

June 6, 2000

Mr. T. Gary Broughton, President
and Chief Executive Officer
GPU Nuclear, Inc.
One Upper Pond Road
Parsipanny, NJ 07054

Mr. Gerald R. Rainey, Chief Executive Officer
and Chief Nuclear Officer
AmerGen Energy Company, LLC
965 Chesterbrook Blvd.
Wayne, PA 19087

SUBJECT: OYSTER CREEK NUCLEAR POWER STATION - ORDER APPROVING
TRANSFER OF LICENSE FROM GPU NUCLEAR, INC. AND JERSEY
CENTRAL POWER & LIGHT COMPANY TO AMERGEN ENERGY COMPANY,
LLC, AND APPROVING CONFORMING AMENDMENT (TAC NO. MA7021)

Dear Messrs. Broughton and Rainey:

The U.S. Nuclear Regulatory Commission staff has completed its review of your application dated November 5, 1999, as supplemented by two letters dated April 6, 2000, and another letter dated April 13, 2000, requesting approval of the transfer of the license for the Oyster Creek Nuclear Generating Station held by GPU Nuclear, Inc. and Jersey Central Power & Light Company to AmerGen Energy Company, LLC, 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 approves the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment, which will be issued and made effective when the transfer is completed.

Enclosures 3 and 4 contain the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation related to the preceding action. The nonproprietary version of the safety evaluation will be placed in the NRC public document room and added to the Agency-wide Documents Access and Management System's Publicly Available Records System (ADAMS PARS) Library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Helen N. Pastis, Senior Project Manager, Section 1
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-219

Enclosures: 1. Order
2. Conforming Amendment
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/encls: See next page

**NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT
BECOMES NONPROPRIETARY UPON REMOVAL OF ENCLOSURE 4.**

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DATED June 6, 2000

ORDER APPROVING TRANSFER OF LICENSE FOR OYSTER CREEK NUCLEAR
GENERATING STATION

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
GPU NUCLEAR, INC., AND)	Docket No. 50-219
JERSEY CENTRAL POWER &)	
LIGHT COMPANY)	
(Oyster Creek Nuclear Generating Station))	

ORDER APPROVING TRANSFER OF LICENSE
AND CONFORMING AMENDMENT

I.

GPU Nuclear, Inc. (GPUN) and Jersey Central Power & Light Company (JCP&L) are the holders of Facility Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station (Oyster Creek or the facility) at steady-state power levels not in excess of 1930 megawatts thermal. The facility, which is owned by JCP&L, is located in Lacey Township, Ocean County, New Jersey. The license authorizes GPUN to possess, use, and operate the facility, and JCP&L to possess the facility.

II.

Under cover of a letter dated November 5, 1999, GPUN, acting for itself and on behalf of JCP&L, and AmerGen Energy Company, LLC (AmerGen), jointly submitted an application requesting approval of the proposed transfer of the Oyster Creek operating license to AmerGen. GPUN and AmerGen also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by two letters dated April 6, 2000, and another letter dated April 13, 2000, collectively referred to as the application herein unless otherwise indicated.

AmerGen is a limited liability company that was formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc., each own a 50-percent interest in AmerGen. British Energy, Inc., is a wholly owned subsidiary of British Energy, plc. After completion of the proposed transfer, AmerGen would be the sole owner and operator of Oyster Creek. The conforming amendment would remove the current licensees from the facility operating license and would add AmerGen in their place.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by GPUN and AmerGen pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity for a hearing was published in the Federal Register on December 16, 1999 (64 FR 70292). Pursuant to such notice, the Commission received a request for a hearing dated January 5, 2000, from the Nuclear Information and Resource Service (NIRS). On May 3, 2000, the Commission denied the request for a hearing, and terminated the associated proceeding. GPU Nuclear, Inc., et al. (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NCR _____, slip op. (May 3, 2000).

Under 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. After reviewing the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that AmerGen is qualified to be the holder of the license, and that the transfer of the license to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. 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, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; that the facility will operate in

conformity with the application, the provisions of the Act and the rules and regulations of the Commission; that there is reasonable assurance 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; that the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations; and that all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated June 6, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license as described herein to AmerGen is approved, subject to the following conditions:

- (1) The AmerGen Limited Liability Company Agreement dated August 18, 1997, and any subsequent amendments thereto as of the date of this Order, may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (2) At least half of the members of AmerGen's Management Committee shall be appointed by a nonforeign member group, all of which appointees shall be U.S. citizens.
- (3) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) (if someone other than the CEO), and Chairman of AmerGen's Management Committee shall be U.S. citizens. They shall have the responsibility and exclusive authority to ensure, and shall ensure, that the

business and activities of AmerGen with respect to the Oyster Creek operating license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.

- (4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or any affiliate, successor, or assignee of PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC.
- (5) AmerGen shall provide decommissioning funding assurance of no less than \$400 million, after payment of any taxes, deposited in the decommissioning trust fund for Oyster Creek when Oyster Creek is transferred to AmerGen.
- (6) The decommissioning trust agreement for Oyster Creek must be in a form acceptable to the NRC.
- (7) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, British Energy, Inc., AmerGen, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (8) The decommissioning trust agreement for Oyster Creek must provide that no disbursements or payments from the trust shall be made by the trustee unless the trustee has first given the NRC 30-days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that 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.

- (9) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30-days prior written notification to the Director, Office of Nuclear Reactor Regulation.
- (10) The appropriate section of the decommissioning trust agreement shall state that 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(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (11) AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Oyster Creek license and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.
- (12) AmerGen shall take no action to cause PECO or British Energy, Inc. or their affiliates, successors, or assigns, to void, cancel, or diminish their \$200 million contingency commitment to AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Also, AmerGen shall inform the NRC in writing whenever it draws upon the \$200 million commitment.
- (13) Before the completion of the sale and transfer of Oyster Creek to it, AmerGen shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

- (14) After receiving of all required regulatory approvals of the transfer of Oyster Creek, GPUN and AmerGen shall immediately inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and state therein the closing date of the sale and transfer of Oyster Creek. If the transfer of the license is not completed by June 30, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this 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. The 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 November 5, 1999, two supplemental letters dated April 6, 2000, and another supplemental letter dated April 13, 2000, and the safety evaluation dated June 6, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 6th day of June 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

GPU NUCLEAR, INC.
AND
JERSEY CENTRAL POWER & LIGHT COMPANY
DOCKET NO. 50-219
OYSTER CREEK NUCLEAR GENERATING STATION
AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-16

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by GPU Nuclear, Inc., et. al. (the licensee), and AmerGen Energy Company, LLC, dated November 5, 1999, as supplemented by two letters dated April 6, 2000 and another letter dated April 13, 2000, 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;
 - 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, Facility Operating License No. DPR-16 is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance, to be implemented within 30 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Amended Operating License and Technical Specification Pages

Date of Issuance:

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
PROPOSED TRANSFER OF OYSTER CREEK NUCLEAR GENERATING STATION
OPERATING LICENSE
FROM JERSEY CENTRAL POWER & LIGHT COMPANY AND GPU NUCLEAR, INC.
TO AMERGEN ENERGY COMPANY, LLC
DOCKET NO. 50-219

1.0 INTRODUCTION

By application dated November 5, 1999, as supplemented by two letters dated April 6, 2000, and another letter dated April 13, 2000, AmerGen Energy Company, LLC (AmerGen), and GPU Nuclear, Inc. (GPUN), acting on its own behalf and on behalf of Jersey Central Power & Light Company (JC), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of Facility Operating License No. DRP-16 for Oyster Creek Nuclear Generating Station (OC, or Oyster Creek) from GPUN and JC to AmerGen. The application also requested NRC approval of a conforming license amendment to reflect the proposed transfer. The letters of April 6, 2000, and of April 13, 2000, provided clarifying information which did not expand the scope of the application as originally noticed in the Federal Register.

GPUN and AmerGen requested that the NRC consent to this transfer and authorize AmerGen to possess, use, and operate OC under the same conditions and authorizations included in the existing Operating License, except as modified as requested by their application. According to the applicants, no physical changes will be made to OC as a result of this transfer, and there will be no significant changes in the day-to-day operations of OC. GPUN, the licensed operator of OC, is a wholly owned subsidiary of GPU, Inc. (GPU), an electric utility holding company registered under the Public Utility Holding Company Act of 1935. JC is the 100-percent owner of OC and is also a wholly owned public utility subsidiary of GPU. After the proposed transfer, AmerGen will become the sole licensed owner and operator of OC.

2.0 BACKGROUND

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States; its principal office is in Wayne, Pennsylvania. AmerGen is organized under the laws of the State of Delaware pursuant to the AmerGen Limited Liability Company Agreement among PECO Energy Company (PECO Energy, or PECO), a Pennsylvania company; British Energy, plc (British Energy, or BE plc), a Scottish corporation; and British Energy, Inc. (BE Inc.), a Delaware corporation that is a wholly owned subsidiary of BE plc. BE plc is a party to the AmerGen Limited Liability Company Agreement, but only PECO and BE, Inc., are members of AmerGen, each holding a 50-percent ownership interest in AmerGen.

In connection with the ongoing restructuring of the electric utility industry in the United States, and in the State of New Jersey in particular, GPU has decided to substantially withdraw from the energy generating business, including nuclear generation, and have JC sell OC. On October 15, 1999, GPUN, JC, and AmerGen executed the Oyster Creek Purchase and Sale Agreement (OC Agreement), under which JC and GPUN will transfer their respective ownership and operating interests in OC to AmerGen. The parties also have executed, or will execute, certain ancillary agreements in connection with the OC Agreement, including an Interconnection Agreement and a Power Purchase Agreement. In accordance with the OC Agreement, the closing of the transaction will take place on the Closing Date, as defined in the OC Agreement, once all conditions have been satisfied and all required regulatory approvals obtained.

The parties state that on and after the Closing Date, the following events will occur, pursuant to the OC Agreement, the Interconnection Agreement, and the Power Purchase Agreement:

- (1) AmerGen will assume all of JC's right, title, and interest in and to OC, except as specified in the OC Agreement, including buildings, machinery, equipment, spare parts, fixtures, inventory, documents, records, assignable contracts, new, used and spent nuclear fuel, other NRC-licensed materials at OC, and other property necessary for its operation and maintenance; and AmerGen will assume all of GPUN's responsibility for the operation, maintenance, and eventual decommissioning of OC.
- (2) AmerGen will offer employment to most of the GPUN personnel working at OC, will assume the existing Collective Bargaining Agreement for the union employees transferred to AmerGen, and will offer employment to selected GPUN corporate support staff located at its Parsippany, New Jersey offices.
- (3) AmerGen has entered into an Interconnection Agreement with JC, will obtain transmission services through PJM Interconnection, LLC, and will have contracted for backup power to the site consistent with NRC requirements.
- (4) JC will purchase 100 percent of OC's capacity and energy from AmerGen from the Closing Date until March 31, 2003.
- (5) JC will have made, or will make, additional cash deposits to the Oyster Creek decommissioning trust funds such that the fair market value after the transfer will be \$430 million, subject to certain adjustments, e.g., if the closing date is other than March 31, 2000. In any event, AmerGen will assure that the fair market value of the funds, net of taxes and expenses, will be no less than \$400 million, which substantially exceeds the NRC's minimum requirements for decommissioning funding; and

- (6) JC will fund the upcoming OC refueling outage (fall 2000), including the cost of the reload fuel, and AmerGen will reimburse JC for these costs – subject to a cap – in nine equal installments, starting on the first anniversary of the Closing Date.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

AmerGen indicated in its application that, even though it has maintained previously that it qualifies as an “electric utility” within the meaning of 10 CFR 50.2, it acknowledges that the NRC has concluded otherwise in connection with the TMI-1 license transfer. AmerGen states that, nevertheless, it meets the financial qualifications requirements for a nonelectric utility for the OC license transfer.

As discussed below, the staff agrees and finds that AmerGen, though not qualifying as an “electric utility” under 10 CFR 50.2, meets the financial qualifications requirements for a “nonelectric utility” to hold the OC license, pursuant to 10 CFR 50.33(f).

AmerGen, as both a newly formed entity and a nonelectric utility applying to own and to operate a nuclear power plant, is subject to a more detailed NRC financial qualifications review than an established electric utility. Specifically, AmerGen must meet the requirements of 10 CFR 50.33(f) by providing the following information:

- (1) As a nonelectric utility applicant for an operating license, AmerGen must show it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. AmerGen 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 to operate a nuclear power plant, AmerGen must disclose: (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 it has incurred or proposes to incur; and (c) any other information the Commission needs to determine the applicant’s financial qualification.

