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August 24, 2005

DOCKETED
USNRC

August 29, 2005(11:00am)

Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: AmerGen Energy Company, LLC
Three Mile Island Nuclear Station, Unit 1
Docket No. 50-289

Request for Public Hearing by
Eric Joseph Epstein

Dear Ms. Vietti-Cook:

On August 15, 2005, Mr. Eric Joseph Epstein filed with you, on the referenced docket, a document that requests a public hearing in connection with the March 3, 2005, application of AmerGen Energy Company, LLC ("AmerGen") under 10 C.F.R. § 50.80. In that application, AmerGen requested Nuclear Regulatory Commission ("NRC") approval – if necessary – of any indirect transfer of the licenses for Clinton Power Station, Unit 1, Oyster Creek Generating Station, and Three Mile Island Nuclear Station, Unit 1 ("TMI") that might be involved in the pending merger of Exelon Corporation (AmerGen's indirect parent) and Public Service Enterprise Group ("PSEG"). Mr. Epstein's request for hearing is limited to TMI. For the reasons discussed below, AmerGen does not believe that any public hearing has been offered and, therefore, no formal response by AmerGen to the petition is required.

AmerGen's March 3, 2005 application under 10 C.F.R. § 50.80 addressed the pending Exelon-PSEG merger. AmerGen's application explained that, under the pending merger agreement, Exelon and PSEG will combine to create Exelon Electric & Gas Corporation ("EEG"). AmerGen will continue to be the owner and licensed operator of TMI and will become an indirect, wholly-owned subsidiary of EEG. Current PSEG shareholders will, following the merger, hold approximately 32% of EEG; current Exelon shareholders will hold the balance. Accordingly, AmerGen specifically requested NRC approval under 10 C.F.R. § 50.80 only to the

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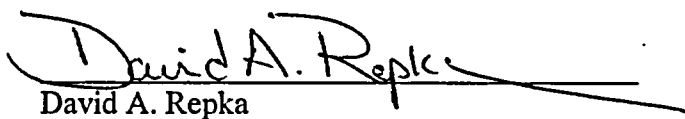
Accordingly, AmerGen specifically requested NRC approval under 10 C.F.R. § 50.80 only to the extent necessary. On July 6, 2005, the NRC Staff documented the completion of its "threshold review," concluding that no NRC indirect license transfers are required under 10 C.F.R. § 50.80 under the present circumstances. Therefore, no *Federal Register* notice of the application has been published and no opportunity for hearing has been offered by the NRC.

Mr. Epstein styles his petition as a request for hearing under 10 C.F.R. § 2.309. However, as reflected in Section 2.309(a), that regulation applies to persons whose interest may be affected by a proceeding. Here, based on the NRC's threshold determination, there is no NRC approval necessary and none will be issued. Accordingly, there is no NRC proceeding that would give rise to any hearing opportunity. At most, Mr. Epstein's petition could be viewed as comments on a threshold determination.

Under these circumstances, AmerGen concludes that a formal answer to Mr. Epstein's petition in accordance with 10 C.F.R. § 2.309(h) is neither warranted nor justified. Moreover, AmerGen believes that the threshold determination by the NRC Staff is timely, accurate, and appropriate.

Mr. Epstein has included in his petition a discussion of his purported standing to intervene and his proposed contentions for hearing. AmerGen does not concede that, if a hearing were offered, Mr. Epstein has demonstrated standing or that his contentions would be admissible. AmerGen recognizes that, under the NRC's rules, if there is a hearing opportunity and a proper petition is filed, the time for the licensee's response on the issues of standing and contentions begins from the date of the petition. Accordingly, if the Commission concludes that there is a proceeding, and that the petition should – for some unforeseen reason – be considered in accordance with the rules of practice, AmerGen requests that it be afforded an appropriate opportunity to respond to the petition.

Respectfully,


David A. Repka
Counsel for AmerGen Energy Company, LLC

cc: Kathryn L. Winsberg
Eric J. Epstein