

February 16, 2000

Mr. Harold W. Keiser
Chief Nuclear Officer & President -
Nuclear Business Unit
Public Service Electric & Gas
Company
Post Office Box 236
Hancocks Bridge, NJ 08038

SUBJECT: ORDER APPROVING THE TRANSFER OF LICENSE FOR HOPE CREEK
GENERATING STATION, TO THE EXTENT HELD BY PUBLIC SERVICE
ELECTRIC AND GAS COMPANY, TO PSEG NUCLEAR LIMITED LIABILITY
COMPANY AND APPROVING CONFORMING AMENDMENT
(TAC NO. MA5674)

Dear Mr. Keiser:

The enclosed Order is being issued in response to your application dated June 4, 1999, as supplemented October 22, 1999, requesting approval of the transfer of the license for the Hope Creek Generating Station, to the extent it is held by Public Service Electric and Gas Company, to PSEG Nuclear Limited Liability Company and approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. The enclosed Order provides consent to the proposed transfer, subject to the conditions described therein. The Order also approves the enclosed conforming license amendment to be issued and made effective at the time the transfer is completed.

Also enclosed is our related safety evaluation. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Richard B. Ennis, Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-354

Enclosures 1. Order
2. Conforming Amendment to NPF-57
3. Safety Evaluation

cc w/encls: See next page

Hope Creek Generating Station

cc:

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U.S. Nuclear Regulatory Commission
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Hancocks Bridge, NJ 08038

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Nuclear Engineering
Nuclear Department
P.O. Box 236
Hancocks Bridge, NJ 08038

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PUBLIC SERVICE ELECTRIC AND)	
GAS COMPANY)	
)	Docket No. 50-354
ATLANTIC CITY ELECTRIC COMPANY)	
)	
(Hope Creek Generating Station))	

ORDER APPROVING TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

Public Service Electric and Gas Company (PSE&G) and Atlantic City Electric Company are the joint owners of the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey. They hold Facility Operating License No. NPF-57 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on July 25, 1986, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50). Under this license, PSE&G (currently owner of 95 percent of HCGS) is authorized to act as agent for Atlantic City Electric Company and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

II.

By application dated June 4, 1999, as supplemented October 22, 1999 (collectively referred to as the application herein), PSE&G requested approval of the proposed transfer of PSE&G's rights under the operating license for HCGS to a new, affiliated nuclear generating company, PSEG Nuclear Limited Liability Company (PSEG Nuclear). PSEG Nuclear would assume title

to PSE&G's interest in the facility following approval of the proposed license transfer and would become exclusively responsible for the operation and maintenance of, and the performance of eventual decommissioning activities for HCGS. No physical changes or significant change in the day-to-day management and operations of HCGS are proposed in the application. The proposed transfer does not involve any change with respect to the non-operating ownership interest in HCGS held by Atlantic City Electric Company.

PSE&G also requested approval of a conforming license amendment to reflect the transfer. The amendment would replace references to Public Service Electric and Gas Company, or PSE&G, with PSEG Nuclear.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the Federal Register on June 30, 1999 (64 FR 35193). No hearing requests were filed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application and other information before the Commission, the NRC staff has determined that PSEG Nuclear is qualified to hold the license to the same extent the license is now held by PSE&G, and that the transfer of the license, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the

rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated February 16, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the license transfer referenced above is approved, subject to the following conditions:

1. For purposes of ensuring public health and safety, PSEG Nuclear shall provide no less than \$159.0 million decommissioning funding assurance, to be held in decommissioning trust(s) for HCGS upon the transfer of the HCGS license to PSEG Nuclear. Any amounts held in any decommissioning trust(s) maintained by PSE&G for HCGS after such license transfer subject to the limitations in Paragraph 2 below, may be credited towards the amount required under this paragraph.

2. Any decommissioning trust funds established by PSE&G for HCGS to comply with NRC regulations shall be transferred to PSEG Nuclear upon the transfer of the license, or following the transfer of the license but no later than one year from the date of issuance of this Order. In the event the decommissioning trust funds are not transferred by PSE&G to PSEG Nuclear at the time the license transfer is effected, PSE&G shall remain subject to the NRC's authority under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning such decommissioning trust funds, until such time as the decommissioning trust funds are transferred to PSEG Nuclear.
3. PSEG Nuclear shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application for the transfer of the HCGS license and the requirements of this Order and the related safety evaluation.
4. If the assets of any decommissioning trust maintained by PSE&G for HCGS are retained in such trust following the transfer of the HCGS license to PSEG Nuclear instead of being transferred to any trust established by PSEG Nuclear, PSE&G shall maintain the assets as retained in such trust in accordance with the application for the transfer of the HCGS license.
5. The decommissioning trust agreement for HCGS shall provide that:
 - a) The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of

decommissioning, as defined above, the assets may be used for any purpose authorized by law.

- b) Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.
 - c) No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
 - d) The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.
 - e) The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.
6. PSEG Nuclear shall not take any action that would cause PSEG Power LLC or its parent companies to void, cancel, or diminish the commitment to fund an extended plant shutdown as represented in the application for approval of the transfer of the HCGS license from PSE&G to PSEG Nuclear.
7. Before the completion of the transfer of the interest in HCGS to PSEG Nuclear

as previously described herein, PSEG Nuclear shall provide to the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that PSEG Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

8. After receipt of all required regulatory approvals of the subject transfer, PSE&G shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of closing of the transfer no later than seven business days prior to the date of closing. Should the transfer not be completed by December 31, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 4, 1999, and the supplement dated October 22, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

Dated at Rockville, Maryland, this 16th day of February 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

PUBLIC SERVICE ELECTRIC & GAS COMPANY

ATLANTIC CITY ELECTRIC COMPANY

DOCKET NO. 50-354

HOPE CREEK GENERATING STATION

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-57

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by the Public Service Electric & Gas Company (PSE&G) dated June 4, 1999, as supplemented October 22, 1999, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is amended as indicated in the attachment to this license amendment, and paragraph 2.C.(2) of Facility Operating License No. NPF-57 is hereby amended to read as follows:

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A, as revised through Amendment No. , and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into the license. PSEG Nuclear LLC shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

3. The license amendment is effective as of its date of issuance, and shall be implemented within 30 days of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to License No. NPF-57 and
Appendices A, B, and C to the License

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. NPF-57

DOCKET NO. 50-354

Replace the following pages of the Facility Operating License, the Appendix "A" Technical Specifications, the Appendix "B" Environmental Protection Plan, and the Appendix "C" Additional Conditions with the attached revised pages. The revised pages are identified by Amendment number and contain marginal lines indicating the areas of change.

Remove

License, page 1
License, page 2
License, page 3
License, page 4
License, page 5
License, page 6
License, page 7

Appendix A, page B 3/4 8-2
Appendix A, page 6-20

Appendix B, cover sheet

Appendix C, page 1

Insert

License, page 1
License, page 2
License, page 3
License, page 4
License, page 5
License, page 6
License, page 7
License, page 8

Appendix A, page B 3/4 8-2
Appendix A, page 6-20

Appendix B, cover sheet

Appendix C, page 1

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED TRANSFER OF LICENSES

TO THE EXTENT HELD BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY,

TO PSEG NUCLEAR LIMITED LIABILITY COMPANY

DOCKET NOS. 50-354, 50-272, 50-311, 50-277, AND 50-278

HOPE CREEK GENERATING STATION

SALEM NUCLEAR GENERATING STATION, UNITS 1 AND 2

PEACH BOTTOM ATOMIC POWER STATION, UNITS 2 AND 3

1.0 INTRODUCTION

By application dated June 4, 1999, Public Service Electric and Gas Company (PSE&G) requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) consent to the transfer of PSE&G's interests in Facility Operating License No. NPF-57 for the Hope Creek Generating Station (Hope Creek) and Facility Operating Licenses Nos. DPR-70 and DPR-75 for the Salem Nuclear Generating Station, Units 1 and 2 (Salem), respectively. Specifically, PSE&G requested that the NRC consent to the transfer of PSE&G's ownership interests and licensed operating authorities under the Hope Creek and Salem licenses to a new, affiliated nuclear generating company, PSEG Nuclear Limited Liability Company (PSEG Nuclear). As a result of these transfers, PSEG Nuclear would be authorized to possess, use, and operate Hope Creek and the two Salem units under essentially the same conditions and authorizations included in the existing licenses.

In addition, by application dated July 1, 1999, transmitted by PECO Energy Company (PECO), as supplemented August 11 and September 1, 1999, and as supplemented by PSE&G on July 23, 1999, PSE&G requested the NRC's consent to the transfer of PSE&G's interests under Facility Operating Licenses Nos. DPR-44 and DPR-56 for the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom), respectively to PSEG Nuclear, in connection with PSE&G's current non-operating ownership interests in the facilities. PSEG Nuclear would be authorized to possess (own, but not operate) the two Peach Bottom units under essentially the same conditions and authorizations included in the existing licenses.

An additional submittal from PSE&G dated October 22, 1999, provided additional information in response to a request from the staff for additional information.

PSE&G currently owns 95 percent of Hope Creek and 42.59 percent each of Salem Units 1 and 2 and is the licensed operator of all three units. PSE&G also currently owns 42.5 percent each of Peach Bottom Units 2 and 3, which are operated by PECO. This proposed action does not involve the other owners of the five units.

As described in the PSE&G submittals dated June 4 and July 23, 1999, and the application dated July 1, 1999, approval of the license transfers was requested pursuant to 10 CFR 50.80. Additionally, PSE&G requested approval of license amendments for Hope Creek and Salem Units 1 and 2, and PECO requested approval of license amendments for Peach Bottom Units 2 and 3, pursuant to 10 CFR 50.90. These amendments would be administrative in nature and would conform the operating licenses and plant technical specifications for each of the five units as applicable to reflect the proposed license transfers.

Notice of the application for approval of the license transfers and approval of the conforming license amendments was published in the Federal Register for Hope Creek on June 30, 1999 (64 FR 35193), for Salem Units 1 and 2 on June 30, 1999 (64 FR 35192), and for Peach Bottom Units 2 and 3 on August 5, 1999 (64 FR 42728). No hearing requests or comments were received. The submittals dated August 11, September 1, and October 22, 1999, did not expand the scope of the application as initially noticed in the Federal Register.

The proposed transfers are in accordance with a Summary Order issued on April 21, 1999, by the New Jersey Board of Public Utilities and are in response to the ongoing restructuring of the electric utility industry in the State of New Jersey. Following receipt of all regulatory approvals, the PSE&G nuclear generating assets will be transferred to the new nuclear generation affiliate, PSEG Nuclear. PSE&G's non-nuclear generation assets will be transferred to a separate affiliated company. PSE&G will become an electricity and gas transmission and distribution company. Each of these entities will be indirect wholly owned subsidiaries of Public Service Enterprise Group Incorporated, PSE&G's current parent company.

The restructuring of the Public Service Enterprise Group Incorporated organization will include the creation of a new wholesale generation holding company, PSEG Power LLC, which will collectively own the organization's generation assets. The subsidiaries of PSEG Power will be (1) PSEG Nuclear, which will own and operate the Salem units and Hope Creek and own the PSE&G interest in the Peach Bottom units; (2) PSEG Fossil LLC, which will own the organization's non-nuclear generating assets; and (3) PSEG Energy Resources and Trade LLC (PSEG ERT), which will market power. All of the above companies will be indirect wholly owned subsidiaries of Public Service Enterprise Group Incorporated, the current parent of PSE&G.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of the control of the license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

2.0 FINANCIAL QUALIFICATIONS ANALYSIS

Based on the information provided in the applications, PSEG Nuclear will not qualify as an “electric utility” under 10 CFR 50.2. However, the staff has determined that PSEG Nuclear meets the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). PSEG Nuclear, as both a newly formed entity and a non-electric utility applying to own and to operate a nuclear power plant, is subject to a more detailed financial qualifications review by the NRC than an established electric utility. Specifically, PSEG Nuclear must meet the requirements of 50.33(f) by providing information that shows the following:

- (1) As a non-electric utility applicant for an operating license, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. Also, it must submit estimated total annual operating costs for the first 5 years of facility operation and indicate the source(s) of funds to cover these costs.
- (2) As a newly formed entity organized primarily for the purpose of operating a nuclear power plant, it must show (a) the legal and financial relationships it has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and (c) any other information considered necessary by the Commission to enable it to determine the applicant’s financial qualification.

The applications state that PSEG Nuclear will sell its share of power from the nuclear units directly to PSEG ERT under a contract assuring that operating costs are covered. PSEG ERT will then sell power to PSE&G under contract for at least 3 years to meet Basic Generation Service demand at prices fixed by the Stipulation Agreement and after that on the wholesale market at market prices. The applications state that PSEG Nuclear will be an affiliate of Public Service Enterprise Group Incorporated. PSE&G, an “electric utility” under 10 CFR 50.2, will maintain the Basic Generation Service obligation for at least 3 years to those customers remaining with the utility. Financing and financial reporting relative to the new generation affiliates will occur through PSEG Power LLC, the generation assets holding company. The applications assert that PSEG Power will be a financially robust entity holding, through separate subsidiaries, interests in five nuclear units, several fossil generating stations, and a power marketing business. PSE&G states that PSEG Power will be established with sufficient capitalization to support at least a BBB credit rating from widely accepted rating organizations. Appendix 10 of the June 4, 1999, application provided financial projections for PSEG Power in the form of a projected income statement and cash flow projections for the next 5 years. In the October 22, 1999, response to the staff’s request for additional information (RAI), PSE&G stated that there was reasonable expectation that PSEG Power would receive the investment grade rating. The applications state that the capitalization and diversity of PSEG Power’s assets will provide assurance of its ability to meet its financial obligations to PSEG ERT and the generation subsidiaries with respect to the energy and capacity from the nuclear units. Power contracts between PSEG Nuclear and PSEG ERT will require PSEG ERT to take the full output of PSEG Nuclear for three years to meet the Bulk Generation Service (BGS) requirements. Capacity in excess of BGS will be sold by PSEG ERT under wholesale power

purchase agreements or on the competitive wholesale market. After three years the BGS supply contract will be bid out, with PSEG Power authorized to bid for the contract.