Also, 10 CFR 50.33(k)(1) requires that AmerGen must provide information, as described in 10 CFR 50.75, giving reasonable assurance that funds will be available to decommission the facility. AmerGen’s proposals for decommissioning funding assurance for OC are discussed in Section 4.0 of this safety evaluation.

In support of AmerGen’s claim that it has reasonable assurance of obtaining the necessary funds to operate OC, the application contains a proprietary version of a projected income statement for OC for the period from 2000 to 2005. This projected income statement is based on assumptions developed by AmerGen. The application shows that the projected operating revenue for OC is a sufficient source of funds to meet its ongoing operating expenses and, therefore, should satisfy NRC financial qualification requirements. (See the application, Proprietary Enclosure 5A.)

In AmerGen's income statement, some significant year-to-year variations occur within the categories of operating revenues, operating expenses, and net income, primarily because of the planned outages. Also, in the year 2000, a financing transaction between AmerGen and GPU is expected to cause adjusted net income to be much higher than in the other years. Overall, AmerGen's forecast for revenue and expenses shows positive adjusted net income averaging approximately [] annually over the period 2000-2005.

SUMMARY OF PROJECTED INCOME STATEMENTS
MILLIONS PER YEAR

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Operating Revenue	[]
Operating Expenses	[]
Operating Income (Loss)	[]
Effect of Other Income, Expenses, Taxes, and Adjustments	[]
Adjusted Net Income	[]

During the first 3 years of AmerGen's operation of OC (from 2000 to 2003), AmerGen's income from OC is expected to be provided by JC's purchase of 100 percent of OC's capacity and energy, pursuant to the Power Purchase Agreement at rates stipulated therein. All capacity and energy after that time will be sold at market-based rates. Moreover, PECO and British Energy have made certain financial commitments to AmerGen to provide funds to cover operating expenses as necessary to maintain the safety of OC during any periods in which revenues from capacity and energy sales do not cover the operating expenses.

The staff believes that one financial line item requires more extensive review: the projected revenues in the income statement for the 2000-2005 forecast period. Projected revenues are the product of expected megawatt-hour sales times AmerGen's price assumptions as stated in the supporting schedules for the income statements. Projected revenues and net income are more than adequate to cover expected OC expenses and to provide AmerGen with favorable returns on its investment in the facility. However, in a competitive market, prices, revenue, and net income levels could be significantly lower than anticipated by AmerGen during some portions of the projection period, and this could mean less funding would be available for OC operations than amounts forecast.

The staff estimated how sensitive the AmerGen revenue forecasts are to lower market prices so as to establish a projected market price "floor" below which AmerGen would begin to have difficulty covering its OC operating expenses by relying on OC revenues. This was done by determining the average OC market price per kilowatt-hour (kWh) that would produce virtually

zero net income (or a breakeven level) over the forecast period, and this price was compared to the market prices in AmerGen's forecast. If AmerGen were to experience this lower (or floor) level of prices for an extended period, AmerGen or its owners might decide whether to continue operating OC without profits or, at a certain point, to cease OC operations permanently.

The initial price in the AmerGen forecast is approximately [] cents per kWh in the year 2000, which decreases to [] cents per kWh in the year 2002, reflecting what JC is to pay AmerGen as a combined price for capacity and energy for 100 percent of OC's output, pursuant to the Power Purchase Agreement. Beginning in April 2003, AmerGen expects to be selling its OC output to other buyers at market prices. The base market price for OC in the AmerGen forecast is [] cents per kWh in 2003 (which is lower than the forecast price to JC for the March 2000 to March 2003 period). This base market price is forecast to decrease only slightly to [] cents per kWh by the year 2005. So AmerGen is forecasting a decline in the price per kWh for OC output over the period from 2000 to 2005. For OC to break even (the floor price), staff calculations indicate that the average price per kWh could be as much as [] percent per kWh lower (about [] cents per kWh lower) than AmerGen's market price forecast. Not only is this forecast conservative in predicting a decline in the price per kWh, but also the actual price on average could be as much as [] percent lower than forecast levels with AmerGen's still being able to operate at a breakeven level for OC for the 2000-2005 period.

Then the staff tried to determine how reasonable or probable these changes in prices were for the forecast period 2000-2005. Forecasts of electric prices 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 indicative of future electricity prices. For example, recent trends in electricity prices indicate how the prices may 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 6.81 cents per kWh by 1998. The average retail price for the industrial category declined from 4.85 cents per kWh in 1993 to 4.52 cents per kWh in 1998. This downward trend in retail prices and increasing competition in the electric power industry suggests that 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 OC power in its market area. AmerGen expects to be selling power primarily at market-based prices from early in the year 2003 on, 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 AmerGen'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 OC prices. The North American Electric Reliability Council (NERC) projects that capacity margins will decline substantially in the Mid-Atlantic Area Council (MAAC), the region in which OC operates, from 1998 to 2007 (see NERC's Reliability Assessment 1998-2007, October 1998, page 11). This trend would tend to cause market prices of electricity to increase, other factors being equal.

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 OC market area is too speculative to be useful for its contingency analysis. But the staff's most important conclusion is that, even if prices for OC power changed at an average annual rate much lower than that anticipated by AmerGen, this does not preclude AmerGen from operating and maintaining OC in a manner that would protect the public health and safety.

The applicant states that AmerGen's owners have committed to provide additional funds to cover operating expenses as necessary to maintain adequate safety conditions during any periods when operating revenues from OC do not cover operating expenses. Also, if OC profits were too low, the owners could decide to cease OC operations; if this happened, AmerGen states that it would have the right to obtain adequate funding from its owners to ensure safe conditions at OC in a transition to decommissioning (as is noted in the application and discussed in more detail below).

The staff concludes that the projected income statement shows that the anticipated revenues from sales of capacity and energy from OC provide reasonable assurance of an adequate source of funds to meet OC's ongoing operating expenses.

In the November 5, 1999, application, AmerGen provided a projected opening balance sheet showing its anticipated assets, liabilities, and capital structure related to OC as of the Closing Date. AmerGen expects that by the Closing Date, its owners will make capital contributions sufficient to cover the cash purchase price (as defined in Section 3.2 of the OC Agreement). Beyond this initial capital contribution from its owners, AmerGen states that its revenues from the sale of electricity generated at OC and its other plants will provide AmerGen with working capital on an ongoing basis.

AmerGen has proposed that its financial qualifications be evaluated in light of its planned operation of multiple units at multiple sites. As stated above, PECO and British Energy have entered into additional financial arrangements that provide funds to meet operating expenses, if revenues fall short of expectations. Previously, PECO and British Energy each entered into letter agreements with AmerGen dated December 3, 1998, and July 22, 1999 (PECO Energy), and November 5, 1998, and July 22, 1999 (British Energy), in which they committed, subject to the terms of their respective agreements, to provide their share of funds to AmerGen to ensure that AmerGen will have sufficient funds available to meet its operating expenses for AmerGen's nuclear power plants. In connection with its applications for NRC consent to the transfers of the licenses for the Three Mile Island Nuclear Station, Unit 1 (TMI-1) and the Clinton Power Station (Clinton), AmerGen has previously described these financial commitments, which were incorporated by reference in its November 5, 1999, OC application as applicable to OC.

AmerGen sent the NRC a letter dated April 6, 2000, with supplemental information in support of the OC application. In this letter AmerGen enclosed additional letter agreements from PECO (dated April 3, 2000) and British Energy (dated April 5, 2000), stating that under the terms of these letter agreements (Funding Agreements), AmerGen has the right to obtain \$200 million if PECO and British Energy do not otherwise provide adequate funding to AmerGen for additional

operating expenses that it might need. Based upon its projections for the 5 years following the transfer of OC, AmerGen projects that the average cost of operating OC for 6 months will be about \$60 million.

Pursuant to the terms of the Funding Agreements, PECO and British Energy each will provide funding to AmerGen at any time that the Management Committee of AmerGen determines that, in order to protect the public health and safety and/or to comply with NRC requirements, such funds are necessary to meet the ongoing operating expenses for any nuclear power plant in AmerGen's fleet, including OC, or such funds are necessary to safely maintain any such plant, provided, however, that the liability to provide funding under each agreement shall not exceed the lesser of (a) 50 percent of the total funding required by AmerGen from time to time pursuant to the letter agreements, or (b) the aggregate amount of \$100 million cumulatively over the life of the agreements. Pursuant to these agreements, AmerGen will be able to draw upon financial resources of up to \$200 million if such funds are necessary to meet its expenses and/or to meet its obligations to safely maintain any of the nuclear power plants owned and operated by AmerGen.

According to their terms, the Funding Agreements will remain irrevocable until either (1) AmerGen has submitted to the NRC a written certification that fuel has been permanently removed from all of the reactors owned by AmerGen (i.e., after AmerGen has permanently ceased operations at all of its reactors), or (2) the NRC has given its prior written consent to the discontinuance of the funding arrangements contemplated by these agreements. These Funding Agreements are subject to the understanding that PECO or British Energy shall have the right to demand that AmerGen permanently cease operations at any plant rather than use funds available under these agreements for continued operations, provided that, in such event, AmerGen shall nevertheless have the right to continue to obtain the funds necessary to ensure the safe and orderly shutdown of any such plant and to continue the safe maintenance of any such plant until AmerGen certifies to the NRC that the fuel has been permanently removed from the reactor vessel.

In its application to the NRC for approval of the transfer of the license for Clinton, dated July 23, 1999, AmerGen stated that it does not anticipate that it will ever need to draw upon the Funding Agreement commitment because it expects "that both PECO and British Energy will make adequate contributions to AmerGen, on an ongoing basis, necessary to assure AmerGen's ability to fund the ongoing operation and maintenance of all its nuclear power plants, as well as to fund other acquisitions" (page 19 of the July 23, 1999, application). AmerGen also stated that if it were ever forced to draw upon the commitment, which would require specific findings in a vote of the AmerGen Management Committee, it would exercise care to ensure that it either maintained funds or held in reserve the right to draw upon funds sufficient to ensure that AmerGen would be able to fund the transition to a safe shutdown. AmerGen stated that it will inform the NRC in writing at any time that it draws upon the commitment and that it recognizes that the NRC has authority to assure that adequate funds will remain available to fund the transition to a safe shutdown if a question arises regarding the availability of funds for such a purpose (page 20, *ibid.*). All or some portion of AmerGen's earnings will be available for distribution to PECO and British Energy in the years in which it has operating surpluses, and AmerGen will be able to use any carryover surpluses or obtain additional funds from PECO and British Energy in years when it needs to do so (page 19, *ibid.*).

As of April 26, 2000, AmerGen had submitted license transfer applications for the purchase of TMI-1, Clinton, Vermont Yankee, and Oyster Creek. As AmerGen begins operating its units with accompanying revenue streams, it expects to have additional funds beyond the \$200 million of the Funding Agreements available for contingency, as is stated above. The staff has reviewed the expected availability of funds from AmerGen's anticipated revenue stream and of additional funding from PECO and British Energy and concluded that AmerGen has demonstrated reasonable assurance of its financial qualifications to operate Oyster Creek safely. The \$200 million commitment by AmerGen's owners provides additional assurance beyond that required in 10 CFR 50.33(f). However, the staff makes no determination as to whether the availability of the \$200 million would be adequate to fund the concurrent shutdown of multiple units owned by AmerGen.

As noted earlier, a newly formed entity organized primarily for the purpose of operating a nuclear power plant must provide certain information about its legal and financial relationships with its stockholders or owners and about its financial ability to meet any contractual obligation to the entity that it has incurred or proposes to incur. AmerGen provided such information in the application for the transfer of the TMI-1 Operating License, dated December 3, 1998, as supplemented on January 11, February 4, March 4, March 10, and March 15, 1999. The staff found the information sufficient to meet the requirements of the regulations. (See Safety Evaluation for the Transfer of Facility Operating License from General Public Utilities Nuclear, Inc., et al. to AmerGen Energy Company, LLC and Approval of Conforming Amendment, Three Mile Island Nuclear Station, Unit 1, Docket No. 50-289, April 12, 1999.)

