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NUCLEAR REGULATORY COMMISSION  
OFFICE OF THE SECRETARY

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative Judges:

- E. Roy Hawkens, Chair
- Dr. Paul B. Abramson
- Dr. Anthony J. Baratta

In the Matter of	)	
	)	August 29, 2006
AMERGEN ENERGY COMPANY, LLC	)	
	)	Docket No. 50-0219-LR
(License Renewal for the Oyster Creek	)	
Nuclear Generating Station)	)	
	)	

**CITIZENS' REPLY TO NRC STAFF'S ANSWER TO THE PETITION  
TO ADD A NEW CONTENTION AND SUPPLEMENT THERETO**

**PRELIMINARY STATEMENT**

In its Answer to the Petition to Add a New Contention (the "New Petition") filed by 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 (collectively "Citizens" or "Petitioners"), NRC Staff candidly admits two of the seven allegations in the new contention are admissible. In addition NRC Staff raise no specific objection to one other allegation and part of yet another. Thus, at minimum, the Atomic Safety and Licensing Board ("ASLB" or "Board") should admit three of the allegations and part of another.

For the remaining allegations, NRC Staff raises specific objections on grounds of timeliness, but fails to raise any other specific objections. In fact, all of the allegations are based

TEMPLATE = SECY-037

SECY-02

on new commitments made by AmerGen Energy Co. LLC ("AmerGen") on April 4, 2006 and June 20, 2006 in accordance with the Board's Orders of June 6, 2006 and July 5, 2006. In addition, AmerGen disclosed material new information to the NRC and Citizens after April 4, 2006, the date on which AmerGen made the new commitments which the ASLB found rendered the previous contention moot. This material new information was used to formulate the allegations in the contention. Because the allegations to which NRC Staff objects could not have been properly made prior to April 4, 2006, are based on the new commitments, and are based on other material new information, they are timely. Thus, in the absence of any other specific objection to overcome the very specific pleadings provided in the New Petition, they should be admitted.

## ARGUMENT

### I. SUMMARY OF NRC STAFF'S ANSWER

NRC Staff parses the contention into seven allegations or "claims," as follows:

1) The "acceptance criteria are inadequate;" 2) The scheduled UT monitoring frequency is not adequate without adequate monitoring for moisture and coating integrity, and the frequency "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."

NRC Staff Ans. at 9.

NRC Staff admits that for allegations two and five "Citizens have pled information that raises a genuine dispute regarding whether the scope and frequency of monitoring is sufficient to identify degradation," NRC Staff Ans. at 13-14. In addition NRC Staff has not raised an objection regarding the timeliness of these allegations. *Id.* at 11. Thus, NRC Staff does not

object to the admission of allegations two and five concerning the spatial scope and the required frequency of ultrasonic (“UT”) testing. Id. at 14. This further illustrates that AmerGen’s objections to the ASLB admitting these allegations are without merit.

With regard to basis and need for a material dispute, NRC Staff states that only allegations two and five are adequately supported and raise a genuine dispute, but gives no specific reason why the other five allegations did not meet the pleading requirements in this regard. Id. at 13-14. Ironically, even AmerGen did not dispute that four of the remaining five allegations raised material disputes and had an adequate basis. The only claim that NRC Staff and AmerGen both allege did not have adequate basis and did not raise a material dispute is allegation one concerning the adequacy of the acceptance criteria. As discussed in more detail below this allegation was based upon AmerGen documents and expert opinion and raised a material issue. See e.g. Citizens Reply to AmerGen at 9-12. For the other four allegations, NRC Staff’s implicit pleading of an inadequacy in terms of basis and materiality of dispute raised is insufficient to overcome the specific pleadings in this regard raised given by Citizens in the New Petition and the supplement thereto. Furthermore, it is inconsistent with AmerGen’s failure to raise any similar objection.

Summarizing NRC Staff’s objections allegation by allegation, the objections to part of allegation three, about the inadequacy of the monitoring for corrosive conditions, and allegation four, concerning the adequacy of response to detection of corrosive conditions are unclear. NRC Staff agree that these allegations are timely and state no other specific objection. NRC Staff Ans. at 11-12, 13. By failing to raise a specific objection to these allegations, NRC Staff has effectively conceded they should be admitted as part of the contention.