The applications contain tables of estimated aggregate operating costs for the five nuclear units for the next 5 years and income and proposed cash flow projections for PSEG Power for the next 5 years. PSE&G stated in the October 22, 1999, RAI response that the New Jersey Board of Public Utilities mandated rate reductions have been factored into the financial projections for PSEG Power (Appendix 10 of the June 4, 1999, application), and should not affect PSEG Nuclear's ability to meet operations and maintenance (O&M) costs. PSEG ERT is obligated under the power purchase agreement to take all energy and capacity from PSEG Nuclear and to make payments that will cover generating costs, including O&M costs, capital additions, and fuel costs. This obligation exists independent of the mandated rate cuts. As described more fully below, the staff has determined that PSEG Power will be able to recover the costs of the nuclear units from the sale of electricity generated by the nuclear plants and from other generation capacity owned by PSEG Fossil.

The applications state that PSEG Power, with an investment grade credit rating and revenue from fossil units and interests in five nuclear units, will have sufficient assets to fund an extended shutdown of one or more of the nuclear units and has committed to PSEG Nuclear to provide such funds (see PSE&G application of June 4, 1999, Appendix 7, "Payment Structure"). PSE&G stated in the October 22, 1999, RAI response that PSEG Power will hold, in its subsidiaries, collectively, the generation capacity of the present utility, PSE&G. And, while there is no specific contingency for extended shutdowns included in the financial projections in Appendix 10 of the June 4, 1999, application, the projections show that PSEG Power should generate sufficient income from operations which could fund one or more extended shutdowns. Of the five units, Hope Creek has the highest operating costs. The staff estimated the worst case cost of a 6-month outage at Hope Creek and verified that sufficient income will be available to meet this expense.

In support of the claim that PSEG Nuclear has reasonable assurance of obtaining the necessary funds to meet its share of the operating costs for the five nuclear units, the application contains a proprietary version of PSEG Power's projected income statement for the period from 2000 to 2004. This projected income statement is based on assumptions developed by PSE&G. The application shows that the projected operating revenue for PSEG Power will provide a sufficient source of funds for PSEG Nuclear to meet its ongoing operating expenses and, therefore, satisfies this aspect of NRC financial qualification requirements. (See the June 4, 1999, application, Proprietary Appendices 9 and 10)

In the PSEG Power income statement, some significant year-to-year variations occur within each of the categories of operating revenues, operating expenses, and net income, primarily because of the impact of planned outages. But generally, the forecast for revenue and expenses shows net income relatively stable over the 5 years provided. PSE&G states that the revenue projection does not model the BGS contract revenue. The BGS contract rate is expected to exceed actual market rates and is reflected in the PSEG Power income statements and cash flow projections included in Appendix 10. Appendix 11 shows PSE&G's projected average market energy price for the nuclear assets, installed capacity charge, and the nuclear capacity factor assumptions included in the Income Statement and Cash Flow and Revenue projections in Appendix 10 of the application dated June 4, 1999. During the first 3 years of

PSEG Nuclear's ownership of the nuclear assets, the majority of its income from energy generated and revenue from installed nuclear capacity will come from PSEG ERT. Under the Power Purchase Agreement, PSEG ERT will purchase the full output from PSEG Nuclear at a price that will cover its generating costs. PSEG ERT will then sell power to PSE&G for at least 3 years to meet BGS contract requirements and on the competitive wholesale market thereafter. Moreover, PSE&G states that PSEG Power's cash flow from operations will be sufficient to cover operating expenses if needed to fund one or more extended shutdowns.

The staff found that projections of operating expenses are consistent with historical operating costs. However, the staff concluded that one line item required more extensive review: the projected revenues from 2000-2004 as stated in the income statements. Projected revenues are the product of expected megawatt-hour sales times PSE&G's market price assumptions as stated in the Appendix 11 Market Price and Capacity Factor Assumptions. Projected revenues and net income are adequate to cover PSEG Nuclear's expected expenses and to provide the parent companies with favorable returns on their expected investment in the facility. However, in a competitive market, the possibility exists that prices, capacity factors, revenue, and net income levels could be significantly lower than anticipated by PSE&G during some portions of the 5-year projection period and that this could mean less funding would be available for nuclear unit operations. If a combination of lower prices, capacity factors, revenue or net income levels was to persist for an extended period, PSEG Nuclear or its parent companies might decide to continue operating the nuclear units without profits or, at a certain point, to cease operations permanently at one or more of the nuclear units.

The next step in the staff's analysis was to try to determine how reasonable or probable the various growth rates might be for the foreseeable future. Forecasts of electric rates in competitive markets are subject to many unknown factors that make such predictions highly speculative at best, but the reasonableness of various growth rates may be assessed by considering various factors that could provide some indication of future electricity prices. For example, recent trends in electricity prices could allow some inferences as to how such prices might continue to change in the more competitive future environment expected in the electric power industry.

Data on U.S. retail electricity prices from the Energy Information Administration indicate that the overall price (all sales categories) has declined from its highest level in 1993 (at 6.93 cents per kWh) to 6.88 cents per kWh by 1997. The average retail price for the industrial category declined from 4.85 cents per kWh in 1993 to 4.56 cents per kWh in 1997. Considering this downward trend in retail prices and increasing competition in the electric power industry, the general trend of electricity prices at the retail level is likely to continue downward in the near term.

