December 17, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
AMERGEN ENERGY COMPANY, LLC	)	Docket No. 50-219-LR
	)	
(Oyster Creek Nuclear Generating Station)	)	

NRC STAFF ANSWER TO CITIZENS' MOTION FOR AN EXTENSION OF TIME TO FILE ANY APPEAL

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c) the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby answers "Citizens' Motion for an Extension of Time to File any Appeal" (December 10, 2007) ("Motion"). For the reasons set forth below, Citizens' Motion should be denied because the Board does not have authority to extend the time for an appeal to the Commission and the Motion, even if referred to the Commission, is premature and fails to show good cause.[1]

DISCUSSION

The Board does not have authority to extend the time for filing an appeal with the Commission, even for good cause. *See Babcock & Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility-Decommissioning Plan), Materials Lic. No. SNM-145, 1993 WL 76827, at *1 (LBP February 22, 1993) (unpublished order) (referring a request for extension of time to appeal to the Commission); *Long Island Lighting Co*. (Shoreham Nuclear Power Station, Unit 1), LBP-82-41, 15 NRC 1295, 1306 n.29 (1982) (advising the parties that the Board does not have

[1] Should the Commission take-up Citizens' Motion and grant it, the Staff requests that other parties be afforded the same extension of time for any appeals they may wish to file.

authority to extend deadlines for filing appeals). Therefore, any appeal for an extension of time must be filed with the Commission.

Even if Citizens had properly directed their Motion, the request for 15 total days in which their "lead counsel"[2] is in the country, as opposed to 15 consecutive days mandated by 10 CFR § 2.341(b), to file any appeal is premature. Pursuant to 10 C.F.R. § 2.323(a), a motion must be filed within 10 days *after* the occurrence or circumstances giving rise to the motion. The occurrence or circumstances that could give rise to Citizens' Motion have not yet occurred, *i.e.*, the Board has not yet issued its initial decision. Citizens (or any of party) cannot yet know that they will want to appeal, or when that appeal might be due. Therefore the Motion is premature.

Further, Citizens have not shown "good cause" as required by 10 C.F.R. § 2.307. On November 19, 2007, the Board Clerk Debra Wolf informed the parties via e-mail that the Board *anticipated* issuing its initial decision in this proceeding by December 20, 2007. Until the Board issues its decision, the impact, if any, on Mr. Webster's or any other party's ability to prepare an appeal for their client, and thus potential "good cause" for an extension of time, cannot be determined.

Citizens incorrectly suggest that 15 days is the "minimum" or "least" amount of time for an appeal of an initial decision.[3] Fifteen days is simply the deadline established by 10 C.F.R. § 2.341(b)(1) without regard to a party's geographic location. The Commissions' regulations do

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[2] Attorney Julia LeMense, of Rutgers Environmental Law Clinic, who attended part of the evidentiary hearing, has also made an appearance on behalf of Citizens in this proceeding. Attorney Paul Gunter, the designated representative of the Nuclear Information and Resource Service ("NIRS"), which is one of the six organizations collectively known as "Citizens," has also made an appearance in this proceeding.

[3] Pursuant to 10 C.F.R. § 2.306, five days are added to the filing deadline if service is by first-class mail. Thus, an appeal of a Board Order issued December 20 and served by first-class mail would be due January 9, 2008, 10 full days after Mr. Webster returns from the U.K.

not guarantee parties 15 days (either here or abroad) that they can actually work on an appeal. Saturdays, Sundays, and legal holidays count in computing time unless the last day of the time period is a Saturday, Sunday, or legal holiday, in which case, the deadline is the next day which is neither a Saturday, Sunday, nor legal holiday. *See* 10 C.F.R. § 2.306. Mr. Webster has co-counsel and his decision not to work on an appeal, if any, while abroad, and not to communicate with co-counsel about an appeal is his choice and not good cause to extend the Commission's appeal deadline.

Citizens' request that the Board withhold its decision until December 30, 2007 should also be denied. Under the Commission's Model Milestones for Subpart L proceedings, the deadline for a Board's initial decision is 90 days after the end of the evidentiary hearing and closure of the record. *See* 10 C.F.R. Appendix B. Because the record in this proceeding closed September 25, 2007, *see* Tr. 878, the Board must issue its decision by December 25, 2007, in order to meet this milestone.[4] According to the Commission's schedule for license renewal reviews, there is a 30-month deadline for a Commission decision on a contested license renewal application. *See Baltimore Gas & Electric Co*. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 42-44 (1998) (directing the Licensing Board to set schedules in license renewal proceedings in accordance with the Commission's goal of completing license renewal reviews in 30 months). For Oyster Creek, the 30-month period ends January 22, 2007. The extension of time requested by Citizens would likely preclude the Commission from meeting its goal. Furthermore, the parties and the Board have invested considerable effort towards bringing this proceeding to completion within the Model Milestones

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[4] The 90-day period would end December 24, but, both December 24 and 25 are Federal Holidays this year. *See* Exec. Order No. 13453, 72 Fed. Reg. 70,477 (Dec. 11, 2007).

and the 30-month deadline. This effort should not be thwarted and proceeding stalled by the personal choice or inconvenience of one attorney.

CONCLUSION

For the reasons set forth above, Citizens' Motion should be denied because the Board lacks jurisdiction to grant the relief requested, Citizens' Motion is premature, and Citizens have not shown good cause.

Respectfully submitted,

/RA/

Mary C. Baty
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of December, 2007

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO CITIZENS' MOTION FOR AN EXTENSION OF TIME TO FILE ANY APPEAL" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or as indicated by an asterisk, by electronic mail, with copies by U.S mail, first class, this 17th day of December, 2007.

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