

10 CFR 50.12

2130-04-20116

August 10, 2004

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

Oyster Creek Nuclear Generating Station
Facility Operating License No. DPR-16
NRC Docket No. 50-219

Subject: Request for Exemption from the Requirements of 10 C.F.R. § 2.109(b)

Pursuant to 10 C.F.R. §§ 54.15 and 50.12, AmerGen Energy Company, LLC (AmerGen) hereby requests an exemption from the requirement in 10 C.F.R. § 2.109(b) that an application for a renewed license be submitted to the NRC at least five years prior to the expiration of an existing license, in order to retain the protection of the timely renewal doctrine. Specifically, AmerGen requests an exemption from the timing provision in Section 2.109(b) to allow it to submit a License Renewal Application for Oyster Creek Nuclear Generating Station (Oyster Creek) less than five years prior to the expiration of the license, while maintaining the protection of the timely renewal doctrine. The existing facility operating license for Oyster Creek expires on April 9, 2009.

The attachment to this letter provides the rationale and justification for the exemption request. AmerGen requests that the exemption be issued now, subject to the condition that it become effective only if, six months prior to expiration of the existing facility operating license, the NRC has not issued a renewed operating license for Oyster Creek and only if by then the NRC Staff has issued both an Oyster Creek draft supplemental environmental impact statement (SEIS) and an Oyster Creek safety evaluation report (SER) with open items.

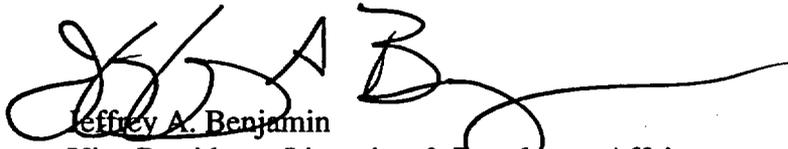
Granting the exemption will not interfere with the license renewal process, or the rights of anyone participating in that process, in any respect. It will simply afford AmerGen the benefit of the timely renewal doctrine in the event that the hearing process is not complete prior to the expiration of the operating license. Any such relief would be temporary, until the merits of the renewal application are resolved. The right of public participation in this process will be afforded in full measure.

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AmerGen Energy Company, LLC
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If you have any questions or require additional information, please do not hesitate to contact us.

Very truly yours,



Jeffrey A. Benjamin
Vice President - Licensing & Regulatory Affairs

Attachment

cc: S. J. Collins , USNRC, Administrator Region 1
P. S. Tam, USNRC, Senior Project Manager
R. J. Summers, USNRC, Senior Resident Inspector
K. Tosch, Manager, Bureau of Nuclear Engineering, NJ Department
of Environmental Protection
File No. 04100

AmerGen Energy Company, LLC
Request for Exemption
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**AMERGEN ENERGY COMPANY LLC APPLICATION FOR EXEMPTION
FROM THE REQUIREMENTS OF 10 C.F.R. § 2.109(b)**

AmerGen Energy Company, LLC ("AmerGen") owns and operates the Oyster Creek Nuclear Generating Station ("Oyster Creek" or "the facility") in New Jersey. The current Operating License for Oyster Creek issued by the U.S. Nuclear Regulatory Commission ("NRC") will expire on April 9, 2009. In light of several events beyond its control, until recently AmerGen had not been in a position to decide to seek license renewal for Oyster Creek. Having now made that decision, AmerGen is in the process of preparing an appropriate license renewal application ("LRA") to be filed with the NRC in July 2005.

In these circumstances, AmerGen should be afforded the same protection of the timely renewal doctrine, as discussed below, as is every other applicant for license renewal before the NRC. This is necessary to assure that AmerGen is not unfairly prejudiced in the event that the license renewal hearing process has not been concluded by April 9, 2009, and Oyster Creek is forced to shut down because its operating license expires.

Accordingly, pursuant to 10 C.F.R. §§ 54.15 and 50.12, AmerGen hereby applies for an exemption from the requirement in 10 C.F.R. § 2.109(b) that an LRA be submitted to the NRC at least five years prior to the expiration of the existing license in order for the timely renewal doctrine to be in effect.¹ Specifically, AmerGen requests an exemption from the timing provision in Section 2.109(b) such that the timely renewal doctrine applies to an LRA for Oyster Creek filed with the NRC less than five years prior to the expiration of the license.

¹ "Section 9(b) of the Administrative Procedure Act (APA), referred to as the 'timely renewal doctrine,' provides that if a licensee of an activity of a continuing nature makes a 'timely and sufficient' application for renewal in accordance with agency rules, the existing license does not expire until the application has been finally determined by the agency. The timely renewal doctrine is embodied in the Commission's regulations at 10 CFR 2.109." 56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991). Section 2.109(b) states: "If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of an operating license at least 5 years prior to the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined."

AmerGen addresses and satisfies the criteria of 10 C.F.R. § 50.12 in this exemption request.² As required by 10 C.F.R. § 50.12(a)(1), and as more fully discussed below, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is fully consistent with the common defense and security. Further, in accordance with 10 C.F.R. § 50.12(a)(2), AmerGen's request demonstrates that special circumstances support issuance of the exemption. Finally, AmerGen requests that the exemption be issued now, subject to the condition that it become effective only if, six months prior to expiration of the existing facility operating license, the license renewal proceeding is ongoing and a renewed operating license for Oyster Creek has not been issued by the NRC and, only if by that time, the NRC Staff has issued both an Oyster Creek draft supplemental environmental impact statement ("SEIS") and an Oyster Creek safety evaluation report ("SER") with open items.

I. BACKGROUND

Oyster Creek is a single unit boiling water power reactor facility. An original provisional operating license was issued for Oyster Creek on April 9, 1969, and the current operating license will expire on April 9, 2009.³ AmerGen, now a wholly-owned subsidiary of Exelon Generation Company LLC ("Exelon"), is the operating licensee. Until recently, AmerGen was jointly owned by Exelon and British Energy plc ("BE"). For several years, BE had faced financial difficulties, and in December 2003, BE sold its share of AmerGen to Exelon.

² 10 C.F.R. § 50.12 sets the governing standard for an exemption from 10 C.F.R. § 2.109(b). The NRC Staff has noted that a license renewal applicant may apply for an exemption from Section 2.109(b). *See* NUREG-1362, "Regulatory Analysis for Final Rule on Nuclear Power Plant License Renewal" (December 1991), at § 5.5. Further, because the license renewal application is governed by 10 C.F.R. Part 54, the exemption provision in 10 C.F.R. § 54.15 comes into play. It states that exemptions from the requirements of Part 54 are governed by 10 C.F.R. § 50.12. Finally, Section 2.109(b) applies, by its express terms, to 10 C.F.R. § 50.21(b) licenses. Oyster Creek is licensed pursuant to Section 104b of the Atomic Energy Act, and 10 C.F.R. § 50.21(b). The reference to Section 50.21(b) in Section 2.109(b) serves as another regulatory link to Section 50.12. Accordingly, AmerGen is proceeding here pursuant to 10 C.F.R. § 50.12.

³ A provisional operating license was issued on April 9, 1969. The provisional license was replaced with an operating license on July 2, 1991. Pursuant to an April 6, 1993, license amendment, the expiration date of the facility operating license was extended from December 15, 2004, to April 9, 2009. The current license expiration date is based on the 40-year period from issuance of the provisional operating license.

In order to meet the five-year time period set forth in Section 2.109(b), AmerGen would have needed to file a sufficient license renewal application on or before April 9, 2004. This would have required AmerGen to begin preparation of an LRA in 2002.⁴ However, AmerGen was not in a position to make a reasonable and sound business decision to pursue license renewal at Oyster Creek at that time. Until earlier this year, AmerGen's ability to reach such a decision was impeded by facility ownership issues and BE's financial restraints. Chief among these was a British government loan condition imposed on BE in an attempt to avoid insolvency and minimize costs. This placed limitations on expenditures for projects such as license renewal. Thus, AmerGen was in no position to decide to proceed with license renewal at Oyster Creek until Exelon acquired full ownership interest.

Furthermore, recent changes in the electrical generation market have further informed the decision to pursue license renewal for Oyster Creek. The economic indicators regarding replacement power options, should Oyster Creek be retired, suggest favorable conditions for continued operation of the unit. Replacement power costs related to a natural gas or coal-fired unit of equal capacity have shifted recently such that license renewal for Oyster Creek is now preferable. The long-term (20-plus years) price outlook for natural gas and petroleum-based fuels has increased in recent years with greater linkage to a strengthening global economy. Also, it is anticipated that there will be continued environmental pressures to reduce sulfur dioxide, nitrogen oxide, carbon dioxide, and mercury emissions in the future. This will result in increased cost to electric generators consuming fossil fuels. Forward-looking power demand estimates also indicate a strong need for generation capacity in the Northeast over the period of re-licensing. Thus, AmerGen has been in a position to make a definitive decision regarding renewal of the facility operating license since only earlier this year. AmerGen formally announced its decision to pursue renewal of the Oyster Creek operating license on February 19, 2004. In light of these factors, AmerGen could not prepare and file a sufficient license renewal application by April 9, 2004, in order to meet the five-year time period in Section

⁴ Industry experience indicates that it takes well over a year to prepare a sufficient power reactor license renewal application.

2.109(b).⁵

AmerGen plans to submit the LRA in July 2005. NRC Staff estimates indicate that the length of time necessary to review a license renewal application and issue the renewed license is currently 22 months if no hearing is granted and 30 months if a hearing is granted. The estimate of 22 months is reliable because the NRC Staff has substantial experience in the review of license renewal applications. The estimate of 30 months for completion of a contested hearing has not been fully tested and, thus, is not so dependable that AmerGen (or any licensee) should rely on it at the expense of foregoing timely renewal protection.

Thus, when the LRA is filed, the nearly four years remaining in the original license term leaves ample time for the NRC Staff to conduct a complete and thorough review of the license renewal application. On the other hand, it is not at all clear that this same length of time will be adequate to allow completion of a contested hearing on the application. The Governor of New Jersey recently announced his opposition to license renewal for Oyster Creek and instructed the New Jersey Department of Environmental Protection to participate fully in the NRC's regulatory process in opposition to the Oyster Creek license renewal application. Indications are that other opponents of license renewal also will seek to oppose the LRA. In these circumstances, it would not be prudent for AmerGen to rely merely on untested predictions of how long it will take to complete a contested hearing on the application. Rather, AmerGen should be afforded the benefits and protections of the timely renewal doctrine, but only in the event that the hearing process has not been concluded and the NRC has not issued a renewed operating license for Oyster Creek six months prior to expiration of the existing operating license, and if the NRC Staff has issued both a draft SEIS and SER with open items.

AmerGen requests that the exemption be issued now, to become effective if these conditions come to pass. This assures that the normal license renewal process will be followed and that the

⁵ "The Commission discourages the filing of pro-forma renewal applications that would be filed simply for the sake of meeting the 10 CFR 2.109(b) deadline." 56 Fed. Reg. 64,943, 64,963 (Dec. 13, 1991).

exemption would take effect only if and when the NRC Staff safety and technical reviews are sufficiently complete to the point of providing reasonable assurance of continued safe plant operation for an interim period pending completion of the hearing process, and there has been a thorough NRC Staff analysis of potential environmental impacts.⁶

II. AMERGEN'S APPLICATION SATISFIES THE CRITERIA OF 10 CFR § 50.12

Section 54.17(a) states, in part, that “[t]he filing of an application for a renewed license must be in accordance with [S]ubpart A of 10 CFR [P]art 2” One provision in Subpart A of Part 2 is the timely renewal provision for power reactors, cited at 10 C.F.R. § 2.109(b). In addition, Section 54.15 provides that: “Exemptions from the requirements of this part [Part 54] may be granted by the Commission in accordance with 10 CFR 50.12.” For the reasons discussed below, the exemption criteria in Section 50.12 are satisfied by this application.

A. 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

1. *This Exemption is Authorized by Law*

10 C.F.R. § 50.12(a)(1) requires a demonstration that an exemption from NRC regulations is authorized by law. The NRC’s timely renewal regulation derives from Section 9(b) of the Administrative Procedure Act of 1946 (“APA”). Section 9(b) of the APA states that “[w]hen a licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.” 5 U.S.C. § 558(c). The NRC has incorporated the APA’s timely renewal doctrine in its regulations at 10 C.F.R. § 2.109.

⁶ In this regard, AmerGen notes that the draft SEIS is the product of public comment, meetings, and NRC Staff inspection activities. An SER with open items is issued only after extensive NRC audit and inspection activities, as well as receipt of the applicant’s response to NRC Staff requests for additional information.

The five-year license renewal timeframe in 10 C.F.R. § 2.109(b) is a creature of agency regulation, not statute. It was adopted by the NRC in its discretion, in the exercise of its rulemaking authority under Section 161 of the Atomic Energy Act of 1954, as amended (“AEA”), 42 U.S.C. § 2201 and further to Section 181 of the Act, 42 U.S.C. § 2231. No statute required the NRC to adopt a five-year provision. Rather, in implementing the APA’s timely renewal provisions, the NRC need only ensure it preserves for itself a reasonable period of time to review sufficient license renewal applications.⁷

In fact, prior to the 1991 promulgation of Part 54, Section 2.109 contained only a 30-day filing requirement for all licenses issued for activities of a continuing nature. The NRC Staff and stakeholders recognized that reactor license renewal application review would take considerably longer than 30 days. The proposed rule for Part 54 contemplated extending the Section 2.109 deadline for power reactor license renewal activities to three years to allow for a more detailed review. The NRC Staff, of its own accord, changed this timing provision to five years in the final rule to make it coincide with another notification threshold in an NRC decommissioning regulation. 56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991).

Thus, neither the AEA nor the APA requires a five-year threshold under the timely renewal doctrine to the review of license renewal applications.⁸ The NRC may shorten the period in its discretion and in accordance with agency rules through change to or exemption from the existing regulation. Accordingly, this exemption request is authorized by law, as required by Section 50.12(a)(1).

⁷ “Any period determined as reasonable for NRC review of license renewal applications should ideally not be restrictive to licensees.” NUREG-1362, “Regulatory Analysis for Final Rule on Nuclear Power Plant License Renewal” (Dec. 1991) at 5-5 (*emphasis added*). See also 56 Fed. Reg. 64,943, 64,963 (Dec. 13, 1991) (Supplementary Information accompanying promulgation of the 1991 license renewal rule).

⁸ It should be noted that, in submitting this exemption request, AmerGen does not seek an exemption from the 40-year limit imposed on commercial operating licenses for power reactor facilities by virtue of 10 C.F.R. § 54.31(b).

2. *Granting this Exemption Will Not Present an Undue Risk to Public Health and Safety*

10 C.F.R. § 50.12(a)(1) requires a demonstration that the granting of an exemption from the requirements in question “will not present an undue risk to the public health and safety.” As demonstrated below, this exemption request fully satisfies this criterion.

AmerGen will satisfy the substantive license renewal criteria set forth in Parts 54 and 51 in connection with the preparation of a license renewal application for Oyster Creek. AmerGen plans to submit an appropriate application in July 2005. It will conduct all of the reviews and evaluations (including, for example, aging management reviews and time-limited aging analysis evaluations) required by NRC regulations, which ensure continued safe plant operation for the period of extended operation (*i.e.*, up to 20 additional years). *See* 10 C.F.R. § 54.21.

This will afford the NRC Staff a full and reasonable period of time to complete its safety and environmental reviews -- consistent with its 30-month schedule for contested cases -- prior to the expiration date of the Oyster Creek operating license on April 9, 2009. Exelon believes fully that the NRC Staff would not authorize renewal of the Oyster Creek operating license until it had reasonable assurance that the findings required by 10 C.F.R. § 54.29 regarding continued, safe operation of the facility can be made. The right of public participation in this process will be afforded in full measure.

Granting the exemption will not interfere with the license renewal process, or the rights of anyone participating in that process, in any respect. It will simply afford AmerGen the benefit of the timely renewal doctrine in the event that hearing process is not complete prior to the expiration of the operating license. Any such relief would be temporary, until the merits of the renewal application are resolved.

Further, any conceivable risk would be equivalent to that inherent in any other license renewal application, where continued operations pending NRC action on the application are

permitted. Moreover, any such risk would be mitigated by several factors. First, existing licensee programs and activities which serve to ensure safe plant operation (*e.g.*, operational, maintenance, engineering, and corrective action programs and processes) will remain in effect during any operations under the timely renewal doctrine. Second, the full panoply of NRC inspection and oversight activities will remain in effect, including the agency's authority to shut down the plant. Third, in light of the proposed conditional effective date of the exemption, these inspection and oversight activities will be further and fully informed by NRC Staff review of the Oyster Creek license renewal application, which will have been completed by the time any exemption may be necessary. Thus, conditioning the exemption as proposed will further assure that no undue risk to public health and safety is presented.

3. *Granting this Exemption is Consistent with the Common Defense and Security*

NRC substantive requirements relating to license renewal will be fully met by AmerGen's renewal application. The timing aspect of Section 2.109(b) in no way affects the security or safeguards features or programs at the facility during any period of interim plant operation. Such features and programs would remain in full effect during any interim period permitted by the timely renewal doctrine. Accordingly, the grant of the requested exemption is consistent with the common defense and security.

