

**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)
)**

**Public Redacted
Surrebuttal Testimony of
David A. Schlissel
Synapse Energy Economics, Inc.**

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

June 14, 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. Have you previously submitted testimony in this proceeding?**

7 A. Yes. I submitted direct testimony on May 7, 2004.

8 **Q. What is the purpose of your Surrebuttal testimony?**

9 A. The purpose of this Surrebuttal testimony is to respond to the rebuttal testimony
10 of Dominion witnesses Wood and Martin and WPS/WPL witnesses Graves,
11 Johnson and Seitz.

12 Rebuttal Testimony of Dominion witness Robert S. Wood

13 **Q. Dominion witness Wood testifies that if the NRC determines that a licensee’s**
14 **financial problems could begin to affect safety performance, it will take**
15 **action.¹ Have you seen any recent instances in which the NRC has failed to**
16 **require a licensee to shut down an operating plant or to enforce existing NRC**
17 **regulations because of concerns over the financial impact of such actions on**
18 **the licensee?**

19 A. Yes. During the past decade there have been numerous instances in which the
20 NRC allowed nuclear power plants to continue operating or failed to enforce
21 existing NRC requirements because of the adverse financial impact on the
22 licensee of doing so.

23 For example, in late 2001, the NRC allowed the Davis-Besse plant in Ohio to
24 continue operating rather than shut down to conduct required inspections of the
25 facility’s reactor vessel head. When the plant was ultimately shut down in

¹ Wood Rebuttal Testimony, at page 9, line 17, to page 10, line 7.

1 February 2002, the licensee found that corrosion extended through the 6 inch
2 thick reactor vessel head and that only the one-third inch thick stainless steel
3 lining prevented a possible and serious loss-of-coolant accident. The NRC's
4 internal Office of Inspector General has concluded that the decision to allow the
5 Davis-Besse plant to continue operating beyond December 31, 2001 without
6 performing reactor vessel head inspections "was driven in large part by a desire to
7 lessen the financial impact on the licensee that would result from an earlier
8 shutdown."²

9 Similarly, in late 2003, the NRC discovered that licensees had failed to comply
10 with important fire protection regulations adopted after the Browns Ferry fire in
11 1975. Instead, of complying with one of the three fire protection options
12 specified by the NRC, licensees were relying on operator manual actions, that
13 were not approved by the NRC, to shut down the plant in case of a serious fire.
14 However, rather than requiring that licensees comply with the existing automatic
15 safe-shutdown fire regulations, the NRC apparently has decided to change its
16 regulations to permit what the industry is already doing. The high cost, on
17 licensees and NRC staff, of enforcing the existing NRC fire-protection regulations
18 was one of the main reasons cited for the change in policy.

² NRC NUREG-1100, Volume 20, at page 127, dated February 2004 and NRC Office of Inspector General Event Inquiry No. 03-02S, at pages 15-17.

1 **Q. Mr. Wood discusses actions taken by the NRC regarding the Chapter 11**
2 **bankruptcies of several nuclear power plant owners and during what he calls**
3 **Northeast Utilities' operational problems with its Millstone facility.³ Are any**
4 **of the examples offered by Mr. Wood relevant to the situation that the NRC**
5 **would face if the corporate subsidiary that only owns a single-asset, that is a**
6 **nuclear power plant, were to experience an extended outage or to**
7 **permanently shut down?**

8 A. No. I think it is good, and appropriate, that the NRC increased its inspection
9 presence during the PG&E and ENRON bankruptcies and during the problems at
10 the Millstone nuclear facility. However, none of the examples provided by Mr.
11 Wood provided a set of circumstances similar to that which would be faced if the
12 corporate subsidiary that only owns a single asset, i.e., a nuclear power plant,
13 were to experience significant financial problems or declare bankruptcy because
14 of an extended plant outage or permanent shutdown. In such a situation, the single
15 asset owned by the corporate subsidiary would not be generating any cash flow
16 while significant expenditures would still be required. The corporate subsidiary
17 would have no source for any required funds other than funds provided by the
18 parent corporation or other affiliates.

19 By way of contrast:

- 20 ■ Both of PG&E's Diablo Canyon nuclear units were operating, and
21 providing substantial positive cash flows, when that Company experienced
22 the financial problems that led it into Chapter 11. PG&E also owned
23 many other assets in addition to the Diablo Canyon nuclear plants. It was
24 not a single-asset company.
- 25 ■ The parent company ENRON went bankrupt while the subsidiary Portland
26 General Electric that owned the closed Trojan Nuclear Plant was still
27 producing positive cash flow. This is the reverse of the situation that
28 would occur if DKE were to enter Chapter 11. Portland General Electric
29 also owned billions of dollars of other generating, transmission and
30 distribution assets in addition to Trojan. It was not a single asset company.

³ Wood Rebuttal Testimony, at page 10, lines 7-19, page 18, line 12, to page 19, line 2, and page 21, line 10, to page 22, line 20.

- 1 ▪ The Seabrook Nuclear Plant was under construction when Public Service
2 Company of New Hampshire (“PSNH”) entered Chapter 11. PSNH also
3 was under traditional cost of service regulation at that time and owned
4 substantial other assets in addition to Seabrook. It was not a single asset
5 company.
- 6 ▪ Neither Cajun Electric or El Paso Electric were single asset companies
7 when they experienced the financial problems that caused them to enter
8 Chapter 11. In addition, neither company was the majority owner or the
9 operator of the River Bend (Cajun) or Palo Verde (El Paso Electric)
10 nuclear units.
- 11 ▪ The Long Island Lighting Company’s (“LILCO”) Shoreham nuclear plant
12 only operated at very low power for a short period of time during that
13 company’s financial difficulties. LILCO also was not a single-asset
14 company as it owned billions of dollars of other generating, transmission
15 and distribution assets in addition to Shoreham.

