

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

DIRECT TRANSFER OF FACILITY OPERATING LICENSES

FROM AMERGEN ENERGY COMPANY, LLC

TO EXELON GENERATION COMPANY, LLC

LICENSE NOS. NPF-62, DPR-16 AND DPR-50

CLINTON POWER STATION, UNIT NO. 1;

OYSTER CREEK NUCLEAR GENERATING STATION; AND

THREE MILE ISLAND NUCLEAR STATION, UNIT 1;

DOCKET NOS. 50-461, 50-219, 72-15 AND 50-289

1.0 INTRODUCTION

By application dated June 20, 2008, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081760160), as supplemented by a letter dated July 17, 2008 (together, the application), Exelon Generation Company, LLC (EGC), and AmerGen Energy Company, LLC (AmerGen) (together, the applicants), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80, "Transfer of Licenses," requested that the U.S. Nuclear Regulatory Commission (NRC) approve direct license transfers. The applicants propose to transfer AmerGen's 100 percent ownership interest in Clinton Power Station, Unit No. 1 (Clinton or CPS), Oyster Creek Nuclear Generating Station (Oyster Creek) and its independent spent fuel storage installation (ISFSI), and Three Mile Island Nuclear Station, Unit 1 (TMI-1) (together, the Facilities) to EGC and accordingly transfer the respective licenses to EGC. The transfer of licenses will also result in authorization of EGC, pursuant to the general license provision in 10 CFR 72.210, to store spent fuel at the Oyster Creek ISFSI. EGC will assume all of AmerGen's authority, obligations, and commitments under the licenses for Clinton, Oyster Creek, its ISFSI, and TMI-1, and all NRC orders pertaining thereto. The supplemental information to the application did not expand the scope of the application as originally notified in the *Federal Register*.

2.0 BACKGROUND

The applicants' corporate structures are as follows: EGC is a wholly owned subsidiary of Exelon Ventures Company, LLC, which itself is a wholly owned subsidiary of Exelon Corporation; and AmerGen is currently wholly owned and controlled by EGC. Clinton, located in Harp Township, DeWitt County, approximately 6 miles east of the city of Clinton in east-central Illinois, consists of one boiling-water reactor (BWR). Clinton received a 20 percent power

uprate on April 5, 2002, and is currently authorized to operate at a maximum power level of 3473 megawatts thermal (MWt). The Net Summer Capacity of Clinton is 1,052 megawatts electric (MWe). The NRC issued the construction permit for Clinton on February 24, 1976, and the operating license on April 17, 1987. Clinton's operating license will expire on September 26, 2026.

Oyster Creek, is located in Ocean County, New Jersey, approximately 9 miles south of Toms River, New Jersey. Oyster Creek consists of one BWR that generates 1,930 MWt, and has a Net Summer Capacity of 619 MWe. The U.S. Atomic Energy Commission (AEC) issued the construction permit for Oyster Creek on December 15, 1964, and a provisional operating license on April 9, 1969. The NRC issued the Facility Operating License on July 2, 1991. Oyster Creek's current operating license will expire on April 9, 2009. AmerGen filed for a license renewal in July 2005, and at this time, the decision to renew the current operating license is before the Commission.

In addition to owning and operating Oyster Creek, AmerGen currently operates an ISFSI at Oyster Creek under a general license issued under Subpart K of 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste." Specifically, under 10 CFR 72.210, a general license is issued for ownership and use of ISFSIs at power reactor sites to licensees authorized to possess or operate nuclear power reactors under 10 CFR Part 50. Thus, the transfer of the operating license for Oyster Creek from AmerGen to EGC, will result in EGC holding a general license for the Oyster Creek ISFSI pursuant to 10 CFR 72.210.

TMI-1, Unit 1, located in Dauphin County, Pennsylvania, 10 miles southeast of Harrisburg, Pennsylvania, consists of one pressurized-water reactor (PWR). TMI-1 received a 1.3 percent power uprate on July 26, 1988, and is currently authorized to operate at a maximum power level of 2568 MWt. The Net Summer Capacity of TMI-1 is 786 MWe. The AEC issued the construction permit for TMI-1 on May 18, 1968, and the operating license on April 19, 1974. EGC's operating license for TMI-1 will expire on April 19, 2014.

EGC is a large electrical generation company, with an aggregate net capacity of more than 24,000 MWe, including nearly 17,000 MWe of nuclear capacity. Upon completion of the direct transfer of the licenses from AmerGen to EGC for the Facilities, and with NRC approval, any references to AmerGen as licensed operator and owner of the Facilities in the licenses will be deleted and replaced with EGC under the same conditions and authorizations included in the existing licenses.

### 3.0 REGULATORY EVALUATION

The applicants' request for approval of the direct transfer of the licenses listed above and discussed in this Safety Evaluation is made pursuant to 10 CFR 50.80. Section 50.80(a) states:

No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33

and 10 CFR 50.34, “with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.” Section 50.80(c) states that “the Commission will approve an application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.”

