

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF THE SECRETARY

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

July 27, 2007 (2:13pm)

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)	
)	July 27, 2007
AMERGEN ENERGY COMPANY, LLC)	
)	Docket No. 50-0219-LR
(License Renewal for the Oyster Creek)	
Nuclear Generating Station))	
_____)	

**CITIZENS' MOTION FOR CLARIFICATION AND MOTION
IN LIMINE**

This motion is presented in two parts. The first is a motion for clarification regarding certain evidence presented by NRC Staff and the second is a motion in limine regarding certain evidence presented by AmerGen Electric Company, LLC ("AmerGen") and NRC Staff.

I. Motion for Clarification

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") move to clarify whether certain testimony submitted by NRC Staff is within the scope of the hearing and, more generally, for clarification on the extent to which parties in this proceeding may use the scope issue as both a sword and a shield.

NRC Staff has provided testimony regarding an analysis done by Sandia National Laboratories of the drywell shell (the “Sandia Study”). NRC Staff Testimony at A8. While Citizens have no objection to this testimony if they will get a chance to respond to it, they are concerned that if they allow the testimony to go unchallenged, Citizens’ response may be subject to a motion in limine, leading to a waste of resources and a distorted factual record. Thus, Citizens request clarification on two issues. First, most narrowly, whether testimony provided by the Staff regarding the analysis of the drywell carried out by Sandia National Laboratories is within the scope of the proceeding? Second, more generally, whether parties may present or refrain from challenging testimony that is outside the scope of the proceeding, but then move to strike the response to that testimony on the grounds that response is outside scope of the proceeding?

On the first issue, Citizens fundamentally disagree with NRC Staff’s characterization of the Sandia Study as showing that “the Oyster Creek degraded drywell shell could withstand the postulated load conditions without exceeding ASME Code [criteria].” NRC Staff Testimony at A8. Sandia specifically commented in its report that the study was not designed to provide absolute predictions of load factors. Sandia Study (available at ML070120395) at 12, Furthermore, the Sandia report assumed that the only areas thinner than 0.736 inches were two areas measuring 30 inches by 18 inches, one in Bay 1 and one in Bay 13, directly below the downcomers. *Id.* at 47-49. Citizens analysis of the data has shown that this is far from bounding because there are bigger areas than this in Bays 1, 13, 15, and probably Bay 9. In addition, those areas are not directly below the downcomers. However, Citizens are unclear how the Sandia Study and its interpretation are relevant to the current proceeding and are therefore seeking clarification of this issue. If the Atomic Safety and Licensing Board (the “Board”) finds the

issues raised by NRC Staff's characterization of the Sandia Study to be outside of the scope of the hearing, Citizens request that the characterization be promptly struck before the response brief and testimony is due.

On the second issue, Citizens strongly believe that notions of fundamental fairness dictate that where an issue is raised and becomes part of the record, Citizens should have a right to respond. Thus, Citizens request the Board to clarify that parties must not only limit their own pleadings to issues that are within the scope of the proceeding, they must also promptly object when an issue that they believe is outside the hearing is raised by another party. Citizens further request the Board to find that by either raising an issue that is outside the scope of the hearing or failing to promptly object to another party raising such an issue, parties will thereafter be estopped from objecting to the response to that issue on the grounds that the issue is outside the scope.

II. Motion In Limine

In general, the Board informed the parties that the witness affidavits should "set out in detail sufficient for comprehension and confirmation by another expert the specific data and analyses supporting the authoring expert's conclusions." Board Order dated April 17, 2007 at 6. In certain parts of the testimony presented by AmerGen and NRC Staff, Citizens find that the level of detail is insufficient to allow them to know which analyses and data support the testimony. Because Citizens will be unable to respond effectively to this testimony, allowing this testimony to be admitted would violate the cardinal rule of fairness in Board proceedings and impede development of the record. Citizens are therefore moving to strike limited portions of the initial testimony presented by AmerGen and NRC Staff on the grounds that they are either unsupported or beyond the scope of the proceeding. With regard to testimony that is unsupported, in the alternative, Citizens request that AmerGen and NRC Staff be provided with

an opportunity to either withdraw the unsupported testimony or provide the required support and Citizens be provided with an opportunity to respond after the support is provided.

A. Unsupported Or Out Of Scope Testimony Presented By AmerGen

Part 1 A.20 is wholly unsupported. The answer makes reference to “extensive investigations” of the source of the water intruding into the drywell, but has not provided any specific reference to those investigations.