On the basis of above-cited information in the application for the transfer of the OC Operating License, the staff concludes that AmerGen has provided reasonable assurance of being able to obtain adequate funding to own OC and to cover estimated operation costs for the period of the current OC Operating License, as required by 10 CFR 50.33(f). In addition, pursuant to guidance in NUREG-1577, Rev. 1, AmerGen has provided reasonable assurance of having funds to cover operating expenses in the event of an extended outage. However, to ensure that enough funds are available to fund the transition to a safe shutdown, the staff believes that the commitment made to allow AmerGen to draw up to \$200 million from PECO Energy and British Energy should be the subject of a condition of approval of the transfer of the Operating License and a corresponding condition in the Operating License itself, essentially as follows:

AmerGen shall take no action to cause PECO Energy or British Energy, or their affiliates, successors, or assigns, to void, cancel, or diminish their \$200 million contingency commitment to AmerGen, the existence of which is represented in the application and in the AmerGen letter to the NRC dated April 6, 2000, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Also, AmerGen shall inform the NRC in writing whenever it draws upon the \$200 million commitment.

4.0 DECOMMISSIONING FUNDING ASSURANCE

A. Amount of Decommissioning Funds

Pursuant to 10 CFR 50.75(b), each power reactor licensee must certify that it will provide decommissioning funding assurance in an amount that may be more but not less than the amount determined under the formulas in 10 CFR 50.75(c)(1) and (2). These formulas are based on the size and type of the reactor and on cost escalation factors for labor, energy, and low-level waste (LLW) disposal costs. The LLW disposal cost factor is to be derived from the latest version of NUREG-1307, "Report on Waste Burial Charges," which is currently Revision 8. Revision 8 allows licensees a variety of methods by which they may estimate costs of LLW disposal, including disposition by waste vendors. (See, for example, page 6, Example 4, in Revision 8.) In Enclosure 8 of its application, AmerGen calculated the required funding using the formulas in 10 CFR 50.75(c) and information in Revision 8. On the basis of this calculation, AmerGen concludes that currently it must certify that it will provide at least \$333.5 million for OC's eventual decommissioning to comply with the requirements of 10 CFR 50.75(b). The staff has verified AmerGen's calculation and accepts this amount as accurate.

In its application AmerGen states that JC has agreed to make additional deposits to the OC decommissioning trust funds such that, at closing, the funds will have a fair market value of \$430 million, net of taxes and expenses paid at the time of transfer. In any event, AmerGen states that it will ensure that, when the transfer occurs the fair market value of the funds, net of taxes and expenses, will be no less than \$400 million, which exceeds the NRC-required formula amount of \$333.5 million. Moreover, after crediting earnings on the minimum after-tax value of the decommissioning funds at a 2-percent annual real rate of return from the time of the collection of the funds through the projected expiration date of the OC license, the credited value of the funds transferred to AmerGen is expected to exceed \$480.4 million (as shown in Enclosure 9 of the application). The NRC's regulations at 10 CFR 50.75(e)(1)(i) allow licensees to take a credit of up to a 2-percent annual real rate of return on decommissioning trust funds on deposit when using the prepayment method of decommissioning funding assurance. This credit may be applied toward the current estimate of decommissioning funds needed for decommissioning at permanent cessation of operations. This \$480.4 million or more exceeds the required formula amount cited above.

NRC Staff's Conclusion on Amount of Decommissioning Funds

The staff concludes that AmerGen has complied with the requirements in 10 CFR 50.75(b) with respect to the decommissioning funds that AmerGen must certify that it will provide. The amount that AmerGen proposes to have placed in OC's decommissioning trust fund, combined with earnings on the trust fund calculated at a real rate of 2 percent annually, is greater than the approximately \$333.5 million that is required under the generic formulas in 10 CFR 50.75(c).

To reflect AmerGen's commitment to provide decommissioning funds, the staff concludes that the following should be a condition of approval of the transfer and a license condition:

AmerGen shall provide decommissioning funding assurance of no less than \$400 million, after payment of any taxes, deposited in the decommissioning trust fund for OC when OC is transferred to AmerGen.

B. Decommissioning Funding Assurance Mechanism

Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the acceptable methods described in 10 CFR 50.75(e). The NRC has determined that the requirement to provide assurance of decommissioning funding is necessary to ensure the adequate protection of the public health and safety. AmerGen has arranged with JC to ensure that the decommissioning trust funds for Oyster Creek will be fully prepaid at a level exceeding the required amount, as stated above. AmerGen has selected the prepayment method, coupled with an external trust fund, as provided for in 10 CFR 50.75(e)(1)(i). The anticipated amount of funding for decommissioning exceeds NRC requirements, but to provide additional assurance regarding the trust itself, the following provisions shall be made conditions to approving the transfer of the Operating License for OC to AmerGen and also be incorporated into the license as conforming conditions:

- (1) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (2) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, BE Inc., AmerGen, or their affiliates, successors, or assigns shall be prohibited. 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 are prohibited.
- (3) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30-days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that 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.
- (4) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30-days prior written notification to the Director, Office of Nuclear Reactor Regulation.
- (5) The appropriate section of the decommissioning trust agreement shall state that 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(a)(3) of the Federal Energy Regulatory Commission's regulations.

NRC Staff's Conclusion on the Decommissioning Funding Assurance Mechanism

The NRC staff concludes that, based on the above discussion and subject to the trust agreement containing the provisions previously discussed, AmerGen's proposed decommissioning funding assurance mechanism meets the requirements of 10 CFR 50.75(e). The staff further concludes that to ensure that the decommissioning trust is maintained consistent with the staff's action on the application, the following should be included as a condition of the transfer approval and as a condition in the Operating License:

AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Oyster Creek license to AmerGen and the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting the Order.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

A. Background

Section 104d of the AEA prohibits the Commission from issuing a license for a nuclear power plant under Section 104 to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The Commission's regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition. The issue addressed in this section is whether, in the NRC staff's view, AmerGen is controlled by foreign interests such that it may not be issued a license under Section 104d.

The NRC has developed a Standard Review Plan (SRP) to document the process that the staff uses to analyze whether an applicant is owned, controlled, or dominated by foreign interests within the meaning of Section 104d. The staff has used this SRP, approved by the Commission on August 31, 1999, as guidance for evaluating the foreign ownership considerations of the proposed purchase of OC by AmerGen.

