

June 6, 2000

Mr. T. Gary Broughton, President
and Chief Executive Officer
GPU Nuclear, Inc.
One Upper Pond Road
Parsipanny, NJ 07054

Mr. Gerald R. Rainey, Chief Executive Officer
and Chief Nuclear Officer
AmerGen Energy Company, LLC
965 Chesterbrook Blvd.
Wayne, PA 19087

SUBJECT: OYSTER CREEK NUCLEAR POWER STATION - ORDER APPROVING
TRANSFER OF LICENSE FROM GPU NUCLEAR, INC. AND JERSEY
CENTRAL POWER & LIGHT COMPANY TO AMERGEN ENERGY COMPANY,
LLC, AND APPROVING CONFORMING AMENDMENT (TAC NO. MA7021)

Dear Messrs. Broughton and Rainey:

The U.S. Nuclear Regulatory Commission staff has completed its review of your application dated November 5, 1999, as supplemented by two letters dated April 6, 2000, and another letter dated April 13, 2000, requesting approval of the transfer of the license for the Oyster Creek Nuclear Generating Station held by GPU Nuclear, Inc. and Jersey Central Power & Light Company to AmerGen Energy Company, LLC, and approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. The enclosed Order approves the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment, which will be issued and made effective when the transfer is completed.

Enclosures 3 and 4 contain the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation related to the preceding action. The nonproprietary version of the safety evaluation will be placed in the NRC public document room and added to the Agency-wide Documents Access and Management System's Publicly Available Records System (ADAMS PARS) Library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Helen N. Pastis, Senior Project Manager, Section 1
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-219

Enclosures: 1. Order
2. Conforming Amendment
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/encls: See next page

**NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT
BECOMES NONPROPRIETARY UPON REMOVAL OF ENCLOSURE 4.**

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DATED June 6, 2000

ORDER APPROVING TRANSFER OF LICENSE FOR OYSTER CREEK NUCLEAR
GENERATING STATION

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
GPU NUCLEAR, INC., AND)	Docket No. 50-219
JERSEY CENTRAL POWER &)	
LIGHT COMPANY)	
(Oyster Creek Nuclear Generating Station))	

ORDER APPROVING TRANSFER OF LICENSE
AND CONFORMING AMENDMENT

I.

GPU Nuclear, Inc. (GPUN) and Jersey Central Power & Light Company (JCP&L) are the holders of Facility Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station (Oyster Creek or the facility) at steady-state power levels not in excess of 1930 megawatts thermal. The facility, which is owned by JCP&L, is located in Lacey Township, Ocean County, New Jersey. The license authorizes GPUN to possess, use, and operate the facility, and JCP&L to possess the facility.

II.

Under cover of a letter dated November 5, 1999, GPUN, acting for itself and on behalf of JCP&L, and AmerGen Energy Company, LLC (AmerGen), jointly submitted an application requesting approval of the proposed transfer of the Oyster Creek operating license to AmerGen. GPUN and AmerGen also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by two letters dated April 6, 2000, and another letter dated April 13, 2000, collectively referred to as the application herein unless otherwise indicated.

AmerGen is a limited liability company that was formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc., each own a 50-percent interest in AmerGen. British Energy, Inc., is a wholly owned subsidiary of British Energy, plc. After completion of the proposed transfer, AmerGen would be the sole owner and operator of Oyster Creek. The conforming amendment would remove the current licensees from the facility operating license and would add AmerGen in their place.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by GPUN and AmerGen pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity for a hearing was published in the Federal Register on December 16, 1999 (64 FR 70292). Pursuant to such notice, the Commission received a request for a hearing dated January 5, 2000, from the Nuclear Information and Resource Service (NIRS). On May 3, 2000, the Commission denied the request for a hearing, and terminated the associated proceeding. GPU Nuclear, Inc., et al. (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NCR _____, slip op. (May 3, 2000).

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that AmerGen is qualified to be the holder of the license, and that the transfer of the license to AmerGen is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; that the facility will operate in

conformity with the application, the provisions of the Act and the rules and regulations of the Commission; that there is reasonable assurance the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; that the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations; and that all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated June 6, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license as described herein to AmerGen is approved, subject to the following conditions:

- (1) The AmerGen Limited Liability Company Agreement dated August 18, 1997, and any subsequent amendments thereto as of the date of this Order, may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (2) At least half of the members of AmerGen's Management Committee shall be appointed by a nonforeign member group, all of which appointees shall be U.S. citizens.
- (3) The Chief Executive Officer (CEO), Chief Nuclear Officer (CNO) (if someone other than the CEO), and Chairman of AmerGen's Management Committee shall be U.S. citizens. They shall have the responsibility and exclusive authority to ensure, and shall ensure, that the

business and activities of AmerGen with respect to the Oyster Creek operating license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.

- (4) AmerGen shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or any affiliate, successor, or assignee of PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC.
- (5) AmerGen shall provide decommissioning funding assurance of no less than \$400 million, after payment of any taxes, deposited in the decommissioning trust fund for Oyster Creek when Oyster Creek is transferred to AmerGen.
- (6) The decommissioning trust agreement for Oyster Creek must be in a form acceptable to the NRC.
- (7) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, British Energy, Inc., AmerGen, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (8) The decommissioning trust agreement for Oyster Creek must provide that no disbursements or payments from the trust shall be made by the trustee unless the trustee has first given the NRC 30-days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from

the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

- (9) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30-days prior written notification to the Director, Office of Nuclear Reactor Regulation.
- (10) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (11) AmerGen shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Oyster Creek license and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.
- (12) AmerGen shall take no action to cause PECO or British Energy, Inc. or their affiliates, successors, or assigns, to void, cancel, or diminish their \$200 million contingency commitment to AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen's ability to draw upon the commitment. Also, AmerGen shall inform the NRC in writing whenever it draws upon the \$200 million commitment.
- (13) Before the completion of the sale and transfer of Oyster Creek to it, AmerGen shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

- (14) After receiving of all required regulatory approvals of the transfer of Oyster Creek, GPUN and AmerGen shall immediately inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and state therein the closing date of the sale and transfer of Oyster Creek. If the transfer of the license is not completed by June 30, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 5, 1999, two supplemental letters dated April 6, 2000, and another supplemental letter dated April 13, 2000, and the safety evaluation dated June 6, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 6th day of June 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation