

# **POLICY ISSUE NOTATION VOTE**

February 14, 2008

SECY-08-0018

FOR: The Commissioners  
FROM: Luis A. Reyes  
Executive Director for Operations

SUBJECT: RENEWAL OF FULL-POWER OPERATING LICENSE FOR  
OYSTER CREEK NUCLEAR GENERATING STATION

PURPOSE:

The purpose of this paper is to inform the Commission of the results of the U.S. Nuclear Regulatory Commission (NRC) staff's review of the Oyster Creek Nuclear Generating Station (OCNGS) license renewal application submitted by AmerGen Energy Company, LLC, (AmerGen); and to request that the Commission authorize the Director of the Office of Nuclear Reactor Regulation (NRR) to make the appropriate findings and renew the operating license for OCNGS for an additional 20 years. Based on the Commission's direction in the Staff Requirements Memorandum for SECY-02-0088, the Director of NRR is only authorized to renew operating licenses without Commission authorization for uncontested license renewal reviews. Since the Oyster Creek application was contested, the staff now requests Commission approval to issue the renewed license. This paper does not address any new commitments or resource implications.

SUMMARY:

Following the submittal of AmerGen's license renewal application, the staff completed its safety review of the application and presented its safety evaluation report to the Advisory Committee on Reactor Safeguards (ACRS). The staff found that there is reasonable assurance that the

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activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis for OCNGS. The ACRS concluded that aging management programs provided reasonable assurance that OCNGS could be operated in accordance with its current licensing basis for the period of the extended license without undue risk to the health and safety of the public. The staff performed its environmental review of the OCNGS license renewal application and issued a final supplemental environmental impact statement. The environmental review also considered the National Marine Fisheries Service's Biological Opinion for OCNGS and the State of New Jersey certification of AmerGen's compliance with the Coastal Zone Management Act. The staff has concluded that the adverse environmental impacts of license renewal for OCNGS are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable.

Contentions were filed by the State of New Jersey and citizens groups requesting hearings on the renewal of the license. Public hearings were conducted by the Atomic Safety and Licensing Board (ASLB) and an initial decision was rendered in December 2007, finding that AmerGen had demonstrated that the frequency of its planned ultra-sonic testing measurements, in combination with the other elements of its aging management program, provides reasonable assurance that the sand bed region of the drywell shell will maintain the necessary safety margin during the period of extended operation. An appeal of the ASLB's initial decision is currently pending. Also, New Jersey has appealed to the U.S. Court of Appeals the prior Commission denial of their request to intervene as a party. With respect to the license application, the staff's review is completed, and the text of the renewed license is provided as an enclosure to this paper.

#### BACKGROUND:

By letter dated July 22, 2005, AmerGen submitted its application (Reference 1) to renew the operating license for OCNGS in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 51 and 10 CFR Part 54. In its submittal, AmerGen requested renewal of operating license DPR-16, which was initially issued under Section 104b of the Atomic Energy Act, for a period of 20 years beyond the current license expiration of midnight, April 9, 2009.

#### DISCUSSION:

##### **Staff Performance of Safety Review**

The staff performed its safety review of the OCNGS license renewal application in accordance with 10 CFR Part 54, using guidance in NUREG 1800, Rev. 1, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants", September 2005. Following issuance of the Safety Evaluation Report (SER) with open items in August 2006 (Reference 2), the staff issued an updated version in December 2006 (Reference 3). In March 2007, the NRC staff issued the final SER, "Safety Evaluation Report Related to the License Renewal of Oyster Creek Generating Station" (Reference 4). The SER was published as NUREG-1875, dated April 2007, which presents the conclusions of the staff's review. The SER also documents the results of the staff's review of the scoping and screening, aging management programs, and time-limited aging analyses, in accordance with the requirements of 10 CFR Part 54.

Pursuant to 10 CFR 54.29, the staff concluded in its Safety Evaluation that:

1. Actions have been identified and have been or will be taken with respect to managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require an aging management review under 10 CFR 54.21(a)(1); and
2. Actions have been identified and have been or will be taken with respect to time-limited aging analyses that have been identified to require review under 10 CFR 54.21(c).