B. Discussion

AmerGen's Ownership and Organization

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. AmerGen is organized under the laws of the State of Delaware pursuant to an agreement among PECO, BE Inc., and BE plc. PECO and BE Inc. each own 50 percent of AmerGen. In its application AmerGen has substantively provided the information required in 10 CFR 50.33(d). AmerGen's 50-percent indirect ownership by BE plc, a foreign corporation, raises the issue of whether AmerGen is owned, controlled, or dominated by foreign interests within the meaning of the prohibition in Section 104d of the AEA.

Guidance Relevant to the Issue of Foreign Control

The Commission has had limited experience with license transfer applications that involve the issue of foreign ownership, control, or domination. The Commission has stated that, in the context of the other provisions of Section 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security. Guidance in the SRP states that an applicant partially owned by a foreign entity – for example, partial ownership of 50-percent or greater – may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant who are responsible for special nuclear material must be U.S. citizens. In addition, partial ownership must be considered in light of all of the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of ownership interests or shares. However, the NRC considered the issue of foreign ownership, control, or domination in the TMI-1 and Clinton transfer cases and approved AmerGen's purchase of TMI-1 and Clinton, and since the situation with respect to AmerGen's ownership of TMI-1, Clinton, and OC is virtually identical, the staff has followed the guidance of the TMI-1 and Clinton decisions considering foreign ownership issues with respect to OC.

Information Provided

AmerGen has submitted, in addition to information required by 10 CFR 50.33(d), information specified in Section 2.2 of the SRP on Foreign Ownership, Control, and Domination. In addition, AmerGen's information essentially describes a "negation action plan" as referred to in Section 4.4 of the SRP. On this basis, the staff concludes that AmerGen has taken, or has committed to take, sufficient mitigating steps to continue to ensure that AmerGen is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government for the purposes of the AEA and the NRC's regulations.

As stated earlier, AmerGen is a limited liability company with its principal place of business in Wayne, Pennsylvania. Principal officers of AmerGen include U.S. and British citizens. The positions of Chief Executive Officer (CEO) and Chief Nuclear Officer (CNO) are jointly held by a U.S. citizen, and the President is a British citizen. At least 50 percent of the Management Committee, which directs and controls the affairs of AmerGen, are U.S. citizens, including the Chairman. According to the application, the "CEO is authorized to employ and retain other officers, subject to the approval of the Management Committee."

AmerGen further states in its application that there has been no material change in the nature and extent of foreign participation in AmerGen since the issuance of the TMI-1 safety evaluation.

AmerGen's Proposed Measures to Address Foreign Control Concerns

AmerGen developed a negation action plan to address foreign control issues when it proposed to acquire TMI-I. This plan would be applicable to AmerGen as the licensee for OC as well. Under the Limited Liability Company Agreement (LLC Agreement) by which AmerGen was formed, the property, business, and affairs of AmerGen are directed and controlled by a Management Committee pursuant to Article 6.3. Under Article 6.1(a) of the LLC Agreement, PECO, through the PECO Energy Member Group (one of the two member groups of AmerGen), appoints and may

remove half of the members of the Management Committee, and BE, Inc., through the BE Member Group, also appoints and may remove half of the members of the Management Committee. (AmerGen states that currently there are six voting members on the Management Committee, half of whom are appointed by PECO and are U.S. citizens, and half of whom are appointed by BE, Inc. and are U.K. citizens.) Pursuant to Article 6.1(d) of the LLC Agreement, the PECO Energy Member Group appoints the Chairman of the Management Committee. The Chairman can only be removed by the PECO Energy Member Group. The Chairman of the Management Committee has a tie-breaking vote on Management Committee decisions regarding “all [s]afety issues.”

The term “safety issue” is defined in Section 1.7 of the LLC Agreement to mean any matter that concerns any of the following:

- (i) implementation or compliance with any generic letter, bulletin, order, confirmatory order, or similar requirement issued by the NRC;
- (ii) prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
- (iii) placement of the plant in a safe condition following any nuclear event or incident;
- (iv) compliance with the Atomic Energy Act (AEA), the Energy Reorganization Act, or any NRC rule;
- (v) compliance with a specific operating license and its technical specifications;
- (vi) compliance with a specific Updated Final Safety Analysis Report, or other licensing basis document.¹

The staff has previously concluded and continues to conclude that this definition broadly encompasses all issues involving the common defense and security and the public health and safety that are under NRC jurisdiction.

AmerGen states that Michael J. Egan, a U.S. citizen, is the Chairman of the Management Committee. Additionally, the CEO and CNO of AmerGen, who is elected by the Management Committee and is responsible for the day-to-day operations of AmerGen, is Gerald R. Rainey, a U.S. citizen. The President of AmerGen is Dr. Robin Jeffrey, a U.K. citizen. AmerGen stated in the

¹ The definition of “safety issue” also states: “Any matter on which the Management Committee shall vote in accordance with Section 6.3 that is not primarily one of nuclear safety shall not constitute a Safety Issue, so that, for purposes of illustration only, any plant expenditure of a material nature intended to extend the economic operational life or improve the economic performance of the power station in question shall not be considered a safety question.” The staff believes that, for purposes of establishing whether safety decisions are subject to foreign ownership, control, or domination, this and analogous distinctions are acceptable and do not appear to compromise such safety decisions.

TMI-1 and Clinton applications that the President will not have decision-making authority for TMI-1 and Clinton operations. Rather, the President's duties will be directed toward business decisions, such as future acquisitions by AmerGen. The NRC staff believes that the provisions of the LLC Agreement may not specifically require that AmerGen's CEO and Chairman of the Management Committee must be U.S. citizens in the future. However, in its application AmerGen has proposed that the NRC staff require that its CEO, CNO (if someone other than the CEO), Chairman of the Management Committee, and at least half the members of the Management Committee shall all be U.S. citizens, as reflected in license conditions that AmerGen has proposed for the OC transfer.