Part 2 A.15 is totally unsupported. Despite the SER discussing the acceptance criteria as requiring severely corroded areas to meet criteria on both thickness and extent, AmerGen now asserts without support that these criteria are actually volumetric. None of the references provided by AmerGen in A.16 refer to the local area acceptance criterion being volumetric in nature. Thus, AmerGen has offered no support for this proposition.

Part of part 3 A.18 is unsupported and out of scope. AmerGen asserts, without any support, that larger grids cannot be taken on the exterior of the drywell shell without reducing the existing safety margin. This assertion is also beyond the scope of the hearing because the Board has already ruled that the spatial scope of the UT measurements is outside the scope of this proceeding. Board Order dated June 19, 2007 at 5. Furthermore, AmerGen asserts that the UT points measured from the exterior were “determined to be the thinnest locations in the sand bed region,” but provides no support for this proposition.

Part 3 A.22 is without support because it relies upon the unsupported assertion in part 3 A. 18 that the exterior UT measurements were taken at the thinnest locations. It is therefore equally unsupported.

Part 3 A.23 is unsupported. First, this answer repeats the assertion in part 3 A.18 that the exterior UT measurements were taken at the thinnest locations, but again provides no support.

Second, this answer relies upon that assertion to draw a conclusion that is therefore equally unsupported.

Part of part 3 A.29 is unsupported and out of scope. AmerGen asserts, without support, that insufficient information is available from external UT measurements to compare against the general buckling criteria. Furthermore, AmerGen again states (without support) why it believes larger grids cannot be taken on the exterior of the drywell shell, which is beyond the scope of this proceeding.

Part 3 A.30 is wholly unsupported because it relies upon and repeats the unsupported assertion in part 3 A.18 that the exterior UT measurements were taken at the thinnest locations, without providing any further support. This answer then draws conclusions from the unsupported assertion. This answer is therefore wholly unsupported.

Part of part 3 A.33 and the whole of A.34 and A.35 are unsupported. AmerGen repeats its unsupported assertion that the local area acceptance criterion is volumetric in nature and makes a further unsupported assertion that unless the entire tray corrodes away, the loss of metal is insignificant. A.34 and A.35 rely on that unsupported premise.

Part of part 3 A.42 are vague and unsupported. First, AmerGen states that the grinding of most of the external data measurement points removed “good metal” and so led to additional conservatism. AmerGen has failed to provide a reference to any exhibits showing exactly how many points were actually ground or whether the grinding led to any significant removal of metal. Citizens are aware of anecdotal reports about a few points being over-ground, but do not understand how AmerGen can support the proposition that this problem occurred at most points. In addition, AmerGen discussed micrometer readings taken from epoxy molds, but provided no

reference to the underlying data. Thus, the testimony about the epoxy molds is wholly unsupported.

Part 4 A.13 is wholly unsupported. AmerGen refers to “extensive investigations” that ruled out many sources of water, but fails to provide a reference to these investigations.

Part 5 A.7 is unsupported. The first part of the testimony is based on a manufacturers data sheet, which AmerGen has not provided as an exhibit. The second part is based on an EPRI survey of epoxy coating performance, which again is not provided as an exhibit or even specifically referenced. Thus, AmerGen has failed to provide the required support for this testimony.

The second and third paragraphs of part 5 A.9 are unsupported. Both paragraphs discuss industry experience, but provide no reference to supporting data or reports.

B. Unsupported Testimony Presented By NRC Staff

Part of A.7 is unsupported. Mr. Ashar testifies that the analysis by General Electric (“GE”) of local thinning showed that “the postulated wall thinning did not have a significant effect on the allowable buckling loads.” The GE analysis found reductions in load factor of 3.5% and 9.5%, depending on the depth of the area measured. Safety Evaluation Report (“SER”) at 4-58; Calculation C-1302-187-5320-024 Rev. 1 (AmerGen Ex. 18) at 10-11. However, neither the GE analysis nor the provided references to the SER and Calculation C-1302-187-5320-024 Rev. 1 that assess the significance of these reductions. Thus, Mr. Ashar’s testimony about the significance of these reductions is unsupported.

CONCLUSION

For the foregoing reasons Citizens request the Board to grant the relief requested in both parts of this motion.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Rich Webster", with a long, sweeping flourish extending to the right.

