

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

August 14, 2006 (9:45am)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:
E. Roy Hawkins, Chair
Dr. Paul B. Abramson
Dr. Anthony J. Baratta

In the Matter of:)	August 11, 2006
AmerGen Energy Company, LLC)	
(License Renewal for Oyster Creek Nuclear Generating Station))	Docket No. 50-219
)	
)	

**AMERGEN'S ANSWER TO CITIZENS' PETITION
TO ADD A NEW CONTENTION AND SUPPLEMENT THERETO**

I. INTRODUCTION

On June 23, 2006, Citizens¹ submitted to the Atomic Safety and Licensing Board (Board) a "Petition to Add a New Contention" (Petition) in which they proposed a new contention relating to, among other things, AmerGen Energy Company LLC's (AmerGen) aging management program for the Oyster Creek Nuclear Generating Station (OCNGS) drywell shell. Pursuant to the Board's July 5, 2006 Order (Granting NIRS's Motion for Leave to Submit a Supplement to its Petition) (Supplementation Order), on July 25, 2006, Citizens submitted a "Supplement to Petition to Add a New Contention" (Supplement). Provided below is AmerGen's Answer to both Citizens' Petition and its Supplement.²

¹ Citizens are comprised of Nuclear Information and Resource Service, Jersey Shore Nuclear Watch, Inc., Grandmothers, Mothers and More for Energy Safety, New Jersey Public Interest Research Group, New Jersey Sierra Club, and New Jersey Environmental Federation.

² As directed by the Board in its Supplementation Order, AmerGen is responding herein to the bases set forth in both Citizens' Petition and its Supplement. See Supplementation Order at 4. However, since Citizens have filed a single "amended contention" (as reflected in its Supplement) which supersedes and expands

As discussed below, Citizens raise a number of new issues that go well beyond the limited opportunity provided by the Board to submit a new contention. Furthermore, Citizens have not provided an adequate basis for the admission in this proceeding of that portion of their contention regarding the frequency of ultrasonic testing (UT) in the sand bed region. Because Citizens have failed to comply with the Board's Supplementation Order and failed to meet the requirements of 10 CFR §§ 2.309(f)(1) and (f)(2), their Petition and Supplement should be dismissed and their request for hearing denied.

II. BACKGROUND

In its June 6, 2006 Memorandum and Order (Contention of Omission is Moot, and Motions Concerning Mandatory Disclosures are Moot), LBP-06-16, slip op. (June 6 Memorandum and Order), the Board concluded that Citizens' original contention regarding AmerGen's aging management program for the OCNGS drywell was moot, but nevertheless afforded Citizens a limited opportunity to submit a new contention. The Board specifically stated that:

the substance of [any new contention] must be limited to the sand bed region, . . . *and must be limited to AmerGen's new UT program for that region as reflected in its docketed commitment of April 4, 2006.*

June 6 Memorandum and Order at 9 (emphasis added). Thus, pursuant to the Board's direction, Citizens were afforded another opportunity to submit a new contention – but the scope of that contention was limited to AmerGen's new UT program. *Id.* The Board's June 6 Memorandum and Order did not grant Citizens a "license" to reopen issues that go beyond AmerGen's April 4 UT Commitment or to raise issues based on old information.

upon the proposed contention submitted in their June 23 Petition (See Supplement at 7-8), AmerGen is only responding to that amended contention.

AmerGen's new UT program, as reflected in its April 4, 2006 UT commitment (April 4

UT commitment), was limited to the following:

Ultrasonic Testing (UT) thickness measurement of the drywell shell in the sand bed region will be performed on a frequency of every 10 years. The initial inspection will occur prior to the period of extended operation. The UT measurements will be taken from the inside of the drywell at the same locations where UT measurements were performed in 1996. The inspection results will be compared to previous results. Statistically significant deviations from the 1992, 1994, and 1996 UT results will result in corrective actions that include the following:

- Perform additional UT measurements to confirm the readings.
- Notify NRC within 48 hours of confirmation of the identified condition.
- Conduct visual inspection of the external surface in the sand bed region in areas where any unexpected corrosion may be detected.
- Perform engineering evaluation to assess the extent of condition and to determine if additional inspections are required to assure drywell integrity.
- Perform operability determination and justification for operation until next inspection.