B. Special Circumstances Support the Issuance of an Exemption

10 C.F.R. § 50.12(a)(2) requires a showing of at least one of six "special circumstances" to support issuance of the requested exemption. Two of the special circumstances identified in Section 50.12(a)(2) apply to this request. First, application of the five-year time limit in Section 2.109(b) is not necessary, in these circumstances, to achieve the underlying purpose of the regulation. Second, compliance with the regulation would result in undue hardship and costs to AmerGen that are significantly in excess of those contemplated when the regulation was adopted and those incurred by other licensees similarly situated.

1. Application of the Five-Year Provision in Section 2.109(b) is Not Necessary to Achieve the Underlying Purpose (10 C.F.R. § 50.12(a)(2)(ii)) of the Regulation

The underlying purpose of Section 2.109(b) is to ensure that a reasonable period of time is available to the NRC Staff to conduct an adequate review of a license renewal application. The Statement of Considerations accompanying the final rule for Section 2.109(b) underscores this purpose and provides insights into the genesis of the timing provision at issue.⁹

Prior to the 1991 promulgation of Part 54, Section 2.109 contained only a 30-day filing requirement for all licenses issued for activities of a continuing nature. Because the Staff and stakeholders recognized that reactor license renewal application reviews would take considerably longer than 30 days, the proposed Part 54 rule suggested extending the Section 2.109 deadline to three years prior to license expiration.

The Commission believes that the 30-day deadline for timely renewal currently contained in § 2.109 would not provide the NRC a reasonable time to review an application for a renewed operating license for a nuclear power plant. Because the review of a renewal application will involve a review of many complex technical issues, the NRC estimates that the technical review would take approximately 2 years. Any necessary hearing could likely add an additional year or more. Therefore, in the proposed rule, the Commission modified § 2.109 to require that nuclear power plant operating license renewal applications be submitted at least 3 years prior to their expiration in order to take advantage of the timely renewal doctrine.

55 Fed. Reg. 29,043, 29,051 (July 17, 1990).

When the final rule was published, the NRC on its own initiative revised the three-year period to a five-year period for the following reason:

No specific comment was received concerning the proposal to add a 3-year provision for the timely renewal provision for license renewal. The current regulations require licensees to submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their operating licenses. The Commission has concluded that, for consistency, the deadline for the submittal

⁹ 56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991).

of a license renewal application should be 5 years prior to the expiration of the current operating license.

56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991).

The decommissioning regulation referred to in this passage from the relevant regulatory history is 10 C.F.R. § 50.75(f)(2), which provides that: “Each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.”

Thus, when it promulgated Section 2.109(b), the NRC intended to assure that the NRC Staff would have a reasonable period of time to conduct an adequate review of the information and analyses supporting renewal of a facility operating license.¹⁰ In drafting the proposed rule associated with Section 2.109(b), the NRC explicitly noted that its purpose in doing so was to provide more than 30 days to review an application to renew a power reactor operating license. The NRC believed that a conservative and reasonable time in which to review an application was three years.¹¹ Although no comments were received regarding this three-year period, the NRC Staff altered the period to five years so that this timing aspect of license renewal would be consistent with a decommissioning regulation. The effect of such consistency would be to afford the NRC notice regarding the licensee’s future plans for the facility, one way (renewal) or the other (decommissioning).

The NRC was advised formally of AmerGen’s intent to pursue license renewal, rather than decommissioning, for its Oyster Creek facility on February 19, 2004, more than five years before the license expiration date of April 9, 2009. Thus, the underlying purpose of Section 2.109(b) related to NRC notification of the licensee’s intent for the facility was fulfilled. Accordingly, application of the five-year term in Section 2.109(b) for filing a license renewal application is not necessary in this

¹⁰ See note 7 *supra*.

¹¹ 56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991).

situation to achieve the purpose of the regulation. Furthermore, the proposed July 2005 filing date for an Oyster Creek LRA should provide the NRC Staff with ample time in which to perform a full and adequate review. Finally, and as reported to the NRC in March 2003, the Oyster Creek facility enjoys the status of having a fully funded decommissioning fund. Thus the parallel objective codified in Section 50.75(f)(2) is already achieved without regard to this exemption request.

