

May 1, 2007 (7:47am)

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:	)	
	)	April 30, 2007
AmerGen Energy Company, LLC	)	
	)	Docket No. 50-219
(License Renewal for Oyster Creek Nuclear Generating Station)	)	
	)	

**NOTICE OF, OR IN THE ALTERNATIVE,  
REQUEST FOR LEAVE TO FILE MOTION TO STRIKE  
PORTIONS OF CITIZENS' ANSWER TO  
AMERGEN'S MOTION FOR SUMMARY DISPOSITION**

On April 26, 2007, Citizens submitted their Answer to AmerGen's Motion for Summary Disposition relating to the frequency of ultrasonic testing (UT) in the sand bed region of the Oyster Creek Nuclear Generating Station Drywell.<sup>1</sup> AmerGen has reviewed that Answer and concluded that significant portions of the Answer, including the supporting memorandum of Dr. Rudolph Hausler, go well beyond the scope of this proceeding and the limited issue in contention (*i.e.*, the appropriate frequency of UT in the sand bed region) and raise, among other things, issues excluded from this proceeding by the Atomic Safety and Licensing Board's (Board) previous decisions.<sup>2</sup>

<sup>1</sup> "Citizens' Answer Opposing AmerGen's Motion for Summary Disposition" (Apr. 26, 2007).

<sup>2</sup> Memorandum and Order (Granting Petition to File a New Contention), LBP-06-22, 64 N.R.C. \_\_, slip op. at 9 (Oct. 10, 2006); Memorandum and Order (Denying Citizens' Motion for Leave to Add a Contention and Motion to Add a Contention) at 6 (April 10, 2007) (unpublished).

Pursuant to 10 C.F.R. §§ 2.1204 and 2.323, AmerGen believes that it is authorized to file a Motion to Strike those portions of Citizens' Answer that, among other things, represent another example of Citizens' continuing attempts to cloud the issues in this proceeding and reargue matters already properly excluded by the Board.<sup>3</sup> AmerGen realizes, however, that such a pleading might be construed as an unauthorized pleading. *See* 10 C.F.R. §§ 2.1205 and 2.323. It is AmerGen's intent to submit a brief pleading, not to exceed ten pages in length (exclusive of any attachments), limited to striking those aspects of Citizens' Answer that go beyond the scope of the contention. AmerGen would not object to Citizens or the NRC Staff filing an Answer to the Motion to Strike. AmerGen's Motion, however, will not be a comprehensive, substantive response to Citizens' Answer, and therefore, Citizens should not be permitted to shoehorn into their Answer to the Motion to Strike matters that go beyond the content of the Motion to Strike.

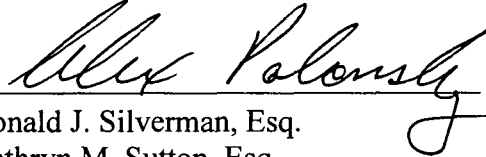
If the Board does not concur that AmerGen is authorized to file the proposed Motion to Strike, then AmerGen hereby respectfully requests leave to file its Motion, pursuant to 10 C.F.R.

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<sup>3</sup> Pursuant to 10 C.F.R. § 2.323(c), both Citizens and the NRC Staff would be afforded the opportunity to submit answers to AmerGen's Motion to Strike.

§§ 2.1204 and 2.323. It is AmerGen's present intention to file its Motion to Strike by May 7, 2007.<sup>4</sup>

Respectfully submitted,



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COUNSEL FOR

AMERGEN ENERGY COMPANY, LLC

Dated in Washington, D.C.  
this 30th day of April 2007

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<sup>4</sup> Counsel for AmerGen has consulted with Citizens' Counsel pursuant to 10 C.F.R. § 2.323(a). Counsel for Citizens did not agree to the alternative relief requested in this Notice. Counsel for AmerGen was unable to reach Counsel for the Staff.

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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 "Notice of, or in the Alternative, Request for Leave to File Motion to Strike Portions of Citizens' Answer to AmerGen's Motion for Summary Disposition" were served this day upon the persons listed below, by E-mail and first class mail, unless otherwise noted.

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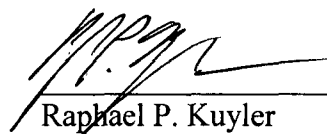
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