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 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)

Docket No. 05-EI-136

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

On Behalf of the Citizens Utility Board of Wisconsin

May 7, 2004
Q. Please state your name, position and business address.
A. My name is David A. Schlissel. I am a Senior Consultant at Synapse Energy Economics, Inc, 22 Pearl Street, Cambridge, MA 02139.

Q. On whose behalf are you testifying in this case?
A. I am testifying on behalf of the Citizens Utility Board of Wisconsin (“CUB”).

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

Q. Please summarize your educational background and recent work experience.
A. I graduated from the Massachusetts Institute of Technology in 1968 with a Bachelor of Science Degree in Engineering. In 1969, I received a Master of Science Degree in Engineering from Stanford University. In 1973, I received a Law Degree from Stanford University. In addition, I studied nuclear engineering at the Massachusetts Institute of Technology during the years 1983-1986.

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

I have testified before state regulatory commissions in Arizona, New Jersey, Connecticut, Kansas, Texas, New Mexico, New York, Vermont, North Carolina, South Carolina, Maine, Illinois, Indiana, Ohio, Massachusetts, Missouri, and
Wisconsin and before an Atomic Safety & Licensing Board of the U.S. Nuclear Regulatory Commission.

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

Q. Have you previously submitted testimony before this Commission?

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

Q. What is the purpose of your testimony?

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

1. Whether it is in the public interest to sell Kewaunee to an indirect subsidiary of an out-of-state multi-tiered holding company.

2. Whether WPS and WPL’s proposed use of the Kewaunee decommissioning trust funds is reasonable and in the public interest.

3. Whether the price that WPS and WPL would receive from Dominion Energy Kewaunee represents Kewaunee’s fair market value.

This testimony presents the results of our analyses.

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

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. Reviewed the testimony submitted by WPS, WPL, and Dominion and prepared data requests that CUB submitted to these companies.

2. Reviewed the responses to the data requests submitted by CUB and other active parties.

3. Reviewed relevant Commission Orders.

4. Examined materials in Synapse files related to other nuclear power plant sales and to issues related to the ownership of nuclear power plants by subsidiaries of multi-tiered holding companies.

5. Examined materials available in the U.S. Nuclear Regulatory Commission’s public docket files related to decommissioning cost issues and the sales of other nuclear power plants.

6. Examined materials available on the website of Rochester Gas & Electric Corporation related to the sale of the R.E. Ginna nuclear power plant to Constellation.

7. Reviewed publicly available materials concerning nuclear power plants sales and decommissioning related plans and cost issues.

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

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

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

A. Yes. During the summer of 2002, Synapse prepared a report titled “Financial Insecurity: The Increasing Use of Limited Liability Companies and Multi-Tiered Holding Companies to Own Nuclear Power Plants.” I was the lead
Q. Please summarize your conclusions in this investigation.

A. I have reached the following conclusions:

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

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

3. The parent corporation Dominion Resources, Inc. has not guaranteed that Dominion Energy Kewaunee will have all of the funds it needs to operate and decommission Kewaunee safely. Instead, Dominion Resources, Inc. has only guaranteed that it will provide up to $60 million if Dominion Energy Kewaunee is unable to obtain needed funds from other sources.

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

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

6. WPS and WPL would not receive Kewaunee’s fair market value if the
proposed sale to Dominion Energy Kewaunee is closed, especially in light
of the low price they will receive and the $405 million in
decommissioning funds that would be transferred to Dominion. In fact,
the $220 million cash price that WPS and WPL would receive from
Dominion for Kewaunee and related nuclear fuel would be $160 million
less than RG&E will receive from Constellation as part of the sale of the
Ginna nuclear plant, a slightly smaller facility, and related nuclear fuel.
The proposed Ginna transaction is very relevant in assessing the fair
market value of Kewaunee because Ginna is a peer plant to Kewaunee
with a similar design and vintage. As part of the proposed Kewaunee sale,
WPS and WPL also would transfer to Dominion Energy Kewaunee
approximately $405 million in decommissioning funds which would be
$202 million more than RG&E will have to transfer to Constellation as
part of the Ginna transaction.
Q. What are your recommendations in this proceeding?

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

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

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

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

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

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

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

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

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

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

A. No.

2 Dominion response to Data Request 3-CUB-6(a).
Q. Does Dominion Resources, Inc. own the Millstone Nuclear Plants through a similar chain of subsidiaries?