However, it is difficult to predict the direction of prices likely to be paid for PSEG Nuclear's power in its market area. PSEG Nuclear expects to be selling power primarily at market-based prices after the year 2003, and these prices will be a mix of competitively determined retail and wholesale prices. Also, trends in retail and wholesale electricity prices vary from one region to another, so PSEG Nuclear's prices within its market area may not follow national trends. Thus, the recent downward trend in national retail prices may not necessarily produce a significant downward influence on prices for the five nuclear units.

The North American Electric Reliability Council (NERC) projects that capacity margins will decline substantially in the Mid-Atlantic Area Council (MAAC) region in which the five nuclear units operate between 1998 and 2007. (See NERC's Reliability Assessment 1998-2007, October 1998, page 11.) The 17.1-percent capacity margin in 1998 in the MAAC region will decline to 5.1 percent in 2007, according to the NERC forecast. NERC concludes that lower capacity margins can diminish the ability of the bulk electric supply systems to respond to higher than projected demand for electricity caused by extreme weather or unforeseen outages. Actual demand growth rates, driven by a strong economy, are much higher than current projections. This trend would tend to cause market prices of electricity to increase, other factors remaining equal and suggests that PSEG Nuclear's price projections are reasonable.

After reviewing several forecasts of U.S. electricity prices and other relevant information (such as a forecast of regional capacity margins), the staff concludes that attempting to forecast the growth rate, or even the direction of change, for market-based prices in the PSEG Nuclear market area is too speculative to be useful for its contingency analysis. But the staff's most important conclusion from this analysis is that, even if prices for power were to change at an average annual rate much lower than that anticipated by PSE&G, this does not preclude PSEG Nuclear from operating and maintaining the five nuclear units in a manner that would protect the public health and safety.

The staff has concluded that the projected income statement shows that the anticipated revenues from sales of capacity and energy from PSEG Nuclear's interests in the five nuclear units provide reasonable assurance of an adequate source of funds to meet its ongoing operating expenses.

On the basis of information in the June 4, 1999, application and the October 22, 1999, RAI response, the staff concludes that PSE&G has provided reasonable assurance that PSEG Nuclear will be able to obtain adequate funding to own PSE&G's shares of the five nuclear units and to cover estimated operating costs for the period of the current licenses, as well as sufficient documentation of specific legal and financial relationships that support this conclusion. However, to ensure that adequate funds are available as might be necessary to fund an extended plant shutdown, the commitment stated in the application that PSEG Power will have sufficient cash flow from operations to fund one or more extended shutdowns, has been made a condition of the Order approving the license transfers and the licenses for all five units, as follows: PSEG Nuclear shall not take any action that would cause PSEG Power or its parent companies to void, cancel, or diminish the commitment to fund an extended plant shutdown as represented in the application for approval of the transfer of the respective license for each of the five units.

3.0 DECOMMISSIONING FUNDING ASSURANCE

PSE&G currently maintains Nuclear Decommissioning Trusts (NDTs) for each of the nuclear units and utilizes the external sinking fund financial assurance method. A status report on the current status of the funds was included with the application. As of December 31, 1998, PSE&G had accumulated \$541.7M in the trust funds for the five units and was authorized to collect \$29.6M annually for the funds (rate still in effect). The breakdown for each of the five units is as follows:

Plant	Total Accumulated in Trust Fund as of 12/31/98 (\$ Millions)	Authorized Annual Collection Amount (\$ Millions)
Hope Creek	159.0	13.4
Salem Unit 1	113.5	2.5
Salem Unit 2	88.8	4.2
Peach Bottom Unit 2	92.3	4.3
Peach Bottom Unit 3	88.1	5.2
Total	541.7	29.6

PSE&G's share of the funding requirement for all five units is estimated to be \$899M as of 1998, based on the formulas in 10 CFR 50.75(c). The NRC's regulations at 10 CFR 50.75(e) allow licensees to take a credit of up to a 2 percent real rate of return on decommissioning trust funds on deposit. This credit may be applied toward the current estimate of decommissioning funds needed at the time of each unit's permanent cessation of operations. After the reorganization, PSEG Nuclear proposes to continue to utilize the external sinking fund method, with periodic deposits being made to the funds over the remaining life of the plants. The source of funds for these deposits will be from a non-bypassable Societal Benefits Charge (SBC) authorized under the New Jersey Restructuring Act and accepted by the New Jersey Board of Public Utilities in a Summary Order, dated April 21, 1999. The SBC will remain constant through a 4-year transition period and then will be reset annually to amortize any over-collected or under-collected balances. This will ensure that the required level of decommissioning funding will be obtained by the time that permanent cessation of operation is expected. Title 10 of the Code of Federal Regulations (10 CFR), Section 50.75(e)(1)(ii)(B), authorizes use of the external sinking fund method by a licensee whose source of revenue for the fund is a non-bypassable charge, which will provide funds estimated to be needed for decommissioning. The staff concludes that earnings on the current funds and future fund deposits will meet the requirements for fully funding the NDTs to meet the \$1.72 billion minimum financial assurance requirements at license termination.

