

RAS-H-23



DOCKETED  
USNRC

May 9, 2008 (11:00am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

VIA E-MAIL AND U.S. MAIL

May 8, 2008

The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: In the Matter of AmerGen Energy Co., LLC (License Renewal for Oyster Creek  
Nuclear Generating Station, Docket No. 50-219-LR)

Dear Chairman Klein:

I am writing on behalf of my clients Nuclear Information and Resource Service, Inc.; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers and More for Energy Safety, New Jersey Public Interest Research Group, New Jersey Sierra Club, and the New Jersey Environmental Federation (collectively "Citizens"), who are parties to the ongoing relicensing proceeding for Oyster Creek Nuclear Generating Station ("Oyster Creek"). Because the Commission has tentatively scheduled an affirmation session regarding this proceeding on May 16, 2008, we would like to inform you that the State of New Jersey has written to the NRC Staff providing "new and significant information that directly affects license extension [for Oyster Creek]." Letter from Jill Lipoti to Samson Lee, dated March 26, 2008 *available at* ML080940453 (attached for your ease of reference).

In Summary, the State's letter alleges that the Supplemental Environmental Impact Statement ("SEIS") prepared to support the licensing decision for Oyster Creek is inadequate because it omitted any mention of the proposed expansion of a confined disposal facility ("CDF") to support dredging projects that will only be required if the plant continues in operation. *Id.* As such, the CDF project should have been included in the SEIS in order to satisfy the requirements of the National Environmental Policy Act ("NEPA"). *Id.* Showing that this expansion project is imminent, a consultant for AmerGen has met with New Jersey Department of Environmental Protection ("DEP") to discuss permitting. *Id.*

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TEMPLATE = SECY 043

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At this stage, we do not have sufficient information to determine whether this issue raises a significant safety concern. Thus, at present we do not intend to make a formal filing requesting the Commission to reopen the record and hold a hearing on this issue. However, if the State is correct, proceeding with licensing without preparing a supplementary environmental impact assessment for the CDF and the associated dredging projects would violate NEPA. We therefore trust that the Commission will reach its own view on this issue prior to any decision regarding the Oyster Creek license renewal. Finally, we note that the timing of AmerGen's notification to the State means that neither Citizens nor the State have been provided with any opportunity to request a hearing on this issue even though it is material to the license renewal decision.

As noted in the attached certificate of service, copies of this letter have been sent by e-mail or first class mail to all the parties in this proceeding. Thank you for your consideration.

Yours sincerely,

/s

Richard Webster, Esq.

Enclosure

c.c. Service List

Jill Lipoti, New Jersey Department of Environmental Protection



**State of New Jersey**

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Division of Environmental Safety and Health

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ON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

March 26, 2008

Samson Lee, Acting Director  
Division of License Renewal  
U. S. Nuclear Regulatory Commission  
One White Flint North (Mail Stop 11-F1)  
11555 Rockville Pike  
Rockville, MD 20852

Subject: Oyster Creek Proposed Dredging Project

Dear Mr. Lee:

The New Jersey Department of Environmental Protection recently received notice that Exelon is planning a dredging project at Oyster Creek for 2009. In a letter dated February 22, 2008, LGA Engineering, Inc. on behalf of AmerGen, contacted the DEP's Office of Dredging and Sediment Technology and requested a pre-application meeting to discuss the scope of the project and appropriate permits, sampling plans and related documents necessary to meet state and federal regulatory requirements. My staff was invited to attend the meeting to determine if the project required support from the Bureau of Nuclear Engineering with respect to monitoring and sampling for radioactivity. As a direct result of the pre-application meeting, the Department has some concerns with the project as it relates to the extended operation of Oyster Creek and license extension that we would like you to address.

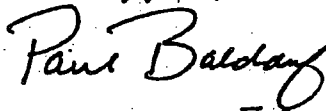
The Generic Environmental Impact Statement (NUREG-1437) and the Supplemental Environmental Impact Statement (NUREG-1437, Supplement 28) collectively discuss future maintenance dredging projects for Oyster Creek. Both of those documents find that the environmental impact from future maintenance dredging is low and that all projects will be carried out according to state and federal regulatory guidance. However, neither document discusses the need for new construction at the site to expand the size of the existing confined disposal facility (CDF) to accommodate the dredge spoils from the future projects. The Department believes that this proposed construction project should have been specifically included in the SEIS and the impacts of the construction on the local environment evaluated. According to LGA Engineering, the current size and location of the existing CDF would adequately support dredge spoils from necessary projects through the expiration of the current

license at Oyster Creek. The new construction is required to support future dredging projects that are anticipated based upon continued operation of the plant under license extension.

In addition, it is unclear whether the construction of a larger CDF will impact the agreement made between AmerGen and the Department as part of the Federal Consistency Determination. In that agreement, AmerGen committed to providing construction of walking trails, an access road and parking area. The expansion of the CDF may impact the walking trails or access to them and should be evaluated. The Federal Consistency Determination acknowledged AmerGen's intent to retain the existing dredge spoil, but there is no mention of an expansion project that effectively doubles the size of the CDF.

The Department believes that construction and expansion associated with the CDF falls within the scope of the National Environmental Policy Act and should have been included as part of the license renewal process and evaluated with regard to public health and safety in the SEIS. We further believe that knowledge of this project is considered new and significant information that directly affects license extension. Therefore, we urge the NRC to investigate the proposed dredging project and evaluate any environmental and public health and safety impacts that may result from the new construction.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jill Lipoti".

Jill Lipoti, Ph.D. *For*  
Director

c. Michael P. Gallagher, P.E., Vice President, License Renewal Projects  
AmerGen Energy Company, LLC

Christopher M. Crane, Executive Vice President, Exelon Corporation  
Chief Operating Officer, Exelon Generation

Luis A. Reyes, USNRC Executive Director for Operations

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-0219-LR
AMERGEN ENERGY COMPANY, LLC	)	
	)	
(License Renewal for the Oyster Creek	)	
Nuclear Generating Station)	)	May 8, 2008
	)	

CERTIFICATE OF SERVICE

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

I hereby certify that on May 8, 2008, I caused a letter to Chairman Klein 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)  
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Attention: Rulemaking and Adjudications Staff  
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Signed: /s/ Richard Webster

**Dated: May 8, 2008**