the present value of the incremental
24 Gross Receipts Taxes that WEPCO's ratepayers would pay would increase to

¹ WEPCO Response to Data Request 5-CUB-14.

² Confidential FPLE Response to Data Request 2-CUB-45, Workpaper-GRT JJR Direct (CONFID).xls.

³ Data Room Confidential FPLE Response to Data Requests 1-CUB-5 and 1-CUB-7.

1 approximately *****BEGIN WEPCO AND FPLE CONFIDENTIAL*****
2 *****END WEPCO AND FPLE CONFIDENTIAL*****. This
3 would represent an extra *****BEGIN WEPCO AND FPLE**
4 **CONFIDENTIAL***** *****END WEPCO AND FPLE**
5 **CONFIDENTIAL***** in nominal dollars, that WEPCO's ratepayers would pay
6 during the years 2007-2033 as a result of the double payment of the Gross
7 Receipts Taxes.⁴

8 **Q. Would the proposed PPA provide an economic benefit for ratepayers if it**
9 **reflected these incremental taxes?**

10 A. No. WEPCO claims that the proposed life-of-license PPA would produce a net
11 positive \$75 million present value for ratepayers.⁵ However, this does not reflect
12 the \$125.7 million, in present value, in incremental Gross Receipts Taxes that
13 ratepayers would have to pay under the PPA. If those incremental Gross Receipts
14 Taxes are considered, the proposed PPA would be more expensive than
15 WEPCO's CCO by \$50 million, present value.

16 **Q. Do the comparisons between the CCO and the proposed PPA presented in**
17 **the Direct Testimony of WEPCO witness Reed reflect the fact that**
18 **ratepayers would have to pay these incremental taxes as a result of the**
19 **double payment of the Gross Receipts Tax under the PPA?**

20 A. No. *****BEGIN WEPCO CONFIDENTIAL*****
21 *****END WEPCO**
22 **CONFIDENTIAL***** do not reflect the fact that pursuant to Section 20.3(d) of
23 the proposed PPA, WEPCO, and consequently, its ratepayers would be
24 responsible for paying the Gross Receipts Tax on the power transactions with

⁴ Data Room Confidential FPLE Response to Data Requests 1-CUB-5 and 1-CUB-7 and Confidential WEPCO Response to Data Request 2-CUB-45, Workpaper_GRT JJR Direct.

⁵ For example, see Direct Testimony of WEPCO witness John Reed, at page 37, line 15.

1 FPLE Point Beach. Thus, they present a misleading comparison between the
2 proposed PPA and the CCO.

3 **Q. What is the purpose of the Delivered Energy Charge Shaping Factors**
4 **included in Exhibit C to the PPA?**

5 A. WEPCO witness Reed claims that shaping the PPA prices provides economic
6 incentives for FPLE Point Beach to ensure top performance when WEPCO most
7 needs the power (i.e., the peak months and hours).⁶

8 **Q. Do you agree that it is necessary and appropriate to include such incentives**
9 **in the PPA to ensure that FPLE Point Beach will provide power to WEPCO**
10 **during peak months and hours?**

11 A. No. The PPA contains several other provisions that provide strong incentives for
12 FPLE Point Beach to provide power from the plants during peak months and
13 hours.

14 **Q. What other provisions in the PPA provide strong incentives for FPLE Point**
15 **Beach to provide power from the plants during peak months and hours?**

16 A. First, as explained by WEPCO witness Reed, the PPA stipulates that scheduled
17 maintenance outages may not occur during the summer months of June, July and
18 August.⁷ Second, FPLE Point Beach must achieve a monthly target capacity
19 factor of *****BEGIN WEPCO CONFIDENTIAL*** **END WEPCO**
20 **CONFIDENTIAL***** percent during each of the summer months of June, July
21 and August.⁸ These two provisions of the PPA should provide a strong incentive
22 to FPLE Point Beach to operate the plants as much as possible during the peak
23 months and hours.

⁶ Direct Testimony of John Reed, at page 33, lines 14-20.

⁷ Direct Testimony of John Reed, at page 34, lines 1-2.

⁸ Ibid., at page 23, lines 5-11.

1 Q. What effect would the shaping factors have on the actual prices that
2 WEPCO's ratepayers will pay for the power from FPLE Point Beach?

3 A. As a result of the application of the shaping factors, the actual prices that
4 WEPCO's ratepayers will pay can be expected to be higher than the nominal
5 annual prices specified in Exhibit A to the PPA.

6 For example, Table 1 below compares the nominal annual prices in the PPA for
7 the years 2008-2012 to the Effective Energy Prices that FPLE has told the NRC it
8 would expect to receive for the power from Point Beach if it achieves an average
9 annual *****BEGIN FPLE CONFIDENTIAL***** *****END FPLE**
10 **CONFIDENTIAL***** percent capacity factor.⁹ This is approximately the same
11 capacity factor that WEPCO assumes in its calculation of its CCO.

12 **Table 1: Effective Prices versus the Nominal Annual Prices Contained**
13 **in the PPA¹⁰**
14 *****BEGIN FPLE CONFIDENTIAL*****

15

16 *****END FPLE CONFIDENTIAL*****

17 Thus, WEPCO's ratepayers would pay an additional *****BEGIN FPLE**
18 **CONFIDENTIAL***** *****END FPLE CONFIDENTIAL***** in

⁹ Confidential FPLE Response to Data Request 1-CUB-8.

