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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

January 13, 2000

In the Matter of	)	
GPU Nuclear, Inc.,	)	
Jersey Central Power & Light,	)	**Docket No. 50-219**
and	)	**License No. DPR-16**
AmerGen Energy Company, LLC	)	
(Oyster Creek Nuclear Generating Station)	)	**(License Transfer)**

APPLICANTS' ANSWER TO PETITION FOR LEAVE TO INTERVENE OF NUCLEAR INFORMATION AND RESOURCE SERVICES

INTRODUCTION

AmerGen Energy Company, LLC (AmerGen), GPU Nuclear, Inc. (GPUN), and Jersey Central Power & Light Company (JCP&L), (together, Applicants), hereby submit this Answer to the Petition[1/] of the Nuclear Information and Resource Service, and its members William deCamp, Jr. and Shirley Schmidt, (together, NIRS), requesting a hearing in the matter of the proposed transfer of the Operating License No. DPR-16 for the Oyster Creek Nuclear Generating Station (Oyster Creek) from GPUN and JCP&L to AmerGen. NIRS has failed to demonstrate its standing, failed to satisfy the pleading requirements of 10 CFR § 2.1306, and failed to raise any admissible issue. NIRS also has failed to provide sufficient information to show that a genuine dispute with the Applicants exists on a material issue of law or fact. Accordingly, its Petition should be dismissed.

1/ "Petition for Leave to Intervene in the License Transfer of Oyster Creek Nuclear Generating Station from Jersey Central Power & Light Co. and GPU Nuclear to AmerGen Energy Company LLC" dated January 5, 2000 (Petition).

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As requested in the license transfer Application, Applicants are seeking NRC consent to the transfer of the Oyster Creek license by March 1, 2000. This schedule is requested so that there will be sufficient time for an orderly transition in advance of the fall outage, so that outage planning and other activities that will occur in preparation for the outage will not be affected. Accordingly, Applicants request that the Commission rule on NIRS' Petition as quickly as possible and, if further proceedings are necessary, establish an expedited schedule for the completion of such proceedings.

BACKGROUND

On November 5, 1999, GPUN, JCP&L and AmerGen,[2/] submitted a Joint Application for Order and Conforming Administrative License Amendment for License Transfer (Application). The Application requested that the NRC consent to the transfer of the Facility Operating License No. DPR-16 for Oyster Creek to AmerGen and that NRC issue an Order approving a conforming license amendment. A notice of the Application was published in the Federal Register on December 16, 1999, and members of the public whose interest may be affected by the proposed transfer were invited to file petitions for intervention and requests for hearing no later than January 5, 2000. 64 Fed. Reg. 70292 (Dec. 16, 1999). The Federal Register Notice specifically referenced the obligations of any petitioner to comply with the requirements of 10 CFR § 2.1306, which imposes an affirmative duty upon petitioners to "[p]rovide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact." 64 Fed. Reg. at 70293. In addition, the Federal Register Notice

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2/ AmerGen is owned by PECO Energy Company (PECO) and British Energy Inc. (BE Inc.), a wholly owned subsidiary of British Energy plc. (British Energy). PECO and BE Inc. each hold a 50 percent ownership interest in AmerGen.

stated that any petitioner "should address the considerations set forth in 10 CFR [§] 2.1306" regarding the petitioner's alleged interest in the pending matter. *Id.*

On January 5, 2000, NIRS submitted a Petition requesting leave to intervene. NIRS did not address the considerations set forth in 10 CFR § 2.1308(a) regarding its alleged interest in this matter. However, NIRS asks for a hearing on the following six issues:

1. Whether AmerGen has demonstrated adequate financial qualifications to ensure the safe operation of Oyster Creek;

2. Whether by virtue of British Energy's participation in AmerGen, AmerGen is fit "on public health and safety grounds" to own and operate Oyster Creek;

3. Whether by virtue of British Energy's participation in AmerGen, AmerGen is fit "on public health and safety grounds" to own and operate any U.S. reactor;

4. Whether NRC must address antitrust issues in reviewing the proposed transfer of Oyster Creek to AmerGen;

5. Whether AmerGen has improperly requested confidential treatment of certain proprietary information in the Purchase and Sale Agreement for Oyster Creek relating to the tax treatment of its Decommissioning Trust Funds; and

6. Whether physical changes at Oyster Creek relating to the current and continued operation of the plant under its existing license must be reviewed and considered in connection with the proposed transfer of Oyster Creek to AmerGen.

ARGUMENT

As set forth in greater detail below, NIRS has failed to establish standing, and its pleading does not meet the requirements of Subpart M.

I. NIRS HAS FAILED TO ESTABLISH ITS STANDING IN THIS MATTER

To intervene as of right in a Subpart M proceeding, a petitioner must demonstrate that it has an interest that may be affected by the proceeding, *i.e.*, the petitioner must demonstrate standing, and it must raise at least one admissible contention or issue. 10 CFR § 2.1306(a); *Niagara Mohawk Power Corp., et al.* (Nine Mile Point, Units 1 & 2), CLI-99-30, 49 NRC __,

slip op. (December 22, 1999), 1999 NRC LEXIS 115, *7.[3/] To establish standing in a license transfer proceeding, NIRS must satisfy both the procedural requirements of Subpart M and the judicial concepts of standing. *Id.*; *see generally, Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185 (1998). Subpart M procedural regulations and the judicial concepts of standing necessitate a showing of three specific elements to establish standing: (1) an "injury-in-fact" to the petitioner which must be "concrete and particularized," actual or threatened (not conjectural or hypothetical), and within the "zone of interests" protected by the Atomic Energy Act of 1954; (2) a causal connection between the alleged injury and the action complained of; and (3) a likelihood that the relief requested by the petitioner will redress the alleged injury. *Nine Mile Point*, CLI-99-30, 1999 NRC LEXIS at *7; *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 1016 (1998); *Bennett v. Spear*, 520 U.S. 154, 167 (1997); *see generally, Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

In addition, when an organization such as NIRS requests a hearing, it must do so either: (1) to represent its own organizational interests; or (2) to represent the interests of one or more of its members (representational standing). *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-03, 39 NRC 95, 102 n.10 (1994); *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), LBP-99-12, 49 NRC 155, 1999 NRC LEXIS 26, *6, *reh'g denied*, 49 NRC 347 (1999). NIRS has relied upon affidavits submitted by two of its members, William deCamp Jr. and Shirley Schmidt, presumably to establish representational standing on their behalf. When an organization relies on representational standing, it must make a showing that:

3/ *See also* "Streamlined Hearing Process for NRC Approval of License Transfers," 63 Fed. Reg. 66721, 66723-724 (Dec. 3, 1998) ("The new Subpart M does not alter the Commission's usual requirement for standing to intervene in a proceeding that a person show an interest which may be affected by the outcome of the proceeding.").