The applications state that PSE&G plans to transfer the Nuclear Decommissioning Trust Funds to PSEG Nuclear, pending a favorable ruling from the Internal Revenue Service (IRS) on tax-free transfers of decommissioning funds, and will assign SBC revenues to PSEG Nuclear to assure that the required level of funding will be maintained. PSE&G intends to seek a private letter ruling from the IRS, that the transfer of the decommissioning trust funds to PSEG Nuclear may occur on a tax-free basis. PSE&G states in the application that it may be necessary to hold the NDTs for an interim period, following the license transfers, pending resolution of the tax issue, and may also need to hold the funds for "sometime" after the license transfers "while tax issues are evaluated." In their October 22, 1999, RAI response, PSE&G acknowledged and voluntarily accepted that the NRC would retain "jurisdiction over PSE&G's actions with respect

to the NDTs for any interim or transitional period until the funds are transferred to PSEG Nuclear.” The NRC staff believes that the provisions of 10 CFR 50.75(e)(1)(i) require that the licensee hold the decommissioning trust funds. However, the staff also believes that the proposal to have PSE&G hold the trust funds for the five units until the IRS tax issues are resolved can be considered a form of another assurance mechanism provided in 10 CFR 50.75(e)(1)(vi), when used in combination with other acceptable assurance methods. The NRC staff views PSE&G’s holding of the NDTs to be comparable to either a parent-company guarantee or a third-party guarantee in the degree of assurance provided by such mechanisms. The NRC has agreed to accept such guarantees, provided that specified financial and other tests are met, as giving reasonable assurance of decommissioning funding, even though the guarantors are not NRC licensees for the reactor facilities whose decommissioning costs are being assured. In the case of a parent company guarantee, the guarantor is obligated to pass a financial test as specified under Appendix A to 10 CFR Part 30. If PSE&G were subject to that test, it would pass by virtue of the following factors:

- (1) It has, and will have following the restructuring, an investment grade bond rating;
- (2) It has, and will have following the restructuring, tangible net worth at least six times the amount of the decommissioning funds being assured;
- (3) It has, and will have following the restructuring, assets located in the United States of at least 90 percent of its total assets.

Similarly, a guarantee by a third party such as a surety bonding company requires the bonding company to issue a guarantee to the licensee that decommissioning funds will be paid by the surety company. Regulatory Guide 1.159, “Assuring the Availability of Funds for Decommissioning Nuclear Reactors,” indicates that the surety company must be listed by the U.S. Department of the Treasury in the most recent version of *Circular 570* and must have a coverage limit sufficient to cover the cost estimates for which assurance is sought (Regulatory Guide 1.159, page 1.159-15, August 1990). PSE&G is not a commercial surety bonding company and is not, therefore, listed in *Circular 570*. The NRC staff concludes that PSE&G’s absence from *Circular 570* is not relevant because the circular is meant to provide some minimum criteria for evaluating the financial wherewithal of surety companies, and does not include non-surety companies such as PSE&G. Because PSE&G has placed in an external trust all the money for which it is obligated under the terms of its restructuring, an estimate of its financial ability to pay such funds, as evidenced by inclusion in *Circular 570*, is not relevant. Additionally, surety bonding companies do not typically set aside funds to fulfill specific guarantee obligations under the bonds they have paid. Rather, their guarantees are based on their estimated future ability to pay under the bond. In this important sense, PSE&G’s provision of actual funds of at least \$541.7 million (total for all five units) provides a level of assurance that exceeds that of surety bonding companies.