16 In addition, when the Millstone nuclear plants experienced the operational and
17 management problems that led to the early retirement of Millstone Unit 1 and
18 multi-year outages at Millstone Units 2 and 3, these facilities were owned by
19 Northeast Utilities and other companies. Many of these owners were regulated
20 utilities subject to cost-of-service regulation that owned significant generation,
21 transmission and distribution assets besides their investments in Millstone.
22 Consequently, the Millstone example cited by Mr. Wood also is not relevant to
23 the situation that would exist if a corporate subsidiary of a multi-tiered holding
24 company, owning only a single nuclear power plant, were to experience
25 significant financial problems or declare bankruptcy.

26 **Q. Do you agree with Mr. Wood’s testimony regarding the significance of the**
27 **regulatory oversight authority over Kewaunee that the PSCW will lose if it**
28 **approves the sale of Kewaunee to DEK?⁴**

29 A. No. The extremely minor ability that the PSCW would have to petition the NRC
30 and participate in the limited opportunities the NRC provides for public
31 comments and hearings does not in any measure compensate for the substantial

⁴ Wood Rebuttal Testimony, at page 4, line 7, to page 5, line 8.

1 regulatory oversight authority that PSCW would lose if it approves the proposed
2 Kewaunee sale.

3 **Q. Please comment on Mr. Wood’s testimony that the NRC has a rigorous**
4 **program to ensure that its deregulated power plant licensees are and will**
5 **remain financially qualified to own, operate, and decommission their**
6 **facilities.**⁵

7 A. As described by Mr. Wood, this “rigorous program” appears to be limited to
8 annual reviews of licensee financial filings, following reports in the financial
9 press, several broad policy statements, and significant speculation on what the
10 NRC “would” or “probably would” do when faced with certain situations.
11 Moreover, this “rigorous” NRC program described by Mr. Wood does not have
12 any specific policies and procedures providing adequate assurance that the power-
13 plant owning subsidiaries, like DEK, will have sufficient funds to operate and
14 decommission their nuclear units.

15 For example, as I discussed in my direct testimony, the NRC does not have any
16 policies limiting the transfer of operating profits from a corporate subsidiary that
17 directly owns a nuclear power plant to its owner(s) or the types or magnitudes of
18 the loans that the subsidiary can make to affiliated companies. Instead, the NRC
19 merely requires that licensees provide notice when the plant-owning subsidiary
20 draws upon the financial support provided by its parent corporation or affiliates or
21 when assets in excess of 10 percent of the subsidiaries value are transferred.

22 In addition, when evaluating how rigorously it can expect the NRC will act to
23 assure that DEK has adequate funds, the PSCW should consider what the NRC
24 actually has done in recent years, as opposed to what Mr. Wood speculates that
25 the NRC would do in certain situations:

- 26 ■ The NRC has developed as one of its performance goals the reduction of
27 unnecessary regulatory burdens and has explicitly considered licensee
28 costs in its decision-making process. As a result, in a number of instances

⁵ Wood Rebuttal Testimony, at page 11, lines 5-7.

1 the NRC has failed to take action to enforce its requirements on a number
2 of occasions because of the possible adverse impact on licensees.

3 ▪ The NRC has not required that the parent corporations guarantee that
4 funds will be provided to safely operate and decommission the nuclear
5 plants owned by their subsidiaries. Instead, the NRC has accepted
6 financial support commitments from affiliates of the plant-owning
7 subsidiaries.

8 ▪ The NRC has reduced its regulatory oversight by eliminating the
9 requirement that a licensee's financial qualifications be examined as part
10 of its reviews of a license renewal application.

11 **Q. Mr. Wood takes issue with your testimony that the NRC has no policy**
12 **limiting the transfer of operating profits from a corporate subsidiary that**
13 **directly owns a nuclear plant or the types or magnitudes of the loans that**
14 **such a subsidiary can make to affiliated companies.⁶ Does Mr. Wood show**
15 **that, in fact, the NRC has such policies?**

16 A. No. He does not cite and, indeed, he cannot cite such policies because the NRC
17 does not have any. The statements from my direct testimony are correct. Instead,
18 Mr. Wood can merely refer to the NRC's regular financial oversight of licensees
19 and claim that the NRC will "probably impose" a condition on its approval of the
20 transfer of Kewaunee's operating licensee that notice be provided if Dominion
21 Energy Kewaunee were to draw upon funds available from its parent corporation.
22 But this would not prevent DEK from transferring all of its operating profits to its
23 parent corporation or from making any questionable loans to affiliated companies.
24 Whatever review the NRC would make would be after-the-fact, that is, after the
25 profits have been transferred out of DEK or the questionable loans have been
26 made.

⁶ Wood Rebuttal Testimony, at page 12, line 16, to page 13, line 8.

1 **Q. Do you have any comment on Mr. Wood’s statement that he does not agree**
2 **with your testimony that the NRC does not have a specific policy statement**
3 **or procedure on how licensees should use financial assurance funds in the**
4 **forms of lines of credit for plant operation or that controls how it would**
5 **consider approval of requests of corporate subsidiaries to reduce, replace, or**
6 **withdraw available lines of credit that are subject to NRC conditions?**⁷

7 A. Yes. I don’t understand how Mr. Wood can disagree with the cited statements
8 from my direct testimony because the NRC itself has stated that it does not have
9 such policy statements or procedures.⁸

10 **Q. Mr. Wood also takes issue with your observation that the applicable NRC**
11 **regulation, 10 CFR 50.33(f) is inconsistent in that on the one hand it says that**
12 **“the applicant shall submit information that demonstrates the applicant**
13 **possesses or has reasonable assurance of obtaining the funds necessary to**
14 **cover estimated operation costs for the period of the license” but then merely**
15 **requires applicants to submit estimates for total annual operating costs for**
16 **only the first 5 years of operation of the facility.**⁹ **Does Mr. Wood’s**
17 **explanation show that the applicable NRC regulation is not “inconsistent?”**

18 A. No. That applicable NRC requirement in 10 CFR 50.33(f) clearly is inconsistent.
19 Instead of showing how it is internally consistent, Mr. Wood merely provides his
20 reasoning as to why requiring only five years of projected financial information is
21 appropriate. He has not shown that requiring only five years of such information
22 is consistent with the requirement in 10 CFR 50.33(f) that the applicant show it
23 possesses or has reasonable assurance of obtaining the funds necessary to cover
24 estimated operation costs for the period of the license.