AmerGen has also stated that the current site personnel at OC, including senior managers, "will remain essentially unchanged." However, as OC experiences personnel changes, AmerGen expects that additional experienced personnel may join the site organization during the period immediately before and after the license transfer. In its application for the transfer of the TMI-1 and Clinton Operating Licenses, AmerGen recommended that substantial weight be given to the fact that BE plc is a corporate citizen of the United Kingdom (U.K.). The U.K. is a close ally of the United States, and the U.S. and the U.K. have had an often cited "special relationship" at least since World War II. The U.K. is also a signatory to the Treaty on Non-Proliferation of Nuclear Weapons, supports the International Atomic Energy Agency (IAEA) safeguards, is a member of the European Atomic Energy Community (EURATOM), and adheres to other international nuclear safety and safeguards guidelines. AmerGen specifically cited a 1995 decision by the U.S. Secretary of Energy, which found that a U.S.-EURATOM agreement of cooperation is not inimical to the common defense and security of the United States. BE plc, as a U.K. corporation, is subject to the laws of the U.K. and the international conventions and treaties to which the U.K. adheres.

The staff believes that such considerations are consistent with making a noninimicality finding with respect to the common defense and security of the U.S. Though not disposing of the prohibition of foreign ownership, control, or domination under Section 104d of the AEA, these considerations are also consistent with a favorable determination under that section, because, as the Commission has stated in *General Electric Co. and Southwest Atomic Energy Associates*, 3 AEC 99 (1966), in context with the other provisions of Section 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security.

AmerGen states that if it fills a senior management position with someone from outside the existing OC organization "contemporaneously with" the license transfer, it will inform the NRC in advance of any such change and provide the NRC with a resume for the person in advance of the effective date of the change. As a general rule, new personnel do not require prior approval by the NRC; however, the appointment of any such person must be consistent with the OC Operating License and licensing basis and any conditions of approval of the transfer.

Staff Conclusions With Respect to Foreign Ownership Considerations

The staff has considered guidance in the Commission's previous decisions on foreign ownership, control or domination, and in the SRP. Additionally, the staff has relied extensively on the analysis and conclusions of the TMI-1 and Clinton safety evaluations. The staff has also evaluated AmerGen's proposed operating structure and information concerning the management officials of the company. As a result, the staff concludes that the transfer of the Operating License for OC to AmerGen would not violate the prohibitions in the AEA against foreign ownership, control, or

domination, provided that approval of the license transfer to AmerGen is subject to the following conditions, to become license conditions when the conforming amendment is issued:

Transfer Approval and License Conditions

- (1) The Limited Liability Company Agreement dated August 18, 1997, and any subsequent amendments as of the date of this safety evaluation, may not be modified in any material respect concerning decision-making authority over “safety issues” as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (2) At least half of the members of AmerGen’s Management Committee shall be appointed by a nonforeign member group, all of whose appointees shall be U.S. citizens.
- (3) The CEO, CNO (if someone other than the CEO), and Chairman of the Management Committee of AmerGen shall be U.S. citizens. They shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen with respect to the OC Operating License are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.
- (4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO Energy or any affiliate, successor, or assignee of PECO Energy to which PECO Energy’s ownership interest in AmerGen may be subsequently assigned with prior written consent of the NRC.

The staff concludes that these conditions are consistent with Commission precedent (they are virtually identical to those imposed in the TMI-1 and Clinton license transfers). The staff slightly modified certain conditions as proposed by the application in light of the potential transfer of PECO’s interest in AmerGen to a successor company, as noted in a February 28, 2000 submittal from AmerGen and AmerGen Vermont LLC to the NRC.

6.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA) and 10 CFR Part 140 require that AmerGen be added to the current Oyster Creek indemnity agreement. Additionally, in accordance with these requirements, AmerGen must provide primary insurance of \$200 million 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. AmerGen also will be required to maintain property insurance as specified in 10 CFR 50.54(w). The staff does not have any reason to believe that AmerGen will be unable to meet the statutory and regulatory insurance requirements applicable to all power reactor licensees.

Consistent with NRC practice, the staff will require AmerGen to provide satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license reflecting AmerGen as the licensee. Since the issuance of the amended license is directly tied to the consummation of the sale and transfer of Oyster Creek, the order approving the transfer should contain a condition providing that prior to consummation of the sale and transfer of Oyster Creek to AmerGen, AmerGen shall provide satisfactory documentary evidence to the staff that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

7.0 ANTITRUST REVIEW

The Atomic Energy 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, 468 (1999). Therefore, since the transfer application postdates the issuance of the OC operating license, no antitrust review is required or authorized.

8.0 TECHNICAL QUALIFICATIONS

Purpose of the Evaluation

The purpose of this evaluation is to ensure that the applicant's corporate management will be involved with, informed of, and dedicated to the safe operation of the plant and that sufficient, qualified technical resources will be provided to support safe plant operation and maintenance. The staff also evaluated changes to the operating organization that may occur as a result of the license transfer to ensure such changes are acceptable.

Basis and Guidance for the Evaluation

The staff used the following regulations and guidance to complete its evaluation: 10 CFR 50.40(b), "Common Standards"; and 10 CFR 50.80, "Transfer of licenses"; the Standard Review Plan (SRP), NUREG-0800, Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Organization"; Section 13.1.2-13.1.3, "Operating Organization"; and ANSI N18. 1-1971, "Selection and Training of Nuclear Power Plant Personnel," as endorsed by Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants" April, 1987.

Evaluation: Management and Technical Support Organization

The staff reviewed the applicant's submittal to determine the acceptability of the corporate management and technical support organization for the proposed transfer. The staff evaluated the applicant's submittal using the applicable acceptance criteria in the Standard Review Plan, Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization."

In its November 5, 1999 submittal, the applicant indicated that, "The technical qualifications of AmerGen to carry out its responsibilities under Facility Operating License DPR-16, as transferred and amended, will meet or exceed the existing technical qualifications of the current licensee. The NRC Staff previously determined that 'AmerGen has an acceptable corporate-level management'

and 'is technically qualified to operate a nuclear power plant.' ” The applicant notes that, “Subsequent to the NRC’s approval of the TMI-1 transfer, AmerGen’s former Chief Executive Officer (CEO), Dickinson M. Smith, became Vice-Chairman of the Management Committee, and AmerGen’s Chief Nuclear Officer (CNO), Gerald R. Rainey, assumed the duties of the CEO. In addition, Paul E. Haviland became a Vice President of AmerGen with responsibilities relating to the acquisition of additional power plants... .” The staff finds these corporate level changes, as they pertain to matters of nuclear safety, acceptable. The applicant also provided, as enclosure 4 to its November 5, 1999, submittal, an organization chart showing post-acquisition management and support structure for Oyster Creek. Additional, updated information was provided by submittals dated April 6 and April 13, 2000.