For the remaining three and a fraction allegations (one, part of three, six, and seven), NRC Staff complains that they are not timely, *id.* at 11-13, but makes no specific argument about any of the other pleading requirements. *Id.* at 13-14. According to NRC Staff, those allegations that “stem from new information in AmerGen’s April 4 and June 20 commitments” are timely, *id.* at 9, but those allegations that are not based on materially different new information are not. *Id.* at 13. NRC Staff argue that allegations one, part of three, six and seven are in the latter category. As demonstrated in detail below, this is incorrect. These claims are based on the new commitments made by AmerGen and are based on other materially different new information.

## **II. Undisputed Issues**

NRC Staff makes no mention of the scope of the proceeding, Citizens’ standing, and the need for a specific statement of the contention. Thus, there is no dispute that Citizens have standing, that the contention is within the scope of this proceeding, and that it was properly stated in the New Petition and Supplement thereto. Furthermore, as discussed above, NRC Staff does not object to the admission of allegations two and five, and provides no specific reason why allegations four and part of three should not be admitted.

## **III. Allegation One Regarding Acceptance Criteria Was Properly Pled**

NRC Staff explicitly state that allegation one regarding the inadequacy of the acceptance criteria was untimely and implied, but did not explicitly state, that it lacked sufficient basis and failed to raise a material dispute. NRC Staff Ans. at 12-13. Because AmerGen raised a similar objection, Citizens have already responded adequately. Citizens’ Reply to AmerGen at 9-11, 14-15, 24-25. In summary, comparing the results of the UT measurements to acceptance criteria is inextricably part of the UT testing program. Citizens have submitted an expert opinion showing, among other things, that the modeling from which the acceptance criteria are derived may have missed the most critical buckling mode because it incorrectly assumed axial symmetry. This

shows that there is a basis for the allegation and a material issue is in dispute. In addition, Citizens only discovered the acceptance criteria for areas that are thinner than 0.736 inches in April 2006. This shows that this allegation is timely, because Citizens could not have previously disputed the adequacy of undisclosed local acceptance criteria.

The recently issued Safety Evaluation Report for this reactor ("SER") confirms that this allegation is timely, has an adequate basis, and raises a material issue. On April 7, 2006, AmerGen explained to NRC Staff how it derived the acceptance criteria for areas thinner than 0.736 inches. SER at 4-57 to 4-60. Thereafter, NRC staff asked for further clarification regarding certain assumptions. Id. at 4-60. AmerGen then provided further clarification on June 20, 2006. Id. at 4-61 to 4-67. Thus, while Citizens and NRC Staff were aware of the 0.736 inch acceptance criterion at the time of the initial petition, they were unaware of the acceptance criteria for areas that are thinner than 0.736 inches and how they were derived. This means that Citizens could not have previously challenged these acceptance criteria.

To further illustrate the nature of this allegation, one acceptance criterion challenged is that no more than one square foot in each bay should be thinner than 0.736 inches. Citizens believe this is the most critical criterion, because it would require least corrosion to violate it. Unfortunately, is not rigorously derived because the modeling used did not look at whether smaller areas with other shapes would lead to similar reductions in shell strength. Therefore, AmerGen must conduct more modeling to determine whether this criterion should be more stringent, because one square foot thinner than 0.736 inches is probably not the smallest such area that could lead to buckling.

Because this allegation is based on AmerGen documents and an expert opinion, it has ample basis. Indeed, neither AmgerGen, nor NRC has specifically alleged any defect in the basis

of this allegation. The SER also confirms that this allegation raises a material dispute by noting that it is still evaluating the derivation of the acceptance criteria, SER 1-10 to 1-12, 4-60 & 4-67, and is therefore leaving an open item in the safety evaluation. Id. at 1-12, 4-60. Thus, NRC Staff has confirmed that this issue is safety critical and must be resolved before relicensing can proceed. This amply illustrates that this issue raises a material dispute.

#### **IV. Allegation Three Concerning Monitoring for Corrosive Conditions Was Properly Pled**

NRC Staff specifically claims that part of allegation three regarding the inadequacy of the monitoring for coating integrity and moisture was untimely. NRC Staff Ans. at 11. NRC Staff bases its objection on AmerGen's original proposal to use visual inspections to detect corrosion in the sandbed region. Id. Because this objection has nothing to do with the monitoring program for moisture, NRC Staff presumably does not object on grounds of timeliness to the part of allegation three that challenges the adequacy of the program to monitor for wet conditions on the exterior of the drywell shell.