⁷ Wood Rebuttal Testimony, at page 13, line 9, to page 14, line 3.

⁸ See the Direct Testimony of David A. Schlissel, at page 10, line 18, to page 11, line 14.

⁹ Wood Rebuttal Testimony, at page 14, line 4, to page 15, line 14.

1 **Q. Mr. Wood claims that your testimony that the NRC has decided not to**
2 **evaluate licensee's financial qualifications as part of its review of license**
3 **renewal applications contradicts your statement that the NRC conducts**
4 **ongoing reviews of financial qualifications after a license is transferred.¹⁰ Do**
5 **you agree that these statements are in conflict?**

6 A. No. I do not see how the statements are in conflict at all. As I discussed in my
7 direct testimony that the NRC has decided not to conduct detailed and formal
8 reviews of a licensee's financial qualifications as part of its review of license
9 renewal applications. That is what the NRC has decided and what I reported in
10 my direct testimony. The NRC also continues to perform the sort of ongoing
11 monitoring of licensee financial conditions that is discussed by both Mr. Wood
12 and me.

13 **Q. Should Mr. Wood's claim that the NRC has nearly doubled its financial staff**
14 **since the beginning of 1997 reassure the PSCW that the NRC has developed**
15 **sufficient staff resources to adequately monitor licensees financial**
16 **qualifications?¹¹**

17 A. No. Mr. Wood's response to Data Request 15-CUB-1(b) reveals that the NRC
18 had a financial staff of four in 1997. This was at a time when essentially all
19 nuclear power plants were owned by utilities subject to cost-of-service regulation
20 or by municipalities or other public entities. There were few, if any, merchant
21 power plants.

22 Today, according to Mr. Wood's testimony, all or a substantial portion of 38
23 nuclear units (out of a total of 104 units) are operated on a merchant basis.
24 Therefore, the need for NRC oversight of licensee financial circumstances has
25 increased significantly. However, despite the restructuring of the electric industry
26 and the associated dramatic increase in the number of merchant nuclear plants, the
27 NRC financial staff has been increased by only four additional staff.

¹⁰ Wood Rebuttal Testimony, at page 15, line 15, to page 16, line 7.

1 **Q. Should the PSCW be reassured by Mr. Wood’s acknowledgement that the**
2 **ENRON collapse was very sudden and caught almost all financial analysts,**
3 **including the NRC’s, by surprise?¹²**

4 A. No. As I understand it, one of the reasons that the ENRON collapse was such a
5 surprise was that there was little or no ongoing monitoring of ENRON’s financial
6 circumstances by outside regulatory authorities. This is very different from the
7 monitoring of WPS and WPL’s financial circumstances that is performed on an
8 ongoing basis by the PSCW staff and by staff and intervenors during periodic rate
9 cases. In other words, I don’t believe that in a similar situation for a regulated
10 company, a competent staff, like that of the PSCW, would have missed what now
11 appear to have been the warning signs from ENRON.

12 **Q. Mr. Wood has testified that the more relevant concern is not that ENRON’s**
13 **collapse was not foreseen, but what actions the NRC was able to take to**
14 **mitigate any adverse effects from the collapse.¹³ He also testified that the**
15 **“NRC took action to ensure that Portland General would not be adversely**
16 **affected by its parent’s financial difficulties.”¹⁴ What actions did the NRC**
17 **actually take to ensure that Trojan’s owner was not adversely affected by its**
18 **parent’s financial difficulties?**

19 A. Data Request 15-CUB-4 cited this section of Mr. Wood’s rebuttal testimony and
20 asked him to please specify the action taken by the NRC to ensure that Portland
21 General Electric would not be adversely affected by its parent’s financial
22 difficulties and to provide the source document for this answer. Mr. Wood’s
23 response was that he was not aware of any NRC documents regarding Portland
24 General Electric’s status during the ENRON bankruptcy. Moreover, he explained
25 that the “actions” taken by the NRC were limited to several meetings and

¹¹ Wood Rebuttal Testimony, at page 17, lines 22-23.

¹² Wood Rebuttal Testimony, at page 18, lines 12-14.

¹³ Wood Rebuttal Testimony, at page 18, lines 14-16.

¹⁴ Wood Rebuttal Testimony, at page 18, lines 19-20.

1 conference calls between the NRC financial staff and other NRC staff personnel.
2 Apparently the NRC took no other “actions” besides these meetings and
3 telephone calls to ensure that Portland General Electric would not be adversely
4 affected by ENRON’s financial difficulties.

5 **Q. Please comment on Mr. Wood’s testimony that it is not a realistic scenario to**
6 **consider that DEK would pay all of its profits as dividends to its owners,**
7 **thereby leaving DEK with insufficient funds for nuclear operations or**
8 **decommissioning.¹⁵**

9 A. I disagree with Mr. Wood’s apparent complacency on this issue. I believe it is
10 quite possible that a corporate parent may have different objectives than ensuring
11 that its nuclear plant-owning subsidiary has adequate funds.

12 For example, an independent review of PG&E’s financial condition for the
13 California Public Utilities Commission found that between 1997 to September
14 2000, PG&E had transferred \$4.6 billion to its parent corporation.¹⁶ Of this
15 amount, \$632 million had been transferred during the first nine months of 2000, a
16 period during which PG&E was experiencing significant financial problems as a
17 result of the new power markets in California. The independent review further
18 found that “Historically, cash has flowed in only one direction, from PG&E to [its
19 parent corporation], and then to the unregulated affiliates.”¹⁷

20 I find it interesting, and significant, that Mr. Wood has testified that the NRC
21 increased its inspection presence at Diablo Canyon in response to PG&E’s
22 bankruptcy. However, he does not discuss whether the NRC was aware of this
23 substantial transfer of funds when it was being made or whether, prior to the time
24 when PG&E entered Chapter 11, the NRC took any actions in light of PG&E’s

¹⁵ Wood Rebuttal Testimony at page 19, lines 3-16.

