UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 5/3/00

COMMISSIONERS:

SERVED 5/3/00

Richard A. Meserve, Chairman
Greta Joy Dicus
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Edward McGaffigan, Jr.
Jeffrey S. Merrifield

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

CLI-00-06

MEMORANDUM AND ORDER

This proceeding involves a November 5, 1999, joint application by AmerGen Energy Company, LLC ("AmerGen"),[1] GPU Nuclear, Inc. ("GPUN," a wholly-owned subsidiary of GPU, Inc.) and Jersey Central Power & Light Company ("Jersey Central," also a wholly-owned subsidiary of GPU, Inc.) seeking authorization for the transfer to AmerGen of both GPUN's facility operating license for the Oyster Creek Nuclear Generating Station ("Oyster Creek") and Jersey Central's 100-percent ownership in Oyster Creek. AmerGen, GPUN and Jersey Central (jointly "applicants") submitted their application pursuant to Section 184 of the Atomic Energy

[1] AmerGen is a limited-liability corporation owned in equal shares by PECO Energy Company and British Energy Inc. (a wholly-owned subsidiary of British Energy plc). See Applicants' Answer to Petition for Leave to Intervene of Nuclear Information and Resource Service, dated Jan. 13, 2000, at 2 n.1.

Act of 1954 ("AEA")[2] and section 50.80 of the Commission's regulations.[3] On December 16, 1999, the Commission published a notice of this application in the Federal Register. 64 Fed. Reg. 70,292.

On January 5, 2000, the Nuclear Information and Resource Service ("NIRS") filed a petition to intervene and request for hearing, seeking to oppose the proposed Oyster Creek license transfer. NIRS asserts that the application is deficient in five different respects. On January 13, 2000, pursuant to 10 C.F.R. § 2.1307(a), the applicants filed an answer to the NIRS petition. NIRS submitted no reply to the applicants' response, although entitled to do so under our rules. See 10 C.F.R. § 2.1307(b). The staff, as is its usual practice in license transfer cases, has chosen not to participate as a party in the adjudicatory portion of the proceeding. We consider the NIRS petition under Subpart M of our procedural rules. 10 C.F.R. §§ 2.1301 et seq.

DISCUSSION

To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its "interest may be affected by the proceeding," i.e., it must demonstrate "standing." See AEA, § 189a, 42 U.S.C. § 2239(a). The Commission's rules for license transfer proceedings also require that a petition to intervene raise at least one admissible issue. See 10 C.F.R. § 2.1306. For the reasons set forth below, we conclude that NIRS has demonstrated standing, but has proffered no admissible issues. We therefore deny NIRS's petition to intervene and request for hearing, and terminate this proceeding.

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[2] 42 U.S.C. § 2234 (precluding the transfer of any NRC license unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing).

[3] 10 C.F.R. § 50.80. This regulation reiterates the requirements of AEA § 184, sets forth the filing requirements for a license transfer application and establishes the following test for approval of such an application: (1) the proposed transferee is qualified to hold the license and (2) the transfer is otherwise consistent with law, regulations and Commission orders.

A. Standing

For a petitioner to demonstrate standing in a Subpart M license transfer proceeding, the petitioner must

(1) identify an interest in the proceeding by

(a) alleging a concrete and particularized injury (actual or threatened) that

(b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and

(c) is likely to be redressed by a favorable decision, and

(d) lies arguably within the "zone of interests" protected by the governing statute(s).

(2) specify the facts pertaining to that interest.

See 10 C.F.R. §§ 2.1306, 2.1308; Niagara Mohawk Power Corp. (Nine Mile Point), CLI-99-30, 50 NRC 333, 340-41 and n.5 (1999) (and cited authority). Moreover, an organization seeking representational standing must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member.[4]

The Commission has found sufficient for purposes of standing a claim of insufficient funds to ensure safe operation and shutdown, posing a threat of radiological harm to a co-owner's interest in a facility, as a result of thin capitalization, inability to fund operations because of potential litigation liability, and financial insulation of shareholders from potential

[4] See, e.g., Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-48 (1979); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-97 (1979). Regarding the preference for an affidavit, see Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 & n.4 (1999); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 1), LBP-96-1, 43 NRC 19, 23 (1996).

costs. See Gulf States Util. Co. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48 (1994).[5] In Georgia Power Co. (Vogtle Elec. Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25 (1993), the Commission found standing where the petitioner established regular residence near the facility and asserted that he could suffer an increased risk of radiological injury from the transfer of responsibility for safe operations of the facility to a corporate management alleged to be lax on safety because of violations of agency regulations and submissions of false information to the NRC.

