

July 7, 2004

Mr. Christopher M. Crane
President and Chief Nuclear Officer
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4300 Winfield Road
Warrenville, IL 60555

SUBJECT: OYSTER CREEK NUCLEAR GENERATING STATION - EXEMPTIONS FROM
THE REQUIREMENTS OF 10 CFR 50.71(e)(4), REGARDING UPDATED FINAL
SAFETY ANALYSIS REPORT (UFSAR) (TAC NO. MC2443)

Dear Mr. Crane:

The Commission has approved the enclosed exemption from specific requirements of Title 10 of the *Code of Federal Regulations*, Part 50, Subsection 71(e)(4) for Oyster Creek Nuclear Generating Station. This action is in response to a letter from Mr. M. P. Gallagher, Director, Licensing and Regulatory Affairs, AmerGen Energy Company, LLC, dated March 26, 2004, that requested exemptions. The Nuclear Regulatory Commission staff reviewed the application and has granted these exemptions. Specifically, AmerGen is granted a one-time exemption to delay the next UFSAR update to 30 months after the last update, instead of the 24 months allowed by the regulation, to October 25, 2005, and a permanent exemption to submit all future UFSAR updates up to 12 months after completion of a refueling outage, instead of the 6 months allowed by the regulation.

A copy of the Exemption is enclosed and is being forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Peter S. Tam, Senior Project Manager, Section 1
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-219

Enclosure: Exemption

cc w/encl: See next page

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
AMERGEN ENERGY COMPANY, LLC
OYSTER CREEK NUCLEAR GENERATING STATION
DOCKET NO. 50-219
EXEMPTION

1.0 BACKGROUND

AmerGen Energy Company, LLC (the licensee), is the holder of Facility Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station (OCNGS), a boiling-water reactor facility, located in Ocean County, New Jersey. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Paragraph 50.71(e)(4) requires that licensees provide the NRC with updates to the Updated Final Safety Analysis Report (UFSAR) annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect changes up to 6 months prior to the date of filing. This regulation would require the licensee to submit the next OCNGS UFSAR update by April 25, 2005, which is 24 months after the most recent update (April 25, 2003).

By letter dated March 26, 2004, the licensee requested a one-time schedular exemption from the requirements of 10 CFR 50.71(e)(4), extending the filing date by “approximately 6

months.” This one-time schedular exemption would thus extend the 24-month interval between the last and next filing to be 30 months. Since the licensee last submitted an update on April 25, 2003, this proposed one-time, 6-month extension would permit the next update to be as late as October 25, 2005. The requirement to reflect changes up to 6 months prior to the date of filing is unaffected by this exemption, and would still apply.

The licensee also requested a permanent schedular exemption to allow filing of all future UFSAR updates up to 12 months, instead of 6 months, after completion of a refueling outage. Thus, accordingly to the licensee’s current refueling schedule, this would permit the licensee to file future updates in the fall of odd-numbered years.

3.0 DISCUSSION

In its March 26, 2004, application, the licensee stated that following the schedular requirements of 10 CFR 50.72(e)(4) literally means that the licensee has to file both OCNGS and Peach Bottom Atomic Power Station (PBAPS, owned by the licensee’s parent company, Exelon) UFSAR updates in the same time frame (i.e., spring) of odd-numbered years. Such filing schedule for both OCNGS and PBAPS constitutes a hardship for the licensee and its parent company Exelon; additional temporary resources would have to be employed in order to simultaneously prepare both OCNGS and PBAPS updates. Such additional resource expenditure does not contribute to increased nuclear safety.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Section 50.12(a)(2)(iii) of 10 CFR Part 50 indicates that special circumstances exist when compliance with a regulation would result in undue hardship significantly in excess of those contemplated when the regulation was adopted, or that are

significantly in excess of those incurred by others similarly situated. In the licensee's case, a special circumstance exists because of the hardship described above, and the special circumstance requirement of Section 50.12(a)(2)(iii) of 10 CFR Part 50 is satisfied.

The requested schedular exemptions are administrative and would not affect plant equipment, operation, or procedures. The UFSAR is simply a repository document that contains the analysis, assumptions, and technical details of facility design and operating parameters. Until the UFSAR is updated, the recent design and operational changes are documented in the licensee's safety analysis reports, and in the Commission's Safety Evaluations for changes requiring prior approval. Changes to a facility or its operation are effected through processes defined in regulations other than 10 CFR 50.71, such as, 10 CFR 50.90, 10 CFR 50.59, and 10 CFR 50.54. These regulations provide the basis for evaluating proposed changes and ensuring that the changes will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The UFSAR, and its periodic updates, only reflect changes that have already been implemented under various processes prescribed by other NRC regulations such as those cited above. Consequently, extending the due date for the filing of UFSAR updates does not present an undue risk to the public health and safety.

4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not endanger life or property or common defense and security, and are, otherwise, in the public interest. Therefore, the Commission hereby grants the licensee exemptions from the requirements of 10 CFR Part 50, Paragraph 50.71(e)(4) for OCNGS. Specifically, the licensee is granted a one-time exemption to delay the next UFSAR update to 30 months after the last update, instead of the 24 months allowed by the regulation, to October 25, 2005, and a permanent exemption to file all future UFSAR updates up to 12

months after completion of a refueling outage, instead of the 6 months allowed by the regulation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 40989).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of July, 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Ledyard B. Marsh, Director
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Oyster Creek Nuclear Generating Station

cc:

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Oyster Creek Nuclear Generating Station

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