¹⁰ Data Room Confidential FPLE Response to Data Requests 1-CUB-5 and 1-CUB-7.

1 just the first five full years of the PPA as a result of the *****BEGIN FPLE**
2 **CONFIDENTIAL***** *****END FPLE CONFIDENTIAL***** Effective
3 Energy Prices under the PPA, as opposed to the nominal prices set forth in the
4 PPA.

5 **Q. Would these additional payments under the PPA also impact the amounts of**
6 **the Gross Receipts Taxes that WEPCO's ratepayers would have to double**
7 **pay?**

8 A. Yes. Ratepayers would have to double pay an additional *****BEGIN FPLE**
9 **CONFIDENTIAL***** *****END FPLE CONFIDENTIAL***** in
10 Gross Receipts Taxes as a result of these higher effective energy prices for the
11 power under the proposed PPA with FPLE Point Beach.¹¹ Consequently,
12 ratepayers would be paying more than *****BEGIN FPLE CONFIDENTIAL*****
13 *****END FPLE CONFIDENTIAL***** just during the years
14 2008-2012, than the prices in the PPA would suggest.

15 **Q. Do the economic analyses and the claimed benefits for ratepayers from the**
16 **PPA discussed in the Direct Testimony of WEPCO witness Reed reflect the**
17 **effective energy prices and/or the additional double payment of Gross**
18 **Receipts Taxes that would result from the application of the monthly shaping**
19 **factors?**

20 A. No.

21 **Q. What impact can those shaping factors be expected to have on the relative**
22 **economics of the proposed PPA?**

¹¹ Based on Data Room Confidential FPLE Response to Data Requests 1-CUB-5 and 1-CUB-7.

1 A. The application of the shaping factors can be expected to increase the effective
2 energy prices under the PPA and, therefore, make the PPA relatively more
3 expensive than the continued ownership scenario.

4 **Q. How were the annual prices contained in Exhibit A to the PPA developed?**

5 A. As described by Company witnesses Schubilske and Weaver, WEPCO developed
6 its projected annual CCO. WEPCO provided these estimated CCO to potential
7 bidders and indicated that it preferred: “Pricing at or below [its] projected cost of
8 continued ownership (though [it] expressed a willingness to consider PPA pricing
9 within a reasonable range of the cost of continued ownership if such a PPA
10 provides greater overall value).”¹² The annual prices in Exhibit A to the PPA
11 represent FPLE Point Beach’s PPA bid prices.

12 **Q. What projected capacity factors did WEPCO use to calculate its annual
13 CCO?**

14 A. WEPCO used an 86.84 percent average annual capacity factor to develop its
15 CCO.

16 **Q. What was the basis for the use of this 86.84 percent average annual capacity
17 factor?**

18 A. WEPCO has said that this 86.84 percent average annual capacity factor reflects
19 the average capacity factor for the past six years for non-fleet Pressurized Water
20 Reactor plants (“PWR”).¹³ According to WEPCO, NMC’s PWR plants over this
21 same period achieved an 86.86 percent average annual capacity factor.¹⁴ WEPCO
22 also has said that there is little to suggest that Point Beach can or will operate at a

¹² WEPCO Application, at page 7.

¹³ Exhibit____(JAS/DAW-1), at page 1.

¹⁴ Exhibit____(JAS/DAW-1), at page 2.

1 level above that achieved by independent PWR or NMC PWR plants going
2 forward.¹⁵

3 **Q. Do you agree that it is reasonable to expect that Point Beach could not be**
4 **operated at a better, that is, higher, capacity factor than 86.84 percent absent**
5 **a sale to another owner such as FPLE?**

6 A. No. The evidence I have reviewed strongly suggests that it is reasonable to
7 expect that Point Beach could be operated by WEPCO at better than an 86.84
8 percent average annual capacity factor, with or without NMC's involvement.

9 **Q. What is the evidence that forms the basis for this conclusion?**

10 A. Point Beach's own recent operating experience forms the basis for this
11 conclusion, as does NMC's projections for future Point Beach operations and the
12 recent operating experience of Xcel's Prairie Island power plants in Minnesota.

13 **Q. What has been Point Beach's operating experience during the past six years?**

14 A. Point Beach achieved the following annual capacity factors in each of the past six
15 years:

¹⁵ Ibid.

1 **Table 2: Point Beach Capacity Factors 2001-2006¹⁶**

Year	Point Beach Capacity Factor
2001	89.9 %
2002	89.1%
2003	88.8%
2004	88.3%
2005	75.7%
2006	94.3%
Average	87.7%

2 Thus, Point Beach’s average annual capacity factor for the six year period, 2001-
3 2006 was higher than the 86.84 percent figure that was used in the calculation of
4 the CCO that WEPCO provided to potential bidders. Indeed, Point Beach
5 exceeded an 86.84 percent capacity factor in each of these years except for 2005.

6 At the same time, WEPCO has said that the 86.84 percent average annual
7 capacity factor it used to develop the CCO reflects about a 3.11 percent average
8 annual forced outage rate. However, as shown in the following table, Point Beach
9 achieved much lower forced outage rates in each of the past six years.

10 **Table 3: Point Beach Forced Outage Rates 2001-2006¹⁷**

Year	Point Beach Forced Outage Rate
2001	1.10 %
2002	0.40%
2003	2.20%
2004	1.40%
2005	0.50%
2006	0.00%
Average	0.93%

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¹⁶ WEPCO Response to Data Request 2-CUB-13.