> (1) its members would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30-31 (1998) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). This showing includes "specify[ing] how the proposed action . . . would cause or threaten 'injury-in-fact' to the members who have authorized the intervention on their behalf." *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-4, 39 NRC 47, 50 (1994). Moreover, the alleged injury to NIRS' members must be described with particularity. *See Hydro Resources, Inc.* (Leach Mining License) LBP-98-9, 47 NRC 261 (1998), 1998 NRC LEXIS 40, *20, *reversed in part on other grounds*, CLI-98-16, 48 NRC 119 (1998).

The NIRS' Petition fails to meet the requirements for representational standing, because it fails to adequately address the three basic elements required to support any kind of standing: injury-in-fact, causation and redressability. In its Petition, NIRS identifies the issues it seeks to raise, but makes no attempt to fulfill its burden to establish that it has standing to request a hearing. The accompanying affidavits contain generalized references to threats to the health and safety of NIRS' members posed by: AmerGen's alleged lack of financial and managerial qualifications to assume control of Oyster Creek; an alleged lack of proper oversight of the transaction on the part of the Commission; the alleged improper withholding of portions of the Purchase and Sale Agreement for Oyster Creek; as well as questions regarding GPUN's deferral of various maintenance items. deCamp Affidavit ¶ 6; Schmidt Affidavit ¶ 4. However, these generalized references are not sufficient to cure the fatal flaws in the Petition.

In a proceeding that has no obvious potential for immediate offsite consequences (like a license transfer), a petitioner is required to "allege in detail" a specific injury or threat to a member's health and safety. *Parks Township*, LBP-94-4, 39 NRC at 51-52. NIRS, through its members' affidavits, does no more than suggest that there is a remote chance that its members' generalized health and safety could be jeopardized in some speculative way by NRC's granting the license transfer. Neither the petition nor the accompanying affidavits attempt to describe with the requisite specificity how the health and safety of NIRS' members is threatened by the proposed transfer. Moreover, nowhere in the petition or the affidavits can there be found a discussion of the second and third elements of standing: causation and redressability.

The burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 1999 NRC LEXIS 13, *19 (1999). Furthermore, the Commission neither expects nor requires its adjudicatory boards "to sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves." *Id.* at *18-19. In its petition, NIRS does not even address its standing, and in the accompanying affidavits, the allegations of injury are set forth without specificity. NIRS has clearly failed to meet its burden in establishing standing.

Finally, in promulgating Subpart M, the Commission confirmed that "[t]he procedures are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases." 63 Fed. Reg. at 66722. In addition, Subpart M expressly directs the NRC staff to "promptly issue approval or denial of license transfer requests." 10 CFR § 2.1316(a). The Commission re-emphasized the policy underlying

Section 2.1316(a) when promulgating Subpart M stating that "staff action on license transfer requests should not be delayed except for sound reasons." 63 Fed. Reg. at 66725-26.[4/] NIRS should not be allowed to further delay this proceeding as a result of its flawed Petition. In fact, NIRS has on two separate occasions been granted the opportunity to supplement a deficient petition in license amendment proceedings involving Oyster Creek. *See GPU Nuclear Corp.* (Oyster Creek Nuclear Generating Station), 1996 WL 413413 (NRC) (July 3, 1996) (unpublished Order); *GPU Nuclear Corp.* (Oyster Creek Nuclear Generating Station) 1999 WL 1080717 (NRC) (November 29, 1999) (unpublished Order). NIRS has continued to ignore the Commission's regulations with regard to the requirements for intervention. The delay and associated costs imposed on licensees as a result are unjust. NIRS, therefore, should not be afforded any further opportunity to supplement its petition in order to cure its deficiencies.

II. THE PETITION DOES NOT SATISFY THE SUBPART M PLEADING REQUIREMENTS REGARDING THE ISSUES SOUGHT TO BE RAISED

Pursuant to 10 CFR § 2.1306, NIRS must, for each of the issues it seeks to have admitted:

(1) Demonstrate that the issue is within the scope of the proceeding on the license transfer application;

(2) Demonstrate that the issue is relevant to the findings the NRC must make to grant the application for license transfer;

4/ Indeed, the Commission's policy of avoiding unnecessary delay in its proceedings is well established. *See, e.g., Baltimore Gas & Electric Company* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC 45, 52 (1998) ("We have a regulatory responsibility which includes the avoidance of unnecessary delay or excessive inquiry in our licensing proceedings."); *Nuclear Fuel Services, Inc, and New York State Atomic and Space Development Authority* (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975) ("'fairness to all parties . . . and the obligation of administrative agencies to conduct their functions with efficiency and economy require that Commission adjudication be conducted without unnecessary delays,'" quoting 10 CFR Part 2, Appendix A).

(3) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and

(4) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Failure to comply with any of these requirements requires dismissal of the issue. *Sequoyah Fuels Corp.* (Gore Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-9, 39 NRC 116, 117-18 (1994) (applying Subpart L principles); *see also* "Notice of Consideration and Approval of Transfer of Facility Operating Licenses and Conforming Amendment, and Opportunity for a Hearing," 64 Fed. Reg. 70292, 70293 (Dec. 16, 1999) ("requests for a hearing must comply with the requirements set forth in 10 CFR § 2.1306"); 10 CFR § 2.1306(b) (Subpart M requirements are mandatory).

The requirements for admission of issues under Subpart M are essentially the same as the Subpart G requirements for the admission of contentions, *compare* 10 CFR § 2.714(b)(2) (NRC pleading requirements under Subpart G), and the Commission refers to precedent decided under Subpart G on the admissibility of contentions when reviewing the admissibility of issues under Subpart M. *See, e.g., North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-27, 49 NRC __, slip op. at 6, n.5 (Oct. 21, 1999) (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Generating Station, Unit 1), CLI-83-25, 18 NRC 327 (1983)).

An issue sought to be admitted pursuant to Subpart M must be confined to the subjects delineated by the hearing notice, and issues concerning matters that are not within that defined scope cannot be admitted. *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-98-28, 48 NRC 279, 1998 WL 817407, *3 (1998). It is well-established that an

issue that "advocate[s] stricter requirements than those imposed by the regulations" will be rejected as "an impermissible collateral attack on the Commission's rules." *See, e.g., Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *accord Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998); *see also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991).

Moreover, an issue will be found to lack sufficient basis if it amounts to, without more, a petitioner's differing opinion with the NRC as to what applicable regulations should require. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 303, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 11 (1995). In this regard, the mere citation of an alleged factual basis for an issue is not sufficient. Rather, a petitioner is obliged "to provide the . . . analyses and expert opinion" or other information "showing why its bases support its [issue]." *Id.* at 306. Similarly, the NRC will not accept an expert opinion as an adequate basis for an issue if it "merely states a conclusion (*e.g.*, the application is 'deficient,' 'inadequate,' or 'wrong,') without providing a reasoned basis or explanation for that conclusion." *Private Fuel Storage*, LBP-98-7, 47 NRC at 181.

