

**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 Kewaunee Nuclear Power)
Plant from Wisconsin Public Service Corporation and) Docket No. 05-EI-136
Wisconsin Power and Light Company to Dominion)
Energy Kewaunee, Inc., and for Related Approvals)
and Declaratory Rulings Regarding Various Ancillary)
Agreements, Arrangements and Rate Recovery Issues)
)**

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

**On Behalf of the
Citizens Utility Board of Wisconsin**

May 7, 2004

1 **Q. 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 Citizens Utility Board of Wisconsin (“CUB”).

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

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

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

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

18 Since 1983 I have been retained by governmental bodies, publicly-owned utilities,
19 and private organizations in 24 states to prepare expert testimony and analyses on
20 engineering and economic issues related to electric utilities. My clients have
21 included the Staff of the California Public Utilities Commission, the Staff of the
22 Arizona Corporation Commission, the Staff of the Kansas State Corporation
23 Commission, the Arkansas Public Service Commission, municipal utility systems
24 in Massachusetts, New York, Texas, and North Carolina, and the Attorney
25 General of the Commonwealth of Massachusetts.

26 I have testified before state regulatory commissions in Arizona, New Jersey,
27 Connecticut, Kansas, Texas, New Mexico, New York, Vermont, North Carolina,
28 South Carolina, Maine, Illinois, Indiana, Ohio, Massachusetts, Missouri, and

1 Wisconsin and before an Atomic Safety & Licensing Board of the U.S. Nuclear
2 Regulatory Commission.

3 A copy of my current resume is attached as Exhibit___DAS-1.

4 **Q. Have you previously submitted testimony before this Commission?**

5 A. Yes. I submitted testimony in September 1994 in Public Service Commission of
6 Wisconsin (“Commission”) Docket Nos. 6630-CE-197 and 6630-CE-209
7 addressing the proposed replacement of the steam generators at the Point Beach
8 Unit 2 Nuclear Generating Station and in Docket No. 6690-UR-115 concerning
9 the reasonableness of Wisconsin Public Service Corporation’s proposed funding
10 plan for the Kewaunee Nuclear Power Plant (“Kewaunee” or “KNPP”).

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

12 A. Synapse was asked by CUB to examine three issues related to the proposed sale
13 of Kewaunee to Dominion Energy Kewaunee, Inc.¹ by Wisconsin Public Service
14 Corporation (“WPS”) and Wisconsin Power and Light Company (“WPL”):

- 15 1. Whether it is in the public interest to sell Kewaunee to an indirect
16 subsidiary of an out-of-state multi-tiered holding company.
- 17 2. Whether WPS and WPL’s proposed use of the Kewaunee
18 decommissioning trust funds is reasonable and in the public interest.
- 19 3. Whether the price that WPS and WPL would receive from Dominion
20 Energy Kewaunee represents Kewaunee’s fair market value.

21 This testimony presents the results of our analyses.

22 **Q. Please explain how Synapse conducted its investigations and analyses on the**
23 **decommissioning cost issue.**

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

¹ I am using the name “Dominion” to generically refer to the entire corporate holding company which includes Dominion Resources, Inc. and Dominion Energy Kewaunee.

- 1 1. Reviewed the testimony submitted by WPS, WPL, and Dominion and
2 prepared data requests that CUB submitted to these companies.
- 3 2. Reviewed the responses to the data requests submitted by CUB and other
4 active parties.
- 5 3. Reviewed relevant Commission Orders.
- 6 4. Examined materials in Synapse files related to other nuclear power plant
7 sales and to issues related to the ownership of nuclear power plants by
8 subsidiaries of multi-tiered holding companies.
- 9 5. Examined materials available in the U.S. Nuclear Regulatory
10 Commission's public docket files related to decommissioning cost issues
11 and the sales of other nuclear power plants.
- 12 6. Examined materials available on the website of Rochester Gas & Electric
13 Corporation related to the sale of the R.E. Ginna nuclear power plant to
14 Constellation.
- 15 7. Reviewed publicly available materials concerning nuclear power plants
16 sales and decommissioning related plans and cost issues.

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

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

23 **Q. Have you previously examined the issue of the ownership of nuclear power
24 plants by subsidiaries of multi-tiered holding companies?**

25 A. Yes. During the summer of 2002, Synapse prepared a report titled "Financial
26 Insecurity: The Increasing Use of Limited Liability Companies and Multi-Tiered
27 Holding Companies to Own Nuclear Power Plants." I was the lead

1 investigator/writer for this report. A copy of the report is attached as Exhibit ____
2 DAS-2.

3 **Q. Please summarize your conclusions in this investigation.**

4 A. I have reached the following conclusions:

- 5 1. If the sale of Kewaunee to Dominion Energy Kewaunee is closed, the
6 Public Service Commission of Wisconsin will lose regulatory oversight
7 over the plant and its owners. The Commission will have no authority to
8 determine such critical issues as the adequacy of the plant's
9 decommissioning funds, whether the plant's operating life should be
10 extended, and whether it should be sold to a subsequent owner. The
11 Commission also would be unable to assure the financial integrity of
12 Dominion Energy Kewaunee and its owners and that adequate funds were
13 being made available to maintain and operate Kewaunee.
- 14 2. Dominion does not have delineated corporate policies setting limits on the
15 retention of earnings or the transfer of earnings or other funds by
16 Dominion Energy Kewaunee. Dominion also does not have delineated
17 corporate policies setting limits on inter-affiliate loans or other inter-
18 affiliate transactions. Consequently, the Commission should be concerned
19 that Dominion could use all of Dominion Energy Kewaunee's earnings to
20 fund other operations or priorities, leaving insufficient funds in Dominion
21 Energy Kewaunee for nuclear operations or decommissioning.
- 22 3. The parent corporation Dominion Resources, Inc. has not guaranteed that
23 Dominion Energy Kewaunee will have all of the funds it needs to operate
24 and decommission Kewaunee safely. Instead, Dominion Resources, Inc.
25 has only guaranteed that it will provide up to \$60 million if Dominion
26 Energy Kewaunee is unable to obtain needed funds from other sources.
- 27 4. The Commission also cannot rely upon the U.S. NRC to adequately
28 monitor the financial condition of Dominion Energy Kewaunee and to
29 require that sufficient funds will be made available to operate and

1 maintain the plant. The financial assurance reviews conducted by the
2 NRC when an operating license is transferred are very limited. In addition,
3 the NRC will no longer conduct a review of a licensee's financial
4 assurance when evaluating a license renewal application. It also is unclear
5 whether the NRC has the requisite staff expertise or resources to
6 effectively monitor licensee's financial circumstances on an ongoing
7 basis.

8 5. Refunding of the Non-Qualified Decommissioning Trusts should not be
9 considered as a benefit of the proposed sale to Dominion. Instead, it is
10 reasonable to expect that a large portion, if not all, of the funds in the Non-
11 Qualified Trusts can eventually be refunded to ratepayers whether or not
12 the plant is sold. This is especially true if Kewaunee's operating life is
13 extended.

14 6. WPS and WPL would not receive Kewaunee's fair market value if the
15 proposed sale to Dominion Energy Kewaunee is closed, especially in light
16 of the low price they will receive and the \$405 million in
17 decommissioning funds that would be transferred to Dominion. In fact,
18 the \$220 million cash price that WPS and WPL would receive from
19 Dominion for Kewaunee and related nuclear fuel would be \$160 million
20 less than RG&E will receive from Constellation as part of the sale of the
21 Ginna nuclear plant, a slightly smaller facility, and related nuclear fuel.
22 The proposed Ginna transaction is very relevant in assessing the fair
23 market value of Kewaunee because Ginna is a peer plant to Kewaunee
24 with a similar design and vintage. As part of the proposed Kewaunee sale,
25 WPS and WPL also would transfer to Dominion Energy Kewaunee
26 approximately \$405 million in decommissioning funds which would be
27 \$202 million more than RG&E will have to transfer to Constellation as
28 part of the Ginna transaction.

1 **Q. What are your recommendations in this proceeding?**

2 A. I recommend that the Commission reject the proposed sale of Kewaunee to
3 Dominion Energy Kewaunee as not being in the public interest.