Finally, the requirements of 10 CFR 50.40(b), “Common Standards;” apply with regard to the technical and financial qualifications of the applicant. The NRC staff used the guidance in Standard Review Plan (SRP) NUREG-0800, Section 13.1.1, “Management and Technical Support Organization,” and Sections 13.1.2 - 13.1.3, “Operating Organizations,” to evaluate the applicants’ submittal.

#### 4.0 FINANCIAL QUALIFICATION

Section 50.33(f) of 10 CFR provides that each application shall state:

[E]xcept for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21 (b) or 50.22, information sufficient to demonstrate to the Commission the financial qualification[s] of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought.

Section 50.2 of 10 CFR states, in part, that an electric utility is:

[A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

The NRC staff finds that EGC does not qualify as an “electric utility” as defined in 10 CFR 50.2, because most of its electric revenue used to recover costs will not be set by a separate regulatory authority or by the entity itself. Thus, the NRC staff has determined that EGC must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). Because EGC is not an electric utility and is subject to a full financial qualifications review, it must provide information to demonstrate that it possesses or has reasonable assurance of obtaining the necessary funds to cover estimated operating costs for the period of the license. Section 50.33(f) further states that the applicants shall submit estimates for total annual operating costs for each of the first 5 years of facility operations following the proposed date of the transfer, and indicate the sources of funds to cover these costs. Also, 10 CFR 50.33(k)(1) requires that EGC provide information described in 10 CFR 50.75 indicating that there is reasonable assurance that funds will be available to decommission the facility (See Section 5.0, Decommissioning Funding).

The licensee submitted the following summary of the projected income statement for EGC, in its application dated June 20, 2008:

**EXELON GENERATION COMPANY, LLC**  
**SUMMARY OF PROJECTED INCOME STATEMENT**  
*(In \$ Millions)*

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
<b>Total Revenue:</b>	[				]
<b>Total O&amp;M:</b>	[				]
<b>Operating Income:</b>	[				]
<b>Interest and Tax:</b>	[				]
<b>Net Income:</b>	[				]

The NRC staff review indicates that the assumptions and supporting data supplied as the basis for this summary projected income statement appear to be reasonable. Based upon the revenues and costs provided above, the NRC staff finds that EGC's anticipated revenues will exceed its anticipated operating and maintenance costs, which include those for Clinton, Oyster Creek, and TMI during the 5-year period.

In addition, the NRC staff conducted two scenario analyses assuming a 10 percent decrease in the price of a Megawatt Hour (MWhr) of electricity, and separately, a 10 percent reduction in forecast capacity. The NRC staff finds that the potential reduction in revenue from either case would still result in sufficient revenue to cover the anticipated maintenance and operation expenses.

Based on its review, the NRC staff finds that EGC has demonstrated reasonable assurance of obtaining necessary funds to cover the estimated operation costs for the period of the licenses. Accordingly, the NRC staff has determined that EGC has met the financial qualifications requirements for a nonelectric utility pursuant to 10 CFR 50.33(f), and is financially qualified to hold the licenses for Clinton, Oyster Creek, and TMI-1.

According to the Funding Agreement dated December 22, 2003 (2003 Funding Agreement), EGC provides \$200 million for the benefit of AmerGen for financial assurance. Because EGC will become NRC's licensee for the Facilities, the 2003 Funding Agreement between the applicants will no longer be necessary. Accordingly, the NRC staff finds that upon the transfer of the licenses from AmerGen to EGC, the 2003 Funding Agreement can be eliminated, and the following conditions can be removed for the respective operating licenses: 2.C.(21) from the Clinton license, 3.L from the Oyster Creek license, and 2.c(16) from the TMI-1 license.

**5.0 DECOMMISSIONING FUNDING**

The NRC has determined that the requirement to provide reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning

funding assurance by one or more of the methods described in 10 CFR 50.75(e), as determined to be acceptable by the NRC.

Currently, AmerGen holds the decommissioning funds for Clinton, Oyster Creek, and TMI-1 through AmerGen Consolidation, LLC, and three other single member limited liability companies, AmerGen Clinton non-qualified (NQF), LLC, AmerGen Oyster Creek NQF, LLC, and AmerGen TMI-1 NQF, LLC (the NQF Companies). After the proposed transfer, the NQF Companies, all of which are wholly owned and controlled by AmerGen, will remain in place and become direct, wholly owned and controlled subsidiaries of EGC. In connection with the transfer of the Facilities to EGC, AmerGen Consolidation, LLC, will merge into Exelon Generation Consolidation, LLC, and the NQF companies will change their names to replace "AmerGen," with "Exelon Generation."

