

February 22, 2007 (11:18am)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
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:	)	February __, 2007
	)	
AmerGen Energy Company, LLC	)	
	)	Docket No. 50-219
(License Renewal for Oyster Creek Nuclear	)	
Generating Station)	)	
	)	

**PROTECTIVE ORDER**

This protective order governs the disclosure and use of proprietary information by the Nuclear Information and Resource Service ("NIRS"), Jersey Shore Nuclear Watch, Inc. ("JSNW"), Grandmothers, Mothers and More for Energy Safety ("GRAMMES"), New Jersey Public Interest Research Group ("NJPIRG"), New Jersey Sierra Club ("NJ Sierra Club"), and New Jersey Environmental Federation ("NJEF"), hereinafter individually and collectively referred to as "Citizens," in the proceeding on the application of AmerGen Energy Company, LLC ("AmerGen") for renewal of its operating license for the Oyster Creek Nuclear Generating Station ("OCNGS"). This protective order governs the disclosure and use of non-safeguards, commercial proprietary information (as defined in the attached nondisclosure affidavit), owned or possessed by AmerGen or its parents and affiliates. It does not govern proprietary information owned by third parties and possessed by AmerGen or its parents or affiliates ("third-party proprietary information"). Should Citizens seek access to any such third-party proprietary

information, AmerGen shall make reasonable efforts to obtain any necessary approvals from the owner of such information for its release subject to any appropriate non-disclosure provisions.

This protective order shall remain in effect until specifically modified or terminated by the Atomic Safety Licensing Board (“Licensing Board”) or the Nuclear Regulatory Commission (“Commission”). Nothing in this protective order precludes Citizens, AmerGen, or the NRC Staff from seeking changes in it from the Licensing Board or the Commission as future circumstances warrant.

Those persons who are qualified pursuant to this protective order and who have executed a nondisclosure affidavit in the form attached to this protective order—the terms of which are hereby incorporated in this protective order—shall be permitted access to proprietary information under the following conditions:

A. The following persons will be afforded access to proprietary information under this protective order for the purposes of this proceeding:

Richard Webster (Counsel)  
Julia Huff (Counsel)  
Karen Hughes (Paralegal)  
Raechelle Edwards (Filing Clerk)  
Rudolf Hausler (Expert Witness)

Additions or substitutions to this list of individuals for whom access to proprietary information may be provided under this protective order must be made in accordance with the provisions of paragraph B below. The grant of access to proprietary information does not waive any participant's objections to the qualifications of any proposed witness to testify concerning matters in this proceeding.

B.1. Citizens shall advise AmerGen and the Licensing Board, in writing, of the names of any additional persons, not named in paragraph A above, for whom access to proprietary

information is sought along with the showing required in Paragraph B.2. below. Such persons may have access to proprietary information only: (a) when they have been approved by the Licensing Board pursuant to this protective order, and (b) when they have executed the attached nondisclosure affidavit.

B.2.a. To qualify for access to proprietary information, Citizens must certify that the individual to be authorized is either: (1) an employee or member of an intervening organization; (2) a legal counsel; or (3) another individual necessary for the preparation of materials for this proceeding who possesses the requisite competence necessary to evaluate all or portions of the proprietary information that he or she may be shown. In such certification, Citizens shall provide sufficient information for AmerGen and the Licensing Board to understand the rationale for disclosure of proprietary information to such additional designated recipients. For an employee or member of an intervening organization, Citizens shall explain why there is a need for disclosure to that individual, with due regard for AmerGen's legitimate interest in minimizing dissemination of proprietary information. AmerGen may challenge the need for, or the requisite competence of, the sponsoring party's additional designated recipients of proprietary information within three business days of receipt of Citizens' filing. Citizen's need for an additional designee, or the additional designee's requisite competence, to review and evaluate all or portions of the proprietary information pursuant to this protective order may be stipulated by written agreement between AmerGen and Citizens, and presented to the Licensing Board or the Commission as appropriate for approval, or, in the absence of such agreement, may be determined by further order of the Licensing Board or the Commission as appropriate.

B.2.b. Citizens and AmerGen hereby stipulate that any person listed in paragraph A. may discuss or show proprietary information received from AmerGen with up to one additional

representative from each of the organizations that comprise Citizens, but only: (1) on a need to know basis; (2) after such additional representatives execute and return to AmerGen the attached nondisclosure affidavit; and (3) after AmerGen is given three business days to object consistent with paragraph M and/or on reasonable grounds. Citizens are not required to seek approval from the Licensing Board pursuant to paragraph B.1., above, for these representatives to have access to proprietary information. In addition, any person listed in paragraph A. may transmit by facsimile draft or final pleadings that contain proprietary information to such representatives, who shall fully comply with all requirements of this Protective Order. No other access to proprietary information shall be provided to such additional representatives absent the showing required by paragraph B.2.a. AmerGen will not be required to provide copies of proprietary information to such additional representatives pursuant to paragraph F. below.

C. Persons who receive any proprietary information (including transcripts of in camera hearings, filed testimony, or any other document that reveals proprietary information) shall maintain the information's confidentiality as required by the attached nondisclosure affidavit.

D. Persons who receive any proprietary information shall use it solely for the purpose of participation in this proceeding before the Licensing Board and participation in any further Commission or judicial proceedings in this case, and for no other purpose.

E. Once granted access to the proprietary information, persons shall keep a record of all documents containing or revealing proprietary information in their possession or control and shall account for and ultimately deliver that information for disposal to the Licensing Board, in accordance with the nondisclosure affidavit attached hereto.

F. AmerGen will provide one copy of proprietary information to each location where those individuals authorized to review such information and listed in paragraph A. above work, and there shall be a limit of one transcript per office provided of any proceeding conducted on the record in which proprietary information is revealed. Such proprietary information and such transcripts may only be reviewed by persons qualified to have access to proprietary information in accordance with the provisions of paragraphs A and B.2.a. and B.2.b. above, and who have executed the attached nondisclosure affidavit. Citizens shall not electronically reproduce or photocopy the copy of the proprietary information provided by AmerGen or any transcripts containing proprietary information without the express prior approval of the Licensing Board, unless such reproduction or photocopying is required to make sufficient copies to serve documents on the parties and the Licensing Board.

G. In addition to the requirements specified in the attached nondisclosure affidavit, all pleadings and filings in this proceeding (including testimony) that contain or reveal any proprietary information shall:

1. be segregated and served only –
  - a. on counsel for AmerGen, the Assistant for Rulemakings and Adjudications in the Office of the Secretary,<sup>1</sup> the NRC Staff, a representative of Citizens who has signed the nondisclosure affidavit attached hereto, and the individual members of the Licensing Board;
  - b. by U.S. Postal Service registered, express, or certified mail; by messenger-courier or overnight delivery service (e.g., Federal Express); or by personal delivery; and
  - c. in two sealed envelopes including (i) an outer mailing envelope bearing the name and address of the addressee and the statement “PRIVATE. TO BE OPENED BY ADDRESSEE ONLY” and (ii)

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<sup>1</sup> The original of the pleading or correspondence containing the proprietary information (without additional copies) should be directed to Emile L. Julian, Assistant for Rulemakings and Adjudications, Rulemakings and Adjudications Staff, Office of the Secretary.

an inner sealed envelope with the statement "CONTAINS PROPRIETARY INFORMATION." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked. The outer envelope will contain the intended recipient's name and address, and will bear no marking or indication that the document within contains or reveals proprietary information.

2. include an attached cover letter or memorandum that briefly describes the contents of the pleading or correspondence without reference to any proprietary information such that the cover letter or memorandum can be placed in the public docket of this proceeding.

H. Persons who have reason to suspect that documents containing or revealing proprietary information may have been lost or misplaced (for example, because an expected paper has not been received) or that proprietary information has otherwise become available to unauthorized persons, shall notify the Licensing Board promptly of those suspicions and the reasons for them.

I. An organization that is represented by one or more of its members who sign the attached nondisclosure affidavit will be bound by and jointly liable with the affiant for any unauthorized disclosure of proprietary information. Any violation of this protective order and any violation of a provision of the nondisclosure affidavit executed hereunder shall constitute a violation of an order of the Commission.

J. Nothing in this protective order prevents Citizens from seeking public disclosure of information designated as proprietary information in accordance with NRC regulatory procedures.

K. Nothing in this protective order restricts AmerGen's right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of protected materials.

L. All affidavits of nondisclosure shall be filed with the Licensing Board and served on AmerGen and the NRC Staff.

M. Upon receipt of a properly executed affidavit of nondisclosure by an individual approved by the Licensing Board as eligible to receive proprietary information, AmerGen shall have three business days to object to any matter involving the execution of the affidavit of nondisclosure. Absent an objection by AmerGen relating to the execution of the affidavit of nondisclosure, AmerGen shall promptly transmit by overnight delivery service the proprietary information to the affiant consistent with paragraph F, above.

It is so ORDERED.

