

October 5, 2000

Mr. Gerald R. Rainey, Chief Nuclear Officer
AmerGen Energy Company, LLC
200 Exelon Way
Kennett Square, PA 19348

SUBJECT: CLINTON, OYSTER CREEK, AND THREE MILE ISLAND - ORDERS
APPROVING APPLICATION REGARDING PROPOSED CORPORATE
RESTRUCTURING (TAC NOS. MA9524, MA9545 AND MA9525)

Dear Mr. Rainey:

The staff has completed its review of your application dated July 19, 2000, as supplemented by letter dated September 15, 2000, requesting approval of the indirect transfer of the 10 CFR Part 50 Facility Operating Licenses held by AmerGen pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations. The indirect transfers would be to Exelon Corporation with respect to PECO Energy Company's (PECO's) 50 percent interest in AmerGen and corresponding indirect interest in the above licenses. The indirect transfers would result if Exelon Corporation, to be formed in connection with the pending merger of Unicom Corporation and PECO, becomes the new holding company of PECO before PECO transfers its 50 percent interest in AmerGen to Exelon Generation Company, LLC. The enclosed Orders approve the proposed transfers, subject to the conditions described therein. Enclosure 4 contains the staff's safety evaluation related to the preceding action.

The Orders have been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Donna M. Skay, Project Manager, Section 2
Project Directorate III
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-461, 50-219, 50-289

Enclosures: 1. Order for Clinton
2. Order for Oyster Creek
3. Order for Three Mile Island
4. Safety Evaluation

cc w/encls: See next page

Mr. Gerald R. Rainey, Chief Nuclear Officer October 5, 2000
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Dear Mr. Rainey:

The staff has completed its review of your application dated July 19, 2000, as supplemented by letter dated September 15, 2000, requesting approval of the indirect transfer of the 10 CFR Part 50 Facility Operating Licenses held by AmerGen pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations. The indirect transfers would be to Exelon Corporation with respect to PECO Energy Company's (PECO's) 50 percent interest in AmerGen and corresponding indirect interest in the above licenses. The indirect transfers would result if Exelon Corporation, to be formed in connection with the pending merger of Unicom Corporation and PECO, becomes the new holding company of PECO before PECO transfers its 50 percent interest in AmerGen to Exelon Generation Company, LLC. The enclosed Orders approve the proposed transfers, subject to the conditions described therein. Enclosure 4 contains the staff's safety evaluation related to the preceding action.

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* Input provided by memo incorporated with no significant changes.

**See previous concurrence

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
AMERGEN ENERGY COMPANY, LLC) Docket No. 50-461
)
(Clinton Power Station))

ORDER APPROVING APPLICATION REGARDING PROPOSED
CORPORATE RESTRUCTURING

I.

AmerGen Energy Company (AmerGen, the licensee) is the holder of Facility Operating License No. NPF-62, which authorizes AmerGen to possess, use, and operate Clinton Power Station (the facility). The facility is located at the licensee’s site in DeWitt County, Illinois. British Energy, Inc., and PECO Energy Company (PECO) each own 50 percent of AmerGen.

II.

By application dated July 19, 2000, AmerGen requested approval of the indirect transfer of the facility operating license to Exelon Corporation, to the extent such would occur upon PECO becoming a subsidiary of Exelon Corporation, a new corporation to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. Supplemental information was provided by a submittal dated September 15, 2000.

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an AmerGen application dated February 28, 2000, in which AmerGen requested approval of the indirect transfer of the Clinton

license (and certain other licenses held by AmerGen) that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the merger between Unicom and PECO referred to above, and will also become a subsidiary of Exelon Corporation. British Energy, Inc., is not involved in the merger, and its interest in AmerGen will remain unchanged. The February 28, 2000, application is still under review.

According to the July 19, 2000, application, the transfer of PECO's 50 percent interest in AmerGen to EGC may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would become and continue to be the direct parent of PECO pending the receipt of necessary approvals to allow PECO's generating assets, including its interest in AmerGen, to be transferred to EGC; PECO would continue to hold its 50 percent interest in AmerGen, which will continue to be the sole owner and operator of Clinton.

Approval of the indirect transfer of the facility operating license that would occur under the immediately preceding circumstances was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the FEDERAL REGISTER on August 31, 2000 (65 FR 53035). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the July 19, 2000, application by AmerGen, the September 15, 2000, supplement, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO while PECO continues to hold its ownership interest in AmerGen, will not affect the qualifications of AmerGen as holder of the license

described above, and that the indirect transfer of the license, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the condition set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer related to the proposed corporate restructuring is approved, subject to the following condition:

- (1) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 19, 2000, supplemental submittal dated September 15, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 5th day of October 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
AMERGEN ENERGY COMPANY, LLC)	Docket No. 50-219
)	
(Oyster Creek Nuclear Generating Station))	

ORDER APPROVING APPLICATION REGARDING PROPOSED
CORPORATE RESTRUCTURING

I.

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. DPR-16, which authorizes AmerGen to possess, use, and operate Oyster Creek Nuclear Generating Station (Oyster Creek or the facility). The facility is located at the licensee's site in Ocean County, New Jersey. British Energy, Inc., and PECO Energy Company (PECO) each own 50 percent of AmerGen.

II.

By application dated July 19, 2000, AmerGen requested approval of the indirect transfer of the facility operating license to Exelon Corporation, to the extent such would occur upon PECO becoming a subsidiary of Exelon Corporation, a new corporation to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. Supplemental information was provided by a submittal dated September 15, 2000.

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an AmerGen application dated

February 28, 2000, in which AmerGen requested approval of the indirect transfer of the Oyster Creek license (and certain other licenses held by AmerGen) that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the merger between Unicom and PECO referred to above, and will also become a subsidiary of Exelon Corporation. British Energy, Inc., is not involved in the merger, and its interest in AmerGen will remain unchanged. The February 28, 2000, application is still under review.

According to the July 19, 2000, application, the transfer of PECO's 50 percent interest in AmerGen to EGC may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would become and continue to be the direct parent of PECO pending the receipt of necessary approvals to allow PECO's generating assets, including its interest in AmerGen, to be transferred to EGC; PECO would continue to hold its 50 percent interest in AmerGen, which will continue to be the sole owner and operator of Oyster Creek.

Approval of the indirect transfer of the facility operating license that would occur under the immediately preceding circumstances was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the FEDERAL REGISTER on August 31, 2000 (65 FR 53034). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the July 19, 2000, application by AmerGen, the September 15, 2000, supplement, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO while PECO continues to hold its ownership

interest in AmerGen, will not affect the qualifications of AmerGen as holder of the license described above, and that the indirect transfer of the license, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the condition set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer related to the proposed corporate restructuring is approved, subject to the following condition:

- (1) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 19, 2000, supplemental submittal dated September 15, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 5th day of October 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an AmerGen application dated February 28, 2000, in which AmerGen requested approval of the indirect transfer of the TMI-1 license (and certain other licenses held by AmerGen) that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the merger between Unicom and PECO referred to above, and will also become a subsidiary of Exelon Corporation. British Energy, Inc., is not involved in the merger and its interest in AmerGen will remain unchanged. The February 28, 2000, application is still under review.

According to the July 19, 2000, application, the transfer of PECO's 50 percent interest in AmerGen to EGC may be delayed beyond the closing of the merger of Unicom and PECO. During this interim period, Exelon Corporation would become and continue to be the direct parent of PECO pending the receipt of necessary approvals to allow PECO's generating assets, including its interest in AmerGen, to be transferred to EGC; PECO would continue to hold its 50 percent interest in AmerGen, which will continue to be the sole owner and operator of TMI-1.

Approval of the indirect transfer of the facility operating license that would occur under the immediately preceding circumstances was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the FEDERAL REGISTER on August 31, 2000 (65 FR 53036). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the July 19, 2000, application by AmerGen, the September 15, 2000, supplement, and other information before the Commission,

the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO while PECO continues to hold its ownership interest in AmerGen, will not affect the qualifications of AmerGen as holder of the license described above, and that the indirect transfer of the license, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the condition set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect license transfer related to the proposed corporate restructuring is approved, subject to the following condition:

- (1) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 19, 2000, the supplemental submittal dated September 15, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 5th day of October 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO PROPOSED CORPORATE RESTRUCTURING
OF PECO ENERGY COMPANY
AMERGEN ENERGY COMPANY, LLC
CLINTON POWER STATION
OYSTER CREEK NUCLEAR GENERATING STATION
THREE MILE ISLAND NUCLEAR STATION, UNIT 1
DOCKET NOS. 50-461, 50-219, 50-289

1.0 INTRODUCTION

In a July 19, 2000, application filed pursuant to 10 CFR 50.80, as supplemented by letter dated September 15, 2000, AmerGen Energy Company, LLC (AmerGen) requested the approval of the U.S. Nuclear Regulatory Commission (NRC) for certain indirect license transfers to the extent effected by a planned corporate restructuring of PECO Energy Company (PECO), a 50 percent owner of AmerGen, that will result in the creation of a new holding company for PECO, Exelon Corporation (Exelon). Exelon will result from the merger of PECO and Unicom Corporation (Unicom).

AmerGen currently owns and operates, and holds the licenses for Clinton Power Station (Clinton), Facility Operating License NPF-62; Oyster Creek Nuclear Generating Station (Oyster Creek), Facility Operating License DPR-16; and Three Mile Island Nuclear Station, Unit 1 (TMI-1), Facility Operating License DPR-50.

The July 19, 2000, application was the subject of a Federal Register notice published on August 31, 2000. The September 15, 2000, supplement provided additional information concerning personnel changes in two management positions at AmerGen, but did not expand the scope of the application as noticed.

2.0 BACKGROUND

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States, with its principal offices located in Wayne, Pennsylvania. AmerGen is organized under the laws of the State of Delaware pursuant to the AmerGen Limited Liability Company Agreement among PECO, a Pennsylvania company; British Energy, plc (BE plc), a Scottish corporation; and British Energy, Inc. (BE Inc.), a Delaware corporation that is a wholly owned subsidiary of BE plc. BE plc is a party to the AmerGen Limited Liability Company (LLC)

Agreement, but only PECO and BE Inc., are the direct owners of AmerGen, each holding a 50 percent ownership interest in AmerGen. This safety evaluation focuses on the proposed indirect transfer of the operating licenses held by AmerGen, following the merger of Unicom and PECO.

By application dated February 28, 2000, and supplements thereto, AmerGen requested approval of the indirect transfer of the licenses for Clinton, Oyster Creek, and TMI-1 that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the pending merger referred to earlier between Unicom and PECO, under which merger Commonwealth Edison Company, PECO, and EGC are to become direct or indirect subsidiaries of Exelon Corporation. The February 28, 2000, application was noticed separately and is still under consideration.

AmerGen indicated in its July 19, 2000, application that the transfer of PECO's interest in AmerGen to EGC may be delayed for an interim period following completion of the merger, pending the receipt of other regulatory approvals of the direct transfer of PECO's generating assets, including PECO's interest in AmerGen, to EGC. During this interim period, PECO, which will have become a subsidiary of Exelon Corporation upon the closing of the merger, would continue to hold its interest in AmerGen and, thus, its indirect interest in the Clinton, Oyster Creek, and TMI-1 licenses, until its interest in AmerGen is transferred to EGC. The July 19, 2000, application requests approval of the indirect transfer of these licenses that would occur upon Exelon Corporation becoming the new parent of PECO while PECO continues to hold its interest in AmerGen for the above interim period.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

AmerGen states in its July 19, 2000, application that, notwithstanding PECO becoming a subsidiary of Exelon Corporation while continuing to hold its 50 percent interest in AmerGen, there will be no change in AmerGen's financial qualifications, and that AmerGen will continue to be financially qualified to hold its NRC licenses because neither AmerGen's financial projections nor PECO's financial support for AmerGen will be affected.

When AmerGen first acquired Clinton, Oyster Creek, and TMI-1, AmerGen demonstrated under 10 CFR 50.33(f) that it was financially qualified to be the holder of the respective licenses. The staff notes that since AmerGen's financial qualifications were first reviewed, the financial support from PECO and BE Inc., to AmerGen (documented by certain letter agreements considered by the staff in connection with AmerGen's acquisition of the above facilities) has actually increased (to \$200 million, from an initial \$65 million), thus, augmenting AmerGen's total possible sources of funds. In its July 19, 2000, application, AmerGen has incorporated by reference its February 28, 2000, application for approval of the indirect license transfers that would occur in connection with EGC acquiring PECO's ownership interest in AmerGen, as well as supplements thereto dated June 1, 2000, and June 28, 2000. AmerGen provided five year projections of revenues and expenses for Clinton, Oyster Creek, and TMI-1 in the June 1, 2000, supplement, in addition to other information. The staff has reviewed AmerGen's projections and concludes that AmerGen's financial projections are consistent with AmerGen continuing to be financially qualified to hold the licenses it now holds. The staff further concludes that since AmerGen's financial projections will not be affected by PECO becoming a subsidiary of Exelon

Corporation on an interim basis, AmerGen's financial qualifications will not be affected by the new holding company structure.

4.0 DECOMMISSIONING FUNDING ASSURANCE

The application states that AmerGen's decommissioning funding arrangements for Clinton, Oyster Creek, and TMI-1 will not be affected in any way by PECO becoming a subsidiary of Exelon Corporation while PECO continues to hold its 50 percent interest in AmerGen. AmerGen is proposing no changes regarding the respective decommissioning trusts. Accordingly, the staff finds the proposed restructuring will not affect AmerGen's decommissioning funding arrangements.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

PECO, as one-half owner of AmerGen, is and will continue to be a United States corporation as a wholly owned subsidiary of Exelon Corporation, which will also be a United States corporation. Pursuant to the Merger Agreement between PECO and Unicom, Exelon Corporation's stock will initially be held by the current shareholders of PECO and Unicom, and will continue to be widely held and traded on the New York Stock Exchange. According to the July 19, 2000, application, all of the directors and officers of Exelon Corporation will be U.S. citizens.

The September 15, 2000, supplement states that the current president and chief nuclear officer (CNO) of Commonwealth Edison Company's (ComEd's) Nuclear Generation Group will also become the CNO and chairman of the management committee of AmerGen, while ComEd's chief operating officer will become the chief executive officer of AmerGen. Both persons are U.S. citizens, according to the supplement. AmerGen's application does not propose any changes in the existing conditions in each of the licenses for Clinton, Oyster Creek, and TMI-1 that relate to the negation action plan currently in place to preclude foreign control over AmerGen, which plan was previously reviewed by the staff in connection with the direct transfer of the licenses to AmerGen. The July 19, 2000, application states that "neither AmerGen, PECO, nor Exelon Corporation will be subject to foreign ownership, control, or domination." With respect to the foreign control prohibition contained in the Atomic Energy Act and the proposed restructuring of PECO, the staff does not know or have reason to believe otherwise.

6.0 TECHNICAL QUALIFICATIONS

In its application dated July 19, 2000, AmerGen stated that the technical qualifications of AmerGen to carry out its licensed responsibilities will remain as they are now. AmerGen will continue to operate AmerGen's nuclear stations in accordance with the terms of the existing licenses.

In its supplemental letter dated September 15, 2000, AmerGen stated that Oliver Kingsley, currently the CNO of ComEd would become the CNO and Chairman of the Management Committee of AmerGen during the interim period following the merger of Unicom and PECO. In addition, ComEd's Chief Operating Officer, Jack Skolds, will become the Chief Executive

Officer of AmerGen. However, the AmerGen Management Committee will retain final decision making authority with respect to the AmerGen facilities.

In consideration of the foregoing, the staff finds that the proposed restructuring will not affect AmerGen's technical qualifications to operate or maintain its nuclear units.

7.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station Unit 1)*, CLI-99-19, 49 NRC 441, 446, (June 18, 1999). Therefore, no antitrust review is required or authorized because the transfer application here postdates the issuance of the operating licenses for Clinton, Oyster Creek, and TMI-1 .

8.0 ENVIRONMENTAL CONSIDERATION

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

9.0 CONCLUSION

In view of the foregoing discussion, the staff concludes that the proposed interim restructuring, under which PECO will become a subsidiary of Exelon Corporation while AmerGen continues to be 50 percent owned by PECO, will not affect the qualifications of AmerGen to be the holder of the licenses for Clinton, Oyster Creek, and TMI-1, and that the indirect transfer of the licenses, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal contributor: M. A. Dusaniwskyj

Dated: October 5, 2000