These actions will be completed prior to restart from the associated outage.

Letter from Michael P. Gallagher, AmerGen, to Document Control Desk, NRC (April 4, 2006),

Enclosure at 1-2 (April 4 commitment letter enclosure).

On June 20, 2006, AmerGen committed to perform additional UT on the drywell, as follows:

In addition to AmerGen's previous commitment to perform drywell sand bed region Ultrasonic Testing (UT) prior to the period of extended operation . . . AmerGen will perform additional UT inspection of this area two refueling outages after the initial inspection. Subsequent inspection frequency will then be established as appropriate, not to exceed 10-year intervals.

Letter from Michael P. Gallagher, AmerGen, to Document Control Desk, NRC (June 20, 2006), Enclosure 2 at 2.³ In response to this additional commitment, in its Supplementation Order, the Board specifically limited the scope of any supplement to Citizens' Petition:

This supplement . . . must be limited to AmerGen's UT program for the sand bed region as reflected in AmerGen's docketed commitment of June 20, and be based on new information contained in that commitment.⁴

Supplementation Order at 3 (emphasis in original).

As discussed below, however, Citizens have effectively ignored the Board's clear and explicit directive to limit any new contention to AmerGen's "new" UT program as reflected in its April 4 and June 20 docketed commitments. Instead, they have proffered a broad set of new allegations—many of which go well beyond AmerGen's "new" UT program and which fail to meet the requirements of 10 CFR §§ 2.309(f)(1) and (f)(2).

In their Supplement, Citizens argue that they may "amend contentions . . . so long as they act in accordance with 10 CFR § 2.309(f)(2)." Supplement at 22. This misstates the Board's Supplementation Order. In that Order, the Board did not state that Citizens could *either* file a revised contention based on AmerGen's new UT monitoring commitments *or* raise new, unrelated issues based upon the criteria of 10 CFR § 2.309(f)(2). Instead, it required Citizens to meet *both* of those standards:

This supplement . . . must be limited to AmerGen's UT program . . . as reflected in AmerGen's docketed commitment of June 20 and be based on new information contained in that commitment. In addition, NIRS's supplement must demonstrate that it satisfies

³ AmerGen also committed to conduct UT measurements at certain specific drywell shell plate junctions—all of which are in the upper, as opposed to the sand bed, region of the drywell—and as such are outside the scope of the Board's limited authorization to Citizens. *Id.* at 2-3.

⁴ The Board also made clear that Citizens' June 23 Petition is its "final submission regarding AmerGen's April 4 commitment" and that it "would not accept any further augmentation . . . insofar as those arguments are not directly impacted by AmerGen's June 20 commitment." Supplementation Order at 3.

the criteria of 10 C.F.R. § 2.309(f)(2) and the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).⁵

Supplementation Order at 3 (emphasis in original). As discussed below, Citizens have not met these standards.

III. CITIZENS' PROPOSED NEW CONTENTION RAISES NUMEROUS NEW ISSUES WHICH GO WELL BEYOND THE LIMITED OPPORTUNITY PROVIDED BY THE BOARD TO SUBMIT A NEW CONTENTION

Citizens have now had three opportunities to submit an admissible contention in this proceeding. Their first attempt was mooted by AmerGen's actions, because their contention was limited to a contention of omission. In response, the Board exercised its discretion to afford Citizens two further opportunities to *reformulate* its contention to challenge, with the requisite specificity and basis, the sufficiency or adequacy of AmerGen's new UT commitments. It did not grant Citizens a "blank check" to raise other issues that go beyond AmerGen's new UT program.

Citizens' proposed new contention, as reflected in its Supplement, states:

AmerGen must provide an aging management plan for the sand bed region of the drywell shell that ensures that safety margins are maintained throughout the term of any extended license, but the proposed plan fails to do so because the acceptance criteria are inadequate, the scheduled UT monitoring frequency is too low in the absence of adequate monitoring for moisture and coating integrity and is not sufficiently adaptive to possible future narrowing of the safety margins, the monitoring for moisture and coating integrity is inadequate, the response to wet conditions and coating failure is inadequate, the scope of the UT monitoring is insufficient to systematically identify and sufficiently test all the degraded areas of the shell in the sand bed region, the quality assurance for the measurements is inadequate, and the methods proposed to analyze the UT results are flawed.

⁵ Indeed, had the Board not offered Citizens the limited opportunity to submit a revised contention based upon AmerGen's new UT commitments, this proceeding would have been terminated and Citizens would have been required to seek to reopen the proceeding if they desired to raise new issues unrelated to AmerGen's new UT commitments. See June 6 Memorandum and Order at 8.

Supplement at 7. This contention contains the following seven, separate allegations regarding AmerGen’s drywell aging management plan:

1. AmerGen’s “acceptance criteria are inadequate”;
2. AmerGen’s “scheduled UT monitoring frequency is too low in the absence of adequate monitoring for moisture and coating integrity and is not sufficiently adaptive to possible future narrowing of the safety margins”;
3. The monitoring for moisture and coating integrity is inadequate;
4. The response to wet conditions and coating failure is inadequate;
5. The “scope of the UT monitoring is insufficient to systematically identify and sufficiently test all the degraded areas of the shell in the sand bed region”;
6. The “quality assurance for the measurements is inadequate”; and
7. The “methods proposed to analyze the UT results are flawed.”

All but the second allegation (regarding UT monitoring frequency)⁶ go beyond AmerGen’s new UT commitments.⁷

Even if these allegations did remotely “relate” to AmerGen’s new UT commitments, most are not based on new information or information which is materially different from that which was previously available. Accordingly, allegations 1 and 3-7, above, should be dismissed for failure to comply with the Board’s directives, and pursuant to 10 CFR § 2.309(f)(2).

It is also important to understand that Citizens had ample opportunity to raise many of their allegations in their original petition to intervene, but failed to do so. As the Board explicitly recognized months ago:

⁶ AmerGen addresses that portion of Citizens’ contention in Section IV below.

⁷ Citizens assert that they should be able to raise issues unrelated to AmerGen’s new UT commitments because AmerGen’s drywell aging management commitments “form an ‘integrated package.’” Supplement at 13. Citizens’ position would render the Board’s directives meaningless by hypothetically encompassing any aspect of AmerGen’s drywell aging management program (including, for example, corrosion monitoring of the upper region of the drywell). Such a position is plainly incorrect and the product of a semantic effort to exceed the boundaries of the remaining potentially litigable issues authorized by the Board.

NIRS conceivably could have proffered a contention that included (1) an “omission” challenge asserting that AmerGen must take periodic UT measurements in the sand bed region, *and (2) a “substantive” challenge asserting . . . that AmerGen’s UT measurements must be performed at a specified frequency.*

June 6 Memorandum and Order at 5-6, n.7 (emphasis added). As discussed below, Citizens were not barred from raising any number of the issues that they now proffer in their current Petition and Supplement relating to such things as AmerGen’s “acceptance criteria,” moisture and coating integrity measurement, or methods of statistical analysis. Such issues could have been raised earlier and are demonstrably not based on AmerGen’s new UT commitments.

1. Adequacy of AmerGen’s “Acceptance Criteria”

Citizens first take issue with AmerGen’s drywell thickness “acceptance criteria,” arguing that they have been authorized by the Board to “set forth new bases, based upon the New Information and the New Commitments” regarding the “derivation of the acceptance criteria.” Supplement at 17. Citizens then go on at length to discuss the findings on this topic of their new consultant, Stress Engineering Services, Inc. (SESI).

Citizens’ allegations do not focus on AmerGen’s April 4 or June 20 UT commitments. Instead, these allegations focus on the prior OCNIGS licensee’s derivation of acceptable thicknesses or “acceptance criteria” *against which the UT measurement data are compared.* There is nothing in AmerGen’s April 4 or June 20 commitments that adds to, or modifies, the acceptance criteria that have been in effect for years and have been used to assess the actual 1992, 1994, and 1996 UT results. On this basis alone, this aspect of Citizens’ Supplement should be dismissed.