Subpart M requires a petitioner to "[p]rovide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact." 10 CFR § 2.1306(b)(2)(iv). If the petitioner does not believe that the application addresses a relevant issue, the petitioner is required to "explain why the application is deficient." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149,

155-56 (1991). An issue that does not directly controvert a position taken in the application is subject to dismissal. *Private Fuel Storage*, LBP-98-7, 47 NRC at 181; *see also Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). Further, an allegation that some aspect of an application is "inadequate" or "deficient" must be supported by facts and a reasoned explanation of why the application is deficient and how the deficiency is material to the proceeding. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 512 (1990). As the following makes clear, NIRS fails to meet its burden under 10 CFR § 2.1306 with respect to each of the six issues it seeks to raise.

A. The Financial Information Provided by AmerGen Fully Complies with NRC Requirements and Is of a Type That the NRC Previously Found Sufficient to Support a License Transfer

As its first issue, NIRS raises eight overlapping claims, all of which appear to be directed at a general claim that AmerGen has failed to demonstrate the requisite financial qualifications to own and operate Oyster Creek as required by 10 CFR § 50.33(f)(2). In support of this issue, NIRS makes the following claims:

(1.A) As a Limited Liability Company, AmerGen is inherently financially unqualified to own and operate Oyster Creek;

(1.B) AmerGen cannot appropriately rely upon operating revenues as its source of funds to cover its operating expenses;

(1.C) AmerGen's access to an additional $110 million in funds is inadequate to cover certain expected operating and maintenance costs, which NIRS presumably believes have not been anticipated;

(1.D) AmerGen's access to an additional $110 million in funds will be inadequate to address a shortfall in operating revenue, if Oyster Creek operates at a lower capacity than reasonably anticipated;

(1.E) AmerGen's access to an additional $110 million in funds will be inadequate to address a shortfall in operating revenue, if AmerGen is unable to sell power at market prices;

(1.F) AmerGen's access to an additional $110 million in funds is an inadequate alternative source of funds, because the commitment also applies to AmerGen's other plants;

(1.G) AmerGen should be required to guarantee payment of the maximum liability for deferred premiums provided under the Price-Anderson Act, rather than providing the guarantee of $10 million (for one year's deferred premium) required for all other licensees under 10 CFR § 140.21; and

(1.H) It should be presumed that AmerGen will compromise safety to pursue power production goals.

Each of NIRS' claims fails to stand up to scrutiny.

As an initial matter, AmerGen's submission of information related to its financial qualifications fully complied with the NRC's "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Rev. 1 (SRP), and NIRS does not claim otherwise. AmerGen's five-year projection of operating revenues that provide a source of funds to cover its projected operating costs establishes the necessary reasonable assurance that AmerGen will obtain the funds necessary to cover its operating costs. As such, these projections alone establish compliance with the requirements of

10 CFR § 50.33(f)(2). NIRS does not raise any specific issue challenging these projections, but rather, at best, NIRS raises only some very generalized concerns (*e.g.*, AmerGen's ability to sell electricity at market prices), without providing any supporting facts, expert opinions or documents which show that there is any material issue of fact or law in dispute.[5/] Thus, there is no basis for a hearing regarding AmerGen's projections, and any additional information submitted by AmerGen in further support of its financial qualifications (*e.g.*, the availability of $110 million in additional funds from British Energy and PECO Energy) is supplemental in nature. NRC need not rely upon this additional information, and there is therefore no basis for a hearing on such matters, even if NIRS had raised valid issues regarding this supplemental information.

Second, the NRC has previously found that the same type of financial information submitted by AmerGen here was sufficient for NRC to make an informed and reasoned decision that companies selling power at market-based rates are financially qualified to own and operate nuclear facilities. *See GPUN, Inc., et al., to AmerGen*, (Three Mile Island, Unit No. 1), "Order Approving Transfer of License and Conforming Amendment," 64 Fed. Reg. 19202 (April 19, 1999) (*TMI-1 Order*); *Boston Edison Company* (Pilgrim Nuclear Power Station, Unit No. 1), "Order Approving Transfer of License and Conforming Amendment," 64 Fed. Reg. 24426 (May 6, 1999) (*Pilgrim Order*); *Illinois Power Co.*, (Clinton Power Station), "Order Approving Transfer of license and Conforming Amendment," 64 Fed. Reg. 67598 (December 2, 1999) (*CPS*

5/ The undersigned counsel are not aware of any request from NIRS for copies of the proprietary financial projections, which could have been made available several weeks ago pursuant to an appropriate confidentiality arrangement. AmerGen notes that, under appropriate circumstances with respect to other applications, it has previously supplied proprietary information to potential intervenors on a confidential basis.

Order); *Safety Evaluation by the Office of NRR, Transfer of Facility Operating License from GPUN, Inc., et al. to AmerGen*, (Three Mile Island, Unit No. 1), Docket No. 50-289 at 21 (April 12, 1999) (*TMI-1 Safety Evaluation*); *Safety Evaluation by the Office of Nuclear Reactor Regulation, Proposed Transfer of Clinton Power Station Operating License from Illinois Power Co. to AmerGen Energy Co., LLC*, Docket No. 50-461 (November 24, 1999) (*CPS Safety Evaluation*).

Any NIRS challenge to the adequacy of the $110 million source of funds referenced in the Application is irrelevant, because this supplemental information is not required. Neither the NRC's regulations, nor the SRP, require the submission of such information as a prerequisite for a financial qualification determination. *See* 10 CFR § 50.33(f)(2); SRP at 10. Any implication that such a showing is required under NRC regulations must be rejected as an impermissible collateral attack on NRC regulations. Under circumstances where financial projections are adequate to meet NRC's requirements, requiring any additional showing would be tantamount to an improper imposition of stricter requirements than those provided by the regulations. *See Seabrook Station*, LBP-82-106, 16 NRC at 1656; *accord Private Fuel Storage*, LBP-98-7, 47 NRC at 179; *see also Palo Verde Nuclear Generating Station*, LBP-91-19, 33 NRC at 410.

AmerGen's more detailed responses to the sub-issues 1.A through 1.H offered by NIRS are provided below:

1.A AmerGen's Financial Qualifications Are Not Compromised By its Choice of Corporate Form

In support of its first issue, NIRS contends that AmerGen is inherently financially unqualified by virtue of its being a Limited Liability Company (LLC), which is "designed to shield its parent corporations from liability." Petition at 5. NIRS' argument is either

disingenuous or reflects a fundamental misunderstanding of the basic tenets of corporate law. All corporations are by their very nature designed to limit the liability of shareholders, including parent companies. Numerous NRC reactor licensees are corporations that are subsidiaries of other corporations, and in each such case, the parent companies are "shielded" from liability unless there is a basis to "pierce the corporate veil." Other licensees are themselves publicly traded corporations, which similarly limit their shareholders' liability. Therefore, from a liability standpoint, there is no difference between an LLC and a corporation.

NIRS further asserts that AmerGen has "virtually no resources of its own," *id.*, and is "a tiny corporation with few corporate resources." *Id.* at 2. NIRS provides no basis for these assertions, which simply ignore AmerGen's current ownership and operation of two nuclear power plants with a combined generating capacity of more than 1700 MWe, over 1,500 employees, and hundreds of millions of dollars in revenues (on an annual basis). NIRS also refers to the Licensing Board decision in *Louisiana Enrichment Services* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331 (1996), as a precedent in which an allegedly similar LLC was found not financially qualified. The LES case, however, is not even remotely similar. LES was applying to construct a facility, not operate an existing facility, and did not have commitments from the participants to cover the construction costs. *Id.* at 400. In considering this situation, the Licensing Board applied the standards in 10 CFR Part 50, Appendix C, which apply only to newly formed entities applying for construction permits. *Id.* at 395. In contrast, AmerGen is purchasing a fully constructed and operational nuclear plant, and there are no questions raised with regard to AmerGen's ability or commitment to fully fund the purchase price. Moreover, the standards in Appendix C to Part 50 do not apply, because this is not a construction permit proceeding. Rather, the financial qualifications test for an operating license are set forth in 10

CFR § 50.33(f)(2), which requires projections of expenses for five-years and an indication of the sources to cover these expenses. That AmerGen has provided this information is undisputed. Finally, NIRS conveniently fails to disclose that the Licensing Board decision in the LES proceeding, which is cited by NIRS in support of its position, was reversed on appeal by the Commission. *Louisiana Enrichment Services* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997). Accordingly, issue 1.A is clearly baseless.

1.B AmerGen Has Appropriately Relied upon Operating Revenues as Its Source of Funds to Cover Operating Expenses

In its issue 1.B, NIRS asserts that AmerGen cannot rely solely upon operating revenues to demonstrate its financial qualifications. Petition at 7. NIRS provides no support for this proposition, and if accepted, this position would prevent nuclear plants from operating in a competitive market. Certainly, the NRC regulations at 10 CFR § 50.33(f)(2) do not preclude operating revenues from being identified as the source of funds needed to cover expenditures, and the NRC has accepted operating revenues in many other cases. *CPS Order*; *Pilgrim Order*; *TMI-1 Order*. The showing required for establishing financial qualifications under 10 CFR § 50.33(f)(2) is one of "reasonable assurance," not "absolute certainty" or "assurance beyond doubt." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 18 (1988) (quoting *Coalition for the Environment v. NRC*, 795 F.2d 168, 175 (D.C. Cir. 1986)).

Moreover, NIRS provides no basis whatsoever – no expert opinion, documentation or other information as required by 10 CFR § 2.1306(b)(2) – to show that AmerGen's ability to sell Oyster Creek's power at market rates is a genuinely disputed, material issue. NIRS is also wrong in asserting that AmerGen relies "solely" on Oyster Creek operating revenues, since AmerGen

will also receive revenues from at least two other nuclear plants. It is also relevant that AmerGen will have a fully funded decommissioning trust for Oyster Creek. NIRS' reference to the fact that the power purchase agreement between JCP&L and AmerGen for the Oyster Creek capacity and energy only runs through March 2003 is also unavailing. Electricity has a commodity value in the marketplace, and it is reasonable to assume that AmerGen can and will make sales in the competitive market. Thus, it is irrelevant that the power purchase agreement between AmerGen and JCP&L only lasts for three years.

1.C AmerGen's Projections Anticipate the Potential Costs Identified by NIRS

In support of its issue I.C, NIRS raises the specter of significant costs for items such as Thermo-Lag fire barrier material replacement, spent fuel storage issues, and potential installation of a new crane for heavy load movement. Presumably, NIRS believes that costs for these items have not been anticipated by AmerGen, and it somehow assumes that AmerGen would need to draw upon the additional $110 million available to it in order to pay for these costs. NIRS provides no basis for its erroneous assumptions, and it cannot do so, because AmerGen has planned for these and other such costs, which are incorporated in its financial projections. Related plans for the upcoming refueling outage are discussed in greater detail below, in response to NIRS sixth issue. There is no basis for NIRS' claim that AmerGen needs additional funds for these purposes, and this issue should be dismissed.

1.D There Is No Basis for Assuming that Oyster Creek Will Operate at a Capacity Factor That Is Lower than its Recent Capacity Factor

NIRS baldly asserts that "there is no reason to believe Oyster Creek will operate reliably or will produce any meaningful amount of electricity between the Closing Date and March 31, 2003." Petition at 9. Of course, there is no reason to believe that Oyster Creek will operate

unreliably, and NIRS presents no documented facts or other evidence to support its speculation that Oyster Creek will not produce any "meaningful amount of electricity." At best, NIRS asserts that "history suggests that the plant will produce 65% or less of its available capacity." *Id.* In fact, recent history suggests a much higher capacity factor. Oyster Creek's capacity factor during the last three non-refueling outage years (1995, 1997, and 1999) averaged 96.2%. This performance confirms the reasonableness of the forced outage rate (between scheduled refueling outages) used in AmerGen's financial projections. Even considering years with scheduled outages, Oyster Creek's overall average capacity factor over the last six years (1994-1999) exceeds 85.8%. NIRS' unfounded suggestions that future performance will be inconsistent with this recent performance are speculative at best, and this issue should be dismissed.

1.E There Is No Basis for Assuming that AmerGen Will Not Be Able to Sell Power at Market Prices

As discussed above, electricity has a commodity value, and it is reasonable to project that AmerGen can and will be able to sell electricity into the market. NIRS fails to provide any information to provide a basis for its claim that AmerGen would not be able to sell the electricity from Oyster Creek, and it cannot show that there is a genuine dispute concerning a material issue. It provides no expert opinion or references to documents as required by 10 CFR § 2.1306. It does not provide any discussion of the likely market price of electricity after March 2003. Rather, NIRS provides nothing more than vague, unsupported speculation that because GPUN and JCP&L had planned to shut down Oyster Creek, AmerGen will not be able to sell electricity unless it cuts operating costs to the point of threatening the public health and safety. Petition at 9. Obviously, this argument rests on a faulty premise, because the cost of production has no bearing on AmerGen's ability to sell electricity from Oyster Creek. Rather, the cost of

production could only impact AmerGen's overall profitability. In any event, there is simply no sound basis for NIRS' speculation that AmerGen is incapable of improving the economics of Oyster Creek operations without compromising safety. To the contrary, "[i]t is well established that the best operating nuclear power plants from a safety perspective are the best economic performers." "Rasplav Project Objectives," *Nuclear Engineering International*, p. 40 (Oct. 30, 1999) (quoting former NRC Chairman Shirley Jackson).