The OCNCS renewal application included a supplement to the Final Safety Analysis Report (FSAR), as required by 10 CFR 54.21(d). Appendix A of the SER contains a listing of the commitments AmerGen made related to Aging Management Programs to manage the aging effects of structures and components during the period of extended operation. AmerGen will incorporate appropriate changes to the next update of the Oyster Creek updated FSAR, which will occur after the issuance of a renewed license. The FSAR will be updated for each item in Appendix A in accordance with the guidance for 10 CFR 50.71(e). Since future changes to the FSAR will be made in accordance with 10 CFR 50.59, the NRC is assured that these programs, maintenance activities, and inspection procedures will be adequately controlled. Until the FSAR update is complete, a condition in the proposed renewed license (Enclosure 1) requires that any changes to the items on the list be made in accordance with 10 CFR 50.59.

The listing in Appendix A also identifies future actions. Throughout NUREG-1875, the staff has described various schedules for future actions. The staff has determined that these future actions are not required for operation during the existing license term; however, those commitments which have future actions requiring completion before entering the period of extended operation to effectively manage aging are reflected as license conditions for the renewed license. AmerGen can change the schedules for these actions without prior NRC approval, as long as the actions are completed prior to entering the period of extended operation in accordance with the license condition.

To support the review of AmerGen's license renewal application, Region I conducted an inspection at OCNCS with support from NRR. The inspection was conducted in accordance with Inspection Manual Chapter 2516, "Policy and Guidance for the License Renewal Inspection Program"; and Inspection Procedure 71002, "License Renewal Inspection." As described in the Memorandum from Samuel J. Collins, dated May 1, 2007 (Reference 5), the result of this inspection verified that the contents of the application, aging management programs, implementation, and other activities related to the license renewal of OCNCS are in accordance with docketed commitments and regulatory requirements.

The staff and AmerGen briefed the ACRS Subcommittee on Plant License Renewal regarding the staff's safety review on October 3, 2006, and on January 18, 2007. The ACRS Full Committee was briefed on the updated SER on February 1, 2007. On February 8, 2007, the ACRS issued its, "Report on the Safety Aspects of the License Renewal Application for Oyster Creek Generating Station." The ACRS concluded that, on the basis of its review of the AmerGen license renewal application, the updated SER, and subject to successful incorporation of ACRS' recommendations (discussed below), that AmerGen had properly identified the structures, systems, and components (SSCs) that are subject to aging management programs.

Furthermore, the ACRS concluded that the programs instituted to manage aging-related degradation of the identified SSCs were appropriate and provided reasonable assurance that OCNCS can be operated in accordance with its current licensing basis for the period of the extended license without undue risk to the health and safety of the public.

In its Report, the ACRS provided three recommendations for the staff to incorporate as license conditions, and noted that if the three recommendations are incorporated, “no issues related to the matters described in 10 CFR 54.29(a)(1) and (a)(2) would preclude renewal of the operating license for OCNCS”. The ACRS Report is included in Chapter 5 of NUREG-1875 (Reference 4).

The ACRS recommendations are as follows:

1. We concur with the staff’s proposal to impose license conditions to increase the frequency of the drywell inspections and to monitor the two drywell trenches to ensure that the sources of water are identified and eliminated.
2. The staff should add a license condition to ensure that the applicant fulfills its commitment to perform an engineering study prior to the period of extended operation to identify options to eliminate or reduce the leakage in the OCNCS refueling cavity liner.
3. The staff should add a license condition to ensure that the applicant fulfills its commitment to perform a 3-D (dimensional) finite-element analysis of the drywell shell prior to entering the period of extended operation.

On March 8, 2007, the Executive Director for Operations responded to and agreed with the ACRS’ recommendations. The staff agreed to impose a license condition to require AmerGen to increase the frequency of the drywell inspections and to monitor the two drywell trenches to ensure that the sources of water are identified and eliminated. In addition, the staff agreed to ensure that the applicant fulfills its commitment to: (a) perform an engineering study prior to the period of extended operation to identify options to eliminate or reduce the leakage in the OCNCS refueling cavity liner; and (b) perform a 3-D finite element analysis of the drywell shell prior to entering the period of extended operation.

Accordingly, the staff finds that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis for OCNCS.

### **Staff Performance of Environmental Review**

The staff performed its environmental review of the OCNCS license renewal application in accordance with 10 CFR Part 51, using the guidelines described in NUREG-1555, “Standard Review Plans for Environmental Reviews for Nuclear Power Plants,” issued February 2000 and its Supplement 1, “Operating License Renewal.”

On September 16, 2005, the staff published a Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) and conduct scoping, initiating a 60-day scoping period. The SEIS, prepared by the staff for the plant-specific review, is a supplement to the Generic

Environmental Impact Statement (GEIS), NUREG-1437, that was codified in 10 CFR Part 51 for license renewal. The SEIS for OCGNS is Supplement 28 to the GEIS. The staff visited the OCGNS site in October 2005, and then held two public scoping meetings on November 1, 2005, in Toms River, New Jersey. The Staff reviewed the comments received during scoping, reviewed related documents, and consulted with Federal, State, and local agencies. On June 23, 2006, the staff issued a draft of the SEIS (Supplement 28 to NUREG-1437), which contained the preliminary results of the staff's evaluation and recommendation.

With the publication of the Environmental Protection Agency Notice of Filing of the draft SEIS, the NRC initiated a 75-day public comment period on the preliminary results of the staff's review. During this comment period, two public meetings were held in Toms River, New Jersey on July 12, 2006. In these meetings, the staff described the approach and results of the NRC environmental review and answered questions from the public. The comment period for the draft SEIS ended on September 8, 2006. The staff evaluated the comments received on the draft SEIS and completed its analysis, considering and weighing the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and the alternatives available for reducing or avoiding adverse effects. The final version of the SEIS for OCGNS was issued on January 19, 2007 (Reference 6).

Disposition of the comments from members of the public are addressed in the SEIS. As discussed in Section 9.3 of the SEIS, the NRC staffs preliminary recommendation was that the Commission determine that the adverse environmental impacts of license renewal of OCGNS are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. This was determined on the basis of: (a) the analysis and findings in the *Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants*, NUREG-1437; (b) the Environmental Report submitted by AmerGen (AmerGen2005b); (c) consultation with other Federal, State, and local agencies; (d) its own independent review; and (e) its consideration of public comments received;

The National Marine Fisheries Service's Biological Opinion, dated November 21, 2006, states that the continued operation of this plant may adversely affect, but is not likely to jeopardize, three threatened or endangered species of sea turtle. Take limits are specified in the Incidental Take Statement, which includes reasonable and prudent measures as well as terms and conditions, that must be followed by the licensee to prevent and minimize the effects of operation on these species. A license condition has been added to the renewed license which states:

Within 30 days from the issuance date of the renewed license, AmerGen shall comply with the terms and conditions of the Incidental Take Statement in the Biological Opinion in effect or as subsequently issued by the National Marine Fisheries Service regarding operation of OCGNS.

Under the authority of the Coastal Zone Management Act (CZMA), on January 3, 2008, the New Jersey Department of Environmental Protection (NJDEP) provided AmerGen a letter dated December 28, 2007, that certifies that continued operation of the Oyster Creek plant beyond 2009 was consistent with New Jersey's Coastal Management Program. This certification is required for approval of the renewed license.

Considering the information provided in the SEIS, the additional license condition concerning the biological opinion and the NJDEP consistency determination for CZMA, the staff has concluded that:

The adverse environmental impacts of license renewal for OCNGS are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable.

### **Hearings and Petitions**

Two Requests for Hearing and Petitions to Intervene were filed on November 14, 2005. One Petition was filed by the NJDEP and the other Petition was filed by a group of six organizations collectively referred to as "Citizens", requesting a hearing and petitioning for leave to intervene in the proceeding on AmerGen's license renewal application.

On February 27, 2006, the ASLB issued a Memorandum (LBP-06-07) and Order in which it: (1) denied New Jersey's Request for Hearing and Petition to Intervene; and (2) granted Citizens' Request for Hearing and Petition to Intervene. New Jersey appealed the ASLB decision to the Commission, which denied the appeal (CLI-07-08). An appeal of the Commission's denial is pending before the U. S. Court of Appeals for the Third Circuit.

The ASLB concluded that Citizens' contention was admissible to the extent it challenged AmerGen's aging management program for measuring corrosion in the sand bed region of the drywell liner. On September 24-25, 2007, the ASLB held an evidentiary hearing in Toms River, New Jersey. The ASLB initial decision was released on December 18, 2007 (LBP-07-17), resulting in the contention filed by Citizens being resolved in favor of AmerGen.

As the result of the ASLB hearing, AmerGen has committed to the following changes to their Updated Final Safety Analysis Report (UFSAR):

- The NRC will be notified in accordance with 10 CFR Part 50, if as a result of performing a 3-D finite element structural analysis of the drywell shell, it does not meet code-specified safety factors;
- The sand bed drain lines will be verified to be clear of obstructions every other refueling outage; and
- A strippable coating will be applied to the reactor cavity to prevent water intrusion prior to filling the reactor cavity with water.

On January 14, 2008, the Petitioners appealed the initial decision. The NRC is not compelled to await exhaustion of administrative or judicial appeals before renewing an operating license for Oyster Creek for up to an additional 20 years (56 FR 64943). In accordance with 10 CFR § 54.31(c), if the renewed license is subsequently set aside on appeal, the previous operating license would be reinstated.

### **Standard Indemnity Agreement**

In accordance with 10 CFR 54.19(b), license renewal applications include “conforming changes to the standard indemnity agreement, 10 CFR 140.92, Appendix B, to account for the expiration term of the proposed renewed license.” AmerGen stated in its renewal application that:

The current indemnity agreement (B-70) for license DPR-16 does not contain a specific expiration term. Expiration is expressed in terms of the time of the expiration of the license specified. Therefore, conforming changes to account for the expiration term of the proposed renewed license are unnecessary.

The staff notes that the current indemnity agreement for OCNGS states in Article VII that the agreement shall terminate at the time of expiration of that license specified in Item 3 of the Enclosure to the agreement. Item 3 of the Enclosure to the indemnity agreement lists the license number. By maintaining the license number on issuance of the renewed license, conforming changes need not be made to the indemnity agreement. Therefore, the requirements of 10 CFR 54.19(b) have been met.

### **Conclusion**

Based on the results of the staff’s review of AmerGen’s license renewal application, the staff recommends that the Commission authorize the Director of NRR to make the appropriate findings; and once the Director has made those findings, to issue the renewed operating license for the Oyster Creek Nuclear Generating Station for an additional 20 years of operation in accordance with the enclosed text of the renewed license (Enclosure 1).

### **RECOMMENDATION:**

That the Commission authorize the Director of NRR to renew the operating license for the Oyster Creek Nuclear Generating Station upon making the appropriate findings on safety and environmental matters.

### **COORDINATION:**

The Office of the General Counsel has reviewed this paper and has no legal objections.

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Luis A. Reyes  
Executive Director  
for Operations

### **Enclosures:**

1. Text from the renewed License for OCNGS Nuclear Power Plant
2. References

AMERGEN ENERGY COMPANY, LLC  
DOCKET NO. 50-219  
OYSTER CREEK NUCLEAR GENERATING STATION  
RENEWED FACILITY OPERATING LICENSE  
Renewed License No. DPR-16

1. The Nuclear Regulatory Commission (NRC or the Commission) having previously made the finding set forth in License DPR-16 issued on July 2, 1991, has now found that:
  - A. The application to renew license No. DPR-16 filed by AmerGen Energy Company, LLC (AmerGen or the Licensee) complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Oyster Creek Nuclear Generating Station (OCNGS or the facility) has been completed in conformity with Provisional Construction Permit No. CPPR-15; the application, as amended; the provisions of the Act; and the rules and regulations of the Commission;
  - C. Actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under 10 CFR 54.21(a)(1); and (2) time-limited aging analyses that have been identified to require review under 10 CFR 54.21(c), such that there is reasonable assurance that the activities authorized by the renewed operating license will continue to be conducted in accordance with the current licensing basis, as defined in 10 CFR 54.3, for the facility, and that any changes made to the facility's current licensing basis in order to comply with 10 CFR 54.29(a) are in accordance with the Act and the Commission's regulations;
  - D. The facility will operate in conformity with the application, as amended; the provisions of the Act, and the rules and regulations of the Commission (except as exempted from compliance in Section 2.D. below);
  - E. There is reasonable assurance (i) that the activities authorized by the renewed operating license can be conducted without endangering the health and safety of the public and (ii) that such activities will be conducted in compliance with the Commission's rules and regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D. below);
  - F. AmerGen is technically qualified to engage in the activities authorized by this renewed operating license in accordance with the rules and regulations of the Commission;
  - G. AmerGen has satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

- H. The issuance of this renewed license will not be inimical to the common defense and security or to the health and safety of the public;
  - I. The receipt, possession and use of source, byproduct, and special nuclear materials as authorized by this renewed license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70; and
  - J. The issuance of this renewed license is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Operating License No. DPR-16, dated July 2, 1991, as amended, is superseded in its entirety by Facility Renewed Operating License No. DPR-16, hereby issued to AmerGen to read as follows:
- A. This renewed operating license applies to the Oyster Creek Nuclear Generating Station, a boiling-water reactor and associated equipment (the facility), owned by AmerGen. The facility is located in Ocean County, New Jersey, and is described in the Licensee's Updated Final Safety Analysis Report, as supplemented and amended, and in the Licensee's Environmental Report, as supplemented and amended.
  - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses AmerGen:
    - (1) Pursuant to Section 104b of the Act and 10 CFR Part 50, to possess, use, and operate Oyster Creek Nuclear Generating Station at the designated location on the Oyster Creek site in Ocean County, New Jersey, in accordance with the procedures and limitations set forth in this renewed license;
    - (2) Pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Updated Final Safety Analysis Report, as supplemented and amended;
    - (3) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use at any time any byproduct, source, or special nuclear materials as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
    - (4) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source, or special nuclear materials without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and

- (5) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to possess, but not separate such byproduct, source, or special nuclear materials as may be produced by the operation of the facility.

C. This renewed license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter 1 and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter applicable and is subject to the additional conditions specified or incorporated below:

- (1) Maximum Power Level

AmerGen is authorized to operate the facility at reactor steady-state core power levels not in excess of 1930 megawatts (thermal) (100 percent rated power) in accordance with the conditions specified herein.

- (2) Technical Specifications and Environmental Technical Specifications

The Technical Specifications contained in Appendices A and B, as revised through Amendment No. 265, are hereby incorporated in the renewed license. AmerGen shall operate the facility in accordance with the Technical Specifications.

- (3) Fire Protection

AmerGen shall implement and maintain in effect all provisions of the approved fire protection program as described in the Updated Final Safety Analysis Report for the facility and as approved in the Safety Evaluation Report dated March 3, 1978, and supplements thereto, subject to the following provision:

The Licensee may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

- (4) Security Training and Qualification

AmerGen, shall fully implement and maintain in effect all provisions of the Commission-approved physical security, training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822), and the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The combined set of plans<sup>1</sup>, which contain Safeguards Information protected under 10 CFR 73.21, is

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<sup>1</sup> The Training and Qualification Plan and Safeguards Contingency Plan are Appendices to the Security Plan.

entitled: "Oyster Creek Nuclear Generating Station Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan, Revision 5," submitted by letter dated May 17, 2006.

(5) Inspections of Core Spray Spargers

Inspections of core spray spargers, piping and associated components will be performed in accordance with BWRVIP-18A, "BWR Core Spray Internals Inspection and Flaw Evaluation Guidelines," as approved by NRC staff's Final Safety Evaluation Report dated December 2, 1999.

(6) Reactor Vessel Integrated Surveillance Program

AmerGen, is authorized to revise the Updated Final Safety Analysis Report (UFSAR) to allow implementation of the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel Integrated Surveillance Program as the basis for demonstrating compliance with the requirements of Appendix H to Title 10 of the *Code of Federal Regulations* Part 50, "Reactor Vessel Material Surveillance Program Requirements," as set forth in the Licensee's application dated December 20, 2002, and as supplemented on May 30, September 10, and November 3, 2003.

All capsules in the reactor vessel that are removed and tested must meet the test procedures and reporting requirements of American Society for Testing and Materials (ASTM) E 185-82 to the extent practicable for the configuration of the specimens in the capsule. Any changes to the capsule withdrawal schedule, including spare capsules, must be approved by the NRC prior to implementation. All capsules placed in storage must be maintained for future insertion. Any changes to storage requirements must be approved by the NRC, as required by 10 CFR Part 50, Appendix H.

(7) Inspection of Drywell Sand Bed Region

The Licensee shall perform full scope inspections (as defined in Appendix A of the license renewal safety evaluation report; dated March 20, 2007 and summarized in the UFSAR) of the drywell sand bed region every other refueling outage beginning in the refueling outage prior to the period of extended operations.

(8) Drywell Trenches

The Licensee shall monitor the drywell trenches (as defined in Appendix A of the license renewal safety evaluation report; dated March 20, 2007) every refueling outage to identify and eliminate the sources of water and receive NRC approval prior to restoring the trenches to their original design configuration.

(9) Engineering Study of Refueling Cavity Liner

The Licensee shall perform an engineering study prior to the period of extended operation to identify options to eliminate or reduce the leakage in the OCGS refueling cavity liner.

(10) Three Dimensional Finite-Element Analysis of Drywell Shell

The Licensee shall perform a 3-D (dimensional) finite-element analysis of the drywell shell and provide to the NRC staff a summary of the results prior to entering the period of extended operation.

(11) UFSAR Supplement Changes

The UFSAR supplement, as revised, submitted pursuant to 10 CFR54.21(d), shall be included in the next scheduled update to the UFSAR required by the 10 CFR 50.71(e)(4) following the issuance of this renewed operating license. Until that update is complete, AmerGen may make changes to the programs and activities described in the supplement without prior Commission approval, provided that AmerGen evaluates such changes pursuant to the criteria set forth in 10 CFR 50.59 and otherwise complies with the requirements in that section.

(12) License Renewal Commitments

The UFSAR supplement, as revised, describes certain future activities to be completed prior to and during the period of extended operation. AmerGen shall complete these activities in accordance with Appendix A of NUREG-1875, "Safety Evaluation Report Related to the License Renewal of Oyster Creek Generating Station", dated March 2007, and shall notify the NRC in writing when implementation of those activities required prior to the period of extended operation are complete and can be verified by NRC inspection.

(13) Biological Opinion

Within thirty days from the issuance date of the renewed license, AmerGen shall comply with the terms and conditions of the Incidental Take Statement in the Biological Opinion in effect or as subsequently issued by the National Marine Fisheries Service regarding operation of OCGS.

(14) Financial Protection

The Licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

(15) Sale and License Transfer Conditions:

- a. 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.
- b. The decommissioning trust agreement for Oyster Creek must be in a form acceptable to the NRC.
- c. With respect to decommissioning trust fund investments in the securities or other obligations of Exelon Corporation, 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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 the Order approving the transfer, and consistent with the safety evaluation supporting such Order.
- h. AmerGen shall take no action to cause Exelon Generation Company, LLC or its affiliates, successors, or assigns to void, cancel, or diminish its \$200 million contingency commitment to AmerGen, dated December 22, 2003, or cause it to fail to perform

or impair its 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.

- D. The facility has been granted certain exemptions from the requirements of Section III.G of Appendix R of 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." This section relates to fire protection features for ensuring the systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage. These exemptions were granted and sent to the Licensee in letters dated March 24, 1986 and June 25, 1990.

The facility has also been granted certain exemptions from the requirements of Section III.J of Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." This section relates to emergency lighting that shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. This exemption was granted and sent to the Licensee in a letter dated February 12, 1990.

In addition, the facility has been granted certain exemptions from Section 55.45(b)(2)(iii) and (iv) of 10 CFR Part 55, "Operators' Licenses." These sections contain requirements related to site-specific simulator certification and require that operating tests will not be administered on other than a certified or an approved simulation facility after May 26, 1991. These exemptions were granted and sent to the Licensee in a letter dated March 25, 1991.

These exemptions granted pursuant to 10 CFR 50.12 are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. With these exemptions, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

3. This license is effective as of the date of issuance and shall expire at midnight on April 9, 2029.

## REFERENCES

- (1) "License Renewal Application Oyster Creek Generating Station,"  
Accession Number **ML052080185**
- (2) "Safety Evaluation Report with Open Items", dated August 2006.  
Accession Number **ML062300330**
- (3) "Updated Safety Evaluation Report", dated December 2006  
Accession Number **ML063630255**
- (4) "NUREG-1875, Safety Evaluation Report Related to the License Renewal of Oyster  
Creek Nuclear Generating Station," dated March 2007, Volume 1, Accession  
Number **ML071290023**, Volume 2, Accession Number **ML071310246**
- (5) "Regional Administrator Letter on License Renewal for Oyster Creek Generating  
Station," Accession Number **ML071220102**
- (6) "Generic Environmental Impact Statement for License Renewal of Nuclear Plants,  
Supplement 28, Regarding the Oyster Creek Generating Station, Final Report,"  
Volume 1, Accession Number **ML070100234**, Volume 2, Accession Number  
**ML070100258**