¹⁶ *Review of Pacific Gas and Electric Company*, the Barrington-Wellesley Group, Inc., dated January 30, 2001, at page I-5.

¹⁷ Ibid.

1 financial problems to ensure that adequate funds were available to operate Diablo
2 Canyon safely.

3 **Q. Does Mr. Wood cite any evidence to support his claim that it is unlikely that**
4 **a company would allow one of its subsidiaries to go bankrupt and**
5 **consequently risk the NRC's increased regulatory oversight at its other**
6 **nuclear assets?**¹⁸

7 A. No. More importantly, because of the difficulty of holding a parent corporation,
8 like Dominion, responsible for the liabilities incurred by a nuclear power plant
9 owning-subsiary, there might not be anything else that the NRC could do in
10 such a situation beyond merely increasing its regulatory oversight of the parent
11 corporation's other nuclear assets.¹⁹

12 **Q. Please comment on Mr. Wood's claim that if the parent Dominion**
13 **corporation, DRI, were to remove assets from DEK, the NRC would soon**
14 **learn about it through its frequent reviews of DEK's and DRI's financial**
15 **reports.**²⁰

16 A. Mr. Wood has testified that the NRC reviews the annual reports filed by licensees
17 and the financial press as part of its ongoing monitoring of licensee financial
18 qualifications.²¹ This does not represent "frequent reviews" to me, especially
19 when compared to the monitoring performed by the staffs of state regulatory
20 commissions.

21 In addition, as I noted in my answer to the previous question, when the NRC does
22 conduct such an after-the-fact review and finds that a substantial transfer of assets
23 has occurred, there may not be anything that the NRC can do to force the parent
24 corporation to return the assets to the nuclear plant owning subsidiary.

¹⁸ Wood Rebuttal Testimony, at page 19, line 18, to page 20, line 5 and page 22, line 22, to page 23, line 2.

¹⁹ See the Direct Testimony of David A. Schlissel, at page 18, line 3, to page 19, line 21.

²⁰ Wood Rebuttal Testimony, at page 19, lines 12-14.

²¹ Wood Rebuttal Testimony, at page 9, lines 11-17.

1 **Q. Mr. Wood dismisses the fact that the Vermont Public Service Board**
2 **premised its approval of the sale of the Vermont Yankee nuclear plant to**
3 **Entergy on the requirement that Entergy’s parent corporation provide an**
4 **additional \$60 million of financial support (for a total of \$130 million) as**
5 **being “based upon the facts of that case.”²² Is that a reasonable**
6 **characterization of the reasons why the Vermont Public Service Board**
7 **required the additional financial assurance?**

8 A. No. As Mr. Wood testifies, the NRC was satisfied with the \$70 million of
9 financial support that would have been provided to the Vermont Yankee plant’s
10 direct owner under two lines of credit from other Entergy affiliates, not from
11 Entergy’s parent corporation. However, the Vermont Public Service Board was
12 very concerned that this \$70 million would not be adequate to assure the safe
13 operation or decommissioning of the Vermont Yankee plant. Therefore, the
14 Public Service Board required Entergy’s parent corporation to commit the
15 additional \$60 million. The key point is that the \$70 million level of financial
16 support that satisfied the NRC (i.e., \$10 million more financial support than
17 Dominion has committed to Dominion Energy Kewaunee) did not satisfy the state
18 commission that would be losing its regulatory authority over the financial
19 support that Vermont Yankee’s owners would provide to the plant’s operations
20 and decommissioning.

21 **Q. Mr. Wood testifies that your conclusion that the NRC does not have**
22 **statutory authority to require a licensee in bankruptcy to continue making**
23 **safety-related or decommissioning expenditures is “incorrect.”²³ Do you**
24 **agree with his observation?**

25 A. No. The NRC has acknowledged that although it could order a licensee in
26 bankruptcy to continue making safety-related or decommissioning expenditures, a

²² Wood Rebuttal Testimony, at page 21, lines 3-5.

²³ Wood Rebuttal Testimony, at page 21, lines 10-14.

1 bankruptcy court could order the licensee not to make such expenditures.²⁴ For
2 this reason, the NRC has sought legislation from Congress to ensure that
3 decommissioning costs receive explicit priority in bankruptcy proceedings. But,
4 so far, this legislation has not been enacted. The NRC has further said that it is
5 willing to support legislation to prioritize safety-related claims in bankruptcy
6 proceedings.²⁵ But, so far, such legislation also has not been enacted.

7 **Q. Do you have any comments on Mr. Wood’s claim that it is unlikely that**
8 **Wisconsin and/or federal taxpayers will have to pay for some part of**
9 **Kewaunee’s decommissioning.**²⁶

10 A. Yes. Mr. Wood bases this conclusion on the fact that DEK will have
11 decommissioning funds that exceed the NRC’s minimum requirements.²⁷
12 However, the PSCW has repeatedly expressed its concern about the adequacy of
13 the NRC’s minimum requirements by requiring the owners of Kewaunee and
14 Point Beach to collect decommissioning funds that are substantially higher than
15 the NRC minimum requirements. If Kewaunee is sold to DEK, the Commission
16 will no longer have any authority to assure that DEK maintains the plant’s
17 decommissioning funds at levels above the NRC minimum requirements.

18 **Q. Mr. Wood notes that Exhibit___DAS-2 discusses Limited Liability**
19 **Companies.**²⁸ **(“LLCs”) Is the issue of LLCs relevant to this proceeding?**

20 A. No. Although it addresses the relevant issue of the ownership of nuclear power
21 plants by single-asset subsidiaries of multi-tiered holding companies, the Synapse
22 Study that is included as Exhibit___DAS-2 also was commissioned to look at the
23 implications of plant ownership by corporate subsidiaries that may be organized
24 as LLCs. That is why the LLC issue is addressed in Exhibit___DAS-2.