1.F AmerGen Has Met NRC's Financial Assurance Requirements for Oyster Creek Without Regard to the Additional $110 Million in Funds Which Are Available, If Needed, For Any of Its Plants

As already discussed above, AmerGen's undisputed five-year financial projections establish AmerGen's financial qualifications to own and operate Oyster Creek. The availability of the additional $110 million "backstop" to AmerGen is supplemental information, which NRC need not rely upon in reviewing the pending Application. Any dispute regarding this backstop is therefore entirely irrelevant and provides no basis for conducting a hearing. Moreover, AmerGen's current operations are projected to generate hundreds of millions of dollars in revenues per year, and British Energy and PECO Energy have provided AmerGen with adequate financial resources on an ongoing basis, without regard to the $110 million backstop. There is therefore no present or likely future need for AmerGen to ever draw upon the backstop. If it ever were to do so, AmerGen would inform the NRC, and if Necessary, NRC could take appropriate action to assure AmerGen's continued financial qualifications. *See, e.g.*, 10 CFR § 50.33(f)(4) (NRC c an request "additional or more detailed information").

1.G AmerGen Has Met the Requirements of 10 CFR § 140.21

The NRC's regulations plainly provide that a licensee must maintain an acceptable guarantee of "payment of deferred premiums in an amount of $10 million for each reactor he is

licensed to operate." 10 CFR § 140.21. Nevertheless, NIRS asserts that AmerGen should be required to provide such assurance of payment for the entire amount of the potential liability for deferred premiums under the Price-Anderson Act. This issue must be rejected as it is plainly an impermissible collateral attack on the adequacy of NRC's existing regulatory requirements. *See Seabrook Station*, LBP-82-106, 16 NRC at 1656; *accord Private Fuel Storage*, LBP-98-7, 47 NRC at 179; *see also Palo Verde Nuclear Generating Station*, LBP-91-19, 33 NRC at 410. Moreover, NIRS' concerns are wholly unfounded. AmerGen has already confirmed that it "will obtain all required nuclear property damage insurance pursuant to 10 CFR § 50.54(w) and nuclear energy liability insurance pursuant to Section 170 of the Act and 10 CFR Part 140." Application at 30. Among the coverages AmerGen will obtain is the Nuclear Energy Liability Insurance (Secondary Financial Protection), which is administered by American Nuclear Insurers. 10 CFR § 140.109, Appendix I. There is therefore no question that AmerGen's obligations under the Price-Anderson Act will be met.

Moreover, the indemnity agreement that AmerGen must enter into with the NRC provides an NRC guarantee of the deferred premiums, subject to reimbursement or liens on the licensee property. 10 CFR § 140.22, 10 CFR § 140.92, App. B (Form of Indemnity Agreement), Article VIII. The NRC imposes fees on its licensees for this guarantee. 10 CFR § 140.7(a)(2). NIRS provides no discussion whatsoever of this comprehensive set of requirements, coverage, and guarantees, and no basis to suggest that there is any material issue to be set for hearing.

1.H AmerGen Is Entitled to a Presumption that It Will Comply With NRC's Safety Regulations

It is a longstanding principle of American jurisprudence that it should be presumed that individuals will obey the law and that administrative agencies will fulfill their statutory duties.

Leroy Fibre Co. V. Chicago, Milwaukee & St. Paul Railway Co., 232 U.S. 340, 349 (1913) (recognizing and applying the presumption that an individual "will obey the law"); *United States v. Norton*, 97 U.S. 164, 168 (1877) ("It is a presumption of law that officials and citizens obey the law and do their duty . . . ."); *see also Federal Communication s Comm'n v. Schreiber*, 381 U.S. 279, 296 (1965) (administrative agencies are entitled to the presumption "that they will act properly and according to law"). Nevertheless, NIRS implies that in defiance of NRC regulatory requirements, AmerGen "will almost surely" compromise safety in order to pursue production goals. Petition at 12. This suggestion also implies that NRC would not assure AmerGen's continuing compliance with NRC requirements.

To be admissible, an issue founded on the premise that a licensee will not follow regulatory requirements must contain some particularized demonstration that there is a reasonable basis to believe that the licensee would act contrary to the regulations. *General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 146 (1996). In contrast, the issue raised by NIRS is entirely speculative and unsupported. NIRS provides no basis whatsoever for its claim that AmerGen has or will subordinate safety to production goals. It provides no explanation why the NRC's inspection and oversight programs will be insufficient to monitor AmerGen's safety philosophy and the safety of Oyster Creek operations. In essence, NIRS' issue I.H is tantamount to an assertion that no nuclear plant should ever be permitted to operate in a competitive market. Such a position is inconsistent with the NRC's financial qualifications requirements and prior precedent in recent license transfer cases (*e.g.*, *TMI-1 Order, Pilgrim Order, Clinton Order*), which do not preclude revenues from the sale of electricity being identified as the primary source of funds to cover operational expenses. *See* 10 CFR § 50.33(f)(2).

B. AmerGen Provided Sufficient Information for the NRC to Evaluate AmerGen's Technical Qualifications to Operate Oyster Creek

As its second issue, NIRS asserts that AmerGen is "unfit" to operate Oyster Creek, by virtue of British Energy's participation in AmerGen. Petition at 13. NIRS' third issue is essentially duplicative of this second issue, except that it makes the further claim that AmerGen is "unfit" to operate "any U.S. reactor" for the same reason. *Id.* Neither issue has any merit, and neither issue should be set for hearing. Both issues represent an attempt by NIRS to have the NRC address issues relating to British Energy's operations at its nuclear power plants in the United Kingdom, which are well beyond the scope of NRC's jurisdiction, and which are simply irrelevant to the pending Application submitted by AmerGen, GPUN and JCP&L. NIRS' third issue suffers from the further infirmity that it relates to plants other than Oyster Creek and is, therefore, clearly beyond the scope of the pending Application. 10 CFR § 2.1308(b)(4)(i).

As AmerGen explained in the pending Application, GPUN's existing nuclear organization at Oyster Creek will be transferred to AmerGen with the bulk of GPUN's nuclear managers and employees at Oyster Creek becoming AmerGen employees. Application at 11. The existing organization's technical qualifications are consistent with Commission requirements and will remain so with the wholesale transfer of this organization to AmerGen.

NIRS' assertions that AmerGen "has never owned or operated a nuclear power plant" is plainly inaccurate. Petition at 13. AmerGen owns and operates two nuclear plants, TMI-1 and Clinton. Moreover, NIRS' suggestion that "AmerGen is relying entirely upon the abilities of its two corporate partners" is belied by the fact that AmerGen is acquiring the existing site organization at Oyster Creek. *Id.* AmerGen currently has more than 1,500 employees, including numerous capable managers and skilled workers. NIRS' exaggerated claims regarding AmerGen

and its participants reveal the clay footing of its broader argument which is essentially a vague challenge to any future AmerGen business decisions that may be made regarding plant staffing. NRC has rejected such arguments in connection with the recent transfer of Beaver Valley Power Station to FirstEnergy:

> As a general matter, business decisions regarding plant staff, beyond the shift operating crew, personnel qualification, and organizational structure requirements which are specified in the TSs and UFSARs, are not specifically subject to the NRC's regulatory regime. . . . . It is the licensee's responsibility to provide sufficient resources to ensure that [NRC] requirements are met. . . . . Moreover, the NRC will be engaged in ongoing and routine inspection activities at Beaver Valley to ensure that BVPS-1 and 2 continue to be operated and maintained safely in accordance with the existing license requirements.