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

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

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

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

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

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

- to determine whether the Kewaunee decommissioning funds are adequate and whether the method to be used to decommission the plant is appropriate to Wisconsin.
- to approve the subsequent sale of Kewaunee from Dominion to another owner and to assure the financial integrity of any subsequent owner(s) of Kewaunee.
- to determine whether extension of Kewaunee’s operating life is in the best of interest of Wisconsin and its ratepayers and taxpayers.
- to assure the financial integrity of Dominion Energy Kewaunee and its owners. If Kewaunee were sold to Dominion, the Commission would be
unable to assure that adequate funds are made available and prudently
invested in and used to maintain and operate the plant. The Commission
also would be unable to assure that funds that should be used to maintain
and operate Kewaunee are not being improperly transferred to Dominion
Energy Kewaunee’s direct or indirect owners or affiliates.

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

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

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

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

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

For example, the NRC Staff has expressed concern that the use of holding
company structures can lead to a diminution of the assets necessary for the safe
operation and decommissioning of a licensee’s nuclear power plant.\(^3\) In fact, as early as March 1993 the NRC Staff expressed concern that:

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

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

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

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

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\(^3\) 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.

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

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

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

The NRC also does not have a specific policy statement or procedure on how
licensees should use financial assurance funds in the forms of lines of credit for
plant operation.7 Nor does the NRC have any specific policy statement or
procedure that controls how it would consider approval of requests of corporate
subsidiaries to reduce, replace, or withdraw available lines of credit that are
subject to NRC conditions. Instead, the NRC has said that it will review such
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.
The NRC has explained its policy for addressing situations where a licensee has drawn upon the lines of credit provided by a parent or affiliated companies. In such situations, the NRC would:

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

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

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

However, the applicable NRC regulation, 10 CFR 50.33(f), is inconsistent in that on the one hand it says that “the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license.” (emphasis added) But the regulation then merely requires applicants to submit estimates for total annual operating costs for only the first 5 years of operation of the facility. Although the NRC can ask for information for subsequent years, this regulation can mean that the NRC will only review five years of operating cost
data when the new owner may be seeking transfer of a license which will continue in effect for another 25 years or longer.

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

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

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

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

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10 CFR50.75(f)(1).

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


13 NUREG-1350, Vol. 13, Figure 4.

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

Q. Does the NRC review the financial qualifications of applicants for renewal of
nuclear power plants’ operating licenses?

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

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

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

A. No.16

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

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

16 Dominion response to Data Request 3-CUB-19.
17 Dominion response to Data Request 3-CUB-15.
At the same time, Dominion Energy Kewaunee would be prevented from transferring operating earnings or other funds to its affiliate Virginia Electric and Power Company without approval of the state regulatory commissions in Virginia and North Carolina.  

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

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

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

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18 Ibid.
19 Dominion response to Data Request 3-CUB-17.
20 Ibid.
Q. Why should the Commission be concerned about Dominion Energy Kewaunee’s lack of direct control over its internally generated funds and the absence of corporate Dominion policies setting limits on the transfer of earnings out of Dominion Energy Kewaunee or limits on inter-affiliate loans or other inter-affiliate transactions?

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

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

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

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

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

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

\textsuperscript{21} Dominion Response to 1-WIEG-2.
that would own these units would be provided whatever cash is needed to protect
the public health and safety. It did so by entering into an inter-company credit
agreement between the parent corporation and the plant-owning subsidiary.

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

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

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

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

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

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

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22 See Nine Mile Point Unit Nos. 1 & 2 NRC License Transfer Application, February 1, 2001, at page 23.
Q. If the plant-owning subsidiary were to declare that it were bankrupt, does the NRC have statutory authority to require a licensee in bankruptcy to continue making safety-related or decommissioning expenditures?

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

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

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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.
27 10 CFR 50.54 (cc).
28 Direct Testimony of James K. Martin, at page 19, lines 12-17.
veil” to require a parent corporation to accept responsibility for the liabilities of a bankrupt subsidiary and make required payments.

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

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

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

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

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

A. Yes. There are two NRC cases that involved attempts to pierce the corporate veil of the operator of a nuclear power plant. In 1995, the NRC attempted to negate a transfer of assets from a licensee which, as part of a complicated corporate restructuring, had become a subsidiary to a newly created holding company because the transfer had occurred without the prior written consent of the NRC, as required by section 184 of the Atomic Energy Act. The NRC held that it could pierce the veil of corporations that violate section 184. However, before a final adjudication, this case ended in a settlement. In 1997, the NRC tried to force a parent company to provide additional funds to the decommissioning fund for a subsidiary plant. However, prior to a final adjudication, the NRC approved a settlement that resolved the decommissioning fund issue without any specific finding as to the parent company’s liability. In accepting the settlement, the NRC expressed concern that there was a “substantial possibility of defeat if the case proceeds to trial [on a theory of] piercing the corporate veil.”