²⁴ See Footnote No. 76 on page 29 of Exhibit___ DAS-2.

²⁵ See Footnote No. 78 on page 30 of Exhibit___DAS-2.

²⁶ Wood Rebuttal Testimony, at page 23, line 13, to page 24, line 8.

²⁷ Wood Rebuttal Testimony, at page 23, lines 20-22.

²⁸ Wood Rebuttal Testimony, at page 24, line 13, to page 25, line 3.

1 Although most of the discussion in Exhibit___DAS-2 is highly relevant to this
2 proceeding, the LLC issue has no relevance here because DEK will not be an
3 LLC. However, it is certainly possible that Dominion could decide to change the
4 corporate form of DEK into an LLC at some point after it acquires Kewaunee.

5 **Q. Do you have any comment on Mr. Wood’s claim that no merchant nuclear**
6 **power plants have had extended shutdowns?²⁹**

7 A. Yes. The fact that a nuclear unit is a “merchant plant” does not magically mean
8 that the facility will be less susceptible to outages caused by unexpected technical
9 problems, poor management, inadequate financial support of operations and
10 maintenance, or changed NRC requirements. Therefore, it is reasonable to
11 expect that some merchant plants, like other units owned by regulated utilities,
12 will experience extended outages at some point(s) during their remaining service
13 lives.

14 **Q. Do you agree with Mr. Wood’s claim that under current NRC policy, the**
15 **NRC is unlikely to authorize the return of Kewaunee’s non-qualified funds to**
16 **ratepayers if the plant is not sold?³⁰**

17 A. No. All of the evidence suggests that the NRC wants to assure that licensees have
18 decommissioning funds that meet its minimum funding requirements. The NRC
19 does not require that licensees maintain decommissioning funds in excess of its
20 minimum requirements. The Kewaunee qualified decommissioning trust fund
21 meets the NRC minimum funding requirement. Therefore, there is no reason to
22 expect that the NRC would prohibit WPS and WPL from refunding the funds in
23 Kewaunee’s non-qualified trust if these companies would continue to have funds
24 in the qualified trust that would be in excess of the NRC’s minimum
25 decommissioning funding requirements. This is especially true if the PSCW
26 approved and ordered such refunds.

²⁹ Wood Rebuttal Testimony, at page 25, lines 5-9.

³⁰ Wood Rebuttal Testimony, at page 27, lines 3-6.

1 Indeed, the NRC has just approved the transfer of Ginna’s operating license even
2 though only \$202 million of the \$272 million in Ginna’s decommissioning trust
3 funds is being transferred as part of the unit’s sale to Constellation. The NRC did
4 not condition this sale on the transfer of all of the funds in Ginna’s decommission
5 trusts. This supports the view that the NRC is satisfied if a licensee meets its
6 minimum decommissioning funding levels.

7 In addition, Mr. Wood’s argument makes no sense. He implies that the NRC
8 would accept the \$405 million in the Kewaunee qualified decommissioning trust
9 as being adequate if the plant is sold to DEK but would require WPS and WPL to
10 keep all \$600 million currently in the plant’s qualified and non-qualified trusts if
11 they retain ownership. The clear fact is that the \$405 million currently in
12 Kewaunee’s qualified decommissioning fund exceeds the NRC’s required
13 minimum amount, regardless of whether DEK or WPS and WPL own the plant
14 and hold the decommissioning trusts.

15 Rebuttal Testimony of Dominion Witness James K. Martin

16 **Q. Do you agree with the claim in Mr. Martin’s rebuttal testimony that WPS**
17 **and WPL are receiving fair market value for Kewaunee as compared to the**
18 **Ginna transaction?**³¹

19 A. No. As I testified at length in my direct testimony of May 7, 2004, I believe that
20 RG&E is receiving substantially greater value for Ginna than WPS and WPL
21 would receive for Kewaunee.

22 Mr. Martin cites several reasons why he believes that WPS and WPL are
23 receiving fair value for Kewaunee as compared to the Ginna plant’s sales price.
24 However, some of the reasons that Mr. Martin offers to justify Ginna’s higher sale
25 price are simply wrong, if not misleading. First, Mr. Martin references the
26 difference between the Kewaunee PPA energy cost and the Ginna PPA energy
27 cost, which he claims “means RG&E customers will pay approximately \$230

³¹ Martin Rebuttal Testimony, at page 12, line 19, through page 13, line 23.

1 million more over the next ten years than WPS and WPL customers for the same
2 amount of power when measured over this same time period.”³² In making this
3 claim, Mr. Martin ignores the fact that Ginna and Kewaunee are located in very
4 different regions of the country, with very different market prices. The
5 appropriate comparison would examine the Ginna and Kewaunee PPA energy
6 prices within the context of the expected market prices in New York State and
7 Wisconsin, respectively. Mr. Martin does not do so. Therefore, his conclusion
8 has no meaning.

9 Mr. Martin also cites the fact that the proposed Kewaunee transaction would
10 return \$193 million in non-qualified decommissioning funds to WPS and WPL
11 ratepayers, compared to only \$69 million in the Ginna transaction. Although this
12 is true, it reflects the fact that pursuant to PSCW orders, WPS and WPL collected
13 substantially more from their ratepayers for the cost of decommissioning
14 Kewaunee than RG&E collected from its customers.

15 Thus, RG&E has only about \$272 million in Ginna’s decommissioning trust funds
16 where WPS and WPL currently have approximately \$600 million in the
17 Kewaunee qualified and non-qualified trust funds. This means that the \$405
18 million in decommissioning funds that WPS and WPL would transfer to
19 Dominion would be double the \$202 million that RG&E will be transferring to
20 Constellation. This means that WPS and WPL are transferring twice the value in
21 the decommissioning trust funds to Dominion as part of a transaction with a
22 significantly lower sales price. For this reason, Mr. Martin’s claim regarding the
23 relative value of the Ginna and Kewaunee decommissioning funds that would be
24 refunded to ratepayers is misleading.

25 Third, as I discussed in my direct testimony, in theory the Kewaunee PPA would
26 impose more risk on the plant buyer, and provide more protection for ratepayers,
27 because it would be firm rather than unit contingent as in the Ginna PPA.
28 However, in reality, both the Ginna and Kewaunee plants have had very good

³² Martin Rebuttal Testimony, at page 13, lines 3-7.

1 operating histories and both units appear to be in very good physical condition.
2 Consequently, it is reasonable to expect that Ginna's future availability and forced
3 outage rates should be approximately the same as those that Dominion has
4 pledged for Kewaunee.³³

5 In addition, although the Kewaunee PPA specifies significant capacity and energy
6 penalties that DEK would have to pay during an extended plant outage, it is very
7 questionable whether DEK would have the financial capability to pay any
8 penalties beyond the limited amounts guaranteed by the parent Dominion
9 Resources, Inc.³⁴ Consequently, the penalties and performance requirements
10 placed upon DEK in the PPA may be more illusory than real to the extent that, in
11 total, they exceed the limited guarantees made by DRI.

12 Finally, I agree with Mr. Martin that Ginna's commitment to license renewal and
13 the potential for more capacity from Ginna were significant factors in the higher
14 price being paid for Ginna than Kewaunee.

15 **Q. Does Mr. Martin contest your observation that this Commission will lose**
16 **significant regulatory oversight of Kewaunee if the plant is sold to DEK?**³⁵

17 A. No. Instead, he focuses on the few, limited areas of oversight that the Commission
18 would retain. He also presents the obviously weak argument that the PSCW will
19 still have the power to influence Kewaunee operational and financial matters
20 through intervening at the NRC, FERC or SEC.³⁶ This would be a tremendous
21 reduction in the PSCW's powers, especially as compared to the control over the
22 financial integrity of a utility affiliate in a holding company structure granted the
23 PSCW in the Wisconsin Public Utility Holding Company Act.

³³ Direct Testimony of David A. Schlissel, at page 37, line 23, to page 38, line 4.

³⁴ Direct Testimony of David A. Schlissel, at page 35, lines 18-28.

³⁵ Martin Rebuttal Testimony, at page 15, line 11, through page 19, line 13.

³⁶ Martin Rebuttal Testimony, at page 18, lines 10-12.

1 **Q. Should the PSCW be reassured by the existence of the PUHCA regulatory**
2 **restrictions cited by Mr. Martin?**³⁷

3 A. No. The PUHCA limits discussed by Mr. Martin would not prevent DEK from
4 paying out all of its profits as dividends to its owners or make questionable loans
5 to non-public utility (that is, deregulated) affiliates.³⁸ Moreover, the electric
6 industry has been lobbying Congress for years to repeal the PUHCA.
7 Consequently, the PUHCA limits discussed by Mr. Martin may not be in effect
8 for the duration of Kewaunee's remaining operating life.

9 **Q. Please comment about Mr. Martin's claim that you "speculate wildly" about**
10 **the reason why DRI created a multi-tiered holding company.**³⁹

11 A. Protecting the parent corporation from responsibility for the liabilities of its power
12 plant owning subsidiaries is clearly a major reason why multi-tiered holding
13 companies have been created. The potential benefits of avoiding state and federal
14 taxes may be another. If DRI is not concerned about avoiding such liabilities, it
15 can easily enter into a binding agreement with DEK in which it accepts full
16 responsibility for any such liabilities.

17 Rebuttal Testimony of WPS/WPL Witness Frank Graves

18 **Q. Does Mr. Graves's analysis adequately explain the difference in the relative**
19 **value of payments that Constellation will make for the Ginna plant and the**
20 **payments that DEK would make for Kewaunee?**⁴⁰

21 A. No. Mr. Graves' analysis does explain some of the higher value that Constellation
22 is paying for Ginna, as compared to what Dominion would pay for Kewaunee.
23 However, his analysis significantly overstates the value of Ginna for Constellation

³⁷ Martin Rebuttal Testimony, at page 24, line 17, through page 25, line 7.

³⁸ Direct Testimony of David A. Schlissel, at page 13, line 20, to page 14, line 22.

³⁹ Martin Rebuttal Testimony, at page 26, lines 4-9, and page 29, line 16, to page 30, line 18.

⁴⁰ Graves Rebuttal Testimony, at page 15, line 27, to page 21, line 25.

1 and, therefore, does not explain all the difference in price between the two
2 transactions.

3 First, Mr. Graves acknowledges that his analysis does not account for about [REDACTED]
4 [REDACTED] of “apparent Constellation advantage” but he dismisses this amount as
5 being within the uncertainty surrounding the calculations.⁴¹ I disagree. This [REDACTED]
6 [REDACTED] represents an advantage to the Ginna sale transaction that Mr. Graves
7 cannot explain away, so he attempts to dismiss it rather than acknowledge its
8 existence.

9 Second, Mr. Graves repeatedly emphasizes the additional energy and capacity that
10 Constellation will have to sell both to RG&E and into the wholesale market due to
11 the two scheduled power uprates at Ginna.⁴² While he has included the additional
12 revenues from the sale of the extra power from these uprates in his analysis, he
13 has totally ignored the approximate \$30 million cost of implementing these
14 uprates.

15 Third, Mr. Graves estimates the future energy market prices for the power from
16 Ginna by taking what he says are recent prices (almost \$45/MWh) and escalating
17 them at 3 percent per year.⁴³ His resulting energy market prices are significantly
18 higher than other, more independent, estimates I have seen in recent years for the
19 upstate region of New York where the Ginna plant is located. For this reason, he
20 substantially overstates the prices that Constellation will receive for selling Ginna
21 power into the wholesale market.

22 For example, a recent estimate of future energy market prices was prepared for
23 the New York Independent System Operator (“NYISO”) by Levitan &
24 Associates. As shown in Figure DAS-R1 below, this estimate projects that energy
25 market prices in upstate New York will be level at about \$36-38/MWh from 2005

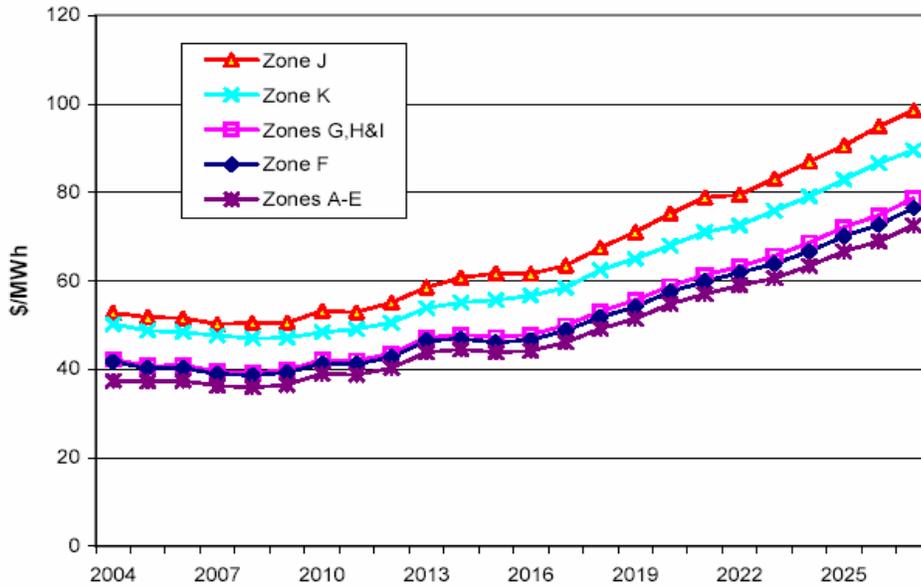
⁴¹ Graves Rebuttal Testimony, at page 19, lines 27-29.

⁴² For example, see Graves Rebuttal Testimony, at page 18, lines 1-11.

⁴³ Graves Rebuttal Testimony, at page 19, lines 7-16.

1 through about 2008. Prices will then climb very slowly after that, reaching about
2 \$43/MWh by 2013.

3 **Figure DAS-R1 – Recently Projected New York State Energy Market Prices**
MarketSym Results – Annual Energy Prices



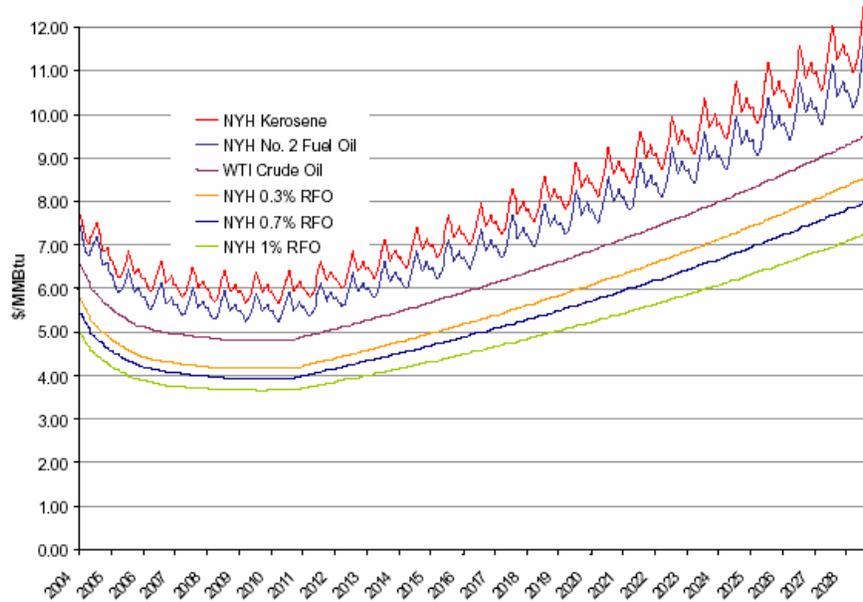
4

5 The Ginna plant is located in Zones A-E in upstate New York.

6 Mr. Graves' mistake here appears to result from his assumption that the high gas
7 and oil prices which account for the recent high energy market prices in upstate
8 New York will continue to increase at his projected 3 percent rate of inflation. As
9 shown in Figures DAS-R2 and DAS-R3 below, other estimates, such as that by
10 Levitan & Associates for NYISO, project that gas and oil prices will decrease
11 over the next several years and then remain relatively flat through 2009 and 2010.

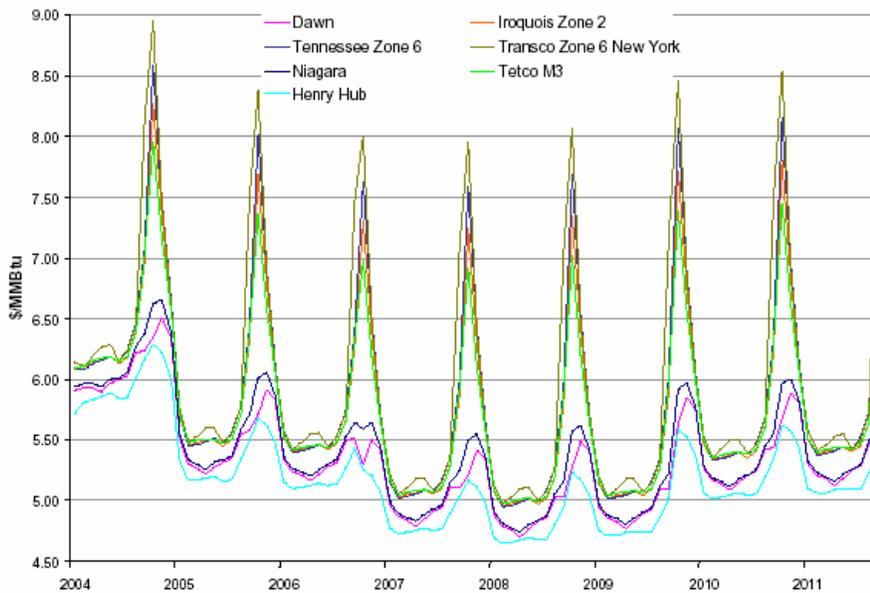
1 **Figure DAS-R2 – Recently Projected Fuel Oil Costs**

