June 18, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S REPLY IN RESPONSE TO CITIZENS' RESPONSE TO COMMISSION ORDER DATED MAY 28, 2008

INTRODUCTION

In accordance with the Commission's May 28, 2008 "Order (Requesting Additional Briefs)" CLI-08-10 ("Order") at 4, authorizing reply briefs, the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby replies to "Citizens' Response to Commission Order Dated May 28, 2008" (June 11, 2008) ("Citizens' Brief"). As explained below, portions of Citizens' Brief mischaracterize the existing record. Moreover, Citizens' Brief does not address AmerGen's clarification of its commitment to perform the 3-D analysis, which appears to address their concern about AmerGen's commitment, and much of Citizens response appears to be irrelevant to the Commission's specific question.

DISCUSSION

The Commission asked the parties to address the following:

> Explain whether the structural analysis that AmerGen has committed to perform, and that is reflected in the Staff's proposed license condition, matches or bounds the sensitivity analyses that Judge Baratta would impose. In any event, explain whether additional analysis is necessary.

CLI-08-10 at 3.

I. Citizens' Brief Mischaracterizes the Staff's Testimony

The NRC must reply to address Citizens' misstatement of the Staff's views. In their brief, Citizens incorrectly asserts that the Staff has "found no errors in Dr. Hausler's contour plots." Citizens' Brief at 5. Contrary to Citizens' statement, the Staff did find errors in Dr. Hausler's contour plots, and testified that Dr. Hausler's plots were inconsistent with available data, and also overestimated the extent of corrosion.[1] In fact, Dr. Hausler admitted that 80% of the area depicted as less than 0.625 in the contour plot in Citizens Exh. 61, Attachment 1, Figure 4, was speculation.[2] Based on evidence presented, the Atomic Safety and Licensing Board ("Board") concluded that Dr. Hausler's contour plots were not reliable representations of the corrosion of the drywell shell.[3] The Board's conclusion was consistent with the Staff's testimony.[4] Nothing in Judge Baratta's additional statement suggests that he disagreed with his colleagues on this aspect of the initial decision.

II. Citizens' Brief Does Not Address Available Additional Information

Citizens opine that AmerGen "should be required to notify the NRC if the outcome of the modeling is indeterminate and fails to establish compliance with the CLB." *See* Brief at 3. However, on January 14, 2008, after the Board's initial decision, AmerGen clarified and revised its commitment.[5] It is unclear to the Staff if Citizens considered AmerGen's January 14 Letter

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[1] *See* Staff Exh. C at A26-27; Response 12(d). The Applicant also found fault with Dr. Hausler's contour plots. *See* Applicant Exh. C, Part 2, at A7; *id.* Part 3, at A40.

[2] Corrected Transcript of Evidentiary Hearing in Toms River NJ (Sept. 24, 2007) at 535.

[3] *AmerGen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 349 n.30.

[4] *Id.* (citing Staff and AmerGen testimony).

[5] *See* Letter from Michael P. Gallagher, AmerGen, to NRC regarding Commitment Clarifications Related to the Aging Management Program for the Oyster Creek Drywell Shell, Associated with (continued. . .)

when they wrote their brief. The January 14 Letter appears to address Citizens' concern about AmerGen's commitment. In the January 14 Letter, AmerGen clarified its commitment to perform a 3-D finite element analysis with regard to how it would perform the sensitivity analysis[6] and revised its commitment to state that "[i]f the analysis determines that the drywell shell does not meet the Code-specified safety factors (i.e. 2.0 for the refueling load case and 1.67 for the post-accident case), the NRC will be notified in accordance with 10 CFR Part 50 requirements."[7]

III. Citizens' Brief includes Irrelevant and Non-Responsive Material

Citizens make arguments and provide information that is both unsupported and non-responsive to the specific question posed by the Commission.

First, Citizens' assert that reasonable assurance of compliance with the current licensing basis is lacking. Citizens' Brief at 10. The assertion is beyond the scope of the Commission's question and beyond the scope of this proceeding, because "[t]he Commission has determined that a finding of compliance of a plant with the CLB is not required for issuance of a renewed license."[8] Reasonable assurance of Oyster Creek's current compliance with its CLB is provided by the regulatory oversight process,[9] not the license renewal process.

(. . .continued)

AmerGen's License Renewal Application (Jan. 14, 2008) (ADAMS Accession No. ML080160540) ("January 14 Letter"). This document was added to ADAMS on January 25, 2008.

[6] January 14 Letter (stating that AmerGen "is including sensitivity analyses as part of its 3D structural analysis. These sensitivity analyses will use, as input, conservative thickness estimates for areas between UT thickness measurement locations, thereby producing a conservative assessment of the performance and capability of the drywell shell.").

[7] *Id.* The commitment previously stated: "If the analysis determines that the drywell shell does not meet required thickness values, the NRC will be notified in accordance with 10 CFR 50 requirements." Staff Exh. 1 at A-30 to A31.

[8] Nuclear Power Plant License Renewal; Final Rule, 56 Fed. Reg. 64,943, 64,951 (Dec. 13, 1991). The Commission reaffirmed this determination when it revised Part 54. *See* Nuclear Power Plant (continued. . .)

Second, Citizens argue that compliance with the current licensing basis must be demonstrated with a "high level of certainty" and that the "required level of certainty" is "at least 95%." Reply at 1 & n.1. Citizens have made this unsuccessful argument numerous times in the course of the Oyster Creek license renewal proceeding, including in their appeal of the Licensing Board's initial decision.[10] As the Board correctly noted in its initial decision, Citizens' argument that reasonable assurance requires 95% confidence is "not supported by Commission regulations or case law."[11] Thus, Citizens' legal argument is unsupported and does not address the Commission's specific question regarding Judge Baratta's "Additional Statement" and the need for additional analysis.

Third, Citizens' critique of the General Electric ("GE") analysis both in their brief and in the attached opinion from Stress Engineer Service, Inc. ("Stress") (Ex. CR 2) of the drywell shell is not responsive to the Commission's question. *See* Brief at 8-10. Citizens' and Stress' critique of the GE analysis neither assists the Commission in determining whether AmerGen's commitment matches or bounds the analysis Judge Baratta would impose nor explains why Citizens believe additional analysis is necessary. The Stress opinion was originally submitted to support a contention challenging the adequacy of AmerGen's shell thickness acceptance criteria (i.e. the minimum required thickness for the drywell shell to ensure structural integrity) that was

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(. . .continued)

License Renewal Revisions, Final Rule, 60 Fed. Reg. 22,461, 22,473-474 (May 8, 1995).

[9] *Id.*

[10] *See* Citizens' Petition for Review of LBP-07-17 and the Interlocutory Decisions in the Oyster Creek Proceeding. (Jan. 14, 2008) ("Citizens' Appeal") at 3-7.

[11] LBP-07-17, 66 NRC at 340 n.18; *See also* NRC Staff's Answer to Citizens' Petition for Review of LBP-07-17 (Jan. 14, 2008) (Staff Answer) at 4-5 (noting that the cases cited by Citizens in support of their assertion addressed the admissibility of scientific evidence not a party's ultimate burden of proof).

not admitted by the Board[12] The Stress opinion merely proposes an alternative technique for measuring and analyzing the condition of the drywell shell.

CONCLUSION

As explained above, Citizens' Brief mischaracterizes the Staff's opinion of Dr. Hausler's contour plots and does not address the additional clarifying information in AmerGen's January 14 Letter. The Commission should consider the Staff's actual position when considering the briefs submitted in response to the Commission's May 28 Order and disregard attempts by Citizens to introduce information that is not responsive to the Commission's question.

Respectfully submitted,

/RA/

Mary C. Baty
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of June 2008

[12] *See* LBP-6-22 64 NRC at 237-240. Judge Baratta did not take exception to this decision. Citizens have appealed the Board's ruling on this proposed contention. *See* Citizens Appeal at 16-17.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S REPLY IN RESPONSE TO CITIZENS' RESPONSE TO COMMISSION ORDER DATED MAY 28, 2008" 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 18th day of June 2008.

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