¹⁷ WEPCO Response to Data Request 2-CUB-24.

1 Thus, Point Beach achieved an average 0.93 percent annual forced outage rate
2 over the past six years, far below the 3.11 percent rate which WEPCO reflects in
3 its projected 86.84 percent average annual capacity factor. Indeed, Point Beach's
4 average forced outage rate over the past ten years has been only 1.70 percent.
5 This is still much lower than the 3.11 percent rate which WEPCO reflects in its
6 projected Point Beach annual capacity factors.

7 **Q. Does WEPCO cite any recent Point Beach operating performance in support**
8 **of its use of a projected 86.84 percent average annual capacity factor in the**
9 **calculation of its future CCO?**

10 A. Yes. WEPCO has cited the fact that during the six year period 2000-2005, the
11 average duration of Point Beach refueling outages had been 55 days.¹⁸ Therefore,
12 WEPCO used 55 days as the average length of future refueling outages in the
13 calculation of its CCO.

14 **Q. Have you seen any evidence that 55 days is an unreasonable duration to**
15 **assume for future Point Beach refueling outages?**

16 A. Yes. There is a significant amount of evidence which suggests that WEPCO
17 would be able to achieve substantially shorter refueling outages at Point Beach,
18 with or without NMC's involvement.

- 19 • The scheduled duration of the spring 2007 Point Beach Unit 1 refueling
20 outage is only *****BEGIN WEPCO CONFIDENTIAL***** *****END**
21 **WEPCO CONFIDENTIAL***** days.¹⁹
- 22 • Since January 1, 2000, the two Prairie Island PWRs in Minnesota, which
23 are similar to Point Beach in design and vintage, achieved six refueling
24 outages of shorter than 40 days. One other refueling outage was 41 days.
25 Another refueling outage (Unit 1 in 2004) had a duration of 73 days but
26 the unit's steam generators were replaced during that outage. The shortest
27 refueling outages at Prairie Island lasted just 21 and 28 days.

¹⁸ Exhibit____(JAS/DAW-1), at page 2.

¹⁹ Confidential WEPCO Response to Data Request 5-CUB-13.

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- 1 • Although there certainly have been some longer refueling/maintenance
2 outages, the general trend in the industry since the late 1990s has been
3 towards refueling outage durations of 25-40 days.
- 4 • NMC's 2007-2011 Business Plan for Point Beach projects 35 day
5 refueling outages in 2007 and 2008, a 30 day refueling outage in 2009,
6 and 25 day refueling outages thereafter.²⁰
- 7 • FPLE Point Beach projects that outage durations at the plants will decline
8 from *****BEGIN FPLE CONFIDENTIAL*****
9 *****END FPLE**
10 **CONFIDENTIAL*****²¹

11 **Q. Are you testifying that when it was calculating its CCO, WEPCO should**
12 **have assumed that it would be able to achieve very short 25-30 day refueling**
13 **outages on a regular basis?**

14 A. Not necessarily. However, I believe that all of the evidence I have cited supports
15 the use of projected operating performance for the Point Beach units of at least
16 87.7 to 89 percent average annual capacity factors. This would have reflected
17 Point Beach's average performance in the past six years, an approximate
18 2 percent forced outage rate, and refueling outages of about 49-50 days in
19 duration.

20 **Q. What would have been WEPCO's CCO if the Company had assumed that**
21 **the Point Beach units would operate at an 87.7 percent average annual**
22 **capacity factor?**

23 A. Assuming an average 87.7 percent annual capacity factor would have reduced
24 WEPCO's calculated CCO by approximately *****BEGIN WEPCO**
25 **CONFIDENTIAL*** ***END WEPCO CONFIDENTIAL***** per
26 MWh. This would have meant a total reduction in payments by ratepayers of
27 roughly *****BEGIN WEPCO CONFIDENTIAL*** ***END**

²⁰ WEPCO Response to Data Request 2-CUB-31.

²¹ Data Room Confidential FPLE Response to Data Requests 1-CUB-5 and 1-CUB-7.

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1 WEPCO CONFIDENTIAL*** per year, assuming total generation of slightly
2 more than 8 million MWh each year.

3 **Q. Is the provision in the Asset Sale Agreement (“ASA”) that would adjust the**
4 **cash purchase price if a Private Letter Ruling (“PLR”) from the U.S.**
5 **Internal Revenue Service (“IRS”) is not received by the closing date**
6 **reasonable and prudent?**

7 A. No. The PSCW should not approve the ASA with this provision. Instead, if it
8 does allow the sale to proceed, the Commission should require that the closing
9 date be delayed until WEPCO receives the PLR concerning Point Beach’s
10 qualified decommissioning trust.

11 **Q. Please explain the basis for this conclusion.**

12 A. As explained by Company witness Schubilske, a favorable PLR from the IRS
13 would allow WEPCO to retain all amounts in the Point Beach Qualified
14 Decommissioning Fund in excess of \$360 million. However, Sections 5.15(c),
15 5.15(d) and 2.3(b)(i)(6) of the ASA would require the closing to proceed even if a
16 final disposition on the request for the PLR has not been received and instead
17 would require that the purchase price be adjusted by only 25 cents for every dollar
18 in excess of \$360 million in the Qualified Fund. In essence, in place of being able
19 to retain the additional \$196 million (above the \$360 million) that WEPCO
20 anticipates will be in the Qualified Fund at the end of August 2007, ratepayers
21 would receive only the approximately \$49-50 million by which the cash purchase
22 price would be increased. This would represent a windfall for FPLE Point Beach
23 and a significant loss in value for ratepayers.