Forecast – Fuel Oil Costs



3 **Figure DAS-R3 – Recently Projected Natural Gas Costs**

Forecast – Gas Costs



5 Mr. Graves' analysis also assumes that Constellation will be able to sell the
6 portion of the capacity from Ginna that is not committed to RG&E at

1 approximately \$5/MWh in 2005, with this price also increasing at about 3 percent
2 per year. This assumption also is inconsistent with the results of the most recent
3 two capacity auctions in upstate New York (called the “rest of state” or “ROS”
4 which includes those portions of the State other than Long Island and New York
5 City) in which capacity has sold for about \$17 per kw-year or about \$2 per MWh
6 for Ginna. Given the substantial amounts of surplus power in New York State
7 outside of New York City and Long Island (that is, a reserve margin of
8 approximately 43 percent in 2004, with additional generating capacity expected to
9 be on-line next year) it is unlikely that this capacity price will increase
10 significantly in the foreseeable future.

11 Thus, it is more reasonable to expect that Constellation will be able to sell the
12 extra capacity and energy from Ginna at approximately \$40/MWh for the
13 foreseeable future, or approximately 20 percent less than the \$50/MWh, escalated
14 at 3 percent per year, assumed by Mr. Graves. This should reduce by 20 to 25
15 percent the \$149 million of additional value that Mr. Graves claims that
16 Constellation can be expected to receive by selling the extra power from Ginna
17 into the wholesale market.

18 Together these three factors mean that Mr. Graves’ analysis of the value of the
19 Ginna and Kewaunee PPAs only explains approximately [REDACTED]
20 [REDACTED] of the difference in the prices being paid for the two comparable
21 plants. It is reasonable to expect that the remaining [REDACTED] of the higher
22 Ginna sales price reflects the fact that RG&E has maximized the value it received
23 for the potential extension of Ginna’s operating life while WPS and WPL have
24 not.

25 **Q. Kewaunee’s power level is currently being increased (“uprated”) by about 25**
26 **MW. Has Dominion said that it will not seek a further uprate if it purchases**
27 **the plant?**

28 A. No.

1 **Q. Would such an additional power uprate increase the value of Kewaunee to**
2 **Dominion?**

3 A. Yes. As I understand, Dominion will be able to sell the additional capacity and
4 energy generated by such a power uprate into the market and retain the additional
5 revenues.

6 **Q. Have you seen any other explanation of why RG&E will receive a**
7 **substantially higher value for Ginna than WPS and WPL would receive for**
8 **Kewaunee?**

9 A. Yes. A 12-19-2003 internal Nuclear Management Company e-mail reported that
10 at a recent Nuclear Power Outlook, an analyst from JP Morgan attributed the high
11 Ginna sale price, which is double the proposed sale price of Kewaunee, “to
12 Ginna’s commitment to license renewal.”⁴⁴

13 **Q. Mr. Graves has noted that reductions in operating costs are key factors in**
14 **power plant profitability and hence, value to the purchases.⁴⁵ Mr. Graves**
15 **also mentioned that it is reasonable to expect that Constellation’s hope to**
16 **reduce Ginna’s operating costs through efficiencies with the rest of its New**
17 **York nuclear fleet might occur for some of the difference in the prices being**
18 **paid for Ginna and Kewaunee.⁴⁶ Is it reasonable to expect that Dominion**
19 **also hopes to achieve similar reductions in the operating costs at Kewaunee**
20 **through efficiencies and synergies with the remainder of its nuclear plant**
21 **fleet?**

22 A. Yes. Any such operating cost reductions would increase the value of Kewaunee
23 to Dominion.

⁴⁴ Provided in WPS’s response to Data Request 2-CUB-2.

⁴⁵ Graves Rebuttal Testimony, at page 20, lines 19-28.

⁴⁶ Ibid.

1 Rebuttal Testimony of WPS/WPL Witnesses Bradley Johnson and Martin
2 Seitz

3 **Q. Do you agree with the testimony of Messrs. Bradley and Seitz that the PSCW**
4 **will not lose a significant amount of regulatory oversight over Kewaunee if it**
5 **is sold to Dominion?⁴⁷**

6 A. No. As I explained in my direct testimony, if the proposed sale of Kewaunee is
7 allowed, the PSCW will lose almost all regulatory oversight authority over
8 Kewaunee and its owner(s)/operator(s) because its output will be sold pursuant to
9 a FERC-regulated power purchase agreement.⁴⁸

10 **Q. Do you agree with Messrs. Johnson and Seitz that without the proposed sale**
11 **of Kewaunee, the funds in the current non-qualified decommissioning trust**
12 **would be unavailable for rate relief until decommissioning has been**
13 **completed?⁴⁹**

14 A. No. As I explained above in response to a similar claim by Dominion Witness
15 Wood, all of the evidence suggests that the NRC wants to assure that licensees
16 have decommissioning funds that meet its minimum funding requirements. The
17 NRC does not require that licensees maintain decommissioning funds in excess of
18 its minimum requirements. The Kewaunee qualified decommissioning trust funds
19 meet the NRC minimum funding criteria. Therefore, there is no reason to expect
20 that the NRC would prohibit WPS and WPL from refunding the funds in
21 Kewaunee's non-qualified trust if these companies would continue to have funds
22 in the qualified trusts that would meet or exceed the NRC's minimum
23 decommissioning funding requirements. This is especially true if the PSCW
24 approved and ordered such refunds.

⁴⁷ Johnson/Seitz Rebuttal Testimony, at page 9, line 9, to page 10, line 6.

⁴⁸ Direct Testimony of David A. Schlissel, at page 7, line 9, to page 8, line 17.

⁴⁹ Johnson/Seitz Rebuttal Testimony, at page 13, lines 6-20.

1 **Q. Does this complete your Surrebuttal testimony at this time?**

2 A. Yes.

3