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

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

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

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

The Commission also cannot rely upon the U.S. NRC to adequately monitor the financial condition of Dominion Energy Kewaunee and to require that sufficient funds will be made available to operate and maintain the plant. The financial assurance reviews conducted by the NRC when an operating license is transferred are very limited. The NRC will no longer conduct a review of a licensee’s financial assurance when evaluating a license renewal application. It also is unclear whether the NRC has the requisite staff expertise or resources to effectively monitor licensee’s financial circumstances on an ongoing basis.
Issue No. 2 – Whether WPS’ and WPL’s proposed use of the Kewaunee Decommissioning Trust Funds is reasonable and in the public interest

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

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

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

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

Q. What is the basis for this conclusion?

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

For example, WPS/WPL witness Graves presents an analysis that shows that, under base case conditions, the $405 million in the two Kewaunee Qualified Decommissioning Trust Funds that would be transferred to Dominion should be just about adequate to pay for the plant’s decommissioning following its scheduled retirement in 2013 without any further contributions from the
ratepayers of either WPS or WPL. Mr. Graves’ base case analysis assumes a 6 percent annual after-tax earnings rate and 4.24 percent average annual escalation in decommissioning costs.

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

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

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

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

A. Yes. The analyses prepared by WPS/WPL witness Spicer showed that there would only have to be a mean value of $366.2 million in Kewaunee’s decommissioning trust funds at this time to pay for the ultimate cost of decommissioning if it is assumed that the plant will not be retired until 2033.\(^{34}\) This would mean that the $405 million in the two Kewaunee Qualified Decommissioning Funds will be more than adequate to pay for the cost of decommissioning the plant starting in 2033.

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

The second Dominion study, however, assumed that Kewaunee’s operating life was extended to January 1, 2033. This study, which used the same earnings and cost escalation rate assumptions as Exhibit JKM-11, found that, in this extended operating life scenario, the Qualified Decommissioning Funds would have in excess of $500 million more than would be needed to complete the scope of 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.
Q. Please explain why you believe it is unrealistic to expect that the cost of decommissioning Kewaunee will be significantly higher than the $530 million in 2002 dollars that has been estimated in the most recent plant-specific cost study.

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

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

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

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

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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.

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

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

Fourth, WPS, WPL and Dominion all expect that as the owner/operator of a number of nuclear plants, Dominion should be able to achieve efficiencies and economies of scale in the decommissioning of Kewaunee.43 I have seen no reasons why the Nuclear Management Company (“NMC”) should not be able to achieve many of these same efficiencies and economies of scale through its involvement in the decommissioning of the nuclear power plants it now operates. In fact, recent decommissioning cost studies for both Kewaunee and Point Beach anticipate that the NMC will oversee and provide site administration for the

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.
43 For example, see Dominion’s response to Data Request 3-CUB-8.
plants’ overall decommissioning processes. For example, the most recent Kewaunee decommissioning cost study assumes that:

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

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

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

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

A. Yes.

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

A. No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Yes. As WPS/WPL witness Graves acknowledges, most of the nuclear power plants that have been successfully sold in recent years, including the Ginna,
Q. Would the price that WPS and WPL receive from the sale of Kewaunee to Dominion Energy Kewaunee represent the plant’s fair market value?

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

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

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

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

A. No. Although it is reasonable to expect the bidders would pay more for a newer nuclear power plant, and therefore a plant with a longer expected operating life, Mr. Graves’ adjustment presents a false comparison of the low price that WPS and WPL will receive for Kewaunee with the prices that have been obtained for 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.
creditable reason to expect that Kewaunee has any less potential for an extended
operating life than Ginna. RG&E has simply received value for that potential as
part of the Ginna sale price while WPS and WPL have not.

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

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

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

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

In addition, as I noted earlier, extending Kewaunee’s operating life would create
the potential that there could be significant excess funds in the plant’s Qualified
Decommissioning Trusts. For example, the analyses prepared by WPS/WPL
witness Spicer showed that there would only have to be a mean value of $366.2
million in Kewaunee’s decommissioning trust funds at this time to pay for the
ultimate cost of decommissioning if it is assumed that the plant will not be retired
until 2033. This would mean that there would be approximately an excess $40
million in present year dollars in the two Kewaunee Qualified Decommissioning

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48 Pre-filed Direct Testimony of Paul Spicer, at page 22, lines 9-11.
Funds that ultimately could be refunded to ratepayers if the plant’s operating life were extended through 2033.\textsuperscript{49}

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

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

\textbf{Q.} \textit{Is there any credible reason to believe that WPS and WPL would be unable to receive NRC approval to extend Kewaunee’s operating life if they chose to do so?}

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

In fact, \textit{Nucleonics Week} has reported that the NRC staff told the NRC Commissioners in March that they “expect all requests to be renewed, baring any unresolved technical issues.”\textsuperscript{51}

\textsuperscript{49} For example, see the Pre-filed Direct Testimony of Paul Spicer, at page 22, lines 9-11.
\textsuperscript{50} For example, see Exhibit\underline{___DAS-3}.
\textsuperscript{51} \textit{Nucleonics Week}, April 8, 2004, at page 1.
Q. Do you expect that Dominion will seek to renew Kewaunee’s operating license?