24 For example, as shown in WEPCO witness Schubilske’s Exhibit JAS-1, the net
25 proceeds from the sale transaction would decrease from approximately
26 \$971 million if a favorable PLR is received to approximately \$825 million if a
27 favorable PLR is not received. Consequently, it would be worth it to delay the
28 closing date until the IRS’s decision on WEPCO’s request for a PLR is received.

1 **Q. What would be the additional costs of delaying the closing date until a**
2 **decision on the PLR is received?**

3 A. WEPCO has said that the IRS ruling request was submitted in January 2007 and
4 that, in general, an IRS ruling takes six to eight months to receive.²² Thus, it is
5 possible that an IRS ruling on the request for a PLR might be obtained before the
6 end of August 2007 or shortly thereafter.

7 It is reasonable to expect that certain costs, such as payments for inventory, might
8 change depending on the actual closing date. However, Section 2.3(b)(i)(10) of
9 the ASA indicates that there would be no purchase price penalty if the closing
10 were delayed until September 30, 2007. After that date, the purchase price would
11 be adjusted downward in the amount of Two Hundred Thousand Dollars for each
12 day that the closing has not occurred. Consequently, even if the closing were
13 delayed by two months, the purchase price would be reduced by only \$6 million.
14 This is significantly less than the approximate \$146 million in value that
15 ratepayers would lose if the closing proceeds before a favorable PLR is obtained
16 from the IRS.

17 **Q. What would happen if the sale is closed prior to the issuance of a PLR by the**
18 **IRS, FPLE Point Beach pays an additional \$49 or \$50 million, the entire**
19 **Qualified Decommissioning Fund is transferred, and then a favorable PLR is**
20 **issued by the IRS?**

21 A. According to WEPCO, the ASA does not anticipate the receipt of a PLR after the
22 closing date: "If Wisconsin Electric does not receive a favorable PLR by the
23 anticipated close date in August 2007, the purchase price will be increased by
24 approximately \$50 million and the entire qualified decommissioning fund is
25 transferred to FPLE-PB."²³ This is not a reasonable outcome for ratepayers.

²² WEPCO Response to Data Request 4-CUB-4(c).

²³ WEPCO Response to Data Request TJF-6-1.

1 They would have given up approximately \$196 million in the transferred
2 Qualified Decommissioning Fund but would have received only a \$49 million
3 increase in the purchase price.

4 **Q. Would WEPCO’s ratepayers be paying more for the power from Point**
5 **Beach during this two-month period?**

6 A. No. *****BEGIN WEPCO CONFIDENTIAL*****

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*****END WEPCO CONFIDENTIAL*****

12 **Q. Who would be operating the plants during this two-month period?**

13 A. As explained by WEPCO witness Kuester, a Transitional Advisory Support
14 Services Agreement would provide the Company with access to specific technical
15 support from FPLE Point Beach during the transition and closing process to
16 ensure continued safe and reliable operations. In addition, an Interim Operating
17 Agreement would allow WEPCO, in its sole discretion, to transfer operations of
18 the plants to FPLE Point Beach.²⁴

19 **Q. What is the corporate structure through which FPLE will own Point Beach if**
20 **the proposed sale is closed?**

21 A. The Point Beach plants will be owned by FPLE Point Beach which is an indirect
22 subsidiary of FPL Group, Inc., as follows:

23 FPLE Point Beach is a direct, wholly-owned subsidiary of ESI Energy, LLC,
24 which is a direct, wholly-owned subsidiary of FPL Energy, LLC (“FPL Energy”).
25 FPL Energy is in turn a direct, wholly-owned subsidiary of FPL Group Capital,

²⁴ Direct Testimony of Frederick D. Kuester, at page 20, lines 17-22.

1 which is a direct, wholly-owned subsidiary of FPL Group, Inc. FPL Group is a
2 public utility holding company incorporated in 1984 under the laws of the State of
3 Florida.

4 These multi-tiered corporate relationships are shown on Exhibit ____ (DAS-2)
5 which is a page from the Point Beach License Transfer Application to the NRC.

6 **Q. What is the purpose of such a multi-tiered holding company?**

7 A. The use of such a multi-tiered holding company structure shields the assets of the
8 parent corporation, FPL Group, from financial risks associated with the operations
9 of the indirect subsidiaries such as FPLE Point Beach.

10 **Q. Does FPL Group own other nuclear power plants through similar chains of**
11 **subsidiaries?**

12 A. Yes. FPLE Energy Seabrook, LLC, which operates and owns 88.23 percent of
13 the Seabrook nuclear power plant, and FPL Energy Duane Arnold, which owns
14 and operates the Duane Arnold nuclear plant, also are indirect subsidiaries of FPL
15 Group. FPL Group also owns other nuclear power plants through its regulated
16 subsidiary Florida Power & Light Company.

17 **Q. If the proposed sale of Point Beach is closed will the Public Service**
18 **Commission of Wisconsin retain any regulatory oversight authority over**
19 **Point Beach or its owner/operator?**

20 A. The Public Service Commission would only retain very limited jurisdiction over
21 Point Beach under the conditions offered by FPLE Point Beach. The Commission
22 will lose significant regulatory oversight authority over Point Beach and the
23 plant's owner because FPLE Point Beach, LLC will operate the plant and its
24 output will be sold pursuant to the approved power purchase agreement.

25 Specifically, after a sale to FPLE, the Commission would lose the authority:

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- 1 ▪ to assure the financial integrity of FPLE Point Beach and its owners. If
2 Point Beach were sold to FPLE Point Beach, the Wisconsin Commission
3 would be unable to assure that adequate funds are made available and
4 prudently invested in and used to maintain and operate the plant. The
5 Wisconsin Commission also would be unable to assure that funds that
6 should be used to maintain and operate Point Beach are not being
7 improperly transferred to FPLE Point Beach's direct or indirect owners or
8 affiliates.
- 9 ▪ to exclude from rates imprudently incurred costs.

10 **Q. Do the conditions offered by FPLE Point Beach adequately compensate for**
11 **the loss of jurisdiction by the PSCW?**

12 A. No. The PSCW still would experience a significant loss of jurisdiction even with
13 the conditions contained in the ASA.

14 For example, the PSCW currently has the authority to ensure that WEPCO does
15 not enter into financial transactions that would limit or threaten its financial
16 capability to provide funds to safely operate and maintain Point Beach. However,
17 pursuant to the conditions in Section 5.22 of the ASA, the Commission's
18 authority and power would be limited to receiving notice of any request made by
19 or for FPLE Point Beach, or any affiliated company, to the SEC to pay dividends
20 from funds other than FPLE Point Beach's retained earnings.

21 There also would be no limit set on the retention of retained earnings by FPLE
22 Point Beach to ensure safe operations and maintenance and no limits on the
23 dividends that FPL Point Beach could pay to its affiliated owners from its
24 earnings. Therefore, FPL Group could take out all of FPLE Point Beach's
25 earnings in dividends to fund other operations or priorities, leaving insufficient
26 funds in FPLE Point Beach for nuclear operations or, later, decommissioning.
27 Nor would there be any PSCW authority to prevent FPL Group from doing so.

1 **Q. But don't the other conditions offered by FPLE Point Beach in the ASA**
2 **protect against FPL Group taking out all of FPLE Point Beach's earnings in**
3 **dividends to fund other operations or priorities?**

4 A. No. The limit on intercompany transactions in Section 5.22(a) of the ASA would
5 prohibit FPLE Point Beach from guarantying any debt or providing any loans to
6 its parent or any of its affiliates. It would not limit the ability of FPL Group to
7 pay out dividends from FPLE Point Beach's earnings.

8 **Q. Why should the PSCW be concerned about FPLE Point Beach's lack of**
9 **direct control over its internally generated funds and the lack of Commission**
10 **authority to ensure the financial integrity of FPLE Point Beach?**

11 A. This is an important concern because FPLE Point Beach could be left without
12 sufficient funds to operate, maintain or decommission the plants without
13 endangering the public health and safety. The bankruptcy of Pacific Gas &
14 Electric Company in the early years of this decade provide a recent example
15 where substantial funds were transferred from a successful operating company to
16 the parent holding company leaving the operating company with such serious
17 financial problems that it had to declare bankruptcy.

18 **Q. Has the NRC expressed concern about the ownership of nuclear power**
19 **plants through holding company structures?**

20 A. Yes. Although it has approved the transfer of operating licenses to indirect
21 subsidiaries of multi-state holding companies, the NRC has expressed concern
22 that the use of holding companies can reduce the assets that would be available
23 for the safe operation and decommissioning of a nuclear power plant. However,
24 the NRC does not adequately protect against the risk that a power plant owning
25 subsidiary will transfer all of its operating profits to its parent(s) or engage in
26 questionable deals with affiliates.

27 For example, the NRC Staff has expressed concern that the use of holding
28 company structures can lead to a diminution of the assets necessary for the safe

1 operation and decommissioning of a licensee's nuclear power plant.²⁵ In fact, as
2 early as March 1993 the NRC Staff expressed concern that:

3 Current and potential organizational structures of many power reactor
4 licensees and their corporate affiliates are complex and evolving. The
5 staff believes that the public health and safety implications of such
6 structures warrant further examination. A licensee subsidiary without
7 assets other than the licensed reactor could renege on its
8 decommissioning obligations if forced to shut down prematurely.
9 Given that corporate law generally limits the liability of stockholders,
10 the NRC may not have recourse to the assets of a parent company if its
11 subsidiary defaults absent legally enforceable commitments by
12 owners. Case law with respect to bankruptcy proceedings is also
13 ambiguous. Although bankruptcy courts have generally directed
14 bankruptcy trustees to make justifiable, legally required expenditures
15 to protect public health and safety, it is not clear that these
16 expenditures will always have a high priority relative to other claims.
17 The staff believes that it should evaluate possible ways to increase
18 assurance of decommissioning funds availability. An increased degree
19 of confidence may be appropriate to assure that the problems that the
20 Office of Nuclear Material Safety and Safeguards has had with some
21 of its licensees abandoning materials sites prior to cleanup will not be
22 experienced for power reactor licensees.²⁶

23 The NRC Staff consequently requested that the NRC Commissioners approve
24 publication of an advance notice of proposed rulemaking to explore alternatives to
25 mitigate the potential impact on safety of power reactor licensee ownership
26 arrangements and to consider whether increased assurance of funding availability
27 for decommissioning activities was needed.