Other bases for rejection are not lacking. According to Citizens, SESI has indicated that “much better techniques than those used by AmerGen are now available and are code compliant.” Supplement at 18. These techniques involve “critical advance[s] [such as] the use of lasers” which are “superior” to AmerGen’s methods. *Id.* SESI’s “cursory check” and

“severely limited review” indicate that newer “state-of-the-art” structural analysis methods are available. Letter, from Richard C. Biel, SESI, to Richard Webster, Rutgers Environmental Law Clinic (July 15, 2006), at 1.

While new techniques may be available, Citizens have failed to show that AmerGen’s techniques are not code compliant and do not satisfy applicable NRC requirements. Compliance with applicable NRC requirements is the critical issue. The fact that other “state-of-the-art” methods may exist to meet those requirements does not raise a genuine dispute of material fact or law contrary to 10 CFR § 2.309(f)(1)(vi) and constitutes an unlawful challenge to the applicable NRC regulations.⁸ *See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1273 (1983)* (holding that the Intervenor’s assertion that a different analytical technique should be used other than that called for by the NRC regulations and incorporated ASME Code provisions “does attack the Commission’s regulations and is rejected”).

Citizens’ June 23 Petition focused on the criterion providing that an average drywell thickness of 0.736” is acceptable. Petition at 7. Citizens argued that this criterion does “not fully reflect the limitations in the modeling that was used to derive the results” and challenged the modeling results and AmerGen’s interpretation of those results. Petition at 7-8. This allegation is beyond the scope of the Board’s directive to limit the contention to AmerGen’s new UT program.

⁸ Furthermore, Citizens have misstated SESI’s conclusion. Citizens state that the “engineering code used [by AmerGen] . . . governs construction of pressure vessels, not serviceability.” Supplement at 18. On the contrary, SESI itself makes clear that the ASME code defines “construction” in an “all-inclusive” manner to comprise “materials, design, fabrication, *examination, inspection, testing*, certification, and pressure relief.” SESI Letter at 2, n. 2 (*emphasis added*). It also quotes the FOREWORD to the ASME Code as follows:

The Committees’ function is to establish rules of safety, relating only to pressure integrity, governing . . . construction . . . and *in service inspection s. . .*

Id. at 3.

The allegation also is not based on previously-unavailable information. As noted in Citizens' Exhibit NC1 at 7 (attached to its Petition), those criteria were developed and documented by General Electric in reports transmitted to the NRC in 1990, 1991 and 1992. These reports have been publicly accessible through the NRC since the early 1990s. Indeed, Citizens specifically cited the 0.736" thickness criterion in their original petition to intervene. *See* Citizens' "Request for Hearing and Petition to Intervene" (Nov. 14, 2005) at 9.

The primary basis stated in Citizens' Petition for concluding that the 0.736" acceptance criterion "did not fully reflect the limitations in the modeling" is that "the modeling assumed only one area thinner than 0.736 inches in each bay, but in bay 13 alone there are a total of at least nine areas that are below 0.736 inches." Petition at 7-8. However, this also is by no means new information. Citizens cited virtually the same information over 7 months ago in their December 19, 2005 "Combined Reply of Petitioners" at 7, 11 ("Petitioners note that in 1993, an evaluation of the drywell liner thickness measurements reported that '*Bays 1 and 13 each have several locations where the measured thickness is below 0.736 inch*'). Emphasis in original.²

Indeed, it is imperative to note that this is not the first time that Citizens have attempted to challenge the thickness measurement acceptance criteria. In Citizens' February 7, 2006 "Motion for Leave to Add Contentions or Supplement the Basis of the Current Contention" at 12, they stated:

the original acceptance criterion for the thickness measurements was 0.736 inches, but some measurements taken in 1992 were less than . . . that. Thus, *new acceptance criteria must be developed* to ensure that the currently unacceptable areas do not grow to levels where they threaten the structural integrity of the drywell liner.

² Furthermore, AmerGen's "recent" report that "over 20 areas in total are now thinner than 0.736 inches" is not materially different than the information of which Citizens were previously aware; *i.e.*, that there were "several locations in Bays 1 and 13 less than 0.736." Petition at 8.