Here NIRS has provided sufficient information to meet the minimum standing requirements under these prior Commission holdings. NIRS alleges that the transfer to AmerGen will threaten the health and safety of individuals living within 1-2 miles of the plant, and that AmerGen is inexperienced, inadequately funded and, like its corporate affiliate, will lower staffing levels and deliberately cut corners in safety causing degraded operations which could affect those living nearby. This suffices for standing.

B. Admissibility of Issues

To demonstrate that issues are admissible under Subpart M, a petitioner must

> (1) set forth the issues (factual and/or legal) that petitioner seeks to raise,
>
> (2) demonstrate that those issues fall within the scope of the proceeding,
>
> (3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,
>
> (4) show that a genuine dispute exists with the applicant regarding the issues, and

[5] The Commission concluded that while "it may well be that the two actions [restructuring of Gulf States Utilities and the transfer of operating control] cannot be shown to have an impact on the safety of River Bend or that our regulations require no more demonstration of financial qualifications than that already found adequate by the Staff..., such findings would require us to reach beyond the minimum threshold for standing." River Bend, CLI-94-10, 40 NRC at 49.

> (5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

See 10 C.F.R. § 2.1308; Nine Mile Point, CLI-99-30, 50 NRC at 342 (and cited authority). These standards do not allow mere "notice pleading"; the Commission will not accept "the filing of a vague, unparticularized" issue, unsupported by alleged fact or expert opinion and documentary support. See North Atlantic Energy Serv. Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999) (citation and internal quotation marks omitted). General assertions or conclusions will not suffice. This is not to say that our threshold admissibility requirements should be turned into a "fortress to deny intervention." Cf. Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999), quoting Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The Commission regularly continues to admit for litigation and hearing issues that are material and are adequately supported. See, e.g., Seabrook, supra.

NIRS proffers five issues, which we discuss below seriatim. None, we conclude, is admissible. All of NIRS's proposed issues are either immaterial to license transfer, too conclusory, or both. When the transfer applicants' Answer pointed out these defects, NIRS filed no reply, although Subpart M authorized it to do so. See 10 C.F.R. § 2.1307(b). NIRS's unelaborated petition is plainly deficient under the detailed issue-pleading requirements of Subpart M.

1. Whether AmerGen is financially qualified to own and operate Oyster Creek

NIRS proffers four general lines of argument to support its position that AmerGen is financially unqualified to own and operate Oyster Creek: the $110 million amount pledged by AmerGen's two parent corporations is insufficient to ensure safe operation, maintenance and

decommissioning of Oyster Creek;[6] AmerGen's revenue from Oyster Creek will likewise be insufficient to ensure safe operation and maintenance of the plant; limited liability companies such as AmerGen are inherently unqualified to own and operate nuclear power plants; and AmerGen, as a newly-formed entity, should be subject to financial qualifications standards more stringent than those applied to established companies. The applicants' general responses are that AmerGen's submission of financial information (in particular AmerGen's five year financial projections) complies with the Commission's "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577 (Rev. 1) (March 1999) ("SRP"); that NIRS raises no specific challenges to these projections; and that NIRS's general arguments are unsupported by the requisite facts, expert opinion, or supporting documents. Answer at 11-12.

a. Insufficiency of $110 Million (now $200 million) Pledge from Parent Corporations

i. Operating and Maintenance Expenses

NIRS expresses concern that AmerGen apparently has only $110 million (now $200 million) in assets (pledges from AmerGen's co-owners to cover operating and maintenance expenses). NIRS questions whether this amount is sufficient to cover such expenses for not

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[6] Petition at 1-2. By letter dated March 30, 2000, after the pleadings in this proceeding, AmerGen informed the Commission that its parent corporations had increased the amount of the guarantee to $200 million. On April 26, 2000, NIRS submitted a letter in response, stating that its arguments applied to the $200 million figure just as they had to the $110 million amount.