28 Unfortunately, the NRC Commissioners disapproved this request and, instead,
29 asked for additional information on the Staff proposal. In response to a
30 Commission question on how many reactor licensees could try to set up a
31 corporate veil to avoid decommissioning costs, the NRC Staff noted:

²⁵ *Safety Evaluation by the NRC's Office of Nuclear Reactor Regulation "Related to Proposed Corporate Restructuring of Commonwealth Edison Company,"* October 5, 2000, at page 3.

²⁶ *Issuance of An Advance Notice of Proposed Rulemaking on the Potential Impact on Safety of Power Reactor Licensee Ownership Arrangements, SECY-93-075,* March 24, 1993, at page 1.

1 Potentially, any investor-owned utility could establish a holding
2 company to which it could transfer the bulk of its assets over time. If
3 forced to shut down prematurely, a licensee with assets limited
4 essentially to the shut down reactor could declare bankruptcy and
5 renege on any unfunded decommissioning obligation. If a bankrupt
6 licensee had insufficient assets, a bankruptcy court might be powerless
7 to order that assets of a parent company be used to fund
8 decommissioning, even if the court wished to do so.²⁷

9 In the years since 1994, the NRC has not developed or adopted any policy
10 limiting the transfer of operating profits from the subsidiary that directly owns a
11 nuclear plant. Nor does the NRC have any policy limiting the types or magnitudes
12 of the loans that such an operating subsidiary can make to affiliated companies.

13 At most, the NRC merely conditions license transfer approvals to new holding
14 company structures upon a requirement that the licensee not transfer to its
15 proposed parent or any other affiliated company significant assets for the
16 production, transmission or distribution of electric energy without first notifying
17 the NRC. The NRC has defined “significant assets” to be facilities having a
18 “depreciated book value exceeding 10 % of the company’s consolidated net utility
19 plant.”²⁸

20 The NRC also does not have a specific policy statement or procedure on how
21 licensees should use financial assurance funds in the forms of lines of credit for
22 plant operation.²⁹ Nor does the NRC have any specific policy statement or
23 procedure that controls how it would consider approval of requests of corporate
24 subsidiaries to reduce, replace, or withdraw available lines of credit that are

²⁷ *Response to Staff Requirements Memorandum of April 28, 1993, Which Disapproved Issuance of An Advance Notice of Proposed Rulemaking on the Potential Impact on Safety of Power Reactor Licensee Ownership Arrangements, SECY-94-280, at pages 4 and 5*

²⁸ For example, see the October 5, 2000 Safety Evaluation by the NRC Office of Nuclear Reactor Regulation of the proposed corporate restructuring of PECO Energy Company, at page 3.

²⁹ Enclosure 1 to the NRC’s December 13, 2001 letter to Christine Salembier, Commissioner, Vermont Department of Public Service, on the subject of “Vermont Yankee Nuclear Power Station – Lines of Credit Associated with Vermont Yankee License Transfer.”

1 subject to NRC conditions. Instead, the NRC has said that it will review such
2 requests on a case-by-case basis.³⁰

3 The NRC has explained its policy for addressing situations where a licensee has
4 drawn upon the lines of credit provided by a parent or affiliated companies. In
5 such situations, the NRC would:

6 evaluate the reasons behind [the licensee's] drawing on the lines of
7 credit. The staff cannot provide a detailed discussion of potential
8 agency actions until it learns the specific reasons for the usage of such
9 funds. Generally, if drawings on the lines of credit were made to cover
10 short-term cash flow deficiencies that did not appear to have any
11 significant safety ramifications, the NRC would not likely need to take
12 any specific action. If drawing on the lines of credit were to indicate
13 serious longer-term financial problems that appeared to potentially
14 adversely impact protection of public health and safety, the NRC
15 would monitor the effects of any degradation on protection of public
16 health and safety and act appropriately.³¹

17 **Q. Does the NRC conduct reviews of the financial qualifications of new plant**
18 **owners as part of its evaluation of proposed transfers of nuclear power plant**
19 **operating licenses?**

20 A. Yes. Before it allows a nuclear power plant operating license to be transferred,
21 the NRC conducts reviews of the financial qualifications of the prospective
22 owner. The NRC's regulations specify the types of information that a prospective
23 licensee must provide and the nature of the review that must be conducted by the
24 NRC staff.

25 However, the applicable NRC regulation, 10 CFR 50.33(f), is inconsistent in that
26 on the one hand it says that “the applicant shall submit information that
27 demonstrates the applicant possesses or has reasonable assurance of obtaining the
28 funds necessary to cover estimated operation costs for the **period of the license.**”

³⁰ Ibid.

³¹ Ibid.

1 (Emphasis added) But the regulation then merely requires applicants to submit
2 estimates for total annual operating costs for only the first 5 years of operation of
3 the facility. Although the NRC can ask for information for subsequent years, this
4 regulation can mean that the NRC will only review five years of operating cost
5 data when the new owner may be seeking transfer of a license which will continue
6 in effect for another 25 years or longer. Because the NRC's review of the
7 financial qualifications of potential new operators of nuclear plants may not be
8 exhaustive, it is essential that this Commission not relinquish its authority to
9 analyze the financial qualifications of any new operator subsequent to FPLE-Point
10 Beach, (if the Commission approves the current transaction), as part of its review
11 of whether a subsequent sale would be in the public interest.