Richard Webster, Esq
RUTGERS ENVIRONMENTAL LAW
CLINIC
Attorneys for Citizens

Dated: July 27, 2007

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

In the Matter of)	
)	Docket No. 50-0219-LR
AMERGEN ENERGY COMPANY, LLC)	
)	ASLB No. 06-844-01-LR
(License Renewal for the Oyster Creek)	
Nuclear Generating Station))	July 27, 2007

CERTIFICATE OF SERVICE

I, Richard Webster, of full age, certify as follows:

I hereby certify that on July 27, 2007, I caused Citizens' motion for clarification and motion in limine to be served via email and U.S. Postal Service (as indicated) on the following:

Secretary of the Commission (Email and original and 2 copies via U.S Postal Service)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemaking and Adjudications Staff
E-mail: HEARINGDOCKET@NRC.GOV

Administrative Judge
E. Roy Hawkens, Chair (Email and U.S. Postal Service)
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: erh@nrc.gov

Administrative Judge
Dr. Paul B. Abramson (Email and U.S. Postal Service)
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Dr. Anthony J. Baratta (Email and U.S. Postal Service)
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ajb5@nrc.gov

Law Clerk
Debra Wolf (Email and U.S. Postal Service)
Atomic Safety & Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: DAW1@nrc.gov

Office of General Counsel (Email and U.S. Postal Service)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OGCMAILCENTER@NRC.GOV

Mitzi Young (Email and U.S. Postal Service)
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
E-mail: may@nrc.gov

Mary C. Batty (Email and U.S. Postal Service)
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
E-mail: mcb1@nrc.gov

Alex S. Polonsky, Esq. (Email and U.S. Postal Service)
Morgan, Lewis, & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: apolonsky@morganlewis.com

Kathryn M. Sutton, Esq. (Email and U.S. Postal Service)
Morgan, Lewis, & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: ksutton@morganlewis.com

Donald Silverman, Esq. (Email and U.S. Postal Service)
Morgan, Lewis, & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: dsilverman@morganlewis.com

J. Bradley Fewell (Email and U.S. Postal Service)
Exelon Corporation
200 Exelon Way, Suite 200
Kennett Square, PA 19348
E-mail: bradley.fewell@exeloncorp.com

John Covino, DAG (Email and U.S. Postal Service)
State of New Jersey
Department of Law and Public Safety
Office of the Attorney General
Hughes Justice Complex
25 West Market Street
P.O. Box 093
Trenton, NJ 08625
E-mail: john.corvino@dol.lps.state.nj.us

Valerie Gray (Email)
State of New Jersey
Department of Law and Public Safety
Office of the Attorney General
Hughes Justice Complex
25 West Market Street
P.O. Box 093
Trenton, NJ 08625
E-mail: valerie.gray@dol.lps.state.nj.us

Paul Gunter (Email and U.S. Postal Service)
c/o Nuclear Information and Resource Service
6930 Carroll Ave., Suite 340
Takoma Park, MD 20912-4446
E-mail: paul@beyondnuclear.org

Edith Gbur (Email)
Jersey Shore Nuclear Watch, Inc.
364 Costa Mesa Drive. Toms River, New Jersey 08757
E-mail: gburl@comcast.net

Paula Gotsch (Email)
GRAMMIES
205 6th Avenue
Normandy Beach, New Jersey 08723
E-mail: paulagotsch@verizon.net

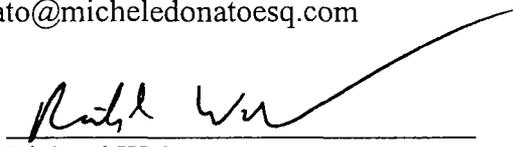
Jeff Tittel (Email)
New Jersey Sierra Club
139 West Hanover Street
Trenton New Jersey 08618
E-mail: Jeff.Tittel@sierraclub.org

Adam Garber (Email)
New Jersey Public Interest Research Group
11 N. Willow St,
Trenton, NJ 08608.
E-mail: agarber@njpirg.org

Peggy Sturmfels (Email)
New Jersey Environmental Federation
1002 Ocean Avenue
Belmar, New Jersey 07319
E-mail: psturmfels@cleanwater.org

Michele Donato, Esq. (Email)
PO Box 145
Lavalette, NJ 08735
E-mail: mdonato@micheledonatoesq.com

Signed:


Richard Webster

Dated: July 27, 2007