NIRS makes only passing reference to the alleged inadequacy of decommissioning funding for Oyster Creek. NIRS's remaining discussion focuses on operation and maintenance expenses. We reject the cursory argument regarding decommissioning expenses on the ground that it is completely unsupported by fact or analysis. We further note that the fair market value of the Oyster Creek decommissioning fund at the time of transfer will be approximately $430 million and that AmerGen has committed to maintaining that value at a minimum of $400 million, net of taxes and expenses -- a figure that substantially exceeds our minimum requirements for decommissioning funding.

only Oyster Creek but also five other facilities which AmerGen either currently owns (Clinton and Three Mile Island, Unit 1) or wishes to buy (Vermont Yankee and Nine Mile Point, Units 1 and 2). Petition at 2, 3, 4, 5, 9-11, and Attachments B, C, D & E.[7] In this respect, NIRS asserts that, if Oyster Creek, Clinton and TMI-1 were all out of operation for six months, the costs would far exceed AmerGen's resources.

Also in this same respect, NIRS draws an analogy between AmerGen and another limited liability organization -- Louisiana Energy Services -- which an NRC Licensing Board found financially unqualified due to insufficient parental underwriting and inadequate plans to raise additional construction funds. See Petition at 5-6, citing Louisiana Energy Services, L.P. (Clairborne Enrichment Center), LBP-96-25, 44 NRC 331 (1996).

We disagree with this line of argument. Applicants point out that the availability of the $110 million (now $200 million) is not part of AmerGen's financial qualifications showing under NRC regulations, but is merely an additional demonstration of financial assurance offered by the applicants.[8] Its adequacy is therefore not an issue in our license transfer inquiry and, consequently, it cannot constitute a basis for granting a hearing. See 10 C.F.R. § 2.1306(b)(2). Furthermore, even assuming arguendo that the financial guarantee were a partial basis (in addition to the sources of funds identified by the applicant to cover the first five years of

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[7] One news article (appended to NIRS's petition) includes a quotation from British Energy's chief executive to the effect that AmerGen may eventually own ten or more nuclear facilities (Petition, Attachment D (Scotland Sunday, dated July 25, 1999)), and a recent New York Times article quotes an AmerGen spokesman as saying the company "would like to buy as many as 20 reactors." "Safety Is Issue in Sales of Reactors," New York Times, dated Feb. 22, 2000. Along similar lines, NIRS raises the specter of AmerGen's parent corporations "spreading themselves thin" internationally -- pointing to AmerGen's and/or British Energy's efforts to purchase Canada's two Bruce reactors. Petition at 3-4 and Attachment A.

[8] Answer at 12. The Commission recognizes that the NRC staff has been including conditions requiring a parent company guarantee in the orders approving license transfers as additional assurance of financial qualifications, when such a guarantee has been offered by the applicant.

operating costs, pursuant to 10 C.F.R. § 50.33(f)(2)) for the NRC's determination concerning the financial qualifications of AmerGen, NIRS has not presented any support (by factual affidavits, expert testimony or documentary evidence) for its assertion that the amount is insufficient or unavailable to AmerGen for the stated purpose. In addition, NIRS's reference to LES is misplaced, as we reversed the LES decision. See Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 303-08 (1997).

ii. Price-Anderson Liability

NIRS also argues that, with only $110 million (now $200 million) spread over multiple plants and a potentially limited revenue stream from Oyster Creek's electricity sales (see next section of this order), AmerGen may be unable to meet its obligations under the Price-Anderson Act and 10 C.F.R. §§ 140.21 & 140.92 Article VIII ($10 million per year per reactor, up to a maximum $63 million per reactor) in the event of a major nuclear accident.[9] According to NIRS, this financial risk is particularly high if a nuclear accident were to occur either early in AmerGen's operation of Oyster Creek or when Oyster Creek and/or other AmerGen nuclear plants are in extended shutdown or undergoing major repairs or modifications. See Petition at 4, 11-12.

In our view, NIRS is attempting to impose on AmerGen a requirement more stringent that the one imposed by the regulations (i.e., an acceptable guarantee of payment of deferred annual premiums in an amount of $10 million for each reactor -- 10 C.F.R. § 140.21) -- an

[9] The Commission recently adjusted the $63 million amount for inflation, increasing it to $83.9 million. 10 C.F.R. § 140.11(a)(4); Final Rule, "Adjustment of the Maximum Retrospective Deferred Premium," 63 Fed. Reg. 39,015 (July 21, 1998). NIRS predicts that Congress will increase the regulatory amounts if it renews the Price-Anderson Act in 2002. Alternatively, if Congress does not renew the Act, NIRS asserts that AmerGen would be subject to unlimited liability for a nuclear accident -- a burden for which it is alleged to be financially unprepared. Petition at 12. NIRS's concerns are misplaced. A congressional decision not to renew the Price-Anderson Act would affect only new reactors, not existing ones (like Oyster Creek) built under the current statute. Those latter reactors would continue to enjoy the Act's protections.