The staff believes that there are additional considerations that support a conclusion that the proposed funding assurance mechanism provides reasonable assurance. First, with the placement of funds in a trust fund, the trustee of the fund has a fiduciary obligation to disburse funds only according to the terms of the trust. The NRC staff has reviewed the terms of the trust and believes that, with the addition of certain provisions, including notification of the NRC prior to disbursement of funds from the trust, prohibition against disbursement or payment if the trustee receives written notice of NRC's objection, and notification of the NRC of any material changes to the trust agreement, additional assurance will be provided. The trust provides, *inter alia*, that funds will be reserved for the exclusive purpose of decommissioning the five reactors, will be divided into qualified and non-qualified funds pursuant to IRS regulations, and will be managed by a trustee, whose fiduciary duty will be to preserve the value of the trust and disburse funds only for their intended purpose. The staff believes that modifications as described later in this section will strengthen the trust agreement and provide an acceptable level of reasonable assurance. Second, even though PSE&G intends to functionally disaggregate all of its electric generating capacity (and not only its nuclear plants), it will remain an electric transmission and distribution utility regulated by the New Jersey Board of Public Utilities. In the past, PSE&G has been allowed to collect decommissioning funds for its nuclear facilities from ratepayers. Staff experience has been that PUCs do not normally allow funds collected in rates for specified purposes to be used for other purposes. Also, in its deregulation legislation, New Jersey has explicitly recognized the importance of decommissioning funding assurance. Thus, in the staff's view, it is unlikely that the New Jersey rate regulators will allow PSE&G to use the decommissioning trust funds for other than decommissioning purposes. Third, as an NRC licensee, PSEG Nuclear will be required to provide assurance that adequate funds to decommission the five units will remain available. Finally, the proposal for PSE&G to hold the decommissioning trust is intended to be only temporary -- that is, when and if the IRS taxation issue is successfully resolved, PSEG Nuclear, as an NRC licensee, will become the holder of the decommissioning trust for the five units. At that point, any residual NRC concerns about a non-licensee holding these decommissioning funds will be mitigated. In connection with the transfer of the Three Mile Island, Unit 1 (TMI) operating license, the applicants proposed that the existing licensees hold the decommissioning funds for the facility, even after the transfer of the license to a new unregulated entity, until certain rulings from the IRS are obtained. The staff approved the TMI transfer with this proposal, but added several conditions of approval to provide additional assurance that the decommissioning funds would be maintained for their intended purpose in the interim. Since the time of the staff's approval, additional experience has been gained concerning the amount of time taken by the IRS to rule on the tax issues involved in TMI, which are similar to those here. In sum, the staff understands the IRS process encompasses approximately 1 year or less, and has resulted in a ruling that would permit a transfer with favorable tax consequences. Accordingly, the staff concludes that reasonable assurance of decommissioning funding will be provided by the method that PSE&G has proposed, provided that the Orders approving the license transfers for Hope Creek, Salem Units 1 and 2, and Peach Bottom Units 2 and 3, contain the following conditions (note, items 3 and 5 have also been added as license conditions for each of the five units):

- (1) For purposes of ensuring public health and safety, PSEG Nuclear shall provide decommissioning funding assurance, to be held in decommissioning trust(s) for each of

the five units upon the transfer of the respective license to PSEG Nuclear, no less than the following amounts:

Hope Creek:	\$159.0 million
Salem Unit 1:	\$113.5 million
Salem Unit 2:	\$88.8 million
Peach Bottom Unit 2:	\$92.3 million
Peach Bottom Unit 3:	\$88.1 million

Any amounts held in any decommissioning trust(s) maintained by PSE&G for each of the five units after such license transfer subject to the limitations in Paragraph 2 below, may be credited towards the amounts required under this paragraph.

- (2) Any decommissioning trust funds established by PSE&G for each of the five units to comply with NRC regulations shall be transferred to PSEG Nuclear upon the transfer of the respective license, or following the transfer of the license but no later than 1 year from the date of issuance of the order approving the transfer. In the event the decommissioning trust funds are not transferred by PSE&G to PSEG Nuclear at the time the license transfer is effected, PSE&G shall remain subject to the NRC's authority under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning such decommissioning trust funds, until such time as the decommissioning trust funds are transferred to PSEG Nuclear.
- (3) PSEG Nuclear shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application for the transfer of the respective license for each of the five units and the requirements of the order approving the transfer and this safety evaluation.
- (4) If the assets of any decommissioning trust maintained by PSE&G for each of the five units are retained in such trust following the transfer of the respective license to PSEG Nuclear instead of being transferred to any trust established by PSEG Nuclear, PSE&G shall maintain the assets as retained in such trust in accordance with the application for the transfer of the license.
- (5) The decommissioning trust agreement for each of the five units shall provide that:
 - a. The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.
 - b. Investments in the securities or other obligations of PSE&G or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.
 - c. No disbursements or payments from the trust shall be made by the trustee until

the trustee has first given the NRC 30 days notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

- d. The trust agreement shall not be modified in any material respect without prior written notification to the Director, Office of Nuclear Reactor Regulation.
- e. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

The staff has determined that the foregoing trust provisions are necessary in the case of unregulated non-electric utility entities even if they directly hold decommissioning trust funds, and that PSEG Nuclear has not shown it should be an exception. The provisions are not necessary should the respective license transfer ultimately not occur.

4.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the Atomic Energy Act of 1954, as amended [AEA or the Act]) and 10 CFR Part 140 require that PSEG Nuclear be added to the current indemnity agreements for Salem, Hope Creek, and Peach Bottom. In accordance with the requirements, PSEG Nuclear will be responsible for ensuring that primary insurance exists in the amount of \$200 million total per site and participate in the secondary retrospective insurance pool once it becomes a licensee. These requirements can be met by purchasing insurance policies from the nuclear liability insurance pool, American Nuclear Insurers. PSEG Nuclear will also be required to maintain property insurance as specified in 10 CFR 50.54(w). The Orders approving the license transfers for Hope Creek, Salem Units 1 and 2, and Peach Bottom Units 2 and 3 are conditioned on demonstration by PSEG Nuclear that the insurance requirements are satisfied, prior to the issuance of the amended licenses to reflect PSEG Nuclear as the licensee or co-licensee. This requirement of a prior demonstration is consistent with staff practice. The staff is aware of nothing that would indicate that PSEG Nuclear will be unable to satisfy applicable insurance requirements.

