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RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of AMERGEN ENERGY COMPANY, LLC (Oyster Creek Nuclear Generating Station)	)	Docket No. 50-219-LR
In the Matter of ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point Nuclear Generating Units 2 and 3)	)	Docket Nos. 50-247-LR and 50-286-LR
In the Matter of ENTERGY NUCLEAR OPERATIONS, INC. (Pilgrim Nuclear Power Station)	)	Docket No. 50-293-LR
In the Matter of ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station)	)	Docket No. 50-271-LR

SUPPLEMENTAL PETITION BY 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; NEW JERSEY ENVIRONMENTAL FEDERATION; RIVERKEEPER, INC.; PILGRIM WATCH AND NEW ENGLAND COALITION FOR ADDITIONAL INVESTIGATION AND CORRECTION OF DEFICIENCIES REGARDING LICENSE RENEWAL REVIEWS FOR OYSTER CREEK, INDIAN POINT, PILGRIM, AND VERMONT YANKEE NUCLEAR POWER PLANTS

TEMPLATE=SECY-037

D503

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I. INTRODUCTION AND SUMMARY

On January 3, 2008, 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; New Jersey Environmental Federation; ("Oyster Creek Organizations"); Riverkeeper, Inc. ("Riverkeeper"); Pilgrim Watch; and New England Coalition ("NEC") (collectively "Petitioners") filed a petition (the "Petition") with the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") to suspend the currently pending license renewal proceedings for the Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee nuclear power plants (collectively "Facilities") including NRC Staff technical reviews and/or adjudicatory hearings, and conduct a comprehensive overhaul of the manner in which NRC Staff reviews of license renewal applications are conducted. Each of the Petitioners relied on a common set of facts to seek relief with respect to the nuclear power plant re-licensing proceeding in which it was an intervenor or a petitioner: the Oyster Creek Organizations sought relief with respect to Oyster Creek, Riverkeeper sought relief with respect to Indian Point, Pilgrim Watch sought relief with respect to Pilgrim, and NEC sought relief with respect to Vermont Yankee. The Commission has scheduled an affirmation session to decide upon the Petition on May 16, 2008.

On May 8, 2008, the NRC Staff served Petitioners with a memorandum from Hubert T. Bell, the NRC Inspector General, to Dale E. Klein, the NRC Chairman, dated May 2, 2008 (the "IG Memo"). This memo provides a summary of some additional investigations undertaken by OIG to follow up on the concerns raised by the OIG Audit of NRC's license renewal program, upon which Petitioners largely based their Petition. The IG Memo confirms that the NRC Staff cannot document that it carried out license renewal reviews adequately and suggests that the

Staff has destroyed essential records. However, it falls far short of the investigation envisaged by Petitioners because it failed to address key issues raised by the initial OIG Audit, the reporting is vague, the investigation was not exhaustive, and the IG Memo contains no proposals to remedy the problems found. Thus, the IG Memo raises more questions that it answers. The most important question left unanswered by the IG Memo is whether the quality of the relicensing reviews was actually sufficient, even though the reporting was deficient. Through analysis of the Audit Report for the Oyster Creek Nuclear Generating Station ("Oyster Creek") Petitioners have been able to determine that the review of many aging management programs ("AMPs") at Oyster Creek was inadequate. However, further work is needed to confirm whether that the audit reports for the other license renewals at issue show similar deficiencies and whether any gap analysis was done to ensure each AMP was complete and the AMPs collectively ensure compliance with the CLB. Furthermore, the IG Memo fails to determine whether the destruction of working papers was lawful and in accordance with NRC official policies. In this submission, Petitioners show that this destruction was illegal and violated NRC's official policy on document retention. Further investigation of this issue is needed to determine how this illegal practice came to be a routine part of license renewal audits. Petitioners are therefore submitting this Petition to supplement the basis of their initial Petition and request additional relief in each of the respective license renewal proceedings in which each Petitioner is an intervenor or has petitioned to intervene.[1]

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[1] This supplemental motion has been prepared quickly to put some of the additional issues raised by the IG Memo before the Commission in advance of the scheduled May 16, 2008 affirmation session on the initial Petition. It therefore only provides a few examples of the issues raised. Petitioners reserve the right to file a more comprehensive motion concerning the adequacy of NRC relicensing reviews at a later date.