attempt which constitutes an impermissible collateral attack on our regulations. See Seabrook, CLI-99-6, 49 NRC at 217 n.8, 220-21. AmerGen meets our Price-Anderson rule; it has explicitly affirmed its intention to obtain the required nuclear property damage insurance and nuclear energy liability insurance required under 10 C.F.R. § 50.54(w) and Part 140, respectively, and AmerGen has likewise recognized its responsibility to enter into an indemnity agreement with the NRC for a guarantee of the deferred premiums, pursuant to 10 C.F.R. §§ 140.22 & 140.92 (Form of Indemnity Agreement), Article VIII. See Answer at 18-19. The transfer will not occur until AmerGen has submitted the financial protection documents required under AEA Section 170 and 10 C.F.R. Part 140, as well as the property insurance required under 10 C.F.R. § 50.54(w). For these reasons, we see no Price-Anderson questions that merit an NRC hearing.

b. Insufficiency of Operating Revenue

NIRS doubts that AmerGen will be able to earn enough operating revenue from Oyster Creek electricity sales to cover all its operating, maintenance and capital expenses -- especially were the plant to shut down for an appreciable period. See Petition at 3. More specifically, NIRS contends that AmerGen has provided inadequate estimates for Oyster Creek's total annual operating costs and revenue for each of the next five years. See Petition at 7-8. Similarly, NIRS argues that "there is no reason to believe" that Oyster Creek will "produce meaningful amounts of electricity" prior to March 31, 2003 (the expiration date for AmerGen's contract to supply electricity to Jersey Central). In support, NIRS points to what it describes as "Oyster Creek's checkered history" which, according to NIRS, supports its prediction that the plant will produce electricity at 65 percent or less of capacity, and may produce no electricity at all, given the plant's as-yet-unaddressed safety issues. See Petition at 9. Likewise, NIRS argues that Oyster Creek is unlikely to sell electricity after March 31, 2003, given the expiration

of AmerGen's contract with Jersey Central and the plant's history of charging more than its competitors for electricity. See Petition at 9.

The Commission has held that an applicant's mere proffering of five-year cost and revenue projections will not be sufficient in the face of plausible and adequately supported claims that those projections are inaccurate or otherwise do not provide adequate assurance of financial qualifications. See North Atlantic Energy Serv. Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219-21 (1999). However, NIRS's issue does not meet this standard, as NIRS has proffered no documentary evidence or expert opinion supporting its conclusion that AmerGen will be unable either to produce meaningful amounts of electricity at Oyster Creek or sell that electricity at market rates. For example, NIRS does not provide any documentation or citation supporting its 65-percent capacity figure, nor is it supported by any information of which we are aware. NIRS's 65-percent figure is contradicted by recent NRC data -- 87.3% in 1993, 67.8% in 1994, 95.8% in 1995, 79.8% in 1996, 93.6% in 1997, and 74.3% in 1998, for an average of 92.2% for non-refueling outage years, 74.0% for refueling outage years, and an overall average of 83.1%.[10]

Next, NIRS asserts that AmerGen's almost-complete reliance on operating revenue to meet costs will require the company to value power production above safety. See Petition at 12-13. We again disagree. Our regulations permit reliance on operating revenues, 10 C.F.R. § 50.33(f)(2), and NIRS has offered no support beyond speculation why the level of Oyster Creek's revenues will lead AmerGen to cut corners in safety. Moreover, NIRS's argument simply ignores the Commission's inspection and enforcement programs. See Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 294, 306-07 (1997) ("in the end, NRC

[10] NUREG-1350, USNRC Information Digest, Vol. 11, p. 96 (Nov. 1999). Some of these averages are too low if one takes into account the 95.28% figure for 1999, reported in Nucleonics Week at 22 (Feb. 10, 2000).

inspections and enforcement action go a long way toward ensuring compliance with our requirements"). NIRS also fails to offer documentary support for its argument that AmerGen is likely to violate our safety regulations. Absent such support, this agency has declined to assume that licensees will contravene our regulations. See, e.g., Curators of the University of Missouri, CLI-95-8, 41 NRC 386, 400 (1995); Northern Ind. Pub. Serv. Co. (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957, 958 (1974); Virginia Elec. and Power Co. (North Anna Power Station, Units 3 and 4), LBP-74-56, 8 AEC 126, 148 (1974).

Finally, NIRS asserts that even the combination of the $110 million (now $200 million) guarantee and the operating revenue will be insufficient to cover Oyster Creek's major anticipated expenses such as the replacement of its Thermo-Lag fire barrier material, the installation of a new, non-single failure-proof crane for heavy load movement, and the costs associated with addressing numerous spent fuel storage issues. See Petition at 8 (alluding to the safety arguments in its Issue VI, discussed below at pp. 17-21). Applicants respond that AmerGen will pay for these expenses through projected income and will not need to draw upon the $110 million (now $200 million) guarantee from its parent companies. See Answer at 16. Again, NIRS has failed to provide us with data or analysis supporting its position and has given us no basis on which to question AmerGen's ability to pay for these expenses through its projected income. Consequently, we must reject this line of argument.

We certainly stand ready to hold a hearing in license transfer cases where petitioners proffer plausible and fact-based claims that a new reactor owner or operator lacks sufficient financing to run the reactor safely. See Seabrook, CLI-99-6, 49 NRC at 219-21. Here, however, NIRS has offered no tangible information, no experts, no substantive affidavits. Instead, it has provided bare assertions and speculation. This is not enough to trigger an adversary hearing on AmerGen's financial qualifications.

c. Miscellaneous Arguments

NIRS asserts that a limited liability company is "inherently unqualified to own and operate" a nuclear power plant such as Oyster Creek pursuant to 10 C.F.R. § 50.40(b). See Petition at 5. We disagree. The Commission has issued reactor licenses to limited liability organizations for decades and NIRS has given us no reason to depart from that practice.

NIRS also asserts that, because both AmerGen and its parent British Energy are less than five years old, the Commission should treat them as "newly-formed entities" subject to the stricter financial requirements of 10 C.F.R. § 50.33(f)(3) and (4). See Petition at 11. NIRS's argument fails to recognize that the applicants have both acknowledged AmerGen's status as a "newly-formed entity" and provided data responding to the stricter financial requirements of the above two regulatory provisions. NIRS also has not explained why that information fails to satisfy those financial requirements.

2. Whether AmerGen (and its parent British Energy) are Fit, on Public Health and Safety Grounds, to Own and Operate Oyster Creek or Any Other U.S. Nuclear Reactor[11]

NIRS asserts that AmerGen has neither owned nor operated a nuclear plant and lacks the necessary base of employees and knowledge to handle nuclear safety issues. According to NIRS, AmerGen is relying entirely on the abilities of its two parents to enable it to operate its reactors safely. See Petition at 13. NIRS has provided no factual basis for its assertions and, indeed, the current record supports applicants on both points. AmerGen currently owns two other nuclear plants: TMI-1 and Clinton. Moreover, AmerGen is acquiring most of the existing organization at Oyster Creek and therefore can hardly be said to rely entirely on its parents' abilities to operate the Oyster Creek reactor. Finally, NIRS does not explain why the NRC

[11] Although NIRS presents ownership of Oyster Creek and ownership of other U.S. reactor as two separate issues (numbered II and III), they are sufficiently similar that we have consolidated our analysis of them.

inspection oversight process is insufficient to monitor the effects of AmerGen management's staffing decisions on the public health and safety.

NIRS next draws the Commission's attention to various statements by AmerGen employees indicating in a variety of contexts that, to cut costs, AmerGen would reduce both personnel and salaries. As an example, NIRS points to AmerGen's comments prior to purchasing Clinton that it would reduce the workforce by more than twenty percent. See Petition at 14 and Attachment F. As another, NIRS identifies British Energy's alleged history of massive cost-cutting, layoffs of key safety personnel, and hiring of outside contractors with little or no knowledge of the company's nuclear facilities -- actions which, according to NIRS, have run afoul of the laws and regulations of the United Kingdom ("UK") and its Nuclear Installations Inspectorate and have also resulted in numerous safety-related incidents at the company's U.K. reactors. See Petition at 14-19, and Attachments G, H. NIRS says that the only reason PECO would ally itself with British Energy is to take advantage of the latter's cost-cutting expertise. See Petition at 15, 17. Finally, according to NIRS, British Energy's numerous safety-significant events and its violations of the UK's nuclear power regulations deprive the Commission of the requisite "reasonable assurance that the applicant will comply with the [Commission's] regulations ... and that the health and safety of the public will not be endangered." See Petition at 17, quoting 10 C.F.R. § 50.40(a).