EGC has proposed that it will satisfy the NRC's decommissioning financial assurance requirements by having fully prepaid decommissioning trust funds (DTF) for the subject units. The current DTF balances shall remain in total after the transfer of ownership to EGC. In the light of recent market fluctuations that could affect these balances, the following condition is included in each Order approving the direct license transfer to EGC for each facility, and a corresponding license condition will be included in the conforming amendment to each unit's operating license:

At the time of the closing of the transfer of (insert name of unit) and the respective license from AmerGen Energy Company, LLC (AmerGen), to Exelon Generation Company, AmerGen shall transfer to Exelon Generation Company ownership and control of AmerGen (name of unit) NQF, LLC; and AmerGen Consolidation, LLC shall be merged into Exelon Generation Consolidation, LLC. Also at the time of the closing, decommissioning funding assurance provided by Exelon Generation Company must be equal to or greater than the minimum amount calculated pursuant to, and required by 10 CFR 50.75 for (insert name of unit). Furthermore, funds dedicated for (insert name of unit) prior to closing shall remain dedicated to (insert name of unit) following the closing. The name of AmerGen (insert of unit) NQF, LLC shall be changed to Exelon Generation (name of unit) NQF, LLC at the time of the closing.

This condition specifies the decommissioning funding requirements at the time of the transfer of the operating licenses from AmerGen to EGC, and supersedes the previous order condition and license condition in each Facility operating license that established the decommissioning funding requirements for the first direct license transfer for each unit. Accordingly, the NRC staff finds that upon the transfer of the licenses from AmerGen to EGC, the following conditions can be removed from the respective operating licenses: 2.C.(14) from the Clinton license, 3.E from the Oyster Creek license, and 2.c(14) from the TMI-1 license.

The applicants notified the NRC staff that the license transfer would require conforming changes to the licensee's name in the decommissioning trust agreements. The trust agreements specify prior written consent by the Director of the Office of Nuclear Reactor Regulation (NRR) for any material amendments to the agreements. In addition, some of the affected operating licensees have conditions that require 30-day prior written notification, or prior written consent for any material amendments to the agreement. The NRC staff acknowledges the conforming changes

to the licensee's name in the decommissioning trust agreements and is providing the written consent of the Director of NRR through the issuance of this SE.

## 6.0 TECHNICAL QUALIFICATIONS EVALUATION

### 6.1 Management and Technical Support Organization

The NRC staff reviewed the applicants' submittal to determine the acceptability of the proposed corporate management and technical support organization. The NRC staff evaluated the submittal using the applicable acceptance criteria contained in SRP Section 13.1.1, "Management and Technical Support Organization."

In their June 20, 2008, submittal, the applicants stated that,

Exelon Generation and its management team have the necessary technical qualifications to assume operational responsibility for the Facilities. The Exelon Generation nuclear management team is experienced and qualified. The necessary management processes and controls will be applied, with clear lines of authority and communication. Exelon Generation will maintain a successful nuclear organization that applies common programs, processes, and best practices.

The submittal also states,

The existing operating organizations will be fully integrated into Exelon Generation, reporting to the Exelon Generation Chief Nuclear Officer (CNO). The CNO will be the senior corporate officer with all the necessary authority and full responsibility for the safe and reliable operation of the Exelon Generation nuclear fleet. Several technical support functions, including Licensing and Regulatory Affairs and Nuclear Oversight, report directly to the CNO.

The NRC staff finds that the plant staff will remain unchanged by the license transfer with the exception of the integration of the entire AmerGen organization into EGC. The transfers will not otherwise affect the on-site organizational structure. Upon completion of the proposed transfers, EGC will assume authority and responsibility for the functions necessary to fulfill the requirements for emergency preparedness and quality assurance, as stated in the submittal.

Based on the information provided in the submittal, EGC has described that its organization for maintaining the existing technical qualifications for the Facilities are equivalent to AmerGen's management and technical support organization, regarding which the NRC staff is aware of no deficiencies. Accordingly, the NRC staff concludes that the proposed organization for managing and its means of providing technical support for the continued operation of the Facilities under both normal and off-normal conditions are in accordance with SRP Section 13.1.1, "Management and Technical Organization."

## 6.2 Operating Organization

The NRC staff reviewed the applicants' submittal to determine the acceptability of the operating organization and to evaluate changes to the operating organization proposed as a result of the license transfer. The initial operating organization was determined to be acceptable by the NRC staff's initial licensing review. The licensee was required to have each subsequent change to the operating organization evaluated in accordance with 10 CFR 50.59 and 10 CFR 50.54, and the NRC staff is not aware of any deficiencies with the current operating organization. Consequently, the NRC staff's review focused on evaluating any changes to the operating organization proposed as a result of the transfer. The NRC staff evaluated the applicant's submittal using the applicable acceptance criteria contained in SRP Section 13.1.2-1.3, "Operating Organization."