II. THE IG MEMO REINFORCES THE CONCLUSION THAT THE LICENSE RENEWAL REVIEWS WERE INADEQUATE

The IG's major finding is that because the NRC Staff destroyed their "audit working papers" and did not retain copies of all applicant documents reviewed, it was "difficult to verify specific details of on-site review activities." IG Memo at 4-5. OIG confirmed to Petitioners that the investigation only attempted to examine the volume of work done to review license renewal applications and made no attempt to examine the quality of the work.[2] Based on review of audit reports, the largest number of documents reviewed per aging management program ("AMP") examined was nine and the least was three. *Id.* at 3. The destroyed "audit working papers" included checklists and "additional information supplied by applicant staff." *Id.* After the audit, the reviewers provided a "formal summary of their technical review and conclusions" to Division of License Renewal ("DLR") to facilitate preparation of the Safety Evaluation Report ("SER") and comments on the final draft SER. *Id.*

To better understand the OIG findings, Petitioners reviewed sections in the audit report for Oyster Creek concerning flow accelerated corrosion ("FAC"). Audit and Review Report for Plant Aging Management Reviews and Programs, Oyster Creek Nuclear Generating Station, Revision 1, dated May 9, 2006 ("OC Audit Report") *available at* ML062280051. The text mentions review of two documents, *Id.* at 29-20, but attachment 5, which lists the documents reviewed for each AMP, lists only the program basis document ("PBD") for the AMP. *Id.* at 515.

Petitioners then searched for the PBD on ADAMS, but a search for "program basis document" within the Oyster Creek docket only brought up two documents: 2006/03/08-Oyster

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[2] Telephone call between George Mulley and Richard Webster on May 13, 2008

Creek Program Basis Document (PBD) B.2.04 Inspection of Ventilation Systems, *available at* ML060690026 and 2006/02/06-Oyster Creek Program Basis Document (PBD) B.1.09 BWR Vessel Internals *available at* ML060370508. These PBDs are high level summary documents prepared by the applicant that appear designed to lead the reviewer through the review process requirements. However, while they are invariably the first document listed for each AMP reviewed, the vast majority are not publicly available.

Although the long section in the audit report summarizing operating experience, including various failures of the FAC AMP in the past, might give the impression of a thorough review, this is misleading because it is almost identical to the similar section in the License Renewal Application. *Compare* OC Audit Report at 20-21 *with* Oyster Creek License Renewal Application at B-41-42. The operating experience summary states that leaks had occurred that the FAC program had previously failed to predict. OC Audit Report at 20. This failure was attributed to errors that had been fixed. *Id.* The audit report then merely repeated the licensee's conclusion that "the risk of a FAC failure in unidentified susceptible lines has been reduced." *Id.* Therefore, despite the past failure of the FAC AMP to anticipate leaks, the Staff did not carry out any independent verification of the only licensee-supplied summary document that they reviewed. In particular, the Staff failed to check the licensee's account of operating experience, the corrective action taken, and the assertion that the chance of recurrence of past problems had been "reduced."

Notably, even the applicant did not assert that the chance of unanticipated leakage had been eliminated. Furthermore, neither the applicant nor the Staff attempted to quantify how likely it was for the proposed FAC AMP to allow further leakage or what the Current Licensing Basis ("CLB") requires for such leakage. It is therefore impossible to understand how the Staff

reached the conclusion in the SER that FAC would be adequately managed at Oyster Creek during any period of extended operation. SER at 3-15.

III. NRC STAFF DESTROYED ESSENTIAL DOCUMENTS AND HINDERED REVIEWERS TO AVOID PUBLIC DISCLOSURE OF CRITICAL DOCUMENTS

From the IG Memo it is difficult to understand when and why the Staff destroyed the audit working papers. In particular, the memo states that "the reviewers disposed of these working papers when they were no longer needed to support the review and approval of the application." IG Memo at 3. This statement is puzzling because, for at least Oyster Creek, the Commission has not approved the license renewal application and there is a complete lack of documentation showing that the application has been properly reviewed. Thus, the destroyed documents are still needed to support the license renewal application. Based on discussions with OIG, Petitioners understand that the working papers were destroyed as soon as summary documents based upon the working papers had been prepared.[3]

Although the memo provides no information on why the working papers were destroyed, OIG confirmed that this was a longstanding policy.[4] In addition, the original OIG Audit document makes it plain that the NRC reviewers were prohibited from taking any licensee documents off-site unless the applicant agreed that the documents could be put into ADAMS. OIG, Audit of NRC's License Renewal Program (September 6, 2007) ("OIG Audit") at 14-15. Despite this prohibition, NRC inspectors also said it is "standard procedure to dispose of licensee documents once their report is written." *Id.* at 15. Furthermore, DLR management managers stated that they did not want NRC auditors bringing undocketed items back to headquarters. *Id.*

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[3] Telephone call between George Mulley and Richard Webster on May 13, 2008

[4] *Id.*

at 15-16. Finally, a senior attorney in the license renewal program stated that management had been warned that documents taken from the site would become subject to the Freedom of Information Act ("FOIA"). *Id.* at 16.