12 **Q. Does the NRC monitor the financial qualifications of licensees on an ongoing**
13 **basis?**

14 A. The NRC's review of financial qualifications continues after a license is
15 transferred. Each licensee is required to submit an annual financial report,
16 pursuant to 10 CFR 50.71(b) and a decommissioning funding status report is
17 required every two years.³² The NRC Staff also monitors the general financial
18 status of nuclear plant licensees by screening the trade and financial press reports,
19 and other sources of information.³³

20 However, it is unclear whether the NRC has the Staff resources or the expertise to
21 conduct adequate reviews of licensee's financial qualifications. For example, the
22 NRC's Executive Director for Operations informed the Commissioners in April
23 1997 that the expertise of the NRC Staff in matters of finance and economic
24 analysis were "limited."³⁴ It is unclear whether the NRC Staff has developed

³² 10 CFR § 50.75(f)(1).

³³ NUREG-1577, Rev 1, Section III.1.d., at page 5.

³⁴ NRC SECY-97-071, April 2, 1997.

1 greater expertise since 1997 especially in light of the fact that the overall size of
2 the NRC Staff has been reduced by approximately ten percent since that time.³⁵

3 The NRC has expressed confidence in its Staff's ability to identify financial
4 distress and has quoted approvingly a Staff member who said "severe financial
5 distress from any of the licensees is something that's not going to be hidden from
6 view very long."³⁶ However, the suddenness of ENRON's collapse and the
7 apparent absence of public warnings of that company's severe financial distress
8 prior to that collapse suggest that the NRC may not have any warning about a
9 licensee's impending financial problems.

10 **Q. What guarantees has FPL provided that FPLE Point Beach will be**
11 **adequately funded to operate and decommission the Point Beach plants?**

12 A. As explained in the Direct Testimony of WEPCO witness O'Sullivan, the parent
13 corporation FPL Group will provide a support agreement to FPLE Point Beach
14 under which the subsidiary will have access to up to \$70 million, if necessary, to
15 pay the expenses of operating and maintaining Point Beach, to protect the public
16 health and safety, and to meet NRC requirements.³⁷ According to Mr. O'Sullivan,
17 this funding assurance will, if necessary, also meet any obligations associated
18 with nuclear liability premiums and required nuclear property insurance.
19 Consequently, some of the funding support might possibly be diverted to pay for
20 FPLE Point Beach's liabilities under the Price Anderson Act if another serious
21 nuclear plant accident occurs during Point Beach's remaining operating life.

³⁵ NUREG-1350, Vol. 13, Figure 4.

³⁶ *In the Matter of Power Authority of the State of New York and Energy Nuclear Fitzpatrick*, 53 N.R.C. 488, June 21, 2001.

³⁷ Direct Testimony of Michael O'Sullivan, at page 7, lines 1-10.

1 **Q. Is FPL Group's \$70 million support agreement consistent with guarantees**
2 **that the NRC has obtained from other new nuclear power plant owners?**

3 A. Yes. The \$70 million support agreement proposed by FPL Group is similar to the
4 support agreements provided by other nuclear power plant buyers.

5 **Q. Has any state regulatory commission expressed concern about the**
6 **inadequacy of a \$70 million support guarantee?**

7 A. Yes. When the Entergy Corporation applied to the NRC and the Vermont Public
8 Service Board for approval to purchase the Vermont Yankee nuclear plant, it
9 offered to provide a \$70 million support guarantee provided by two lines of credit
10 from subsidiaries. The NRC accepted this \$70 million guarantee based on the two
11 lines of credit.

12 However, the staff of the Vermont Department of Public Service and the Vermont
13 Public Service Board raised serious concerns about the adequacy of such a small
14 guarantee, especially where the parent corporation had not pledged any of the \$70
15 million support.³⁸ In response, Entergy pledged that if either line of credit had
16 been drawn upon, the parent corporation would make up any deficiency up to a
17 total of \$60 million.³⁹ Consequently, the total support pledged by Entergy to
18 Vermont Yankee was \$130 million.

³⁸ See the Direct Testimony of Andrea Crane on behalf of the Vermont Department of Public Service, Vermont Public Service Board Docket No. 6545, at pages 18-22.

³⁹ Rebuttal Testimony of Connie Wells, Entergy Nuclear Vermont Yankee, LLC, in Vermont Public Service Board Docket No. 6545, at page 3, lines 8-13.

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1 **Q. If the plant-owning subsidiary were to declare that it were bankrupt, does**
2 **the NRC have statutory authority to require a licensee in bankruptcy to**
3 **continue making safety-related or decommissioning expenditures?**

4 A. No. NRC regulations require any nuclear power plant licensee to immediately
5 report any filing of a voluntary or involuntary petition for bankruptcy.⁴⁰
6 However, the NRC has no additional financial requirements for situations where a
7 licensee files for bankruptcy or otherwise encounters financial difficulties. Nor
8 does the NRC have any statutory authority to require a licensee which is in
9 bankruptcy to continue to make safety-related or decommissioning payments.
10 The NRC must intervene in the proceedings before the bankruptcy court and
11 petition the court to require such payments.

12 The NRC has had some experience with the bankruptcies of some nuclear power
13 plant owners. However, all of these earlier bankruptcies involved entities that
14 owned a number of different assets. The bankruptcy of a single-asset subsidiary,
15 which owns only a single nuclear power plant, as would be the case with FPLE
16 Point Beach, would present very different circumstances and challenges. At the
17 same time, given the multi-tiered holding companies through which parent
18 corporations now own nuclear power plants, the NRC might have trouble
19 “piercing the corporate veil” to require a parent corporation to accept
20 responsibility for the liabilities of a bankrupt subsidiary and make required
21 payments.