NIRS's line of argument is flawed in several respects. For key positions necessary to operate a plant safely, the Commission has regulations requiring specific staffing levels and qualifications. See 10 C.F.R. § 50.54(m). Other than those specific positions, the licensee has a responsibility to ensure that it has adequate staff to meet the Commission's regulatory requirements. If a licensee's staff reductions or other cost-cutting decisions result in its being out of compliance with NRC regulations, then (as noted above) the agency can and will take the necessary enforcement action to ensure the public health and safety. The Oyster Creek

application does not on its face suggest any likelihood of a cost-driven lapse in compliance with NRC safety rules.

NIRS's reliance on purported staffing problems at other plants is unavailing. NIRS's comments regarding Clinton are too vague to satisfy our standards of specificity for issues in license transfer proceedings. See page 5, supra. Nor has NIRS demonstrated that any personnel cuts at Clinton resulted in health and safety problems at that facility. British Energy's staffing decisions at its UK reactors is likewise unavailing. Because AmerGen does not manage those UK facilities, any relevance of UK decisions to this proceeding is both remote and speculative.

3. Whether the NRC has Adequately Examined the Public Health, Safety, Financial, and Antitrust Implications of AmerGen's Parent Companies Owning and Operating Nearly 40 Nuclear Reactors Worldwide, with Ambitions to Purchase and Operate More

NIRS is troubled by the possibility that PECO and British Energy could control 10 percent of the world's nuclear capacity and more than 25 percent of the nuclear capacity in the United States, with ambitions to control even more. NIRS asserts that Commission approval of the transfer should await a full antitrust review of the transfer request and a full health-and-safety review regarding whether these two corporations may be "stretched too thin in their ability to operate a multitude of nuclear reactors." See Petition at 19-21.

As NIRS itself recognizes, the Commission recently determined that NRC antitrust review of post-operating license transfers (such as the one at issue here) is unnecessary from both a legal and policy perspective. Kansas Gas and Elec. Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). NIRS has offered no reasons for the Commission to reconsider the position it adopted in Wolf Creek. We therefore reject NIRS's antitrust argument.

Moreover, because AmerGen is not the operator of the plants owned by its parents or their affiliates and because NIRS has provided no expert opinion, references or other information supporting its assertion that AmerGen is at risk of being "stretched too thin," we find that there is no basis for that assertion. AmerGen will of course continue to be subject to our inspection and enforcement programs and, if necessary, we can and will take the appropriate measures to protect the public health and safety.

4. Whether AmerGen Improperly Withheld from the Public Important Information about its Decommissioning Trust Fund

NIRS asserts that AmerGen has improperly withheld from the public the entire section on the Decommissioning Trust Fund (§ 6.12) in its October 15, 1999, Oyster Creek Purchase and Sale Agreement. NIRS is concerned that AmerGen will try to keep any money remaining in the trust fund after completion of decommissioning. NIRS therefore asks the Commission to withhold approval of the license transfer until AmerGen "openly and fully states its intentions about the ratepayer-funded Decommissioning Trust Fund" and discloses the contents of Section 6.12 of the Purchase and Sale Agreement. See Petition at 22-24.

The disposition of any money remaining in the Trust Fund after completion of decommissioning is far beyond the scope of this proceeding. The question of who receives such money not only is irrelevant to the health and safety findings that the Commission must make in this proceeding, but also is a rate question well outside the Commission's jurisdiction. (The proper forum for such an argument is the Federal Energy Regulatory Commission and/or New Jersey's Board of Public Utilities.) Moreover, we consider applicants' request to withhold the contents of section 6.12 to be understandable on the ground that the section deals with the tax treatment of decommissioning fund transfers -- clearly a matter involving confidential

commercial information.[12] Were any aspect of section 6.12 material to the license transfer, we could order its disclosure to petitioner subject to a protective order. See 10 C.F.R. § 2.740(c)(6). NIRS has neither demonstrated materiality nor sought a protective order in this proceeding.