The applicants' submittal indicated that the personnel presently employed by AmerGen will be fully integrated into EGC and will remain unchanged, since AmerGen is currently owned by EGC. The submittal states, "There will be no changes in the day-to-day operations of the Facilities. The proposed change will have no impact on the design, function, or operation of any plant structure, system, or component, either technically or administratively. The existing on-site organization will be transferred to EGC, which currently operates a large nuclear fleet and has demonstrated the ability to operate its facilities."

The transfer of licenses from AmerGen to EGC will not affect the operating organizations and personnel now responsible for the operation and maintenance of the Facilities. The NRC staff concludes that onsite organizations established to operate and maintain the facilities under both normal and off-normal conditions are in accordance with SRP Section 13.1.2 - 1.3, "Operating Organization."

## 6.3 Summary

The applicants have described the corporate level management and technical support organization and the onsite operating organization that will be responsible for the operation and maintenance of the Facilities after the transfer of licensed operating authority to EGC. Based on the preceding evaluation, the NRC staff concludes that the Facilities will have an acceptable corporate organization, and the Facilities will continue to maintain an acceptable onsite organization, and adequate resources to provide technical support for the safe operation of the plants under both normal and off-normal conditions after the transfer of licensed operating authority from AmerGen to EGC. The applicants' submittal adequately addresses the relevant requirements of 10 CFR 50.40 (b) and 10 CFR 50.80.

## 7.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954, as amended, does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). The application here postdates the issuance of the operating licenses for the units under consideration in this safety evaluation and, therefore, no antitrust review is required or authorized. The subject licenses do not contain any

antitrust conditions. Therefore, there are no antitrust issues to be considered in connection with the conforming license amendments.

#### 8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the Atomic Energy Act of 1954, as amended, prohibit the NRC from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The NRC’s regulation, 10 CFR 50.38, contains language to implement this prohibition.

EGC is a wholly owned subsidiary of Exelon Ventures Company, LLC, which itself is a wholly owned subsidiary of Exelon Corporation. The application states that EGC is a limited liability company incorporated in Pennsylvania and has its principle place of business in Pennsylvania, that Exelon Ventures Company, LLC, is a limited liability company incorporated in Delaware and has its principle place of business in Illinois, and that Exelon Corporation is incorporated in Pennsylvania and has its principle place of business in Illinois. The application provided the names and addresses of its directors and executive personnel and stated that all are United States citizens. The application states that EGC will not be owned, controlled, or dominated by foreign entities. The NRC staff does not know or have reason to believe otherwise.

#### 9.0 NUCLEAR INSURANCE AND INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission’s regulations at 10 CFR Part 140, require that the current indemnity agreement be modified to reflect that EGC will become the licensee after the proposed direct transfer takes effect. EGC will be required to maintain the financial protection required by 10 CFR Part 140 and the property insurance by 10 CFR 50.54(w).

By letter dated October 16, 2008, from Mr. John Hoffman, Director, Underwriting, American Nuclear Insurers (ANI), to Mr. Ira Dinitz of the NRC staff, ANI confirmed that it would write nuclear liability insurance for the Facilities upon transfer of the operating licenses from AmerGen to EGC.

#### 10.0 COMMENTS RECEIVED

Notice of the request for approval and opportunity for a hearing was published in the *Federal Register* on August 26, 2008 (73 FR 50368). The NRC staff received three comments from a member of the public, one for each unit involved in the license transfer. The comments did not provide and information additional to that in the application, nor did they provide any information contradictory to that provided in the application.

## 11.0 CONFORMING AMENDMENT

### 11.1 Introduction

As previously stated, the application requests approval of conforming amendments to the Facilities' operating licenses. The amendments eliminate references to AmerGen Energy Company, LLC, in the licenses and, as appropriate, replace them with references to Exelon Generation Company, LLC, to reflect the results of the proposed transfers.

### 11.2 Discussion

The proposed changes to the operating licenses, technical specifications, and environmental technical specifications, as applicable for each unit, modify the licenses to reflect the approved license transfer actions, which are subject to certain conditions set forth in the Orders approving the transfers, and that were identified and discussed earlier in this safety evaluation. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

### 11.3 State Consultation

On accordance with the Commission's regulations, the State officials from Illinois, Pennsylvania, and New Jersey were notified of the proposed issuance of the amendments. The State officials had no comments.

### 11.4 Conclusions with Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

## 12.0 ENVIRONMENTAL CONSIDERATIONS

The subject application is for approval of the transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

## 13.0 CONCLUSION

In view of the foregoing, the NRC staff finds that EGC is qualified to be the holder of the licenses for Clinton, Oyster Creek, and TMI-1, to the extent proposed in the application, and that

the direct transfer of the licenses is otherwise consistent with applicable provisions of law, regulations and orders issued by the Commission pursuant thereto.

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