Emphasis added. This allegation, raised over 5 months ago, is exactly the same issue that Citizens now attempt to raise as a “new” issue. Thus, contrary to 10 CFR § 2.309(f)(2), this portion of Citizens’ Petition and Supplement, even if it were within the scope of the Board’s limited direction, is not based upon new or materially different information and must be dismissed.

2. Adequacy of AmerGen’s Moisture and Coating Integrity Monitoring Program

Citizens’ third¹⁰ allegation is that AmerGen’s “monitoring for moisture and coating integrity is inadequate.” Supplement at 7; *see also id.* at 5, 9-12. This aspect of Citizens’ proposed contention was not even included in their June 23 Petition. Indeed, Citizens refer to this as their “First Added Allegation.” *Id.* at 8. Nor is it based upon any new information contained in AmerGen’s June 20 commitment. As was the case with Citizens’ first allegation (regarding the adequacy of AmerGen’s drywell thickness acceptance criteria), this goes well beyond the limited opportunity provided by the Board to address AmerGen’s new UT commitments in an amended contention. As such it should be dismissed.

It also should be dismissed because it is based on previously-available information, contrary to 10 CFR § 2.309(f)(2). As discussed in the License Renewal Application, AmerGen will perform visual inspections of the robust, multi-layer epoxy coating covering the outside of the drywell in the sand bed region. License Renewal Application (July 22, 2005) at 3.5-19 to 20, B-89. Thus, the appropriate time for Citizens to challenge this visual inspection program was in their original Petition. They failed to do so then, and they are prohibited under 10 CFR § 2.309(f)(2) from doing so now.¹¹

¹⁰ AmerGen’s response to the second portion of Citizens’ contention, regarding UT monitoring frequency, is provided in Section IV below.

¹¹ To the extent that this aspect of the contention challenges the adequacy of AmerGen’s Protective Coating Monitoring and Maintenance Program, it is clearly outside the scope of the Board’s Order. The latter aging management program is fully described in Section B.1.33 of the OCNGS License Renewal Application, and could have been challenged by Citizens well prior to this point in the proceeding.

3. Adequacy of AmerGen's Response to Wet Conditions and Coating Failure

Citizens' next allegation is that AmerGen's "response to wet conditions and coating failure is inadequate."¹² Supplement at 7, 12-13. Again, this aspect of Citizens' proposed contention was not even included in their June 23 Petition. Citizens admit that this is their "Second Added Allegation." *Id.* at 8, 12. Nor is it based upon any new information contained in AmerGen's June 20 commitment. As was the case with Citizens' first allegation (regarding the adequacy of AmerGen's drywell thickness acceptance criteria), this too goes well beyond the Board's limited grant of authority to address AmerGen's new UT commitments in an amended contention. As such, it should be dismissed.

4. The Spatial "Scope" of AmerGen's UT Monitoring Techniques

Citizens' next allegation is that "the scope of the UT monitoring is insufficient to systematically identify and sufficiently test all the degraded areas of the shell in the sand bed region." *Id.* at 7, 12. Neither AmerGen's April 4 nor June 20 docketed commitments changed, in any respect, the spatial scope of AmerGen's UT monitoring techniques. Future UT is to be conducted at the same locations and using templates with the same dimensions as those used in tests performed in 1992, 1994 and 1996. Thus, Citizens' allegations regarding the spatial scope of AmerGen's UT monitoring techniques are not related to its new UT program commitments, nor are they based upon any material new information.

5. Adequacy of AmerGen's Quality Assurance Program for UT Measurements

Citizens next state that AmerGen's "quality assurance for the measurements is inadequate." Petition at 4; Supplement at 7. Citizens' June 23 Petition bases this rehashed allegation on the fact that 1996 UT data appear to show increased wall thicknesses between 1994

¹² Again, as with the third allegation, Citizens' coatings allegations improperly challenge AmerGen's Protective Coating Monitoring and Maintenance aging management program. *See* n.11 *supra*.

and 1996. Petition at 11. Again, this allegation has nothing to do with AmerGen's April 4 or June 20 commitments on the frequency of UT measurements.