4 Issue No. 1 – Whether it is in the public interest to sell Kewaunee to an indirect
5 subsidiary of an out-of-state multi-tiered holding company

6 **Q. What is the corporate structure through which Dominion will own Kewaunee
7 if the proposed sale is closed?**

8 A. The Kewaunee plant will be owned by Dominion Energy Kewaunee, Inc. which
9 will be an indirect subsidiary of the parent corporation, Dominion Resources, Inc.
10 (“DRI”), as follows:

11 DRI owns 100 percent of Dominion Energy, Inc., which in turn, owns 100 percent
12 of Dominion Nuclear Projects, Inc.. Dominion Nuclear Projects, Inc., is the direct
13 owner of 100 percent of Dominion Energy, Kewaunee, Inc..

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

15 A. The use of such a multi-tiered holding company structure shields the assets of the
16 parent corporation, DRI from financial risks associated with the operations of the
17 indirect subsidiaries such as Dominion Energy Kewaunee, Inc.

18 **Q. Do the direct and indirect owners of Kewaunee have the same officers?**

19 A. Dominion Energy Kewaunee, Inc., Dominion Nuclear Projects, Inc, and
20 Dominion Energy, Inc. all will have essentially the same officers.²

21 **Q. Have you seen any evidence that Dominion Energy, Inc. and Dominion
22 Nuclear Projects, Inc. serve any function other than to be indirect owners of
23 other Dominion subsidiaries?**

24 A. No.

² Dominion response to Data Request 3-CUB-6(a).

1 **Q. Does Dominion Resources, Inc. own the Millstone Nuclear Plants through a**
2 **similar chain of subsidiaries?**

3 A. Yes. The Millstone Nuclear Plants are owned through a similar chain of
4 subsidiaries of Dominion Energy, Inc.

5 **Q. Does Dominion Resources own its other nuclear plants through similar**
6 **chains of subsidiaries?**

7 A. Yes. The North Anna and Surry nuclear plants are owned by similar subsidiaries
8 of DRI.

9 **Q. If the proposed sale of Kewaunee is closed will the Public Service**
10 **Commission of Wisconsin retain any regulatory oversight authority over**
11 **Kewaunee or its owner/operator?**

12 A. No. The Commission will lose regulatory oversight authority over Kewaunee and
13 the plant's owner(s) because Dominion Energy Kewaunee will operate the plant
14 and its output will be sold pursuant to a FERC-regulated power purchase
15 agreement. Instead, regulatory oversight authority will be relinquished to federal
16 agencies, such as the FERC, which might not be as sensitive to or concerned
17 about the best interests of Wisconsin and its ratepayers and taxpayers.

18 Specifically, after a sale to Dominion, the Commission would lose the authority:

- 19 ▪ to determine whether the Kewaunee decommissioning funds are adequate
20 and whether the method to be used to decommission the plant is
21 appropriate to Wisconsin.
- 22 ▪ to approve the subsequent sale of Kewaunee from Dominion to another
23 owner and to assure the financial integrity of any subsequent owner(s) of
24 Kewaunee.
- 25 ▪ to determine whether extension of Kewaunee's operating life is in the best
26 of interest of Wisconsin and its ratepayers and taxpayers.
- 27 ▪ to assure the financial integrity of Dominion Energy Kewaunee and its
28 owners. If Kewaunee were sold to Dominion, the Commission would be

1 unable to assure that adequate funds are made available and prudently
2 invested in and used to maintain and operate the plant. The Commission
3 also would be unable to assure that funds that should be used to maintain
4 and operate Kewaunee are not being improperly transferred to Dominion
5 Energy Kewaunee's direct or indirect owners or affiliates.

6 More specifically, if Kewaunee is sold to Dominion, the Commission
7 would not be able to use the broad powers granted by the Wisconsin
8 Public Holding Company Act to maintain the financial integrity of
9 Kewaunee and its direct owners and their holding company parents.

- 10 ▪ to approve major additions at Kewaunee including spent nuclear fuel
11 storage and the use of the site for the storage of spent fuel from other
12 nuclear plants.
- 13 ▪ to exclude from rates imprudently incurred costs.
- 14 ▪ to inspect and audit all books and records related to Kewaunee and to
15 enter onto and inspect the premises of Kewaunee.

16 The Commission would be required to flow through to retail rates all of the costs
17 which Dominion Energy Kewaunee charges to WPS and WPL under the PPA.

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

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

26 For example, the NRC Staff has expressed concern that the use of holding
27 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.³ 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.⁴

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:

32 Potentially, any investor-owned utility could establish a holding
33 company to which it could transfer the bulk of its assets over time. If

³ *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.

⁴ *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 forced to shut down prematurely, a licensee with assets limited
2 essentially to the shut down reactor could declare bankruptcy and
3 renege on any unfunded decommissioning obligation. If a bankrupt
4 licensee had insufficient assets, a bankruptcy court might be powerless
5 to order that assets of a parent company be used to fund
6 decommissioning, even if the court wished to do so.⁵

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

11 At most, the NRC merely conditions license transfer approvals to new holding
12 company structures upon a requirement that the licensee not transfer to its
13 proposed parent or any other affiliated company significant assets for the
14 production, transmission or distribution of electric energy without first notifying
15 the NRC. The NRC has defined “significant assets” to be facilities having a
16 “depreciated book value exceeding 10% of the company’s consolidated net utility
17 plant.”⁶

18 The NRC also does not have a specific policy statement or procedure on how
19 licensees should use financial assurance funds in the forms of lines of credit for
20 plant operation.⁷ Nor does the NRC have any specific policy statement or
21 procedure that controls how it would consider approval of requests of corporate
22 subsidiaries to reduce, replace, or withdraw available lines of credit that are
23 subject to NRC conditions. Instead, the NRC has said that it will review such
24 requests on a case-by-case basis.⁸

⁵ *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*

⁶ 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.

⁷ 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.”

⁸ Ibid.

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

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

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

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

23 However, the applicable NRC regulation, 10 CFR 50.33(f), is inconsistent in that
24 on the one hand it says that "the applicant shall submit information that
25 demonstrates the applicant possesses or has reasonable assurance of obtaining the
26 funds necessary to cover estimated operation costs for the **period of the license.**"
27 (emphasis added) But the regulation then merely requires applicants to submit
28 estimates for total annual operating costs for only the first 5 years of operation of
29 the facility. Although the NRC can ask for information for subsequent years, this
30 regulation can mean that the NRC will only review five years of operating cost

⁹ Ibid.

1 data when the new owner may be seeking transfer of a license which will continue
2 in effect for another 25 years or longer.

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

5 A. The NRC's review of financial qualifications continues after a license is
6 transferred. Each licensee is required to submit an annual financial report,
7 pursuant to 10 CFR 50.71(b) and a decommissioning funding status report is
8 required every two years.¹⁰ The NRC Staff also monitors the general financial
9 status of nuclear plant licensees by screening the trade and financial press reports,
10 and other sources of information.¹¹

11 However, it is unclear whether the NRC has the staff resources or the expertise to
12 conduct adequate reviews of licensee's financial qualifications. For example, the
13 NRC's Executive Director for Operations informed the Commissioners in April
14 1997 that the expertise of the NRC Staff in matters of finance and economic
15 analysis were "limited."¹² It is unclear whether the NRC staff has developed
16 greater expertise since 1997 especially in light of the fact that the overall size of
17 the NRC Staff has been reduced by approximately ten percent since that time.¹³

18 The NRC has expressed confidence in its Staff's ability to identify financial
19 distress and has quoted approvingly a Staff member who said "severe financial
20 distress from any of the licensees is something that's not going to be hidden from
21 view very long."¹⁴ However, the suddenness of ENRON's collapse and the
22 apparent absence of public warnings of that company's severe financial distress

¹⁰ 10 CFR 50.75(f)(1).

¹¹ NUREG-1577, Rev 1, Section III.1.d., at page 5.

¹² NRC SECY-97-071, April 2, 1997.

¹³ NUREG-1350, Vol. 13, Figure 4.

¹⁴ *In the Matter of Power Authority of the State of New York and Energy Nuclear Fitzpatrick*, 53 N.R.C. 488, June 21, 2001.

1 prior to that collapse suggest that the NRC may not have any warning about a
2 licensee's impending financial problems.

3 **Q. Does the NRC review the financial qualifications of applicants for renewal of**
4 **nuclear power plants' operating licenses?**

5 A. No. The NRC has approved changes to its regulations to remove the requirement
6 that merchant generators, such as Dominion Energy Kewaunee, have to file
7 information on their financial qualifications when seeking the extension of
8 operating licenses.¹⁵ The NRC is removing this requirement because it reviews a
9 licensee's financial background during the initial licensing of a plant and also at
10 the time that the plant's operating license is transferred.

11 This means that the NRC will not evaluate the financial qualifications of
12 Dominion Energy Kewaunee to operate Kewaunee for another 20 years when it
13 reviews Dominion's expected application to renew the plant's operating license.

14 **Q. Does Dominion have any corporate policies setting limits on the retention of**
15 **operating earnings by direct or indirect subsidiaries?**

16 A. No.¹⁶

17 **Q. Does Dominion have any corporate policies that limit or restrict the earnings**
18 **or other funds that could be transferred from Dominion Energy Kewaunee**
19 **to its direct or indirect owners or affiliates?**

20 A. No. The only significant limit on Dominion Energy Kewaunee's payment of
21 dividends to its owners would be the requirements of the Public Utility Holding
22 Company Act ("PUHCA") of 1935. Pursuant to this Act, Dominion and its
23 subsidiaries may pay dividends only from retained earnings unless the SEC
24 specifically authorizes payments from other capital accounts.¹⁷

¹⁵ *Inside NRC*, December 29, 2003, at page 13 and *Nuclear News*, March 2004, at page 21.

¹⁶ Dominion response to Data Request 3-CUB-19.

¹⁷ Dominion response to Data Request 3-CUB-15.

1 At the same time, Dominion Energy Kewaunee would be prevented from
2 transferring operating earnings or other funds to its affiliate Virginia Electric and
3 Power Company without approval of the state regulatory commissions in Virginia
4 and North Carolina.¹⁸

5 However, there is no limit preventing Dominion Energy Kewaunee from paying
6 out all of its profits as dividends to its owners. Therefore, Dominion could use all
7 of Dominion Energy Kewaunee's earnings to fund other operations or priorities,
8 leaving insufficient funds in Dominion Energy Kewaunee for nuclear operations
9 or decommissioning.

10 **Q. Does Dominion have any corporate policies setting limits on inter-affiliate**
11 **loans or other inter-affiliate transactions?**

12 A. No. Dominion has no corporate policies setting limits on inter-affiliate loans or
13 other inter-affiliate transactions. The only limitations on inter-affiliate loans or
14 transactions that Dominion could identify are several minor restrictions contained
15 in the 1935 Public Utility Holding Company Act and the requirement that the
16 state regulatory commissions in Virginia and North Carolina must approve any
17 loans from Dominion Energy Kewaunee to its affiliate Virginia Electric and
18 Power Company.¹⁹ Under the PUHCA, Dominion Energy Kewaunee can make
19 loans to non-public utility affiliates as long as the loan is evidenced by a note
20 where (i) the loan is for the purpose of financing the existing business of the
21 subsidiary and (ii) the interest rate and maturity date of the note are designed to
22 parallel the effective cost of capital to the lender.²⁰

18 Ibid.

19 Dominion response to Data Request 3-CUB-17.

20 Ibid.

1 **Q. Why should the Commission be concerned about Dominion Energy**
2 **Kewaunee’s lack of direct control over its internally generated funds and the**
3 **absence of corporate Dominion policies setting limits on the transfer of**
4 **earnings out of Dominion Energy Kewaunee or limits on inter-affiliate loans**
5 **or other inter-affiliate transactions?**

6 A. This is an important concern because Dominion Energy Kewaunee could be left
7 without sufficient funds to operate, maintain or decommission the plant without
8 endangering the public health and safety. Pacific Gas & Electric Company
9 provides a recent example where substantial funds were transferred from a
10 successful operating company to the parent holding company leaving the
11 operating company with such serious financial problems that it had to declare
12 bankruptcy.

13 **Q. What guarantees has Dominion provided that Dominion Energy Kewaunee**
14 **will be adequately funded to operate and decommission KNPP?**

15 A. Dominion Energy Kewaunee will be able to borrow funds from the DRI Money
16 Pool.²¹ In addition, the parent corporation DRI will provide a support agreement
17 to Dominion Energy Kewaunee under which the subsidiary will have access to up
18 to \$60 million, if necessary, to pay the expenses of operating and
19 decommissioning Kewaunee safely.

20 **Q. Is this \$60 million support agreement consistent with guarantees that the**
21 **NRC has obtained from other new nuclear power plant owners?**

22 A. Yes. The \$60 million support agreement proposed by DRI is similar to the
23 support agreements provided by DRI when it purchased the Millstone nuclear
24 plants and the guarantees made by the Entergy Corporation when it purchased
25 several plants.

26 However, when it purchased the two Nine Mile Point nuclear units, Constellation
27 Energy Group, Inc., the parent corporation, guaranteed that the indirect subsidiary

²¹ Dominion Response to 1-WIEG-2.

1 that would own these units would be provided whatever cash is needed to protect
2 the public health and safety.²² It did so by entering into an inter-company credit
3 agreement between the parent corporation and the plant-owning subsidiary.

4 Constellation made a similar commitment when it spun off the Calvert Cliffs
5 nuclear units into a separately owned indirect subsidiary.²³

6 **Q. What guarantee has Constellation provided as part of its request to transfer**
7 **the Ginna nuclear plant's operating license?**

8 A. Constellation has made the very same commitment to fund Ginna LLC which will
9 be the indirect subsidiary that will own the Ginna nuclear plant. The parent
10 corporation and Ginna LLC will enter into an inter-company credit agreement
11 whereby Constellation will provide the plant-owning subsidiary with any cash
12 needed to protect the public health and safety.²⁴

13 **Q. Has any state regulatory commission expressed concern about the**
14 **inadequacy of a \$60 million support guarantee?**

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

20 However, the staff of the Vermont Department of Public Service and the Vermont
21 Public Service Board raised serious concerns about the adequacy of such a small
22 guarantee, especially where the parent corporation had not pledged any of the \$70

²² See *Nine Mile Point Unit Nos. 1 & 2 NRC License Transfer Application*, February 1, 2001, at page 23.

²³ See *Calvert Cliffs Nuclear Power Plant Request for a Transfer in Control*, December 20, 2000, at page 9.

²⁴ See *R.E. Ginna Nuclear Power Plant Application for Order and Conforming Administrative Amendments for License Transfer*, December 16, 2003, at pages 13 and 14.

1 million support.²⁵ In response, Entergy pledged that if either line of credit had
2 been drawn upon, the parent corporation would make up any deficiency up to a
3 total of \$60 million.²⁶ Consequently, the total support pledged by Entergy to
4 Vermont Yankee was \$130 million.

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

8 A. No. NRC regulations require any nuclear power plant licensee to immediately
9 report any filing of a voluntary or involuntary petition for bankruptcy.²⁷ However,
10 the NRC has no additional financial requirements for situations where a licensee
11 files for bankruptcy or otherwise encounters financial difficulties. Nor does the
12 NRC have any statutory authority to require a licensee which is in bankruptcy to
13 continue to make safety-related or decommissioning payments. The NRC must
14 intervene in the proceedings before the bankruptcy court and petition the court to
15 require such payments.

16 As mentioned by Dominion witness Martin, the NRC has had some experience
17 with the bankruptcies of some nuclear power plant owners.²⁸ However, all of
18 these earlier bankruptcies involved entities that owned a number of different
19 assets. The bankruptcy of a single-asset subsidiary, which owns only a single
20 nuclear power plant, as would be the case with Dominion Energy Kewaunee,
21 would present very different circumstances and challenges. At the same time,
22 given the multi-tiered holding companies through which parent corporations now
23 own nuclear power plants, the NRC might have trouble “piercing the corporate

²⁵ 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.

²⁶ Rebuttal Testimony of Connie Wells, Entergy Nuclear Vermont Yankee, LLC, in Vermont Public Service Board Docket No. 6545, at page 3, lines 8-13.

²⁷ 10 CFR 50.54 (cc).

²⁸ Direct Testimony of James K. Martin, at page 19, lines 12-17.

1 veil” to require a parent corporation to accept responsibility for the liabilities of a
2 bankrupt subsidiary and make required payments.

3 **Q. Would it be difficult to hold a parent corporation responsible for the**
4 **liabilities incurred by a nuclear power plant owning subsidiary in a multi-**
5 **tiered holding company such as that proposed by Dominion for Kewaunee?**

6 A. Yes. The multiple layers of subsidiaries that have been created by parent
7 corporations in the nuclear industry could make it difficult to hold a parent
8 corporation responsible for liabilities incurred by the plant-owning subsidiary.
9 Even if a court concludes that the liability of the subsidiary that actually operates
10 the nuclear plant should be extended to business structures above it (for example,
11 if under capitalization and profit distributions have left the subsidiary unable to
12 cover the costs of unanticipated repairs or security improvements and the
13 subsidiary decides to cease operations), the ability of the court to find a senior
14 business entity with sufficient capital could be complicated by multiple layers of
15 subsidiaries. There may be issues of jurisdiction, applicable state or federal
16 statutes, the role of the NRC, and other myriad issues of law and fact that would
17 need to be resolved. Given that the presumption in every state and federal statute
18 is for the limitation of corporate liability, the burden is always on the party trying
19 to extend that liability to show that the law, facts, and public policy all support
20 violating the statutory presumption.²⁹ Courts, in general, are reluctant to pierce
21 the corporate veil and extend liability; when multiple corporations are involved,
22 that reluctance only increases.

23 A legal memorandum provided to the Vermont Public Service Board by the
24 previous owners of the Vermont Yankee Nuclear Power Corporation concluded
25 that attempts to pierce the corporate veil of nuclear power plant subsidiaries were

²⁹ “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.

1 unlikely to succeed and have seldom been attempted.³⁰ Despite the numerous
2 specific instances where courts have extended liability to parent corporations,
3 there is great uncertainty as to whether or not courts would apply such extended
4 liability to multi-tiered nuclear power companies.

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

7 A. Yes. There are two NRC cases that involved attempts to pierce the corporate veil
8 of the operator of a nuclear power plant. In 1995, the NRC attempted to negate a
9 transfer of assets from a licensee which, as part of a complicated corporate
10 restructuring, had become a subsidiary to a newly created holding company
11 because the transfer had occurred without the prior written consent of the NRC, as
12 required by section 184 of the Atomic Energy Act. The NRC held that it could
13 pierce the veil of corporations that violate section 184. However, before a final
14 adjudication, this case ended in a settlement.³¹

15 In 1997, the NRC tried to force a parent company to provide additional funds to
16 the decommissioning fund for a subsidiary plant. However, prior to a final
17 adjudication, the NRC approved a settlement that resolved the decommissioning
18 fund issue without any specific finding as to the parent company's liability.³² In
19 accepting the settlement, the NRC expressed concern that there was a "substantial
20 possibility of defeat if the case proceeds to trial [on a theory of] piercing the
21 corporate veil."

³⁰ 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.

³¹ *Safety Light Corp.*, 41 N.R.C. at 457-458 (1995).

³² *Sequoyah Fuels Corp. and General Atomics*, CLI-97-13, 46N.R.C. 195 (1997).

1 **Q. Please summarize your conclusions regarding the potential effect of selling**
2 **Kewaunee to a subsidiary of an out-of-state multi-tiered holding company.**

3 A. If the sale of Kewaunee to Dominion Energy Kewaunee is closed, the Public
4 Service Commission of Wisconsin will lose regulatory oversight over the plant
5 and its owners. The Commission will have no authority to determine such critical
6 issues as the adequacy of the plant's decommissioning funds, whether the plant's
7 operating life should be extended, and whether it should be sold to a subsequent
8 owner. The Commission also would be unable to assure the financial integrity of
9 Dominion Energy Kewaunee and its owners and that adequate funds were being
10 made available to maintain and operate Kewaunee.

11 Dominion does not have delineated corporate policies setting limits on the
12 retention of earnings or the transfer of earnings or other funds by Dominion
13 Energy Kewaunee. Dominion also does not have delineated corporate policies
14 setting limits on inter-affiliate loans or other inter-affiliate transactions.
15 Consequently, the Commission should be concerned that Dominion could use all
16 of Dominion Energy Kewaunee's earnings to fund other operations or priorities,
17 leaving insufficient funds in Dominion Energy Kewaunee for nuclear operations
18 or decommissioning.

19 The parent corporation DRI has not guaranteed that Dominion Energy Kewaunee
20 will have the funds it needs to operate and decommission Kewaunee safely.
21 Instead, DRI has only guaranteed that it will provide up to \$60 million if
22 Dominion Energy Kewaunee needs funds.

23 The Commission also cannot rely upon the U.S. NRC to adequately monitor the
24 financial condition of Dominion Energy Kewaunee and to require that sufficient
25 funds will be made available to operate and maintain the plant. The financial
26 assurance reviews conducted by the NRC when an operating license is transferred
27 are very limited. The NRC will no longer conduct a review of a licensee's
28 financial assurance when evaluating a license renewal application. It also is
29 unclear whether the NRC has the requisite staff expertise or resources to
30 effectively monitor licensee's financial circumstances on an ongoing basis.

1 Issue No. 2 – Whether WPS’ and WPL’s proposed use of the Kewaunee
2 Decommissioning Trust Funds is reasonable and in the public
3 interest

4 **Q. What do WPS and WPL propose to do with the Qualified and the Non-**
5 **Qualified Kewaunee Decommissioning Trust Funds if the plant is sold to**
6 **Dominion?**

7 A. WPS and WPL propose to transfer the entire value of the two Qualified
8 Decommissioning Trust Funds to Dominion Energy Kewaunee as part of the sale.
9 They also propose to retain the funds in the Non-Qualified Decommissioning
10 Trust Funds and to return these funds to ratepayers.

11 **Q. Would the return to ratepayers of the funds in the Kewaunee Non-Qualified**
12 **Decommissioning Trusts be possible only if the plant were sold to Dominion?**

13 A. No. The return of a large portion, if not all, of the funds in the Kewaunee Non-
14 Qualified Decommissioning Trusts should be possible even if WPS and WPL
15 retain ownership of Kewaunee.

16 **Q. What is the basis for this conclusion?**

17 A. Witnesses for WPS and WPL have presented several analyses that compared the
18 present value of the funds in two Qualified Decommissioning Funds with the
19 present value of the projected costs of decommissioning Kewaunee. Although a
20 number of the scenarios examined by WPS and WPL are distorted by the
21 assumption of unreasonably high decommissioning costs and/or unreasonably low
22 fund earnings rates, these analyses show that a large portion, if not all, of the
23 funds in the Non-Qualified Decommissioning Trusts will not be needed.

24 For example, WPS/WPL witness Graves presents an analysis that shows that,
25 under base case conditions, the \$405 million in the two Kewaunee Qualified
26 Decommissioning Trust Funds that would be transferred to Dominion should be
27 just about adequate to pay for the plant’s decommissioning following its
28 scheduled retirement in 2013 without any further contributions from the

1 ratepayers of either WPS or WPL.³³ Mr. Graves' base case analysis assumes a 6
2 percent annual after-tax earnings rate and 4.24 percent average annual escalation
3 in decommissioning costs.

4 WPS/WPL witness Spicer similarly presents an analysis which claims that there
5 would have to be a mean value of \$487.4 million in the Kewaunee
6 Decommissioning Funds at this time in order to pay for the ultimate
7 decommissioning of the plant if it were retired in 2013, as is presently scheduled.
8 I believe that this analysis is heavily distorted by the assumption that the ultimate
9 decommissioning of Kewaunee could be as much as 35 percent higher than the
10 recently prepared 2002 plant-specific TLG Kewaunee Decommissioning Cost
11 Study. Nevertheless, even this analysis shows that approximately \$100 million of
12 the funds in the Non-Qualified Trusts could be refunded to ratepayers without
13 jeopardizing the adequacy of the funds that would be available for
14 decommissioning Kewaunee if it were retired in 2013.

15 **Q. What effect would extending the operating life of Kewaunee by 20 years have**
16 **on the adequacy of the funds in the plant's Qualified Decommissioning**
17 **Trusts?**

18 A. Extending Kewaunee's operating life would allow additional time for the
19 decommissioning funds to grow through investment earnings. It is reasonable to
20 expect that the earnings rates on the funds would be higher than the rate at which
21 the cost of performing the decommissioning activities would escalate. As a result,
22 there could be significant excess funds remaining in Kewaunee's Qualified
23 Decommissioning Trusts when decommissioning was completed.

³³ Pre-filed Direct Testimony of Frank C. Graves, at page 14, lines 19-22, and Exhibit FCG-2, and the Pre-filed Direct Testimony of Paul Spicer, at page 22, lines 9-11, and Exhibit PS-6.

1 **Q. Have you seen any analyses in this proceeding that have examined the**
2 **potential impact of life extension on the adequacy of Kewaunee's Qualified**
3 **Decommissioning Trust Funds?**

4 A. Yes. The analyses prepared by WPS/WPL witness Spicer showed that there
5 would only have to be a mean value of \$366.2 million in Kewaunee's
6 decommissioning trust funds at this time to pay for the ultimate cost of
7 decommissioning if it is assumed that the plant will not be retired until 2033.³⁴
8 This would mean that the \$405 million in the two Kewaunee Qualified
9 Decommissioning Funds will be more than adequate to pay for the cost of
10 decommissioning the plant starting in 2033.

11 Dominion also has prepared two studies of the adequacy of the Qualified
12 Decommissioning Trust funds that would be transferred as part of the proposed
13 sale. The results of the first study were presented as Exhibit JKM-11. It showed
14 that under Dominion's assumed earnings and escalation rates, the Qualified Funds
15 would provide about \$90 million less than would be needed to pay for the cost of
16 decommissioning Kewaunee that was estimated in the 2002 TLG Study.

17 The second Dominion study, however, assumed that Kewaunee's operating life
18 was extended to January 1, 2033. This study, which used the same earnings and
19 cost escalation rate assumptions as Exhibit JKM-11, found that, in this extended
20 operating life scenario, the Qualified Decommissioning Funds would have in
21 excess of \$500 million more than would be needed to complete the scope of
22 decommissioning set forth in the 2002 TLG Study.³⁵

³⁴ Pre-filed Direct Testimony of Paul Spicer, at page 22, lines 9-11.

³⁵ A copy of this study is attached as Exhibit___DAS-3.

1 **Q. Please explain why you believe it is unrealistic to expect that the cost of**
2 **decommissioning Kewaunee will be significantly higher than the \$530 million**
3 **in 2002 dollars that has been estimated in the most recent plant-specific cost**
4 **study.**

5 A. There are a number of reasons why it is unrealistic to project that the total cost of
6 decommissioning Kewaunee could be significantly higher than the \$530 million
7 in 2002 dollars that was projected in the latest Kewaunee-specific
8 decommissioning cost study.

9 First, there has been significant actual experience in decommissioning the
10 Connecticut Yankee, Maine Yankee, San Onofre Unit 1, Trojan and Yankee
11 Rowe nuclear power facilities.³⁶ These are all pressurized water reactors, like
12 Kewaunee. All of these units, except, Yankee Rowe, had nuclear steam systems
13 designed by Westinghouse, like Kewaunee.

14 This actual experience should reduce the possibility and, consequently, reduce the
15 Commission's concern, that major unanticipated problems and costs will be
16 experienced when Kewaunee is ultimately decommissioned at the end of its
17 operating life. There may be some unpleasant surprises but not as many as could
18 have been expected before there was any actual experience decommissioning
19 large commercial nuclear power plants.

20 Second, the most recent decommissioning cost estimate for Kewaunee already
21 includes significant contingency factors to address unforeseeable events and cost
22 increases within the decommissioning scope of work.³⁷ In fact, the 2002 TLG
23 Kewaunee decommissioning cost study included an average 16.9 percent
24 contingency allowance. The individual contingency factors used by TLG were
25 listed at Section 3, page 5 of 21, of the TLG Study. In particular, the TLG cost
26 estimate included contingencies for a number of the cost elements in the "other

³⁶ Attached as Exhibit__DAS-4 is a review of recent decommissioning experience that was provided in the WPS/WPL response to Data Request 2-CUB-24.

³⁷ Docket No. 6690-U-115, Exhibit BAJ-3, page viii.

1 costs” category: a 25 percent contingency for the cost of supplies, 15 percent for
2 heavy equipment & tooling, 10 percent for taxes, and 10 percent for insurance.³⁸

3 Third, the most recent Kewaunee decommissioning cost estimate included
4 significant costs that were related to the U.S. Department of Energy’s (“DOE”)
5 failure to begin accepting spent nuclear fuel starting in 1998. For example, the
6 2002 TLG Kewaunee decommissioning cost study estimated that
7 decommissioning related spent nuclear fuel capital and O&M costs will be
8 \$43,548,100, in 2002 dollars.³⁹ Total spent fuel management costs will be
9 \$111,624,000, also in 2002 dollars.⁴⁰ Not all of these costs were the result of the
10 DOE’s failure to begin taking spent nuclear fuel in 1998.⁴¹ However, as I
11 explained in detail in my testimony in Docket No. 6690-U-115, it is reasonable to
12 expect that WPS and WPL will recover some of the additional costs that they will
13 incur as a result of the DOE’s failure to begin taking spent nuclear fuel starting in
14 1998.⁴²

15 Fourth, WPS, WPL and Dominion all expect that as the owner/operator of a
16 number of nuclear plants, Dominion should be able to achieve efficiencies and
17 economies of scale in the decommissioning of Kewaunee.⁴³ I have seen no
18 reasons why the Nuclear Management Company (“NMC”) should not be able to
19 achieve many of these same efficiencies and economies of scale through its
20 involvement in the decommissioning of the nuclear power plants it now operates.

21 In fact, recent decommissioning cost studies for both Kewaunee and Point Beach
22 anticipate that the NMC will oversee and provide site administration for the

38 Docket No. 6690-U-115, Exhibit BAJ-3, at Section 3, page 5 of 21.

39 Docket No. 6690-U-115, Exhibit BAJ-3, Table 6.1, at page 4 of Section 6.

40 Docket No. 6690-U-115, Exhibit BAJ-3, Table 3.3, at page 20 of Section 3.

41 Unfortunately, WPS said in Docket No. 6690-U-115 that it had not tried to identify and quantify all of the costs that can be expected to be incurred as a result of DOE’s failure to begin accepting spent nuclear fuel starting in 1998. WPS response to Data Request 3-CUB-12 in Docket No. 6690-U-115.

42 Testimony of David A. Schlissel in Docket No. 6690-U-115, at pages 12 and 13.

43 For example, see Dominion’s response to Data Request 3-CUB-8.

1 plants' overall decommissioning processes. For example, the most recent
2 Kewaunee decommissioning cost study assumes that:

3 NMC will hire a Decommissioning Operations Contractor (DOC)
4 to manage the decommissioning. NMC will provide site security,
5 radiological health and safety, quality assurance and overall site
6 administration during the decommissioning and demolition
7 phases.⁴⁴

8 NMC also almost certainly will be involved in the license termination activities,
9 decommissioning planning and engineering, site preparations, and spent nuclear
10 fuel dry cask storage operations.

11 It is reasonable to expect that NMC will experience synergies and efficiencies that
12 will reduce decommissioning costs because it will be performing these same
13 decommissioning-related activities at a number of the nuclear power plants it is
14 currently operating.

15 **Q. Do these same factors lead you to conclude that it is reasonable to expect that**
16 **the cost of decommissioning Kewaunee will not escalate at more than 4 to 4.5**
17 **percent per year?**

18 A. Yes.

19 **Q. Has the parent corporation, DRI guaranteed that it will provide whatever**
20 **funds are needed to decommission Kewaunee at the end of its operating life?**

21 A. No. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

⁴⁴ Docket No. 6690-U-115, Exhibit BAJ-3, at Section 3, page 13 of 21.

1 However, the “Buyer” of Kewaunee will be Dominion Energy Kewaunee, not the
2 parent corporation, DRI. Moreover, once Kewaunee completes its operating life,
3 Dominion Energy Kewaunee, being a one-asset company, will have no income to
4 augment the decommissioning funds it has accumulated from the Qualified
5 Decommissioning Trusts that would be transferred at the closing of the sale.

6 Consequently, the parent corporation has not guaranteed that it will spend all
7 monies needed to completely decommission Kewaunee. Instead, DRI has entered
8 into a support agreement with Dominion Energy Kewaunee that will guarantee
9 that DRI will only provide up to another \$60 million to decommission Kewaunee
10 beyond the funds that will available in the accumulated trusts. Although
11 Dominion has said that if further funds are needed it will make them available
12 from its operations, it has not provided a written guarantee of this commitment.⁴⁵

13 **Q. Who would pay for any shortfalls in the funds available for decommissioning**
14 **Kewaunee if Dominion Energy Kewaunee were unable and the parent**
15 **corporation, DRI were unwilling to pay all of the necessary costs of**
16 **decommissioning?**

17 A. As I discussed earlier, it may be very difficult, if not impossible for the NRC or
18 any other party, including the State of Wisconsin, to “pierce the corporate veil”
19 and hold DRI responsible for the unpaid decommissioning liabilities of its
20 subsidiary, Dominion Energy Kewaunee. In such a situation, taxpayers may be
21 required to pay any such shortfalls.

22 In fact, in attempting to assure the Vermont Public Service Board that the former
23 owners of the Vermont Yankee nuclear plant and their ratepayers were unlikely to
24 be required to pay any shortfalls in decommissioning funds, the Entergy
25 Corporation explained that the NRC has on several occasions said that the burden
26 of paying any such shortfalls would fall on taxpayers:

27 NRC regulations do not specifically address the potential liability of
28 other parties in the event that the licensed owner is unable to provide

⁴⁵ Direct Testimony of James K. Martin, at page 15, lines 11-21.

1 the funds required for decommissioning. In the past, the NRC
2 indicated that any failure of the licensed owner to meet its
3 decommissioning funding obligations would result in a burden on
4 taxpayers -- presumably in the form of a publicly funded cleanup. See,
5 e.g., SECY-94-280 (Nov. 18, 1984), at 4. ("Such action would either
6 increase the potential risk to public health and safety of the
7 decommissioning process or would shift the burden of
8 decommissioning funding from ratepayers to taxpayers.") (emphasis
9 added); 61 Fed. Reg. 15427, 15428 (Apr. 8, 1996)("The liability of the
10 licensee to provide funding for decommissioning may adversely affect
11 protection of the public health and safety. Also, a lack of
12 decommissioning funds is a financial risk to taxpayers (i.e., if the
13 licensee cannot pay for decommissioning, taxpayers would ultimately
14 pay the bill. (emphasis added)."⁴⁶

15 Consequently, it appears that Wisconsin and/or federal taxpayers would be
16 required to make up any shortfalls in the cost of decommissioning Kewaunee that
17 Dominion was unwilling or unable to pay.

18 **Q. Should the Commission approve the sale to Kewaunee if it has any concern**
19 **that the \$405 million in the two Qualified Decommissioning Funds will be**
20 **inadequate to pay for the plant's ultimate decommissioning?**

21 A. No. DRI has not provided a guarantee that it will provide whatever additional
22 funds may be necessary to pay for the eventual decommissioning of Kewaunee. If
23 the plant is not sold, the Commission can continue to monitor the adequacy of
24 both the Qualified and Non-qualified Funds and, at the appropriate time, can
25 direct the refund of any potential or actual excess funds.

26 Consequently, I would recommend that the Commission, if it rejects the proposed
27 sale, require that WPS and WPL keep the funds in the Non-Qualified Trusts until
28 such time as the NRC approves the renewal of Kewaunee's operating license. At
29 that time, the Commission can decide what portion of the funds in the Non-
30 qualified Trusts can be refunded to ratepayers with interest.

⁴⁶ Legal Memorandum on the "Decommissioning Liability Associated with a Power Reactor License," Goodwin Procter LLP, February 24, 2002, submitted by Entergy Corporation to the Vermont Public Service Board as Exhibit ENVY-Wells-3 to the Prefiled Rebuttal Testimony of Connie Wells in Docket No. 6545.

1 **Q. Should the refunding of the Non-Qualified Decommissioning Trusts be**
2 **considered as a benefit of the proposed sale to Dominion?**

3 A. No. As I have explained, it is reasonable to expect that a large portion, if not all,
4 of the funds in the Non-Qualified Trusts can eventually be refunded to ratepayers
5 whether or not the plant is sold.

6 **Q. Exhibit SP-3 presents a comparison of the estimated revenue requirements**
7 **associated with continued ownership of Kewaunee by WPS and WPL as**
8 **compared to the estimated revenue requirements associated with the**
9 **proposed sale to Dominion. This Exhibit shows that WPS and WPL would**
10 **continue to make collections from their ratepayers to contribute to the**
11 **Kewaunee decommissioning funds if the plant is not sold. Is this a reasonable**
12 **assumption?**

13 A. No. There would be absolutely no reason for WPS and WPL to continue collect
14 decommissioning funds from ratepayers if the plant is not sold. The combined
15 funds in the Qualified and Non-qualified Decommissioning Trusts are more than
16 adequate to fund the decommissioning of Kewaunee even if the plant is retired in
17 2013.

18 Issue No. 3 – Whether the price that WPS and WPL would receive from
19 Dominion represents Kewaunee’s fair market value

20 **Q. Was the price that WPS and WPL would receive from the sale of Kewaunee**
21 **determined through a competitive bid and auction process?**

22 A. No. WPS and WPL conducted a secret series of negotiations with a number of
23 parties. The sale did not follow an auction format.

24 **Q. Have other nuclear power plants been sold in recent years through**
25 **competitive bid and auction processes?**

26 A. Yes. As WPS/WPL witness Graves acknowledges, most of the nuclear power
27 plants that have been successfully sold in recent years, including the Ginna,

1 Seabrook, Nine Mile Point and Millstone plants, have been sold through
2 competitive bid and auction processes.

3 **Q. Would the price that WPS and WPL receive from the sale of Kewaunee to**
4 **Dominion Energy Kewaunee represent the plant's fair market value?**

5 A. No. The available evidence suggests that WPS and WPL would not receive fair
6 market value for Kewaunee from Dominion especially in light of the low cash
7 price that the companies would receive, the very substantial decommissioning
8 funds that would be transferred to Dominion and the potential value of extending
9 Kewaunee's operating life that would be forfeited by WPS and WPL.

10 **Q. How does the cash price that would be received by WPS and WPL compare**
11 **to the cash prices received for other recently sold nuclear power plants?**

12 A. As shown in Columns 3 and 5 in WPS/WPL witness Graves' Exhibit FCG-5, the
13 cash price that WPS and WPL would receive for Kewaunee is substantially lower,
14 on both a total plant and a \$/kW basis, than the prices that have recently been paid
15 for the Millstone, Seabrook and Ginna nuclear power plants. In particular, the
16 price that RG&E will be receiving from Constellation for the Ginna plant is more
17 than double the price that WPS and WPL would receive from Dominion. Ginna
18 is a peer plant to Kewaunee, with a similar design and vintage.

19 **Q. WPS/WPL witness Graves also compares nuclear plant sales prices by**
20 **looking at the \$/kW per year of remaining service life.⁴⁷ Do you think that**
21 **this measure offers any insight into the comparable value of the cash price**
22 **that WPS and WPL would receive as part of the proposed sale?**

23 A. No. Although it is reasonable to expect the bidders would pay more for a newer
24 nuclear power plant, and therefore a plant with a longer expected operating life,
25 Mr. Graves' adjustment presents a false comparison of the low price that WPS
26 and WPL will receive for Kewaunee with the prices that have been obtained for
27 other nuclear power plants, especially the Ginna plant. After all, there is no

⁴⁷ Pre-filed Direct Testimony of Frank C. Graves, at page 23, lines 16-24.

1 credible reason to expect that Kewaunee has any less potential for an extended
2 operating life than Ginna. RG&E has simply received value for that potential as
3 part of the Ginna sale price while WPS and WPL have not.

4 **Q. What factors do you believe account for the large difference in the prices that**
5 **would be paid for Ginna and Kewaunee?**

6 A. The Ginna plant was sold through a competitive bid and auction process. In
7 addition, RG&E, the owner of Ginna appears to have successfully translated the
8 potential for extending the plant's operating life into a substantially higher cash
9 price. Apparently, RG&E realized that beginning the process of renewing
10 Ginna's operating license before starting the sale process would enhance the value
11 of the plant if/when it was sold.

12 **Q. Do you find the claims by WPS and WPL that extending Kewaunee's**
13 **operating life by 20 years would only produce minor economic benefits to be**
14 **credible?**

15 A. No. As shown in the analyses being presented by GDS on behalf of CUB in this
16 proceeding, extending Kewaunee's operating life by 20 years would produce
17 significant economic benefits for WPS, WPL and their ratepayers.

18 In addition, as I noted earlier, extending Kewaunee's operating life would create
19 the potential that there could be significant excess funds in the plant's Qualified
20 Decommissioning Trusts. For example, the analyses prepared by WPS/WPL
21 witness Spicer showed that there would only have to be a mean value of \$366.2
22 million in Kewaunee's decommissioning trust funds at this time to pay for the
23 ultimate cost of decommissioning if it is assumed that the plant will not be retired
24 until 2033.⁴⁸ This would mean that there would be approximately an excess \$40
25 million in present year dollars in the two Kewaunee Qualified Decommissioning

⁴⁸ Pre-filed Direct Testimony of Paul Spicer, at page 22, lines 9-11.

1 Funds that ultimately could be refunded to ratepayers if the plant's operating life
2 were extended through 2033.⁴⁹

3 Consequently, some of the funds in the Qualified Decommissioning Trusts either
4 could be refunded to ratepayers when the NRC approved renewal of Kewaunee's
5 operating life or, more conservatively, at some point during or after the
6 completion of decommissioning. In either case, extension of Kewaunee's
7 operating license could create a significant economic benefit for the ratepayers of
8 WPS and WPL.

9 The transfer of all of the funds in the two Qualified Decommissioning Trusts
10 would then give Dominion the potential to retain any monies in the transferred
11 decommissioning trusts that would be unspent as a result of extending
12 Kewaunee's operating life through 2033 or decommissioning-related efficiencies
13 and economies of scale. Dominion and not the ratepayers of WPS and WPL
14 would then receive this economic windfall from extending Kewaunee's operating
15 life.⁵⁰

16 **Q. Is there any credible reason to believe that WPS and WPL would be unable**
17 **to receive NRC approval to extend Kewaunee's operating life if they chose to**
18 **do so?**

19 A. No. Through early April of this year, the NRC had granted 23 nuclear units
20 extensions in their operating licenses of up to 20 years. Applications for another
21 19 units had been filed. I am not aware of any application for license
22 renewal/extension that has been denied by the NRC.

23 In fact, Nucleonics Week has reported that the NRC staff told the NRC
24 Commissioners in March that they "expect all requests to be renewed, barring any
25 unresolved technical issues."⁵¹

⁴⁹ For example, see the Pre-filed Direct Testimony of Paul Spicer, at page 22, lines 9-11.

⁵⁰ For example, see Exhibit ___DAS-3.

⁵¹ *Nucleonics Week*, April 8, 2004, at page 1.

1 **Q. Do you expect that Dominion will seek to renew Kewaunee's operating**
2 **license?**

3 A. Yes.

4 **Q. Consequently, do you disagree with the claim made by Mr. Spicer and Mr.**
5 **Molzahn that there is only an 80% probability of life extension for**
6 **Kewaunee?**⁵²

7 A. Yes. I believe that there is a significantly higher probability that whatever party
8 owns Kewaunee will seek to renew its operating license and that the NRC will
9 approve such a request.

10 **Q. Has Dominion submitted license renewal applications to the NRC for the**
11 **Millstone Units 2 and 3 that it purchased in 2001?**

12 A. Yes. Dominion submitted applications in January of this year to renew the
13 operating licenses of Millstone Units 2 and 3 by up to 20 years.⁵³

14 **Q. Have you seen any evidence that suggests that Dominion already expects to**
15 **seek to renew Kewaunee's operating license?**

16 A. Yes. Dominion witness David Christian has acknowledged that it is Dominion's
17 intention to renew Kewaunee's operating license if they determine that it can be
18 done safely and economically.⁵⁴ [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

⁵² Pre-filed Direct Testimony of Paul Spicer, at page 21, line 20, and Pre-filed Direct Testimony of David Molzahn, at page 18, lines 10-18.

⁵³ Direct Testimony of David Christian, at page 23, line 21, to page 24, line 5.

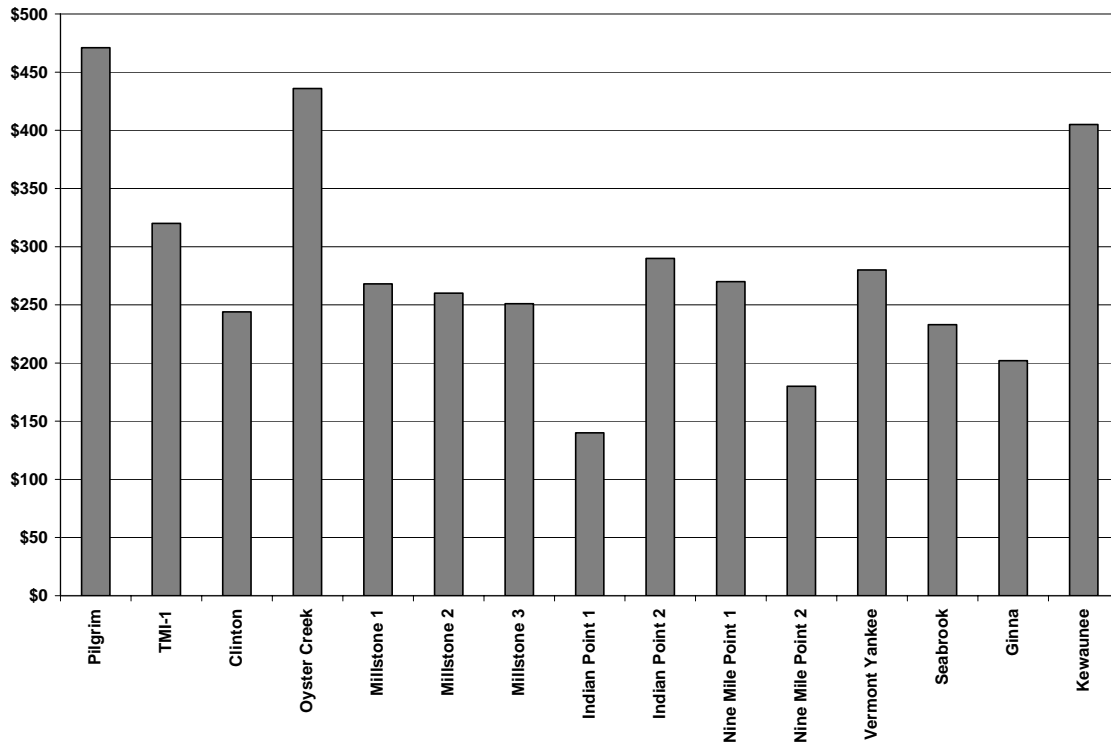
⁵⁴ Ibid.

⁵⁵ Provided as Dominion's response to Data Request 3-CUB-11(i)

1 **Q. How do the decommissioning funds that would be transferred to Dominion**
2 **Energy Kewaunee as part of the proposed sale compare to the**
3 **decommissioning funds that have been transferred as part of other recent**
4 **nuclear power plant sales?**

5 A. As shown in Figure 1 below, the sale of Kewaunee would transfer significantly
6 more decommissioning trust funds than the funds that have been transferred as
7 part of any other recent nuclear power plant sales.

8 **Figure 1: Decommissioning Funds Transferred in Nuclear Power**
9 **Plant Sales (in \$ millions)**



10

11 Figure 1 shows that substantially larger decommissioning funds (that is, more
12 than \$100 million higher) would be transferred to Dominion Energy Kewaunee as
13 part of the proposed Kewaunee sale than have been transferred in other recent
14 nuclear power plant sales. In fact, the \$405 million in decommissioning funds that
15 would be transferred to Dominion is twice the \$202 million in decommissioning
16 funds that will be transferred to Constellation as part of its purchase of the Ginna
17 plant.

1 **Q. What companies would be parties to the proposed Kewaunee PPA?**

2 A. The PPA would be between WPS and WPL and Dominion Energy Kewaunee.

3 [REDACTED]
4 [REDACTED]

5 However, Dominion Resources, Inc. would guarantee Dominion Energy
6 Kewaunee's payment performance under the PPA [REDACTED]
7 [REDACTED]
8 [REDACTED]. Consequently, the claim by
9 WPS/WPL witness Spicer that "Dominion's obligations to WPSC and WPL under
10 the PPAs will be guaranteed by Dominion's ultimate parent, DRI, under corporate
11 guarantees in favor of WPSC and WPL" is correct only up [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 **Q. Is it reasonable to expect that during an extended Kewaunee outage**
16 **Dominion Energy Kewaunee would be able to pay the substantial capacity**
17 **and energy penalties set out in the PPA?**

18 A. No. The PPA specifies significant penalties that Dominion Energy Kewaunee
19 would have to pay during an extended plant outage. However, it is very
20 questionable whether Dominion Energy Kewaunee would have the financial
21 capability to pay those penalties, beyond the [REDACTED] guaranteed by Dominion
22 Resources, Inc. because at the very time it would have to pay those penalties, its
23 only revenue producing asset, the Kewaunee plant, would be out of service.