5. Whether the Proposed License Transfer Would Result in Either Changes to Oyster Creek's License Conditions or Physical Changes to the Facility

NIRS argues that, in three respects (Issues VI.A, B and C), the proposed license transfer would result in changes to Oyster Creek's license conditions or physical changes to the facility. See Petition at 23-40. We reject this set of issues on the general ground that they are beyond the scope of this proceeding. The changes to which NIRS refers would have to be made by any licensee operating this plant, regardless of whether the current license is transferred to AmerGen. We also reject the individual issues on the grounds set forth below.

a. Issue VI.A

NIRS asserts that GPUN, from early 1997 until entering into the sales agreement in 1999, intended to shut the plant down in the year 2000 and was therefore pursuing a cost-containment strategy. According to NIRS, if AmerGen intends to continue operating Oyster Creek after the date (later this year) on which GPUN had intended to shut down the plant, then AmerGen will need to reactivate corrective action programs which GPUN had deferred. Given the extensive corrective actions that NIRS anticipates, NIRS questions the accuracy of both AmerGen's and the NRC's statements that the license transfer would result in no physical changes and would necessitate no changes in the plant's license conditions. See Petition at 23-27 and Attachments I, J, K. NIRS argues that it would be inappropriate (i) for GPUN to

[12] The NRC staff issued a letter on March 7, 2000, determining to withhold this information on the ground that it constituted proprietary information. See ADAMS Accession Number ML003690178.

transfer the license of a reactor that requires substantial safety-related work, (ii) for AmerGen to purchase Oyster Creek unless AmerGen intends to shut the reactor down pending completion of those deferred safety projects, and (iii) for the Commission to make the requisite findings under 10 C.F.R. § 50.80(c)(2) (that the transfer is consistent with applicable laws, regulations and orders) and approve the transfer unless the agency intends to require a shutdown of the reactor until completion of the projects. See Petition at 29-31.

NIRS's line of argument suffers from several deficiencies. The items to which NIRS refers are nothing out of the ordinary for the operation and maintenance of a plant and are not relevant to the license transfer. NIRS has failed to show otherwise, or to demonstrate either that the plant is currently unsafe or that the work would not be completed.[13] More specifically, NIRS fails to address both Section 7.1(p) of the Purchase and Sale Agreement (Enclosure 3 to the Application), requiring GPUN to complete certain operational recovery work prior to closing, and the applicants' agreement to an outage plan. This latter plan, according to applicants, includes all items that are scheduled for completion in the upcoming outage as well as an evaluation of the costs. See Answer at 29. (Jersey Central has agreed to fund the upcoming outage, with AmerGen reimbursing the money over the next nine years.) NIRS fails to explain why the Oyster Creek license cannot be transferred in advance of this scheduled work or why the NRC inspection oversight process is insufficient to monitor Oyster Creek's progress in these respects. See Answer at 29.

b. Issue VI.B

NIRS next contends that, contrary to the assumption that the transfer would lead to no physical changes at Oyster Creek, GPUN has filed with the Commission a license amendment request for expansion and reconfiguration of Oyster Creek's spent fuel pool (Tech Spec

[13] Indeed, GPUN indicates that it has already completed most of the work. See Answer at 27.

Change Request 261, dated June 18, 1999). This expansion would increase the maximum storage capacity from 2,645 to 3,035 irradiated fuel assemblies, thereby restoring full core offload capability. Absent the expansion, says NIRS, the reactor would have to be shut down in 2000 and would thus be of no use to AmerGen. Consequently, argues NIRS, this expansion results directly from, and is a necessary element of, the proposed license transfer. NIRS claims that the expansion poses significant health and safety concerns which it believes the Commission should address prior to approving the transfer. See Petition at 31-33, 34, and Attachment L. NIRS relies on a study from Brookhaven National Laboratory which concluded that "there are potential and significant risks associated with spent fuel configurations under a combination of storage geometry, decay times, and reactor type."[14] NIRS questions what it considers GPUN's management decision not to use its available (and licensed) NUHOMS-52B independent spent fuel storage installation ("ISFSI"). According to NIRS, this management decision enabled GPUN both to reduce its capital improvement costs by avoiding the need to install a single failure-proof crane. See Petition at 33-34.