Safety Evaluation by the Office of NRR, Transfer of Facility Operating License from Duquesne Light Company to Pennsylvania Power Company et al., (Beaver Valley Power Station, Units 1 and 2), Docket Nos. 50-334 and 50-412, at 9 (Sept. 30, 1999) (BVPS1&2 Safety Evaluation).

For the reasons discussed above, NIRS' second and third issues should not be admitted.

C. Antitrust Review In Connection With the Pending Application Is Neither Authorized Nor Warranted

As its fourth issue, NIRS suggests the NRC must consider the antitrust implications of AmerGen and its participants owning multiple nuclear plants, despite controlling authority to the contrary. Oyster Creek was licensed pursuant to Section 104b of the Act. Accordingly, Oyster Creek is exempt from further NRC antitrust review pursuant to the Act, and subsequent NRC issuances and precedent. *See* NUREG-1574, "NRC Standard Review Plan On Antitrust Reviews," Sections 1.1, 1.3, & 1.5 (Dec. 1997); *compare* "NRC Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry," 62 Fed. Reg. 44071, 44074 (Aug. 19, 1997); *see also TMI-1 Safety Evaluation;* "NRC Safety Evaluation Related to

Proposed Merger of CalEnergy Company, Inc. and MidAmerican Energy Holdings Company" (Quad Cities) (Dec. 22, 1998). Moreover, the Commission has determined that antitrust review of post-operating license transfers is not required by the Atomic Energy Act, and that from a policy, as well as legal, perspective, such a review should not be conducted. *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 441 (1999). NIRS provides no basis for suggesting that NRC should reverse itself and conduct a duplicative review of competitive issues regarding the ownership of nuclear power plants, which are addressed by the Antitrust Division of the U.S. Department of Justice, the Federal Trade Commission and the Federal Energy Regulatory Commission.

NIRS also alleges that the NRC must review the holdings of AmerGen and its participants because other large nuclear utilities have had problems. AmerGen, however, is not the operator of Unicom's, British Energy's, or PECO's nuclear plants, and there is no basis to assume that AmerGen will be "stretched too thin," as suggested by NIRS. Petition at 21. NIRS provides no meaningful discussion of AmerGen's Application and no explanation why one might be concerned about AmerGen's ability to operate Oyster Creek. NIRS does not provide any expert opinion or references supporting this issue, and fails to provide information showing a genuine dispute on a material issue, as required by 10 CFR § 2.1306. The assertion that some other company may have had problems in the past does not create a basis to doubt AmerGen's fitness.

D. AmerGen Has Exceeded the NRC's Requirements in Providing Financial Assurance for the Decommissioning of Oyster Creek

As its fifth issue, NIRS raises certain concerns regarding AmerGen's financial assurance for decommissioning funding. However, such concerns are without foundation, and the ancillary

issues raised by NIRS are beyond the scope of the pending Application. The Application explains that JCP&L will make additional deposits into the decommissioning funds and transfer the funds to AmerGen at closing so that the value of the funds will be in excess of $400 million, net of taxes and expenses. For NRC's purposes this trust fund would be valued at $480 million, when earnings are credited at a 2% real rate of return as permitted by NRC's rules. 10 CFR § 50.75(e)(1)(i); *see* Application at 4, 19 and Enclosures 8 and 9. This prefunding amount exceeds the decommissioning cost estimate calculated using the NRC formula in 10 CFR § 50.75(c) by nearly $150 million. See Application, Enclosures 8 and 9. The Application also explains that the funds will be placed in an external fund meeting NRC requirements and acceptable to the NRC, *i.e.*, an independently managed decommissioning trust fund outside the administrative control of AmerGen. *Id.* at 19-20. As the NRC recently confirmed in several recent license transfer proceedings, a transferee is only required to demonstrate that it has sufficient funds to cover the radiological decommissioning cost estimate calculated using the NRC formula in 10 CFR § 50.75(c). *See TMI-1 Safety Evaluation*, at 8; *see also North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201 (1999) (the NRC formula amount, utilizing NUREG-1307, Rev. 8, is sufficient to provide decommissioning funding assurance in license transfer cases); *Pilgrim Order*, 64 Fed. Reg. at 24427.

NIRS does not address any of this information. It provides no explanation why this arrangement, disclosed by the Application, is insufficient to satisfy the NRC decommissioning funding requirement. It provides no information showing that there is a genuine dispute on a material issue. Rather, NIRS focuses on two ancillary issues that are beyond the scope of the pending Application. First, in its issue V.A, NIRS asserts that any remainder of the decommissioning trusts after decommissioning must revert to the ratepayers. This issue is

obviously a rate related issue that is beyond the NRC's jurisdiction, beyond the NRC's ability to fashion relief, and beyond the scope of this proceeding. Secondly, in its issue V.B, NIRS asserts that AmerGen must be denied a license until it discloses the contents of Section 6.12 of the Purchase and Sale Agreement (Application, Enclosure 3). AmerGen requested that Section 6.12 of the Purchase and Sale Agreement be withheld from public disclosure because it discusses the tax treatment of the decommissioning fund transfers, which is confidential commercial information of value in the acquisitions of nuclear plants.[6/] This tax information has no bearing on any of the health and safety findings that the NRC must make.

E. Issues Regarding Physical Changes Relating to the Continued Operation of Oyster Creek Are Beyond the Scope of the Pending License Transfer

As its sixth and final issue, NIRS alleges that the proposed transfer will require extensive changes and corrective actions. NIRS bases this allegation on three claims: (VI.A) that GPUN has deferred significant activity and must now make significant changes to transfer a saleable plant; (VI.B) that contrary to the assumption that there will be no changes to the plant, GPUN is engaged in a complex and controversial spent fuel pool expansion as a direct result of the transfer; and (VI.C) the deferral of numerous items, attrition of GPUN staff, and need to complete numerous amendments place GPUN under adverse conditions. These issues, however, are not only unsupported by a sufficient basis, but clearly beyond the scope of this proceeding.

In its issue VI.A, NIRS states that Oyster Creek must make "significant changes" in order to transfer a saleable operating plant. Petition at 27-28. NIRS refers to a few routine projects that were previously deferred when GPUN was considering the possibility of an early retirement

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6/ Notably, an unredacted version of the Purchase and Sale Agreement was provided to the NRC with the Application. *See* Application, Enclosure 3A.

of the station, but makes no showing that "significant changes" are needed or that there is any material issue within the scope of this license transfer proceeding.