Thus, at least part of the reason that DLR management prevented NRC auditors from removing licensee documents from sites was to avoid those documents becoming available to the public. In particular, the audit report shows that the reviewers relied heavily, and sometimes exclusively, on the PBD documents for each AMP. These PBDs effectively became a shadow license renewal application, but the vast majority of these PBDs are still not available to the public. If concealment of licensee information had not been the goal of the policy on removal of licensee documents from the site, a simple solution would have been to docket the licensee documents and add them into ADAMS. Instead, NRC managers hindered the work of their staff in order to ensure that the public is prevented from seeing licensee documents upon which the agency relied. Furthermore, perhaps even more egregiously, the managers then made it virtually impossible to review the quality of the Staff's work by having them destroy not only the licensee documents but also all their working papers.

Finally, the culture exhibited by NRC managers is extremely troubling. These polices made it plain to NRC auditors that NRC managers regarded protecting the interests of licensees as more important than having a thorough, efficient, and transparent review process. Thus, the implicit message was that NRC managers did not want any problems disclosed to the public.

IV. THE DESTRUCTION OF THE "WORKING PAPERS" VIOLATES NRC POLICY AND IS ILLEGAL

As noted in Section III, the IG Memo states that NRC Staff reviewers conducting onsite audits of AMPs routinely "dispose" of their "working papers" when they were "no longer needed to support the review and approval of the application." IG Memo at 3. *See*

Audit of NRC's License Renewal Program, OIG-07-A-15, September 6, 2007 at 15. The "working papers" consisted of checklists of specific applicant documents reviewed, notes from the reviews and "additional information supplied by the applicant staff." *Id.* The "working papers" were then used as the basis for the reviewers' preparation of formal input to the audit report, which then forms the basis for the Staff's Safety Evaluation Report ("SER"). *Id.*

The memo then references Handbook 1 of NRC Management Directive 3.53[5] (hereinafter "Directive 3.53"), which "provides criteria as to what constitutes personally held non-record materials which may be retained or discarded at the author's sole discretion." *Id.,* Note 7. The IG memo makes no other reference to the categorization of the "working papers" for purposes of determining whether they should be preserved or can be discarded. Therefore, the IG Memo fails to determine whether the destroyed documents should be classified as personal papers. Upon review of Directive 3.53, it is clear that the "working papers," as they are described in the IG Memo, do not qualify as "personally held non-record materials" that can be destroyed when their creator determines they are no longer necessary. On the contrary, the "working papers" must be classified as "Working Files" according to Directive 3.53 and preserved by NRC Staff and Management. Based on this definition, the destruction of the "working papers" violates written NRC Policy and is inconsistent with the underlying regulations on which the policy is based.

The purpose of the NRC's Records Management Program, according to Directive 3.53, is to ensure that NRC decisions and procedures are properly documented. The following is the basic requirement for the program.

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[5] Management Directive 3.53, "NRC Records and Document Management Program," NRC Office of Information Services, June 15, 1995, Revised March 15, 2007, ADAMS Accession No. ML071160026.

To provide for the adequate documentation of the organization, functions, policies, decisions, procedures, and essential transactions of NRC, records shall be created and maintained that are sufficient to— (1)

• Document the persons, places, things, or matters dealt with by NRC (a)

• Facilitate action by NRC officials and their successors in office (b)

• *Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government (c)*

• *Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions (d)*

• Document the formulation and execution of basic policies and decisions and the necessary actions taken, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference) (e)

• Document important board, committee, or staff meetings (f)

Directive 3.53 at 4 (emphasis added). The Directive cites the statutory definition of "federal records" under 44 U.S.C. 3301, as follows.

Defining Federal Records (1)

Federal records are statutorily defined in the Federal Records Act (44 U.S.C. 3301) as— (a)

All books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational value of the data in them.