NIRS's argument is outside the scope of this license transfer proceeding. NIRS's argument relates to the issue whether Oyster Creek should file a license amendment application to expand its spent fuel pool or should take other action to make spent fuel storage available.[15] That is a matter appropriately addressed in a license amendment proceeding rather

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[14] See Petition at 35-36, relying on Attachment M. The Brookhaven study is a general study and is not specific to Oyster Creek.

[15] The spent fuel pool currently contains 2420 fuel assemblies and has room for an additional 225. A typical offload at Oyster Creek is about 184 to 188 fuel assemblies. Therefore, Oyster Creek has sufficient capacity for a one-third offload for the upcoming outage (though not for the next one).

than a license transfer case.[16] A license transfer proceeding is not a forum for a full review of all aspects of current plant operation.

c. Issue VI.C

NIRS's final argument is that GPUN management is placed under conditions so adverse as to constitute "a significant change to the 'day-to-day operation of [Oyster Creek]' and is [therefore] vulnerable to the inadequate systematic review of issues associated with the risk to the public health and safety." See Petition at 36-37. In support, NIRS relies on the collective effect of the following developments: the proposed license transfer, the deferral of numerous safety issues over a lengthy time period, the attrition of GPUN management staff, and GPUN's need to expedite numerous license amendment applications to meet the schedules associated with the sale of Oyster Creek. See Petition at 36.

More specifically, NIRS is concerned that the shift in corporate strategy from early closure (contemplated by GPUN) to continued operation (contemplated by AmerGen) has resulted in an inadequate assessment of the risks associated with that shift. NIRS's concern is underscored by the attrition of GPUN management and the purportedly uncertain future of remaining management under the plant's new ownership. NIRS also focuses on the need for six additional license amendments (technical specification changes)[17] before the plant can

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[16] GPUN filed a license amendment application on June 18, 1999, seeking to rerack its spent fuel pool. A notice of opportunity for hearing on the application was published in the Federal Register, but neither NIRS nor any other entity sought a hearing. 64 Fed. Reg. 44,757 (August 17, 1999). The NRC staff is currently reviewing that application.

[17] The six specified changes which, according to NIRS, require an amendment are:

1. Technical Specification Change Request for Integrated Leak Rate Testing with an adopted methodology;
2. Technical Specification Change Request for charcoal filters;
3. Technical Specification Change Request for the deferral and reduction of ISI

(continued...)

operate safely again, and worries that the quality and degree of the safety analyses associated with those amendment requests will be inadequate -- especially given the concurrent reactivation of the deferred corrective action and maintenance programs. See Petition at 36-39.

NIRS has failed to demonstrate that any significant work remains unperformed, that the work scheduled for the upcoming outage cannot be properly completed, or that the attrition from the plant will prevent proper completion of any remaining work. Regarding attrition, NIRS relies on a 1997 statement regarding greater-than-average attrition. However, the 1997 statement does not support the argument that Oyster Creek suffers three years later from a staffing problem. Indeed, no attrition problems have surfaced during the last three years of staff evaluations. In any event, the Commission is interested in whether the plant poses a risk to the public health and safety, and so long as personnel decisions do not impose that risk, our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff. Once again, NIRS does not explain why the NRC inspection oversight process is insufficient to monitor the health-and-safety ramifications of AmerGen's management decisions.

Finally, the need for amendments to support the next outage and continued operation thereafter is irrelevant to the license transfer proceeding in that no amendments are necessary for the sale to occur or the transfer to proceed. As noted above, a license transfer proceeding is not a forum for a full review of all aspects of current plant operation.

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[17](...continued)
Inspections;

4. Technical Specification Improvements had been deferred because of the closure strategy and were being reactivated for the sale agreement and would include several items being rolled into one submittal;
5. The 18th Refueling Outage Work Order is currently under review for Technical Specification Change Request with a submittal by approximately March, 2000; and
6. The Core Analysis for the Reload Submittal is currently behind schedule as a result of deferral to the early closure and decommissioning mode and only recently GPUN decided to order fuel for the 18th Refueling as a result of the sale.

CONCLUSION

For the reasons set forth above, the Commission:

(1) concludes that NIRS has demonstrated standing;

(2) concludes that NIRS's issues are not admissible;

(3) denies NIRS's request for hearing and petition to intervene; and

(4) terminates this proceeding.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of May, 2000.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-00-06) have been served upon the following persons by U.S. mail, first class (with copies to indicated electronic mail addresses) or through NRC internal distribution.

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of May 2000