The completion of deferred work is outside of the scope of the pending Application and this proceeding. The Application has not sought any special approval to modify the station. While projects that were previously deferred will have to be completed to support the continued operation of the plant, this would be true even if GPUN rather than AmerGen decided to continue to operate the plant. This work was specifically deferred until Outage 18R,[7/] without regard to whether the plant was to continue to be operated by GPUN or sold. Thus, there is no unique nexus between these activities and the license transfer.[8/] Rather, the completion of work items is a normal activity if Oyster Creek is to continue to operate, irrespective of the license transfer. Similarly, this issue is not related to any of the standards for license transfer, as specified in the NRC regulations at 10 CFR § 50.80, which focus on the technical and financial qualifications of the new licensee. Under 10 CFR § 2.1306(b)(2)(i) and (ii) a petitioner is required to demonstrate that its issues are within the scope of the proceedings and relevant to the findings that the NRC must make to grant the Application for license transfer. NIRS has not and cannot make such a demonstration.

NIRS suggests that the completion of deferred work is inconsistent with the statement in the Application that no physical changes would be made to Oyster Creek as a result of the transfer. Petition at 24. The statement in the Application merely indicates that AmerGen is not

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7/ Letter from A. Rone to NRC, "Long Range Planning Program (LRPP) Supplemental Update of Integrated Schedule" (Oct. 1, 1997).

8/ The necessary nexus exists only where the issue raised by a petitioner is a "direct consequence" of a "necessary implication" of the proposed licensing action. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974).

proposing or requesting NRC approval of any special modifications as part of the license transfer (*i.e.*, that this proceeding does not involve facility modification). It does not suggest – and it would be unreasonable to construe the Application as indicating – that any scheduled work, including work relating to regulatory commitments, would not be completed as part of the continued operation of the plant, or that outage work would not occur.

In any event, NIRS makes no showing that there is any genuine dispute with respect to a material issue. NIRS provides no information indicating that Oyster Creek is currently unsafe, and no information indicating that the completion of deferred items cannot be reasonably accomplished.

First, NIRS does not provide a basis to support its assertion that GPUN has deferred "numerous operational and corrective action programs," Petition at 28, and "maintenance and major safety repairs and modifications." *Id.* The few items that NIRS identifies do not support NIRS' characterizations. Further, GPUN's September 1997 Supplemental Update to the NRC's Integrated Schedule, which reflected GPUN's decision to defer a few projects, indicates that the deferral decisions were based on careful risk analysis showing that the deferrals posed no unacceptable risk.

NIRS also fails to address documents available in the Public Document Room showing that much of the work related to these projects has already been performed.[9/] For example, GPUN's September 1997 Supplemental Update to the NRC's Integrated Schedule reported

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9/ A petitioner has an ironclad obligation to examine publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that would serve as the foundation for a specific contention. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983).

GPUN's decision to proceed with the Reactor Water Cleanup system modifications (identified on page 25 of NIRS' Petition) in the 17R outage.[10/] GPUN has also proceeded with its project to expand the spent fuel pools. *See* "Notice of Consideration of Issuance of Amendment to Facility Operating License," 64 Fed. Reg. 44757 (Aug. 17, 1999). Further, the September 1997 Supplemental Update indicates that GPUN would proceed with a number of seismic qualification modifications and that 70 to 75 percent of this work had been completed, that GPUN was proceeding with Thermo-Lag fire barrier modifications in the switchgear room, that 90 percent of the human factors review of the control room had been completed, and that GPUN had completed a significant amount of the Severe Accident Management Program work. More recently, GPUN's December 21, 1999 Annual Update of the Integrated Schedule[11/] reported that spent fuel pool cleanup activity related to compacting material into shipping liners has been completed. NIRS has discussed none of this publicly available information. NIRS has provided no information indicating that the amount of deferred work remaining to be performed is material or genuinely disputed.

Similarly, NIRS does not address the scheduling of any remaining items. GPUN's December 21, 1999 Annual Update of the Integrated Schedule shows that the Thermo-Lag fire barrier modifications, seismic qualification modifications, and Generic Letter 96-06 modifications, as well as the control room human factors design review, spent fuel pool reracking

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10/ NIRS identifies this project based on a preliminary meeting between GPUN and the NRC in August 1997 where the possibility of deferring this project was discussed, but ignored the September 1997 Supplemental Update to the NRC Integrated Schedule (available in the Public Document Room) reflecting the decision to proceed with this project in the 17R outage. GPUN's January 1999 Update (Attachment J to the Petition) reported that this project has been completed.

11/ Letter from S. Levin to NRC, "Long Range Planning Program (LRPP) Annual Update of Integrated Schedule 'ABC' Projects Listing – December 1999" (Dec. 21, 1999).

and cleanup, and vessel beltline inspection are all scheduled to be completed in refueling outage 18R this fall. Thus, except for one project which has been canceled,[12/] the items to which NIRS refers at pages 25-27 of its petition are scheduled for completion prior to Oyster Creek entering into another operational cycle. NIRS provides no explanation why the Oyster Creek license cannot be transferred in advance of this scheduled work or why the NRC inspection and oversight process is not sufficient means of monitoring Oyster Creek's progress.

NIRS similarly provides no information suggesting that any deferred work necessary for continued operations will not be completed. NIRS does not address Section 7.1(p) of the Purchase and Sale Agreement (Application, Enclosure 3), which requires GPUN to complete certain operational recovery work by milestones prior to closing. NIRS also does not address the fact that the parties have agreed to an outage plan, which GPUN will fund subject to reimbursement by AmerGen over a nine-year period. *See* Section 6.17 (Application, Enclosure 3). This includes all of the items scheduled to be completed in the 18R outage. Moreover, the cost for these projects and the funding to reimburse GPUN are factored into AmerGen's budgetary plans and are already included in AmerGen's financial projections. In sum, NIRS fails to demonstrate the existence of any material safety issue that would prevent the license transfer.

In its issue VI.B, NIRS asserts that, contrary to the statement in the Application that no physical changes would be made to Oyster Creek as a result of the transfer, GPUN is engaged in a "highly complex and controversial" activity to expand the Oyster Creek spent fuel pool "as a direct result of the license transfer." Petition at 31. GPUN applied for an amendment to allow

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12/ The December 1999 Update reports that the Anticipatory Scram Bypass Logic Modification has been deleted from the Integrated Schedule.

spent fuel pool expansion in June, 1999, well before AmerGen agreed to purchase the plant. *See* 64 Fed. Reg. at 44759. The purpose of this amendment was to ensure that full core off-load capability would be available to support the decommissioning plan and, therefore, was independent of the license transfer. Consequently, NIRS' assertion that this spent fuel pool expansion is the "direct result" of the license transfer is not only unsupported, but clearly wrong. Rather, the spent fuel pool expansion is a separate, unrelated proceeding, and any issues concerning the spent fuel expansion are simply beyond the scope of this license transfer proceeding.

Further, the proposed amendment to expand the spent fuel pool was noticed in the Federal Register on August 17, 1999, with a thirty-day period for any person to request a hearing. *Id.* Neither NIRS nor any other party sought a hearing, so there is no basis to characterize the amendment as controversial, as NIRS does. NIRS also provides no explanation why this amendment is any more complex than the similar amendments that the NRC has granted for other plants. Indeed, NRC's Federal Register notice makes a proposed finding of no significant hazards consideration. In sum, there is no indication of the existence of any genuine dispute over a material issue.