Supplemental Information

The April 6 letter advised the staff that AmerGen had identified four individuals from outside the current Oyster Creek organization who will assume senior management positions contemporaneously with the transfer of the Oyster Creek license. In addition, AmerGen indicated that the Vice President-Oyster Creek, and the Vice President-Station Support would report to the Senior Vice President-Nuclear Operations, who will report to the AmerGen Chief Nuclear Officer. Resumes of these individuals were included in the submittal.

On April 12, 2000, the staff conducted a telephone conference with the applicant to discuss a Request for Additional Information (RAI). In the letter dated April 13, 2000, the applicant provided a response to the staff’s RAI and telephone conference.

The staff’s RAI contained three questions:

1. Identify for each resume submitted in the April 6, 2000 submittal whether the position to be occupied by the individual is part of the AmerGen corporate organization or part of the plant organization to operate and maintain Oyster Creek.
2. Provide position descriptions describing responsibilities for : Director-Site Support, Director-Work Management.
3. Provide a position description which describes the responsibilities of the Senior Vice President-Nuclear Operations and an organization chart identifying the reporting relationships for the position.

The applicant satisfactorily addressed each of the staff’s three questions.

Staff Conclusions With Respect to Technical Qualifications

The application adequately addresses the relevant requirements of 10 CFR 50.40(b) and 10 CFR 50.80.

The applicant has described its corporate level management and technical support organization and the onsite operating organizations that will be responsible for the operation and maintenance of the Oyster Creek Nuclear Generating Station after the license transfer. The staff concludes that

the applicant will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation of the Oyster Creek Nuclear Generating Station under both normal and off-normal conditions after the license transfer.

Based on all the information submitted, the staff concludes that the applicant has adequately described its organization for managing and its means of providing technical support to the plant staff for operation of the facility after the license transfer. The current organization subject to the changes described, will remain responsible for managing and providing technical support to the plant staff for operation of the facility after the license transfer. It is concluded, in consideration of all of the foregoing, that the applicant has an acceptable organization and adequate resources to provide offsite technical support for the operation of the facility under both normal and off-normal conditions.

Evaluation: Operating Organization

Using the *Basis and Guidance for the Evaluation* stated at the beginning of this section, the staff reviewed the application to determine the acceptability of the applicant's operating organization, evaluating changes to the operating organization proposed as a result of the license transfer. The initial operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization were required to have been evaluated with an appropriate methodology. The staff is aware of no deficiencies in the operating organization. The staff's review focused on evaluating any proposed changes to the operating organization as a result of the transfer. The staff evaluated the application using the applicable acceptance criteria contained in Standard Review Plan, Chapter 13, "Conduct of Operations," Section 13.1.2-1.3, "Operating Organization."

In its November 5, 1999, submittal, the applicant indicated that, "GPUN's existing nuclear organization at Oyster Creek will be transferred to AmerGen. The bulk of GPUN's nuclear managers and employees at Oyster Creek will become AmerGen employees [as of the effective date of the license transfer and amendments] and AmerGen will recognize the union which currently represents employees at Oyster Creek. AmerGen will also have the opportunity to interview and extend offers of employment to GPUN corporate support staff located in GPUN's Parsippany, New Jersey, offices. The overriding philosophy that will govern AmerGen's management of Oyster Creek will be to assure that AmerGen manages, operates, and maintains the plant in accordance with the conditions and requirements established by the NRC. The plant staff, including senior managers, will remain essentially unchanged."

The applicant further states that, "it is to be expected that additional experienced personnel may join the site organization during the period leading up to and after the license transfer" because of routine transfers, resignations, and retirements. Before the transfer, decisions related to these personnel changes will be made by GPUN; after the transfer, any such changes will be made by AmerGen. Any such personnel will meet all existing qualification requirements in accordance with the Oyster Creek license and technical specifications. If AmerGen determines that a senior management position is to be filled with a new individual from outside the existing Oyster Creek organization contemporaneously with the license transfer, AmerGen will inform the NRC in advance of any such change and provide the NRC with a resume for any such individual in advance of the effective date of any such change."

Based on the above, the proposed license transfer will involve essentially no change to either the senior management or the plant staff of Oyster Creek responsible for operating and maintaining the plant. Therefore, the staff concludes that AmerGen's proposed onsite organization to operate and maintain Oyster Creek will be acceptable.

9.0 CONFORMING AMENDMENT

Introduction

As stated previously, GPUN and AmerGen have requested approval of a proposed conforming amendment to Oyster Creek Facility Operating License No. DPR-16. The requested changes eliminate references to the current licensees in the Operating License and, as appropriate, replace them with references to AmerGen to reflect the proposed license transfer and change of ownership. In addition, changes in the license and Technical Specifications to reflect AmerGen's organizations and personnel titles have been requested. No physical changes to the facility or substantive changes to the Technical Specifications have been requested. Supplemental information received after the initial *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

Discussion

The changes to be made to the Operating License, as indicated in enclosure 2 to the cover letter forwarding the Order approving the transfer, do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer, and that were identified and discussed earlier in this safety evaluation. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

State Consultation

In accordance with the Commission's regulations, the New Jersey State official was notified of the proposed issuance of the amendment. The State official had no comments.

Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, 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 amendment will not be inimical to the common defense and security or to the health and safety of the public.

10.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of an Operating License issued by the NRC and approval of a conforming amendment. 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 application.

11.0 CONCLUSION

In view of the foregoing discussion, the staff concludes that AmerGen is financially qualified to own, operate, and decommission OC, and technically qualified to operate OC. Additionally, the staff concludes that no antitrust review is required or authorized in connection with the proposed transfer. Furthermore, the staff concludes that, with the imposition of the conditions described elsewhere in this safety evaluation and contained within the Order approving the transfer, the foreign ownership prohibition contained in Section 104d of the AEA does not bar AmerGen from acquiring the OC Operating License.

Thus, the staff has determined that AmerGen is qualified to be the holder of the OC Operating License, and that the transfer of the Operating License to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, with the conditions referenced above.

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