22 **Q. Would it be difficult to hold a parent corporation responsible for the**
23 **liabilities incurred by a nuclear power plant owning subsidiary in a multi-**
24 **tiered holding company such as that proposed by FPLE for Point Beach?**

25 A. Yes. The multiple layers of subsidiaries that have been created by parent
26 corporations in the nuclear industry could make it difficult to hold a parent

⁴⁰ 10 CFR § 50.54 (cc).

1 corporation responsible for liabilities incurred by the plant-owning subsidiary.
2 Even if a court concludes that the liability of the subsidiary that actually operates
3 the nuclear plant should be extended to business structures above it (for example,
4 if under capitalization and profit distributions have left the subsidiary unable to
5 cover the costs of unanticipated repairs or security improvements and the
6 subsidiary decides to cease operations), the ability of the court to find a senior
7 business entity with sufficient capital could be complicated by multiple layers of
8 subsidiaries. There may be issues of jurisdiction, applicable state or federal
9 statutes, the role of the NRC, and other myriad issues of law and fact that would
10 need to be resolved. Given that the presumption in every state and federal statute
11 is for the limitation of corporate liability, the burden is always on the party trying
12 to extend that liability to show that the law, facts, and public policy all support
13 violating the statutory presumption.⁴¹ Courts, in general, are reluctant to pierce
14 the corporate veil and extend liability; when multiple corporations are involved,
15 that reluctance only increases.

16 For example, a legal memorandum provided to the Vermont Public Service Board
17 by the previous owners of the Vermont Yankee Nuclear Power Corporation
18 concluded that attempts to pierce the corporate veil of nuclear power plant
19 subsidiaries were unlikely to succeed and have seldom been attempted.⁴² Despite
20 the numerous specific instances where courts have extended liability to parent
21 corporations, there is great uncertainty as to whether or not courts would apply
22 such extended liability to multi-tiered nuclear power companies.

⁴¹ “Piercing the Corporate Veil: An Empirical Study”, Robert B. Thompson, 76 Cornell Law Review 1036 (1991), Section II, and “Limited Liability and the Corporation”, Frank H. Easterbrook and Daniel R. Fishel, 52 U. Chi. L. Rev. 89 (1985), Section IV.

⁴² Vermont Yankee Memorandum of Law Regarding Ratepayer Risk of Liability for Vermont Yankee Decommissioning Costs, Vermont Public Service Board Docket No. 6545, dated February 25, 2002, at pages 17 and 18.

1 **Q. Has the NRC expressed doubts as to its ability to hold a parent corporation**
2 **responsible for the liabilities incurred by a subsidiary?**

3 A. Yes. There are two NRC cases that involved attempts to pierce the corporate veil
4 of the operator of a nuclear power plant. In 1995, the NRC attempted to negate a
5 transfer of assets from a licensee which, as part of a complicated corporate
6 restructuring, had become a subsidiary to a newly created holding company
7 because the transfer had occurred without the prior written consent of the NRC, as
8 required by section 184 of the Atomic Energy Act. The NRC held that it could
9 pierce the veil of corporations that violate section 184. However, before a final
10 adjudication, this case ended in a settlement.⁴³

11 In 1997, the NRC tried to force a parent company to provide additional funds to
12 the decommissioning fund for a subsidiary plant. However, prior to a final
13 adjudication, the NRC approved a settlement that resolved the decommissioning
14 fund issue without any specific finding as to the parent company's liability.⁴⁴ In
15 accepting the settlement, the NRC expressed concern that there was a "substantial
16 possibility of defeat if the case proceeds to trial [on a theory of] piercing the
17 corporate veil."

18 **Q. Please summarize your conclusions regarding the potential effect of selling**
19 **Point Beach to a subsidiary of an out-of-state multi-tiered holding company.**

20 A. If the sale of Point Beach to FPLE Point Beach is closed, the Public Service
21 Commission of Wisconsin will lose significant regulatory oversight over the plant
22 and its owners. The Commission would be unable to assure the financial integrity
23 of FPLE Point Beach and its owners and that adequate funds were being made
24 available to maintain and operate Point Beach.

⁴³ *Safety Light Corp.*, 41 N.R.C. at 457-458 (1995).

⁴⁴ *Sequoyah Fuels Corp. and General Atomics*, CLI-97-13, 46N.R.C. 195 (1997).

1 In addition, the Wisconsin Commission would lose the power to disallow
2 imprudently incurred replacement power costs, imprudent Point Beach fuel costs,
3 imprudent plant operating costs and imprudent capital expenditures.

4 The parent corporation FPLE has not guaranteed that FPLE Point Beach will have
5 the funds it needs to operate Point Beach safely. Instead, the parent corporation
6 has only guaranteed that it will provide up to \$70 million if FPLE Point Beach
7 needs funds.

8 The Wisconsin Commission also cannot rely upon the U.S. NRC to adequately
9 monitor the financial condition of FPLE Point Beach and to require that sufficient
10 funds will be made available to operate and maintain the plants. The financial
11 assurance reviews conducted by the NRC when an operating license is transferred
12 are very limited. It also is unclear whether the NRC has the requisite Staff
13 expertise or resources to effectively monitor licensee's financial circumstances on
14 an ongoing basis.

15 **Q. Does this complete your testimony?**

16 **A. Yes.**