NIRS also states that GPUN is unable or unwilling to employ the NUHOMS ISFSI at Oyster Creek. Petition at 33. This assertion is unsupported (and incorrect). More importantly, just as the spent fuel pool expansion is beyond the scope of the proceeding, so too is the adequacy of the NUHOMS system that is already installed at the plant. Moreover, if NIRS' issue VI.B is intended to suggest that AmerGen will not be able to store spent fuel generated from further plant operation, or that such additional storage is unsafe, its contention is an impermissible collateral attack on the NRC's waste confidence rule. *See* 10 CFR § 51.23. Such

challenges to NRC regulations are not permitted in a licensing proceeding, absent a waiver by the Commission of its regulations upon a showing of special circumstances. 10 CFR §§ 2.758, 2.1239; *see also Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974). No such showing has been made here.

In its issue VI.C, NIRS alleges that GPUN management is placed under adverse conditions because of the deferral of numerous issues, attrition of the GPUN staff, and need to expedite numerous license amendments to support the schedule for the sale. Petition at 36. This allegation is vague and speculative, unsupported by any basis, and irrelevant to this license transfer proceeding.

At the outset, as previously discussed, NIRS has not provided any showing that a significant amount of deferred work remains to be performed. Certainly, it provides no information suggesting that the work scheduled for the 18R outage cannot be properly completed. NIRS similarly fails to provide a basis for the suggestion that attrition in the plant staff will prevent proper completion of work. NIRS reference to a statement at a 1997 that the attrition rate was higher than normal after the possible closure of the plant was announced (Petition at 24) provides no meaningful indication of any problem with the current staffing levels.[13/]

Similarly, NIRS provides no information to support the claim that "numerous" amendments will be needed as a result of the sale, or that the workload will in any way stress GPUN management. In particular, while NIRS refers to six items on page 38 of its petition,

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13/ In fact, the Oyster Creek staffing has been very stable over the last year as a result of an employee retention plan, use of experienced contractor support, and new hirings. With the sale of the plant to AmerGen, Oyster Creek will have access to even more technically qualified and experienced personnel.

those items not only are unremarkable on their face, but also they reflect NIRS' misunderstanding of discussions at a November 30, 1999 meeting. Oyster Creek does not need or plan to submit a technical specification change request for integrated leak rate testing. Similarly, there is no need or current schedule to submit technical specification improvements. Conversely, the licensing actions relating to charcoal filters[14/] and inservice inspections[15/] have already been submitted. The last two items listed by NIRS relating to the fall refueling outage work order and the reload analysis, are normal activities for any refueling outage. In sum, NIRS' assertion that there is a "vast amount" of work and analysis that must be performed for continued operation lacks any basis.

NIRS also provides no basis to suppose that any amendments needed for the next outage cannot be prepared and approved in a timely and professional manner. While NIRS refers to a withdrawn amendment related to the reactor building crane (Petition at 39) to suggest that GPUN's license amendment applications may be questionable, the amendment in question was filed in April 30, 1999, long before the sale, and therefore, it has no relation to the license transfer or sale. Moreover, the amendment was withdrawn because NIRS' intervention made it unlikely that the amendment could be approved in time to be useful, and not because of any deficiency in the amendment application. This amendment has no relation whatsoever to the

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14/ The technical specification change for charcoal filters is simply a response to Generic Letter 99-02, issued in June 1999, asking licensees to amend their technical specifications to reference ASTM D3803-1989. The amendment application was submitted on December 1, 1999. Letter from S. Levin to NRC, "Tech Spec Change Request No. 270, Testing Protocol for Activated Charcoal in ESF Systems" (Dec. 1, 1999).

15/ The changes to the in-service inspection program do not involve license amendments. Rather, the program changes are subject to relief requests under 10 CFR § 50.55a, which have already been submitted to the NRC. Letter from S. Levin to NRC, "ASME Relief Request R17 and R18 " (Dec. 30, 1999).

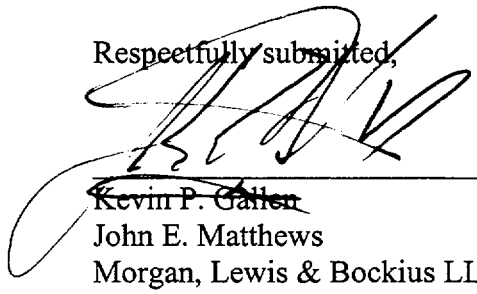
proposed license transfer or to GPUN's or AmerGen's ability to prepare license amendment applications.

Moreover, whether there are amendments needed to support the next outage and continued operation thereafter is irrelevant to the license transfer. None of these amendments is necessary in order for the sale to occur or for the license transfer to proceed. None of these amendments has any relation to the license transfer findings specified in 10 CFR § 50.80. Although NIRS argues that the need for work to support continued operation "preclude[s] a positive finding under 10 CFR § 50.80(c)(2)" (Petition at 40), that regulation only requires that the transfer be consistent with applicable law and regulations. There is no basis in the license transfer standards to require a review of the design or operational status of the plant. NIRS should not be permitted, however, to delay this proceeding or expand the scope beyond the qualifications of the new licensee.

CONCLUSION

For the reasons set forth above, AmerGen respectfully requests that the Commission deny the Petition filed by Nuclear Information and Resource Service on the ground that NIRS lacks standing, has failed to submit a valid issue in accordance with the pleading requirements of 10 CFR § 2.1036, and has failed to establish that there is any material issue of fact or law in dispute. Although AmerGen does not believe that any hearing is warranted, AmerGen respectfully requests that if the Commission determines otherwise, any hearing should be initiated promptly in accordance with the procedures set forth in Subpart M.

Respectfully submitted,



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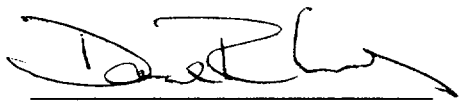

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Dated: January 13, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

January 13, 2000

In the Matter of	
GPU Nuclear, Inc.,	
Jersey Central Power & Light,	**Docket No. 50-219**
and	**License No. DPR-16**
AmerGen Energy Company, LLC	
(Oyster Creek Nuclear Generating Station)	**(License Transfer)**

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of AmerGen Energy Company, LLC in any proceeding related to the above-captioned matter.

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Dated: January 13, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

January 13, 2000

In the Matter of	)	
GPU Nuclear, Inc.,	)	
Jersey Central Power & Light,	)	**Docket No. 50-219**
and	)	**License No. DPR-16**
AmerGen Energy Company, LLC	)	
(Oyster Creek Nuclear Generating Station)	)	**(License Transfer)**

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of AmerGen Energy Company, LLC in any proceeding related to the above-captioned matter.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicants' Answer to Petition for Leave to Intervene of Nuclear Information and Resource Services were served upon the persons listed below by e-mail or facsimile, with a conforming copy deposited in the U.S. mail, first class, postage prepaid, this 13th day of January, 2000.

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