It is also based on previously-available information. See "Citizens' Brief in Opposition to AmerGen's Motion to Dismiss and to Suspend Mandatory Disclosures" (May 5, 2006) at 4, 5, 6, Exhibit RM 1 at 2. Accordingly, this allegation also should be dismissed.

6. Alleged Inadequacies in Statistical Analyses

Citizens state that "the methods proposed to analyze the UT results are flawed." Supplement at 7. Citizens' allegation is that AmerGen's "current statistical techniques" used to evaluate UT measurement data are inadequate. Petition at 11-12. Again, this allegation is not based on AmerGen's April 4 or June 20 commitments.¹³ It does not challenge AmerGen's new periodic UT measurement commitments, but instead challenges the adequacy of the statistical methods used to assess the data from the UT measurements. Accordingly, it should be dismissed on that basis.

Nor are they based on new or materially different information. Information relating to the statistical techniques used by AmerGen to evaluate UT measurement data has long been available to Citizens. See, e.g., Letter, from J.C. Devine, GPUN, to Document Control Desk, NRC (Nov. 26 1990).

Finally, after discussing the various alleged deficiencies in AmerGen's drywell aging management program, Citizens cite *Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813 (2005) for the proposition that, after a contention of omission is rendered moot by the subsequent performance of the alleged omitted technical analyses, those new analyses are "clearly information that was 'not previously

¹³ This argument also essentially rehashes claims made previously. Compare "Citizens' Brief in Opposition to AmerGen's Motion to Dismiss and to Suspend Mandatory Disclosures" (May 5, 2006), at 4 with Petition at 11-12.

available,” and therefore can serve as the basis for a new contention. Supplement at 23. Citizens conclude that the “Board’s analysis in Vermont Yankee is directly applicable to this case.” *Id.*

Citizens are incorrect. Properly pled issues *related to new information* could, in theory, serve as the basis for a new or amended contention. Citizens’ allegations, discussed above, do not relate to AmerGen’s new UT program. The Board’s decision to afford Citizens another opportunity to raise issues with respect to AmerGen’s UT program, does not, under *Vermont Yankee*, give them a license to raise a host of unrelated issues that could have been raised earlier. Accordingly, these aspects of Citizens’ Petition and Supplement should be dismissed.¹⁴

IV. CITIZENS HAVE FAILED TO PROVIDE AN ADEQUATE BASIS FOR ADMISSION OF THE PORTION OF THEIR CONTENTION RELATING TO THE FREQUENCY OF UT MEASUREMENTS

The second portion of Citizens’ proposed contention states that AmerGen’s “scheduled UT monitoring frequency is too low in the absence of adequate monitoring for moisture and coating integrity and is not sufficiently adaptive to possible future narrowing of the safety margins.” Supplement at 7. Citizens begin their argument on this issue by improperly attempting to incorporate by reference the bases from their June 23 Petition. They state: “[b]ecause part of the new contention filed on June 23, 2006 alleged that UT monitoring frequency was too low . . . the basis set out for that element of the new contention in the Petition of June 23, 2006 is directly applicable to the Amended Allegation.” *Id.* at 9. Any incorporation by reference of this type was precluded by the Board (“we expect NIRS’s supplement to contain fully developed arguments—that is, NIRS’s supplement shall be a self-contained document that

¹⁴ Finally, as discussed above, because Citizens have failed to satisfy the “remaining factors in Section 2.309(f)(2)” (*i.e.*, new or materially different information) they were required to address the factors applicable to “nontimely filings” set forth in 10 CFR § 2.309(c). *See* June 6 Memorandum and Order, slip op. at 9, n.12. They have failed to do so. Accordingly, their Petition and Supplement also should be denied on that basis.

shall not 'incorporate by reference' any aspect of its June 23 Petition.") Supplementation Order at 3.

Citizens next state that:

the drywell shell is 0.026 inches or less from violating AmerGen's acceptance criteria. Under corrosive conditions, long-term corrosion rates of more than 0.017 inches per year have been observed. Thus if corrosive conditions are possible, a UT monitoring frequency of once per year or more would be necessary. Furthermore, if the next scheduled UT monitoring that is to occur before the end of the licensing period shows that these safety margins have narrowed, even more frequent monitoring is needed.

AmerGen's new proposal to add a round of scheduled UT monitoring at the second refueling outage does not respond to these problems because the monitoring is scheduled after corrosion beyond the safety margins could occur.

Supplement at 9. These assertions suggest that AmerGen's commitment to perform periodic UT is a bare, static commitment, as opposed to a flexible commitment to modify the frequency of testing as warranted by future test results. When the full scope of AmerGen's new commitments is considered, Citizens' claims do not make any sense.

First, Citizens have not shown that the external side of the sand bed region of the drywell is exposed to a corrosive environment. Even if such an environment existed, Citizens have not shown how that would affect the external side of the sand bed portion of the drywell which is covered with a robust multi-layered epoxy coating. In the absence of this showing, Citizens' speculation about additional corrosion is baseless.

Most importantly, however, AmerGen's commitments adequately address potential future corrosion. In addition to the fact that the 1992, 1994 and 1996 UT results, as well as periodic visual inspections, show no additional corrosion occurring in the sand bed region, as discussed on p. 3 above, AmerGen has committed to perform UT measurements *prior to the period of*

extended operation, and periodically thereafter. AmerGen has committed to take the following corrective actions, if statistically significant deviations from the prior UT results occur:

- Perform additional UT measurements to confirm the readings;
- Notify NRC within 48 hours of confirmation of the identified condition;
- Conduct visual inspection of the external surface in the sand bed region in areas where any unexpected corrosion may be detected;
- Perform an engineering evaluation to assess the extent of condition and to determine if additional inspections are required to assure drywell integrity; and
- Perform an operability determination and justification for operation until the next inspection.

All of these actions will be completed “prior to restart from the associated outage.” April 4 commitment letter enclosure.¹⁵

These commitments establish a program that goes well beyond a mere static commitment to perform UT measurements on a designated frequency. Building upon data from the 1990s, they provide for additional UT measurements even before the period of extended operation commences and specific corrective actions to be taken in the unlikely event that statistically significant-deviations from past data occur. These include prompt notifications to the NRC and specific determinations as to whether it is safe to operate the plant until the next scheduled inspection. These commitments also give the NRC Staff and AmerGen the information needed to determine if any changes in UT inspection frequency are warranted.

Given these commitments, Citizens’ assertion that AmerGen’s program is “not sufficiently adaptive to possible future narrowing of the safety margins” is patently incorrect. Supplement at 7. It is not enough to simply challenge the “periodicity,” and ignore the commitments AmerGen has made to adjust that periodicity, if necessary, based upon as-found

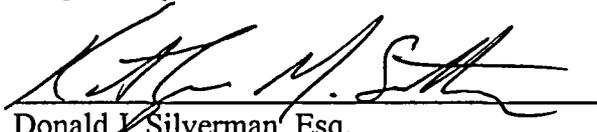
¹⁵ AmerGen’s June 20 commitment letter did not revoke these prior commitments to the NRC.

conditions—and to do so *before* exiting the relevant outage. Thus, Citizens have failed to present a genuine dispute of material fact or law contrary to 10 CFR § 2.309(f)(1).

V. CONCLUSION

Citizens' Supplement raises a host of issues that go well beyond the limited opportunity provided by the Board to submit a new contention. As for the portion of Citizens' Supplement regarding UT monitoring frequency in the sand bed region, Citizens have not provided an adequate basis for the admission of that aspect of the contention. Citizens have failed to satisfy either the Board's Supplementation Order or the requirements of 10 CFR §§ 2.309(f)(1) and (f)(2). Accordingly, their amended contention should be dismissed and their request for hearing denied.

Respectfully submitted,



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Dated in Washington, D.C.
this 11th day of August 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	August 11, 2006
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(License Renewal for Oyster Creek Nuclear Generating Station))	Docket No. 50-219
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CERTIFICATE OF SERVICE

I hereby certify that copies of "AmerGen's Answer to Citizens' Petition to Add a New Contention and Supplement Thereto" were served this day upon the persons listed below, by E-mail and first class mail, unless otherwise noted.

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