A. Yes.

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

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

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

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

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

A. Yes. Dominion witness David Christian has acknowledged that it is Dominion’s intention to renew Kewaunee’s operating license if they determine that it can be done safely and economically.54

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

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

Figure 1: Decommissioning Funds Transferred in Nuclear Power Plant Sales (in $ millions)

Figure 1 shows that substantially larger decommissioning funds (that is, more than $100 million higher) would be transferred to Dominion Energy Kewaunee as part of the proposed Kewaunee sale than have been transferred in other recent nuclear power plant sales. In fact, the $405 million in decommissioning funds that would be transferred to Dominion is twice the $202 million in decommissioning funds that will be transferred to Constellation as part of its purchase of the Ginna plant.
Q. **What companies would be parties to the proposed Kewaunee PPA?**

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

However, Dominion Resources, Inc. would guarantee Dominion Energy Kewaunee’s payment performance under the PPA. Consequently, the claim by WPS/WPL witness Spicer that “Dominion’s obligations to WPSC and WPL under the PPAs will be guaranteed by Dominion’s ultimate parent, DRI, under corporate guarantees in favor of WPSC and WPL” is correct only up to a maximum of $31 million. Any additional performance penalties above this amount would be the sole responsibility of Dominion Energy Kewaunee.

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

A. No. The PPA specifies significant penalties that Dominion Energy Kewaunee would have to pay during an extended plant outage. However, it is very questionable whether Dominion Energy Kewaunee would have the financial capability to pay those penalties, beyond the $31 million guaranteed by Dominion Resources, Inc. because at the very time it would have to pay those penalties, its only revenue producing asset, the Kewaunee plant, would be out of service.

Being a single asset company, Dominion Energy Kewaunee would not have any facilities to generate income when Kewaunee is out of service. Consequently, the penalties and performance requirements placed upon Dominion Energy Kewaunee in the PPA may be more illusory than real to the extent that, in total, they exceed the $31 million of guarantees by the parent corporation DRI.
Q. If Kewaunee is out of service for an extended period or if the plant’s overall performance is poorer than expected, who then would bear the incremental capacity, energy and ancillary costs if Dominion Energy Kewaunee is financially unable to pay the penalties specified in the PPA?

A. The parent corporation, Dominion Resources, Inc. would pay up to $315 million. WPS, WPL and their ratepayers would then bear the risk of any additional capacity, energy and ancillary costs resulting from Kewaunee performance below that set out in the PPA.

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

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

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

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

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

A. No. Mr. Graves overstates the extent to which the Ginna transaction is more favorable to the buyer (Constellation) compared to the proposed Kewaunee 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.
• Constellation will be receiving a significantly smaller decommissioning fund in the Ginna transaction ($202 million) as compared to the $405 million in Kewaunee decommissioning funds that would be transferred to Dominion. In addition, as I discussed earlier, the Ginna Asset Sale Agreement requires Constellation to spend whatever funds it must to pay the decommissioning costs in excess of the accumulated value of the funds that will be transferred at closing. Dominion Resources, Inc. has guaranteed to pay only up to an additional $60 million of any costs of decommissioning Kewaunee that exceed the accumulated value of the trusts that would be transferred at closing. Consequently, Constellation will bear a substantially higher decommissioning-related risk than would Dominion Resources, Inc.

• There is no significant risk that the NRC will reject a request by any buyer of Kewaunee to renew the plant’s operating license for a period of up to 20 years.

• The parent Constellation corporation has committed to the NRC that it will enter into a formal line of credit so that the subsidiary that will directly own Ginna will have all of the funds needed to operate and maintain the plant without endangering the public health and safety. Dominion Resources, Inc. has committed to the NRC to pay only up to $60 million of any funds that Dominion Energy Kewaunee needs but is unable to obtain from other sources.

• In theory, the Kewaunee PPA would impose more risk on the plant buyer because it would be firm rather than unit contingent as in the Ginna PPA. However, in reality, both the Ginna and Kewaunee plants have had very good operating histories and both units appear to be in very good physical condition as their current owners have spent significant amounts to maintain and repair them. Moreover, Constellation has an excellent
reputation as the own/operator of the Calvert Cliffs and Nine Mile Point nuclear plants. Consequently, it is reasonable to expect that Ginna’s future availability and forced outage rates should be approximately the same as those that Dominion has pledged for Kewaunee.

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

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

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

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

Q. **Please explain.**

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

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

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

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

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

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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.
Q. Does this complete your testimony?

A. Yes.