

December 21, 2001

Mr. Oliver Kingsley, President
and Chief Nuclear Officer
Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: SCHEDULAR EXEMPTION FOR EMERGENCY PREPAREDNESS EXERCISE -
OYSTER CREEK NUCLEAR GENERATING STATION (TAC NO. MB3069)

Dear Mr. Kingsley:

By letter dated October 8, 2001, you requested a one-time exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix E, Section IV.F.2.c to conduct an exercise of the onsite and offsite emergency plans every 2 years. Specifically, you requested to reschedule the Oyster Creek Nuclear Generating Station exercise originally scheduled for October 16, 2001.

The NRC staff has completed its review of your request for exemption and determined that the exemption would provide only temporary relief from the applicable regulation and that you made good faith efforts to comply with the regulation. Accordingly, the exemption is granted in accordance with 10 CFR 50.12(a)(2)(v).

Enclosed is a copy of the Exemption being forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

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

Docket No. 50-219

Enclosure: As stated

cc w/encl: See next page

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OFFICIAL RECORD COPY

Oyster Creek Nuclear Generating Station

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
AmerGen Energy Company, LLC) Docket No. 50-219
)
(Oyster Creek Nuclear Generating Station))
)

EXEMPTION

I.

AmerGen Energy Company (AmerGen or the licensee) is the holder of Facility Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station at power levels not to exceed 1930 megawatts thermal. The facility consists of one boiling-water reactor located at the licensee's site in Ocean County, New Jersey. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or Commission) now or hereafter in effect.

II.

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the biennial exercise required by paragraph 2.c. Paragraph 2.c requires offsite plans for each site to be exercised biennially with participation by each offsite authority having a role under the plan.

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During such biennial exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee successfully conducted a full-participation exercise for Oyster Creek on October 5, 1999. By letter dated October 8, 2001, the licensee requested an exemption from Section IV.F.2.c of Appendix E regarding the conduct of a full-participation exercise originally scheduled for October 16, 2001. Specifically, the licensee proposed rescheduling the exercise originally scheduled for October 16, 2001, to sometime before the end of 2002. However, the next exercise will continue to be scheduled biennially from 2001.

AmerGen is among several licensees requesting exercise exemptions in the wake of the National Emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security directly after the National Emergency. The State of New Jersey was initially involved with the recovery response to the National Emergency and the Federal Emergency Management Agency (FEMA) Region II is deeply involved with recovery efforts in New York City. Further, New Jersey has been deeply involved with the response to mail-based terrorism in the weeks that followed the National Emergency. Considering the extraordinary circumstances, a schedular exemption was expected and is acceptable. However, in this period of heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the full-participation exercise as soon as practical to demonstrate (and maintain) readiness.

The licensee is faced with a difficult task to coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this difficult task, the NRC has allowed licensees to schedule full-participation exercises at any time during the

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calendar biennium. This gives the licensee the flexibility to schedule the exercise within a 12- to 36-month window and still meet the biennial requirement specified in the regulations.

The licensee requested relief from Section IV.F.2.c of Appendix E to 10 CFR Part 50. Although the intent of the request is clear, i.e., the need to postpone the biennial exercise, the citation of regulations to accomplish that intent may not be complete. Section IV.F.2.b of Appendix E to 10 CFR Part 50 may also be cited for completeness. The Commission's analysis encompassed the technical issues necessary to grant a schedular exemption from Sections IV.F.2.b and c for the conduct of the biennial exercise.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

III.

The licensee requests a one-time change in the schedule for the next biennial exercise for Oyster Creek. Subsequent biennial exercises for Oyster Creek would be scheduled at no greater than 2-year intervals in accordance with 10 CFR Part 50, Appendix E, Section IV.F.2.c. Accordingly, the exemption would provide only temporary relief from that regulation, in that the next biennial exercise is scheduled to take place in 2003.

As indicated in the licensee's request for an exemption of October 8, 2001, the licensee had originally scheduled a full-participation exercise for October 16, 2001. As further set forth

in that letter, however, AmerGen requested a schedular exemption as a result of the national security threat in the United States, and the response, recovery, and other activities associated with the September 11, 2001, attacks on the World Trade Center. AmerGen is among several licensees requesting exercise exemptions in the wake of the national emergency of September 11, 2001. It is recognized that it was not appropriate to conduct an exercise during the period of disruption and heightened security directly after the national emergency. However, in this period of continued heightened security concerns regarding nuclear plant vulnerability, it is prudent to conduct the exercise as soon as practical to demonstrate and maintain readiness.

The staff completed its evaluation of the licensee's request for an exemption. The State of New Jersey was initially involved with the recovery response to the national emergency and the Federal Emergency Management Agency (FEMA) Region II is deeply involved with recovery efforts in New York City. Further, New Jersey has been deeply involved with the response to mail-based terrorism in the weeks that followed the national emergency. The staff considered the schedule and resource issues resulting from the national emergency, and the fact that AmerGen conducted the previous Oyster Creek full participation exercise on October 5, 1999.

Oyster Creek successfully conducted a full-participation exercise in October 5, 1999, which was evaluated by the NRC (Inspection Report No. 50-219/99-06) and FEMA (Final Exercise Report Oyster Creek December 29, 2000). The licensee was scheduled to conduct a biennial full participation exercise on October 16, 2001. The requested exemption is to postpone that exercise and conduct it during 2002. The interval between biennial exercises could be as long as 39 months, if the exercise were conducted in December of 2002. This is a bit outside the normal parameters of exercise conduct, in which a period of 36 months is acceptable, as long as the sequential exercises are conducted within the calendar biennium.

However, given the circumstances and the fact that other 2001 exercises in NRC Region I will be rescheduled for 2002, this time frame is acceptable. To reschedule this exercise, AmerGen will have to coordinate with local and State supporting agencies as well as NRC Region I and FEMA Region II. This effort will be complicated by the fact that NRC and FEMA will have to support the normally scheduled exercises in addition to the rescheduled exercises during 2002. The increased flexibility requested by the licensee may be necessary for scheduling of Federal resources more so than local or utility resources.

The licensee provided a description of recently completed drills and training evolutions, as well as the planned training and drill schedule for the next year. The previous Oyster Creek full- participation exercise was conducted on October 5, 1999. The results of this exercise determined that the overall performance of the emergency response organization demonstrated that onsite emergency plans are adequate and that the organization is capable of implementing these plans (reference NRC Inspection Report No. 50-219/99-06.) One exercise weakness involving technical support center communications was identified and the licensee stated that prompt corrective actions were implemented. The State of New Jersey and local governments fully participated in the October 5, 1999 exercise. The licensee stated that corrective actions are complete for the only area requiring corrective action, which involved a facsimile machine problem.

Subsequent to the October 5, 1999 full participation exercise, Oyster Creek conducted emergency response drills on March 29, 2000, May 11, 2000, May 17, 2000, May 18, 2000, and an annual exercise on September 20, 2000. The May 11, 17, and 18, 2000, drills were specifically conducted as proficiency enhancing drills for new emergency response team personnel. The September 20, 2000, annual exercise included active participation by the New Jersey Office of Emergency Management. These drills and the self-evaluated annual exercise

satisfy the drill requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b. Overall performance throughout these drills and exercises demonstrated successful implementation of the Emergency Plan and its Implementing Procedures. AmerGen stated that issues identified during these drills, exercises, and associated critiques are being resolved under the Oyster Creek corrective action program. AmerGen has determined that there will be no decrease in safety as a result of this exemption. Additionally, Oyster Creek conducted a training drill on July 11, 2001, a pre-exercise drill on September 4, 2001, and an additional pre-exercise drill on September 24, 2001. The State of New Jersey and local governments have maintained radiological emergency preparedness by participating in the September 4, 2001, drill. Offsite agencies have completed, without issue, all of the out-of-sequence exercise demonstrations, encompassing FEMA Objective Nos. 15, 16, 17, 18, 19, 20, 21, and 22, in conjunction with the previously planned October 16, 2001, full-participation exercise. Completion of these exercise demonstrations provides added assurance of emergency response preparedness.

AmerGen has stated that, on a continuing basis, measures will be taken to maintain emergency preparedness at Oyster Creek. The existing training and drill schedule currently in place for emergency response activities will remain in place and adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. This includes annual training, requalification, and participation drills for onsite emergency responders. It appears that these measures will maintain an adequate level of emergency preparedness during this period.

Licensee representatives meet routinely with State and local emergency management and have discussed rescheduling of the biennial exercise with these groups. K. Hayden, Captain, Acting Commanding Officer of the New Jersey State Police Emergency Management Section, has submitted a similar exemption request to FEMA RII.

The national emergency of September 11, 2001, rendered the conduct of a nuclear power plant exercise in the previously scheduled time frame inappropriate. Application of the applicable regulation would not serve the underlying purpose of the rule, in that diversion of public agency attention from recovery from the national emergency and management of the mail based terrorist events in New Jersey would not contribute to public health and safety. Postponement of exercise conduct is a benefit to public health and safety that compensates for any decrease in safety that may result. Additionally, the licensee's drill program includes offsite agency participation and is a compensating measure contributing to justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that AmerGen has committed to conduct the exercise during the next calendar year (2002). AmerGen made a good faith effort to conduct the exercise and comply with regulations. The circumstances dictating the request for exemption are beyond the licensee's control. The regulations of this part do allow for the postponement of exercises and the regulations have been invoked for appropriate circumstances. This being the case, the occasional need to postpone exercises was considered as a potential circumstance. The NRC staff has determined that conduct of the full-participation exercise as early as practical in 2002 is prudent even though the licensee is expected to conduct another full-participation exercise in 2003. Accordingly, the licensee made a good faith effort to comply with the schedule requirements of Appendix E for full-participation exercises. The staff finds the request acceptable.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of

10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants AmerGen a one-time schedular exemption from the requirements to conduct an exercise of its onsite and offsite (with full-participation by each offsite authority having a role under the plan) emergency plans every 2 years as required by Sections IV.F.2.b and c of Appendix E to 10 CFR Part 50. This conclusion is based on AmerGen's commitment to conduct the postponed exercise in 2002. The staff recommends that AmerGen schedule the exercise as early as practical in 2002, but the exemption is not predicated on AmerGen following this recommendation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (66 FR 65520).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of December 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Ledyard B. Marsh, Acting Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation