

March 1, 2005

EA-04-213

Mr. Christopher M. Crane
President and CEO
AmerGen Energy Company, LLC
200 Exelon Way, KSA 3-E
Kennett Square, PA 19348

SUBJECT: FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING AND
NOTICE OF VIOLATION (NRC Inspection Report 05000219/2004009)
Oyster Creek Generating Station

Dear Mr. Crane:

The purpose of this letter is to provide you with the final results of our significance determination for the preliminary White finding identified at the Oyster Creek Generating Station during an inspection completed on November 29, 2004. The results of the inspection were discussed with Mr. C. N. Swenson, Site Vice President, and other members on your staff during exit meetings on August 26 and November 29, 2004. The inspection finding was assessed using the significance determination process and was preliminarily characterized as White, a finding with low to moderate importance to safety that may require additional NRC inspections. The basis for this preliminary White finding was explained in our letter dated January 11, 2005, which transmitted the subject inspection report.

This preliminary White finding involved untimely actions to change an Emergency Action Level (EAL) threshold value used to declare a General Emergency (GE) or a Site Area Emergency (SAE). Specifically, when an end-of-cycle rod pattern adjustment was made in the reactor core, required changes were made to emergency operating procedures (EOPs) without changing an incorrect threshold value in the Fission Product Barrier Matrix EAL. As a result, during an emergency, Oyster Creek personnel would have had to rely upon operator recognition of this inconsistency between the EOPs and the EAL, which may have delayed proper classification of an emergency. This resulted in a degradation to an emergency preparedness risk significant planning standard, namely, the requirement to maintain an emergency classification and action level scheme. In addition, your configuration change process was not properly implemented to ensure that the Fission Product Barrier Matrix EAL and other supporting emergency procedures were revised.

In our letter dated January 11, 2005, the NRC provided you an opportunity to either request a Regulatory Conference to discuss this finding, or to explain your position in a written response. In a telephone call with Mr. R. Conte of my staff on January 19, 2005, Mr. C. N. Swenson of your staff indicated that AmerGen declined a Regulatory Conference, but would be providing a written response. The written response, dated January 27, 2005, stated that AmerGen did not contest the preliminary White finding.

After considering the information developed during the inspection and the information provided in your letter, the NRC has concluded that the inspection finding is appropriately characterized as White, an issue with low to moderate increased importance to safety that may require additional inspections. The issue is White, as noted previously, because an emergency preparedness risk significant planning standard, namely, the requirement to maintain an emergency classification and action level scheme, was degraded.

You have 30 calendar days from the date of this letter to appeal the staff's determination of significance for the identified White finding. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.

The NRC has also determined that not maintaining an emergency classification and action level scheme is a violation of 10 CFR 50.47(b)(4), and not properly implementing your configuration change process is a violation of Technical Specification 6.8 as cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violations are described in detail in the subject inspection report. In accordance with the NRC Enforcement Policy, NUREG-1600, this Notice of Violation is considered escalated enforcement action because it is associated with a White finding. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response.

In your response dated January 27, 2005, although you did not contest the significance of the finding, you did request clarification of certain statements made in the above referenced inspection report. You contended that Oyster Creek self-identified this problem and immediately lowered reactor power so that the plant condition was consistent with the Fission Product Barrier Matrix EAL. Additionally, you stated that this problem would not have affected an SAE declaration because another threshold value in the Fission Product Barrier Matrix EAL would be reached first, prompting an SAE declaration. We agree that you self-identified and corrected this problem, and agree that the declaration of an SAE would not have been affected.

Because plant performance for this issue has been determined to be in the regulatory response band, we will use the NRC Action Matrix to determine the most appropriate NRC response for this event. We will notify you by separate correspondence of that determination.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure and your response will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 50-219
License No. DPR-16

Enclosure: Notice of Violation

cc w/encl:

Chief Operating Officer, AmerGen
Site Vice President, Oyster Creek Nuclear Generating Station, AmerGen
Plant Manager, Oyster Creek Generating Station, AmerGen
Regulatory Assurance Manager Oyster Creek, AmerGen
Senior Vice President - Nuclear Services, AmerGen
Vice President - Mid-Atlantic Operations, AmerGen
Vice President - Operations Support, AmerGen
Vice President - Licensing and Regulatory Affairs, AmerGen
Director Licensing, AmerGen
Manager Licensing - Oyster Creek, AmerGen
Vice President, General Counsel and Secretary, AmerGen
T. O'Neill, Associate General Counsel, Exelon Generation Company
J. Fewell, Assistant General Counsel, Exelon Nuclear
Correspondence Control Desk, AmerGen
J. Matthews, Esquire, Morgan, Lewis & Bockius LLP
Mayor of Lacey Township
J. Lipoti, Ph.D., Assistant Director of Radiation Programs, State of New Jersey
K. Tosch - Chief, Bureau of Nuclear Engineering, NJ Dept. of Environmental Protection
R. Shadis, New England Coalition Staff
N. Cohen, Coordinator - Unplug Salem Campaign
W. Costanzo, Technical Advisor - Jersey Shore Nuclear Watch
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SISP Review Complete: RJC 02/11/05 (Reviewer's Initials)

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OFFICE	HQ/NRR		HQ/OE		RI/RA				NSIR/DPR/EPD			
NAME	RFranovich RUrban for		FCongel RUrban for		SCollins (JWiggins for on 2/18/05)				RKahler RUrban for			
DATE	02/22/05*		02/23/05**		02/28/05 (SCollins signed)				02/23/05*			

Enclosure

NOTICE OF VIOLATION

AmerGen Energy Company, LLC
Oyster Creek Generating Station

Docket No. 50-219
License No. DPR-16
EA-04-213

During an NRC inspection conducted between August 23 - November 29, 2004, for which exit meetings were held on August 26 and November 29, 2004, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

- A. 10 CFR 50.54(q) requires a licensee authorized to possess and operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b).

10 CFR 50.47(b)(4) requires the facility licensee to have a standard emergency classification and action level scheme in use, and state and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

Contrary to the above, for the period between July 23 - 31, 2004, the licensee had a degraded emergency classification and action level scheme in use because the Fission Product Barrier Matrix Emergency Action Level contained an incorrect threshold value, which could have delayed a General Emergency declaration and subsequent minimum initial offsite response actions directed by state and local response plans. Specifically, a threshold value (reactor water level) used to make a General Emergency declaration (in conjunction with other factors), was incorrectly listed as "less than minus 30" top of active fuel" when it should have been "less than minus 20" top of active fuel."

- B. Technical Specification 6.8.1 requires written procedures covering the applicable procedures in Appendix "A" of Regulatory Guide 1.33, as referenced in the Quality Assurance Topical Report (QATR). Chapter 6 of the Exelon Quality Assurance Topical Report, NO-AA-10, Revision 72, dated March 8, 2004, describes that the Company has in place programmatic controls, which ensure that procedures are technically correct before use and that procedures are reviewed and revised as needed, when pertinent source material is changed, when the plant design is changed, or when deficiencies are identified and corrected.

Procedure CC-AA-102, "Design Input and Configuration Change Impact Screening," requires responsible departments to identify the procedures within their scope of responsibility that are affected by the configuration change and to create action requests to track the procedure changes, and requires the responsible engineer to determine the effect of the configuration change on the general station emergency response plans or scenarios.

Contrary to the above, on July 23, 2004, the licensee did not follow the configuration control process for implementing the necessary changes to station procedures when pertinent source material changed (reactor water level threshold value). As a result, necessary changes were not made to the Fission Product Barrier Matrix Emergency

Action Level, as well as to Emergency Operating Procedure flow chart 2000-EMG-3200.12, "Secondary Containment and Reactivity Release Control," Table 14, and to Emergency Plan Implementing Procedure, EP-OC-123-1006, "Radiological Assessment Computer Program Technical Basis."

These violations are associated with a WHITE significance determination process finding.

Pursuant to the provisions of 10 CFR 2.201, AmerGen Energy Company, LLC is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN.: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-04-213" and should include for the violations: (1) the reason for the violations, or, if contested, the basis for disputing the violations or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible at NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days.

Dated this 1st day of March 2005.