2. *Application of the Regulation will Result in Undue Hardship and Costs to AmerGen that are Significantly in Excess of those Contemplated when the Regulation was Adopted and Those Incurred by Other License Renewal Applicants (10 C.F.R. § 50.12(a)(2)(iii))*

a. *Application of the Regulation Would Result in Undue Hardship and Costs to AmerGen*

It is important to emphasize that AmerGen has not intentionally postponed the decision to seek renewal of the Oyster Creek operating license. As noted, significant factors precluded that decision until February 19, 2004.

The undue hardships facing AmerGen are financial in nature. Without this exemption, AmerGen faces uncertainty and runs the risk of having to shut down the facility at the end of its existing operating license if the renewal hearing process is not complete. And it also places AmerGen in a unique position relative to all other applicants for license renewal which have had and now have the benefit of timely renewal protection and are not exposed to the risk and hardship of possible shutdown if license renewal reviews extend beyond the expiration dates of their licenses. This puts at risk, uniquely, the continued operation of a unit that has performed safely and well for the populace of New Jersey and the northeast United States over the course of its operating life.

Further, without the protection of the timely renewal doctrine, AmerGen places at risk the operating and capital resources (in manpower and money) expended in the effort to renew the facility operating license. AmerGen has prepared a preliminary estimate of the costs of preparation and NRC review of the license renewal application, and estimates that it will spend approximately \$17

million on the renewal effort. The cost estimate is based on actual costs to date associated with Exelon's preparation of the Peach Bottom and Dresden/Quad Cities license renewal applications and the projections for NRC Staff review fees. Without the requested exemption, AmerGen will be exposed to the risk of having the license expire prior to completion of the license renewal hearing process. No other applicant for license renewal has been or is placed at similar risk or hardship.

Thus, AmerGen faces substantial, unique and undue hardships if Oyster Creek is required to shut down because the license renewal hearing process does not conclude before the expiration date of the license. This is a possible result that would be due entirely to the fact that AmerGen was in no position to make the decision to seek license renewal in time to prepare and file an appropriate application by April 9, 2004, because Oyster Creek was owned jointly until recently and one of the owners was in no position to proceed with license renewal. No public interest or regulatory purpose is served in exposing AmerGen, alone in the industry, to this undue risk and hardship. In the weighing of the equities, it makes far more sense to afford AmerGen the protection of the timely renewal doctrine if it becomes necessary, than to expose AmerGen to these unprecedented and substantial hardships and risks that were beyond its ability to avoid.

In summary, AmerGen faces significant hardships if this exemption request is not granted by the NRC, including the risk of closure of a safely-operated unit, with the loss of approximately 634 MW output, as well as the loss of the substantial operating and capital expenses of a license renewal effort, estimated to be \$17 million. All of this burden would be brought to bear on AmerGen were the operating license to expire prior to completion of the license renewal review hearing process and AmerGen not have timely renewal protection.

b. Application of the Regulation Would Result in No Undue Hardship to Other License Renewal Applicants

Both the NRC and the nuclear industry have placed significant attention on the projected schedule for current and future reviews of license renewal applications. AmerGen understands that planning for and coordination of future license renewal applications have created significant

challenges to NRC Staff resources. The license renewal application for Oyster Creek is scheduled to be submitted in July 2005. AmerGen already has reserved a position for Oyster Creek in the NRC queue that would be compatible with the existing schedules of other license renewal applicants and would impose no hardship on the NRC Staff or any other renewal applicants currently in the queue.

III. CONCLUSION

The unique circumstances presented by this exemption application provide ample grounds for issuance to AmerGen of the requested exemption. As required by NRC regulations (Section 50.12), the exemption sought is authorized by law, presents no undue risk to public health and safety, is consistent with the common defense and security, and is clearly supported by special circumstances. Furthermore, the exemption would be conditioned such that it only would become effective if public hearings on the license renewal application have not been concluded and the NRC Staff has not issued a renewed license to Oyster Creek six months prior to expiration of its existing operating license, and only if by then the NRC Staff has issued both a draft SEIS and SER with open items. This timing assures that NRC Staff safety and technical reviews will be sufficiently complete to provide reasonable assurance of continued safe operation for an interim period if necessary, and that there has been a thorough NRC Staff analysis of potential environmental impacts. Accordingly, AmerGen respectfully requests that the NRC grant the exemption on the terms and conditions specified.