For the Atomic Safety and Licensing Board

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E. Roy Hawkens  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February \_\_\_\_, 2007

## NONDISCLOSURE AFFIDAVIT

I, \_\_\_\_\_, being duly sworn, state:

1. As used in this nondisclosure affidavit:

(a) "Proprietary information" is any information which is confidential in accordance with 5 U.S.C. § 552(b)(4) or 10 C.F.R. § 2.390(a)(4), or which reveals such confidential information.

(b) Proprietary information does not include any information or document contained in the files of the Commission, any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court.

(c) An "authorized person" is (i) an employee, consultant, or contractor of the United States Nuclear Regulatory Commission (Commission or NRC); (ii) a person who, at the invitation of the Atomic Safety and Licensing Board (Licensing Board), has executed a copy of this affidavit; or (iii) a person employed by or on behalf of AmerGen, its parents or affiliates.

(d) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer software, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or

without notes or changes thereon), and drafts.

2. I have read the February \_\_\_\_, 2007 Licensing Board protective order issued in this proceeding and will comply in all respects with its terms and conditions regarding the proprietary information produced in connection therewith. I will protect and keep confidential proprietary information in accordance with the terms of this affidavit.

3. I will not disclose proprietary information to anyone except an authorized person. I will protect documents containing or revealing proprietary information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such proprietary information), so that the proprietary information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else. If I provide or transmit any proprietary document to an authorized person, I will ensure that the document is properly and clearly marked "CONTAINS PROPRIETARY INFORMATION" before such provision or transmittal.

4. I will not transmit by electronic transmission other than facsimile any material containing proprietary information.

5. When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and protect all documents containing or revealing proprietary information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container.

6. Any secretarial or administrative work performed at my request or under my supervision will be performed by personnel who also have been qualified for such access and who also have executed a nondisclosure affidavit.

7. To the extent that I use a computer to generate or revise documents that contain or reveal proprietary information, the generated or revised documents shall only be saved to external non-networked storage devices, which device shall be stored in a locked storage container or safe, or will be retained in my direct control. When the information has been saved to disk, all temporary electronic files that are automatically generated on the hard drive must be deleted. At the earlier of (a) the conclusion of this proceeding (including any related Commission or judicial proceedings), (b) the conclusion of my participation in this proceeding, or (c) the sale or transfer of the computer used to generate or revise documents that contain or reveal proprietary information to or by a person not qualified under the Licensing Board's February \_\_\_\_, 2007 protective order, I will permanently destroy proprietary information that may be stored on that computer's storage media, whether permanent hard drive or removable, by using software provided by AmerGen at AmerGen's expense.

8. Each document I generate that contains or reveals proprietary information shall be marked "Contains Proprietary Information" in a conspicuous manner.

9. I shall use proprietary information only for the purpose of participating in this proceeding (including any related Commission or judicial proceedings).

10. I shall keep a record of all documents containing or revealing proprietary information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any related Commission or judicial proceedings), or at the conclusion of my participation in this proceeding (whichever comes first), I shall both (a) account to the Licensing Board for all the documents or other materials containing or revealing proprietary information in my possession or control, and (b) submit such documents (including any and all portions of any notes taken in connection with

review of the documents) by U.S. Postal Service registered, certified, or express mail to the Licensing Board for destruction.

11. Either during or after this proceeding, I will not publicly reveal any proprietary information that I receive by virtue of this proceeding as long as the information remains proprietary and is not otherwise a matter of public record.

12. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's February \_\_\_\_, 2007 protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me or the organization I represent, as the Licensing Board or the Commission may deem to be appropriate or other sanctions as authorized by law.

WHEREFORE, I do solemnly agree to protect and keep confidential such proprietary information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit. I clearly understand that my obligations to protect and keep confidential such proprietary information survive the termination of this proceeding and remain in effect until such time as the information is no longer proprietary or is a matter of public record.

\_\_\_\_\_  
(Name and Organization)

Subscribed to and sworn before me this \_\_\_\_ day of \_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

\_\_\_\_\_  
In the Matter of: )

) February 22, 2007

AmerGen Energy Company, LLC )

) Docket No. 50-219

(License Renewal for Oyster Creek Nuclear )  
Generating Station) )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the proposed "Protective Order" and  
"Nondisclosure Affidavit" were served this day upon the persons listed below, by E-mail  
and first class mail, unless otherwise noted.

Secretary of the Commission\*  
U.S. Nuclear Regulatory Commission  
Attn: Rulemakings and Adjudications Staff  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738  
(E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov))

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Atomic Safety and Licensing Board Panel  
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\* Original and 2 copies  
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