Id. at 11-12. In order to meet the definition, documentary materials must meet the following two criteria;

• They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business. (i)

• They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain. (ii)

Id. at 14, citing 36 CFR 1222.34. The term "appropriate for preservation" is defined as "documentary materials that in the judgment of the agency should be filed, stored, or otherwise systematically maintained by an agency because they are evidence of agency activities or contain unique information, even though the materials may not be covered by the agency's current filing or maintenance procedures." *Id.* at 13. Government owned non-record materials range from library materials to extra copies of documents. *Id.* at 15. "Personal papers" are defined in Part II, Handbook 1 of Directive 3.53 in a section entitled "Disposition of Personally Held Nonrecord Materials," as follows.

> Personal papers, referred to as "personal records" under the FOIA and pertinent case law, are— (d)
> • Documents of a private or nonofficial character that ordinarily pertain only to an individual's personal affairs and do not affect the conduct of agency business, such as family papers and personal correspondence relating to private business, professional, or community service activities (i)
> • Notes prepared by the NRC employee pertaining to agency business but that— (ii)
> – Are prepared for the individual's own use and have not been circulated to others in the course of transacting NRC business *(a)*
> – Are not required to be maintained by NRC policy or procedures *(b)*
> – Are retained or discarded at the author's sole discretion *(c)*
> – Would not be considered agency records if requested under the FOIA (For detailed information on FOIA procedures and definitions, see MD 3.1, "Freedom of Information Act.") *(d)*

Id. at 61-62. On the other hand, the NRC has specific guidelines for preserving drafts and working files, as noted in Part I of Handbook 1.

Drafts, Working Files, and Similar Materials (3)

> Working files, such as preliminary drafts and rough notes and other similar materials, will be maintained and filed with the official record for purposes of adequate and proper documentation if they meet the following two conditions: (a)
>
> • They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, and to communicate with agency staff about agency business. (i)
>
> • *They contain unique information, such as substantive annotations or comments, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.* (ii)
>
> Examples include— (b)
>
> • Drafts of records (e.g., SECY papers) circulated for approval, comment, or action that are significantly changed in the final version based on comments submitted and those comments, provided insight into the basis for an agency position or decision and the comments are not documented in the official record. (i)
>
> • *Information (including video tapes and photographs) generated or acquired by NRC while inspecting a licensee's facility that contain unique information, the rationale for an NRC decision, or guidance that is not documented in the official record.* (ii)

Id. at 19-20 (emphasis added). Although it is somewhat unclear from the statement of the rule in Directive 3.53, both the examples given and the Federal Records Act make it clear that if either of the two conditions are satisfied, the records must be preserved. In particular, records created or received during the conduct of NRC official business that contain unique information or the rationale for an agency decision must be preserved.

In addition, Directive 3.53 contains specific requirements for handling Contractors' work records. In essence, these work records are considered the contractual property of the NRC, and must be retained by the agency. Part VI of Handbook 1 describes the special requirements applicable to Contractors' records. "Contractor records developed under contract with the agency and described as Category 3 are the property of NRC (unless the contract states otherwise),

whether submitted to NRC or retained by the contractor." Directive 3.53 at 86. Part VI goes on to describe what constitutes Contractors' work product, as follows.

> Contractor records consist of all documentary materials created or received by an NRC contractor or a U.S. Department of Energy (DOE) contractor performing work for NRC under the DOE/NRC Memorandum of Understanding in the performance of administrative, technical, or research work. These records consist of published and unpublished reports, background material, feeder reports, raw data, test or trial results, *working papers, or any other documentation received or developed in the execution of the contract*. These records could be classified or sensitive unclassified documents.

Directive 3.53 at 85[6] (emphasis added). The IG Memo states that during the IG review, the OIG auditors interviewed ten NRC Staff members and "two contractors involved with NRC license renewal reviews..." IG Memo at 2. The Memo does not fully explain whether either of the contractors interviewed conducted the onsite audits of applicant AMPs that resulted in the production, and destruction, of the "working papers." Petitioners reserve the right to raise the issue of Contractor compliance with Directive 3.53, if and when further information is made public by the IG or the Commission regarding this aspect of the IG Memo.

Based on these definitions, and the information in the IG Memo, it is clear that the "working papers" referenced in the Memo should be defined as "Working Files" for purposes of

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[6] Directive 3.53 also categorizes different types of Contractor records. Category 3 records are defined as "Records generated or received by the contractor relating directly to the function or purpose for which the contract exists are likely to be Federal records that are necessary for retention by NRC to provide adequate and proper documentation of its activities. These records developed under contract with the agency, created for the NRC's use and delivered to or falling under the legal control of NRC are, in most cases, the contractual property of NRC. These records do not, however, become agency records for the purposes of the Freedom of Information Act until they come into the actual physical possession of NRC. These records include surveys, raw data, feeder reports, published and unpublished reports, experiment and test descriptions, methodology, test results, laboratory notebooks, and other records developed or received in the execution of the contract." Directive 3.53 at 86.

compliance with Directive 3.53 and federal regulations at 36 CFR 1222.34. The "working papers" contain "unique information, such as substantive annotations or comments, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities." *Id.* According to the reviewers interviewed, they included checklists of applicant documents that were reviewed, as well as "notes and additional information supplied by applicant staff." IG Memo at 3. Information supplied by the applicant during the onsite audits "typically would include a high level license renewal document describing the AMPs as well as more detailed supporting documents." *Id.*

The "working papers" then formed the basis for the audit reports and SERs. *Id.* However, the audit reports were found wanting by the IG auditors, who concluded "these audit reports did not provide a detailed description of applicant interviews or the contents of applicant documents reviewed by the NRC Staff." *Id.* at 4. Consequently, the detailed information compiled by Staff reviewers in the "working papers" was not preserved by the NRC, nor was it described in any detailed fashion in the subsequent audit report or SER. On the contrary, the audit reports and SER provide only summaries that lack any useful detail. The reviewers' detailed notes almost certainly contained "substantive comments" that would add to a proper understanding of the agency's "formulation of policies, decisions, actions." Directive 3.53 at 19-20. The second example provided in Directive 3.53 is exactly on point, describing "Information... generated or acquired by NRC while inspecting a licensee's facility that contain unique information,... the rationale for an NRC decision,[.]" *Id.* A Staff reviewer's onsite audit of applicant documents supporting its AMPs for license renewal is certainly akin to "inspecting a licensee's facility." And it certainly contains particular information, collected by that reviewer, that underlies the subsequent preparation of the applicant's SER.

The IG Memo is less clear as to whether the "working papers" were circulated to other staff, thereby addressing the second prong of the definition of Working Files. However, the fact that the "working papers" formed the basis for the preparation of the audit report and SER renders this a minor distinction at best. They provide the only specific, fact-based support for the audit reports, and form a critical link between the actual review undertaken and the details of the applicant documents upon which it was based. Further, the "working papers" include notes and comments on the applicant documents which may or may not be reflected in the final audit reports. Given the admittedly summary nature of the audit reports, it is doubtful any of the reviewers' observations or concerns were included. The overarching purpose of the guidance found in Directive 3.53 is clear. Records, such as Working Files, that reflect the depth of review and decision-making processes of NRC Staff, must be preserved.

Indeed, these notes and checklists form the evidentiary basis for the "professional judgment" cited by reviewers in the IG Memo that determines "the number and type of applicant documents that a reviewer examined during the audit." *Id.* Without the "working papers" it is. difficult, if not impossible, to determine what constitutes "professional judgment" of a Staff reviewer, given the apparent absence of an objective standard by which the reviewer's work can be measured by NRC management.

The IG Memo's reference to the criteria for "personally held non-record materials" should not be misinterpreted as a determination of compliance with Directive 3.53. In fact, Directive 3.53 requires the retention of at least some of records that were destroyed. In the Direction "Personal records" are defined as either private, unofficial materials, or notes prepared "for the employee's own use" in the course of agency business that either have not been circulated to others or are not required to be maintained by NRC policy or procedures. Directive

at 61-62. The "working papers" at issue in the IG Memo are obviously not private, unofficial materials. While they are prepared by the reviewers to aid them in preparing the audit reports, they are not exclusively "for the employee's own use." In fact, the "working papers" are an intrinsic part of the staff review of the applicant's AMPs, and must be preserved as "Working Files" according to Directive 3.53. Without them, there is no detailed factual support for the audit reports or the SER, and thus no factual support for the eventual Commission decision whether to renew the applicant's operating license. The audit reports and SERs are mere "summaries" of documents, apparently lacking specific detail sufficient for the IG to verify critical details of the onsite reviews. The IG Memo states this plainly. "The applicant documents reviewed and the working papers prepared during NRC onsite activities *provide direct support* of the specifics of the NRC review. Consequently, the failure to retain applicant documents and NRC working papers made it difficult to verify specific details of staff on-site review activities." IG Memo at 5. The whole purpose of the NRC Records Management policy is to ensure that federal records necessary to support the NRC's decision-making process are preserved and managed properly. The "working papers" described in the IG Memo form a critical piece of the staff's overall review. Destroying them clearly violates NRC policy and federal regulations.

Thus, Petitioners have now shown that the NRC Staff broke the law in their attempts to conceal from the public how the relicesing reviews were carried out. The NRC Staff have clearly lost sight of the agency's mission to serve the public not the interests of the nuclear industry. As discussed further in the section on additional relief, the Commission should conduct an investigation to determine how this illegal document destruction became standard practice and to determine whether the culture within the agency is hostile to decision-making in a transparent

manner with meaningful public participation. In addition, the Commission should now instruct the Staff to obey the law and preserve working files that contain unique information.

IV. THE COMMISSION HAS INSUFFICIENT INFORMATION TO FORM AN OPINION ON ADEQUATE PROTECTION FOR THE FACILITIES

As discussed in the initial Petition, to make a reasonable assurance finding about the adequacy of aging management systems, the Commission must be confident that NRC Staff have not merely relied upon self-serving statements by applicants. Unfortunately, careful review of the Oyster Creek Audit Report, which is the only surviving record documenting what was done during the Oyster Creek relicensing review, shows that in many instances this is precisely what happened. For many elements of the aging management program, the NRC reviewers relied largely or exclusively on high level summary "PBD" documents that were prepared by the applicant for the purpose of relicensing. The reviewers often did not independently verify the content of those documents by examining the raw records that the PDB documents summarized.

To illustrate the vast gulf between the review provided if an issue is raised in a hearing compared with the review provided by NRC Staff, the Oyster Creek Organizations reviewed over 2,000 documents that AmerGen produced as relevant to the contention about the management of the thickness of the drywell. In contrast, each AMP reviewed at Oyster Creek involved review of less than approximately 14 documents and in many cases only the PBDs were reviewed. OC Audit Report at 511-26. In particular, the review of the drywell monitoring program, which was AMP B 1.27, relied only upon the PBD document. *Id.* at 519-20.

Thus, the only remaining documentation of the relicensing review for Oyster Creek shows that the review was inadequate because it relied largely and sometimes exclusively on high level summary documents prepared by the licensee specifically for the purpose of license renewal. What is particularly concerning is that NRC Staff appear to have neglected to check

what the CLB actually requires in most instances. As the litigation about the drywell showed, measurement spatial scope and frequency must be modified depending on the size of the margins above CLB requirements. In the absence of a clear definition of those requirements, it is impossible to review the AMPs properly.

The AEA imposes a positive burden on the Commission to find that licensing ensures adequate protection of public health and safety. In this submission Petitioners have shown that for Oyster Creek the relicensing process was inadequate and the Commission cannot now relicense the plant because it cannot make the required finding on adequate protection. For the rest of the Facilities, it is highly likely that the same problems pervaded the process, because there is nothing to suggest that the Oyster Creek relicensing review was exceptionally poor. Furthermore, the IG Memo shows that the Staff have destroyed essential working papers without which the Commission cannot show that the quality of the relicensing reviews was adequate. Therefore, the findings of the IG Memo, coupled with the additional facts provided in this submission, reinforce the request in the initial Petition for the Commission to suspend relicensing proceedings for the Facilities while it investigates and attempts to remedy the deficiencies in the relicensing process. Furthermore, the Commission may wish to question whether the assumptions upon which it based its decisions to relicense many other nuclear power plants were valid.

V. CONCEALMENT OF LICENSEE DOCUMENTS IMPAIRED CITIZEN PARTICIPATION

After a license renewal application is complete and the time for filing initial contentions has passed, the Part 2 rules rely on potential intervenors finding out about new information upon which they could base new contentions through normal public disclosure processes. It is highly likely that the licensee documents upon which the NRC Staff relied to review the Oyster Creek

LRA contained such information. However, because the NRC Staff went to great pains to avoid public disclosure of most of these documents, the Oyster Creek Organizations were denied the opportunity to find this information and base new contentions upon it, as were the Petitioners who are participating in other license renewal proceedings.

VI. CONCLUSION AND REQUEST FOR ADDITIONAL REMEDY

Although there are many issues that require further investigation, many of the identified problems can and should be addressed now. OIG has found that there are serious questions about whether license renewal reviews are effective, NRC managers have deliberately shielded from the public licensee documents upon which the agency has relied, and NRC managers have ordered the destruction of working papers that would allow the quality of the reviews to be fully audited. Examination of the audit report for Oyster Creek shows that for many AMPs, the Staff failed to go beyond review of the PBD, a licensee supplied summary document prepared for the purpose of reclicensing. *See e.g.* OC Audit Report at 515-21 (review of 11 AMPs based on PBD only). Thus, for many AMPs at Oyster Creek the quality of the review did not meet the expectations of some NRC managers who expected that operating experience would be independently reviewed. OIG Audit Report at 19.

Although the Staff working papers have been destroyed, the applicant information upon which the Staff relied should have been preserved by the applicants. Thus, the Commission should determine for each approved AMP whether the documents reviewed by the license renewal audit teams were sufficient to fulfill the expectations of NRC managers and support the conclusion that the AMP is adequate to maintain the CLB. The report resulting from this exercise should clearly state the rationale for a finding that the scope of the review was adequate as well as a finding that the AMP is adequate. In cases where the review was not sufficient or

the AMP is inadequate, further auditing will be necessary. Furthermore, where only the PBD is listed as having been reviewed, the Commission should regard the review as inadequate *per se*.

To remedy the curtailment of Petitioners hearing rights the Commission should order the Staff to publicly release all the non-public documents upon which NRC Staff relied during the safety review,[7] reopen the record if necessary, and allow Petitioners an opportunity to file new contentions based upon materially different new information in the documents. The Commission should also immediately change current practices regarding document retention and should order the Staff to start preserving all working papers and making all licensee documents upon which the agency relies for its safety evaluation available to the public as far as possible.

In terms of further investigation, it is important for the Commission to probe the culture of the NRC management to determine why managers attempted to shield licensee information from the public and why managers have a policy of destroying the very papers that would allow the quality of the NRC Staff safety reviews to be fully audited. Furthermore it appears that the license renewal audit is organized around review of AMPs, but does not involve any gap analysis to test whether any aging management programs that are essential to maintain the CLB might be missing. This explains why at Oyster Creek, AmerGen had to enhance the drywell corrosion AMP to manage corrosion from the inside of the drywell. Oyster Creek Safety Evaluation Report at 3-428 to 3-429. Even though water on the inside of the drywell had been previously documented, this omission was not identified during the license renewal review, but came up later during an outage, when the applicant opened some inspection trenches and NRC inspectors found water in them. *Id.* at 427 to 428. The Commission should therefore investigate how the

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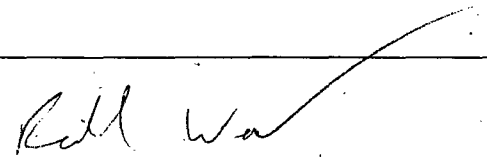
[7] For proprietary documents, the applicant should produce redacted versions for public release and provide full versions to parties who have signed a non-disclosure agreement.

Staff determined whether the CLB contained any requirements that had not been fully covered by the proposed AMPs. Based upon the experience at Oyster Creek, this task is particularly difficult because the terms of the CLB are often unclear. An essential part of relicensing review is to define the requirements of the CLB and compare whether the AMPs are sufficient to maintain the CLB. Without such an analysis, it is unclear how the Staff could make a determination about the adequacy of each AMP or the completeness of the AMPs in aggregate. The Commission should therefore also investigate and report upon how the Staff determined whether each AMPs is complete and whether the AMPs in aggregate adequately maintain the CLB.

Respectfully submitted,

 Richard Webster, Esq. Eastern Environmental Law Center 744 Broad Street Newark, NJ 07102 973-353-3189 rwebster@kinoy.rutgers.edu *Counsel for Oyster Creek Organizations*	/s Mary Lampert Pilgrim Watch 148 Washington Street Duxbury, MA 02332 781-934-0387 mary.lampert@comcast.net *Representative for Pilgrim Watch*
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May 15, 2008

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 15, 2008
	)	

CERTIFICATE OF SERVICE

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

I hereby certify that on May 15, 2008, I caused the Oyster Creek Organizations Supplemental Petition to be served via email and U.S. Postal Service (as indicated) on the following:

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Washington, DC 20555-0001
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