24 Being a single asset company, Dominion Energy Kewaunee would not have any
25 facilities to generate income when Kewaunee is out of service. Consequently, the
26 penalties and performance requirements placed upon Dominion Energy
27 Kewaunee in the PPA may be more illusory than real to the extent that, in total,
28 they exceed the [REDACTED]

1 **Q. If Kewaunee is out of service for an extended period or if the plant’s overall**
2 **performance is poorer than expected, who then would bear the incremental**
3 **capacity, energy and ancillary costs if Dominion Energy Kewaunee is**
4 **financially unable to pay the penalties specified in the PPA?**

5 A. The parent corporation, Dominion Resources, Inc. would pay up to [REDACTED]
6 [REDACTED] WPS, WPL and their ratepayers would then bear the risk of any
7 additional capacity, energy and ancillary costs [REDACTED] resulting
8 from Kewaunee performance below that set out in the PPA.

9 **Q. Do you agree with Mr. Graves’ claim that there is a nearly complete transfer**
10 **of operating and ownership risks to Dominion?**⁵⁶

11 A. No. As I have noted above, WPS and WPL and their ratepayers will continue to
12 bear significant risks because the Kewaunee PPA will be between WPS and WPL
13 and Dominion Energy Kewaunee and not Dominion Resources, Inc.

14 **Q. Do you agree with Mr. Graves that the Ginna plant is similar to Kewaunee?**⁵⁷

15 A. Yes. The two plants share very similar designs, are approximately the same age,
16 and both have Westinghouse nuclear steam supply systems. For these reasons, the
17 NRC considers Ginna and Kewaunee to be peer plants.

18 **Q. Do you agree with Mr. Graves that the Ginna transaction is much more**
19 **favorable to the buyer (Constellation) compared to the proposed Kewaunee**
20 **transaction and that this “readily” explains the substantially higher \$/kW**
21 **price being paid for Ginna?**⁵⁸

22 A. No. Mr. Graves overstates the extent to which the Ginna transaction is more
23 favorable to the buyer (Constellation) compared to the proposed Kewaunee
24 transaction. For example:

⁵⁶ Pre-filed Direct Testimony of Frank C. Graves, at page 25, lines 8-10.

⁵⁷ Pre-filed Direct Testimony of Frank C. Graves, at page 24, lines 1-2.

⁵⁸ Pre-filed Direct Testimony of Frank C. Graves, at page 24, lines 10-30.

- 1 ▪ Constellation will be receiving a significantly smaller decommissioning
2 fund in the Ginna transaction (\$202 million) as compared to the \$405
3 million in Kewaunee decommissioning funds that would be transferred to
4 Dominion. In addition, as I discussed earlier, the Ginna Asset Sale
5 Agreement requires Constellation to spend whatever funds it must to pay
6 the decommissioning costs in excess of the accumulated value of the funds
7 that will be transferred at closing. Dominion Resources, Inc. has
8 guaranteed to pay only up to an additional \$60 million of any costs of
9 decommissioning Kewaunee that exceed the accumulated value of the
10 trusts that would be transferred at closing. Consequently, Constellation
11 will bear a substantially higher decommissioning-related risk than would
12 Dominion Resources, Inc.
- 13 ▪ There is no significant risk that the NRC will reject a request by any buyer
14 of Kewaunee to renew the plant’s operating license for a period of up to
15 20 years.
- 16 ▪ The parent Constellation corporation has committed to the NRC that it
17 will enter into a formal line of credit so that the subsidiary that will
18 directly own Ginna will have all of the funds needed to operate and
19 maintain the plant without endangering the public health and safety.
20 Dominion Resources, Inc. has committed to the NRC to pay only up to
21 \$60 million of any funds that Dominion Energy Kewaunee needs but is
22 unable to obtain from other sources.
- 23 ▪ In theory, the Kewaunee PPA would impose more risk on the plant buyer
24 because it would be firm rather than unit contingent as in the Ginna PPA.
25 However, in reality, both the Ginna and Kewaunee plants have had very
26 good operating histories and both units appear to be in very good physical
27 condition as their current owners have spent significant amounts to
28 maintain and repair them. Moreover, Constellation has an excellent
-

1 reputation as the own/operator of the Calvert Cliffs and Nine Mile Point
2 nuclear plants. Consequently, it is reasonable to expect that Ginna's future
3 availability and forced outage rates should be approximately the same as
4 those that Dominion has pledged for Kewaunee.

5 **Q. Does RG&E believe that it is transferring the risks of operating and**
6 **decommissioning Ginna through the sale of the plant to Constellation?**

7 A. Yes. RG&E has said that "The sale transfers to Constellation the risk that costly
8 repairs may at some time be required at Ginna, as well as other risks associated
9 with its operation. By selling its interest in Ginna, RG&E will also transfer its
10 responsibility for decommissioning the plant."⁵⁹

11 **Q. Does Mr. Graves provide any quantitative evidence to support his claim that**
12 **the Ginna transaction involves a more lucrative PPA for Constellation than**
13 **the PPA that Dominion would have if it purchases Kewaunee?**

14 A. No. Instead, this conclusion appears to be based solely on Mr. Graves' non-
15 quantitative evaluation of the terms of the two PPAs. Most significantly, Mr.
16 Graves does not appear to rely on any information concerning expected capacity
17 margins and wholesale prices in the upstate region of New York where the Ginna
18 plant is located. Mr. Graves' analysis also does not appear to reflect the potential
19 value of a future power uprate of Kewaunee on the profitability of the proposed
20 Kewaunee PPA.

21 **Q. Please explain.**

22 A. The proposed Kewaunee PPA requires Dominion Energy Kewaunee to provide to
23 WPS and WPL essentially all of the capacity and energy from the plant including
24 that capacity and energy that will be available as a result of the approximate 25
25 MW power uprate (increase) that is currently being implemented. The Ginna
26 PPA requires Constellation to provide to RG&E 90 percent of the capacity and

⁵⁹ *Revised Petition to Transfer by Auction Sale the R.E. Ginna Nuclear Generating Station and Related Assets and for Related Approvals*, dated December 17, 2003, at page 18.

1 energy from Ginna including 90 percent of the additional capacity and energy that
2 will be available as a result of the initial 5 percent power uprate scheduled for
3 2006 and the incremental 12 percent power uprate scheduled for 2008. So, Mr.
4 Graves is correct when he says that there would be time lags before RG&E would
5 receive the additional capacity from the planned power uprates.

6 However, the proposed Kewaunee PPA does not require Dominion to provide to
7 WPS or WPL any of the incremental capacity and energy that would be available
8 as a result of any power uprates at Kewaunee beyond the one currently being
9 implemented. Dominion Energy Kewaunee would be free to sell this additional
10 capacity and energy to WPS, WPL or to any other party. Such sales would make
11 the proposed Kewaunee PPA significantly more lucrative for Dominion.

12 **Q. What is your conclusion as to whether WPS and WPL would receive the fair**
13 **market value of Kewaunee as part of the proposed sale to Dominion?**

14 A. The available evidence suggests that WPS and WPL would not receive
15 Kewaunee's fair market value especially in light of the low price they will receive
16 and the \$405 million in decommissioning funds that would be transferred to
17 Dominion. In fact, the \$220 million that WPS and WPL would receive from
18 Dominion for Kewaunee and related nuclear fuel would be \$160 million less than
19 RG&E will receive from Constellation for a slightly smaller facility, the Ginna
20 plant, and related nuclear fuel.⁶⁰ The proposed Ginna transaction is very relevant
21 in assessing the fair market value of Kewaunee because Ginna is a peer plant to
22 Kewaunee with a similar design and vintage. WPS and WPL also would transfer
23 to Dominion approximately \$405 million in decommissioning funds which would
24 be \$202 million more than RG&E will have to transfer to Constellation as part of
25 the Ginna transaction.

⁶⁰ RG&E actually will receive a total of \$423 million from Constellation for the Ginna plant. However, approximately \$40 million of this price would reimburse RG&E for the costs it has incurred in obtaining NRC approval to renew Ginna's operating license by 20 years.

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

2 A. Yes.

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