5.0 TECHNICAL QUALIFICATIONS

For Peach Bottom Units 2 and 3, there will be no change as a result of the PSE&G transfers in PECO Energy's responsibility or authority to operate the units. The same management and operation team will remain in place. Therefore, the NRC staff concludes that the proposed transfers will not affect site technical qualifications at Peach Bottom.

For Hope Creek and Salem Units 1 and 2, PSEG Nuclear is to become the licensed operator upon completion of the transfer. The application states that the technical qualifications of PSEG Nuclear to carry out its responsibilities under the operating licenses will remain the same as those of the current licensee. The existing nuclear organizations will remain essentially intact, with current employees becoming employees of either PSEG Nuclear, PSEG Power, or a corporate support organization on the date of the transfer. Existing PSE&G offsite support organizations will also become part of one of the three above-mentioned organizations on the

date of the transfer. PSE&G states that it will also transfer to PSEG Nuclear all the assets related to operation of the units, such as design records, procedures, blueprints, manuals, and operating records. Also, contracts with major vendors will be assigned to PSEG Nuclear. The applications, which do not propose any changes to the technical specifications or final safety analysis report concerning any matters related to plant operations, state that the technical qualifications of PSEG Nuclear to carry out its responsibilities under the existing operating licenses for Hope Creek and Salem Units 1 and 2 will remain the same as those of the current licensee. The staff, therefore, concludes that PSEG Nuclear will be technically qualified to operate the Hope Creek and Salem facilities.

6.0 ANTITRUST REVIEW

The Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station Unit 1), CLI-99-19, 49 NRC 441(1999). Therefore, since the transfer applications postdate the issuance of the five operating licenses, no antitrust review is required or authorized.

7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The applications state that the new licensee will be PSEG Nuclear, organized under the laws of the State of Delaware, with its principal place of business located at 80 Park Plaza, Newark, New Jersey. The principal officers of PSEG Nuclear are named in the application and all are citizens of the United States; no substantive changes to the current management and organization engaged in operation of the nuclear units are planned. PSEG Nuclear and PSEG Power will be wholly owned subsidiaries of Public Service Enterprise Group, which currently owns 100 percent of PSE&G common stock. The officers and directors of Public Service Enterprise Group are listed in Moody's Public Utility Manual, and are all citizens of the United States.

The applications state that following the proposed transfers, PSEG Nuclear will not be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The staff has no reason to believe otherwise.

8.0 CONFORMING AMENDMENTS

8.1 Introduction

As previously discussed herein, PSE&G requested approval of conforming license amendments for Hope Creek and Salem Units 1 and 2, and PECO requested approval of conforming license amendments for Peach Bottom Units 2 and 3, to conform the operating licenses and plant Technical Specifications for each of the five units to reflect the proposed license transfers. Specifically, Facility Operating Licenses Nos. NPF-57, DPR-70, DPR-75, DPR-44, and DPR-56 would be revised to replace references to Public Service Electric and Gas Company, or PSE&G, with the new proposed licensee, PSEG Nuclear.

8.2 Evaluation

The proposed conforming amendments for Hope Creek, Salem Units 1 and 2, and Peach

Bottom Units 2 and 3 involve no safety questions and are administrative in nature. The staff has determined for editorial purposes, one proposed change (in paragraph 2 of the Hope Creek and Salem Units 1 and 2 licenses) should be simplified by deleting the phrase "Public Service Electric & Gas Company, and transferred to." With this modification, the NRC staff finds that the proposed amendments are acceptable.

8.3 State Consultation

In accordance with the Commission's regulations, the New Jersey State Official was notified of the proposed issuance of the amendments for Hope Creek and Salem Units 1 and 2, and the Pennsylvania State official was notified of the proposed issuance of the amendments for Peach Bottom Units 2 and 3. The State officials had no comments.

8.4 Conclusion With Respect To The Conforming Amendments

The Commission has concluded, based on the considerations discussed herein, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

9.0 ENVIRONMENTAL CONSIDERATION

The subject applications are for approval of the transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the applications.

10.0 CONCLUSIONS

In view of the foregoing information, the NRC staff concludes that with the appropriate conditions discussed above, PSEG Nuclear is financially qualified to hold the licenses for the five units as proposed in the applications and is technically qualified to operate Hope Creek and Salem Units 1 and 2. In addition, the staff concludes that there are no problematic foreign ownership considerations that arise from the proposed transfers.

Accordingly, the staff concludes that PSEG Nuclear is qualified to hold the licenses for Hope Creek, Salem Units 1 and 2, and Peach Bottom Units 2 and 3 to the extent now held by PSE&G and that the transfer of the respective licenses, as described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions addressed in this safety evaluation.

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