With regard to the coating integrity inspection program, the SER confirms that on June 20, 2006, AmerGen agreed to undertake additional coating integrity inspections when it detects wet conditions. SER at 4-70 to 4-71. It is these new inspections that Citizens now allege are inadequate in terms of both methodology and timing. Because these inspections were not part of the aging management regime until June 20, 2006, this challenge could not have been brought before then. It is therefore timely. Confirming that this allegation has ample basis and raises a material dispute, the SER leaves the item open because the new commitments are unclear about how much of the coated areas in the sandbed region will be inspected. Id. at 1-15. In any event, even AmerGen did not dispute that this allegation has adequate basis and raises a material

dispute. AmerGen Ans. at 10. Similarly, NRC Staff raised no specific objection beyond timeliness. NRC Staff Ans. at 13.

**V. Allegation Six Concerning Quality Controls For UT Measurements Was Properly Pled**

NRC staff suggests that because Citizens noted for the first time in May 2006 that the 1996 UT measurements taken in the sandbed region were erroneous, this fact cannot now be used as the basis for an allegation that the quality controls for the UT measurements are inadequate. This is totally illogical. As noted in Citizens' Reply to AmerGen, the erroneous UT measurements, which Citizens received for the first time in April 2006 are material new information upon which a new or amended contention can be based. In addition, the SER states that Staff noted a similar issue for the first time after reviewing AmerGen's April 7, 2006 response to an RAI. SER at 4-54, 4-56.

Furthermore, although NRC Staff claim that Citizens could have raised this claim earlier, they would have had an inadequate basis prior to the release of the erroneous results. NRC Staff appear to argue that Citizens' prior ability to make a claim that would have had an inadequate basis now prevents Citizens raising that claim when an adequate basis has been disclosed by AmerGen. If the Board adopted this approach, it would improperly turn the pleading rules for new contentions into a catch-22 for Citizens and would encourage licensees to block public access to material information, as far as possible. This approach would also violate the Part 2 rules, which allow a new contention to be added when material new information becomes available during the pendency of a license renewal proceeding. 10 C.F.R. § 2.309(f)(2). Moreover, the NRC may not use the Part 2 rules as a fortress to exclude valid citizen contentions, because that would violate the Atomic Energy Act, See Union of Concerned

Scientists v. NRC, 920 F.2d 50, 53 (D.C. Cir. 1990), and the Administrative Procedure Act. See Citizens Awareness Network, Inc. v. NRC, 391 F.3d 338,355 (1st Cir. 2004).

**VI. Allegation Seven Concerning Statistical Analysis Of UT Results Was Properly Pled**

NRC Staff assert that allegation seven regarding the inadequacy of the proposed statistical analysis was not timely because it was not based on material new information. NRC Staff Ans. at 12-13. This is entirely incorrect. When AmerGen committed to one more round of UT testing in December 2005, after Citizens submitted their initial Petition, AmerGen failed to specify what statistical analysis techniques would be used. AmerGen's intention in this regard did not become apparent until April 24, 2006, Ex. NC 2 at 2, and was not formalized until AmerGen made new commitments on June 20, 2006. Letter from Gallagher to NRC dated June 20, 2006, Enclosure 2 at 3-4. Thus, allegation seven is timely because it is based on material new information. Furthermore, this allegation has an adequate basis because it is supported by expert testimony from Dr. Hausler. It also raises a material dispute, as illustrated by its consideration in the SER. SER at 4-60 to 4-62.

**CONCLUSION**

For the foregoing reasons, the ASLB should admit the proposed new contention in its entirety and grant Citizens a hearing on the issues raised.

Respectfully submitted



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Dated: August 29, 2006

UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
AMERGEN ENERGY COMPANY, LLC	)	Docket No. 50-0219-LR
(License Renewal for the Oyster Creek	)	ASLB No. 06-844-01-LR
Nuclear Generating Station)	)	August 29, 2006

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing reply Brief to be sent this 29th day of August, 2006 via email and U.S. Postal Service, as designated below, to each of the following:

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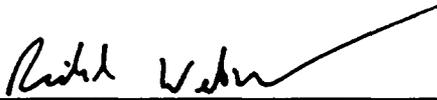
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