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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of:)	June 18, 2008
)	
AmerGen Energy Company, LLC)	Docket No. 50-219-LR
)	
(License Renewal for Oyster Creek Nuclear)	
Generating Station))	
)	

AMERGEN'S REPLY TO CITIZENS' RESPONSE TO CLI-08-10

In responding to the Commission's May 25, 2008 Order,¹ Citizens misstate the record, impermissibly attack the current licensing basis ("CLB"), resurrect issues that the Atomic Safety and Licensing Board ("Board") and the Advisory Committee on Reactor Safeguards ("ACRS") squarely rejected, and attempt to supplement the record. To bring some finality to this proceeding and to maintain the integrity of the hearing process, AmerGen Energy Co., LLC ("AmerGen") respectfully requests that the Commission reject Citizens' backdoor efforts to shore up their appeal, and confirm the Board's initial decision in LBP-07-17.

**I. CITIZENS MISCHARACTERIZE THE RECORD AND MISINTERPRET
JUDGE BARATTA'S STATEMENT**

Citizens argue that AmerGen's commitment to perform a 3-D analysis is "vague," and "fails to . . . affirmatively establish compliance with the CLB," because it allegedly does not reference the American Society of Mechanical Engineers ("ASME") safety factor of 2.0.² This argument mischaracterizes the record because AmerGen modified its commitment in January

¹ Order (Requesting Additional Briefs), CLI-08-10.

² Citizens' Response to Commission Order Dated May 28, 2008 (June 11, 2008) at 2-3 ("CR").

2008, to specify a safety factor of 2.0.³ This modification—completely ignored by Citizens—refutes their argument.

Citizens also claim that Judge Baratta would not have suggested that AmerGen perform “additional” sensitivity analyses if he thought AmerGen already had committed to perform these analyses.⁴ Citizens’ speculation about what Judge Baratta thought is contrary to the record. Judge Baratta had before him some background information on the 3-D analysis, including the drywell shell thickness inputs for each bay for the base case.⁵ He did not have before him, however, any information on the selected sensitivity analyses. Thus, Citizens’ argument, which erroneously presumes that Judge Baratta had access to detailed information about how AmerGen intended to perform the sensitivity analyses, mischaracterizes the record.

Citizens also fundamentally misinterpret Judge Baratta’s Additional Statement as a “dissent” because, in their view, he allegedly “believes that the licensee failed to ‘fully’ show that ‘there is reasonable assurance that the factor of safety required by the regulations will be met throughout the period of extended operation.’”⁶ Citizens omit that Judge Baratta *concurred* that the drywell shell currently exceeded an ASME safety factor of 2.0.⁷ Rather, his concern was that *if* future corrosion occurred, then AmerGen would not know when this safety factor would be

³ Letter from M. Gallagher to NRC Document Control Desk, “Commitment Clarifications Related to the Aging Management Program for the Oyster Creek Drywell Shell, Associated with AmerGen’s License Renewal Application (TAC No. MC7624)” at 1 (Jan. 14, 2008) (“AmerGen will confirm that the safety factors calculated by the new 3D analysis meet or exceed the safety factors specified by the ASME Code (i.e., greater than or equal to 2.0 for the refueling load case)”), available at ADAMS Accession No. ML0801605400.

⁴ CR at 4.

⁵ See Citizens’ Exh. 45.

⁶ CR at 3.

⁷ *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 375 (2007) (Judge Baratta, Additional Statement) (“LBP-07-17”).

exceeded because it could not quantify the margin above that safety factor in the shell's current condition.⁸ The 3-D analysis resolves this concern.⁹

Finally, Citizens suggest (without fully explaining) that AmerGen's sensitivity analyses would not "use . . . an extrapolation method to determine thicknesses between the measured locations."¹⁰ They are mistaken. As explained in paragraph 11 of the AmerGen's expert affidavit, AmerGen determined the thicknesses between measured locations in a conservative but realistic manner. The sensitivity analyses then address uncertainties by analyzing the effect of additional local or general-area thinning, beyond this conservative estimate.¹¹ These analyses match or bound the extrapolation scheme that Judge Baratta would have required.¹²

II. CITIZENS ABUSE THE COMMISSION'S REQUEST

Citizens go beyond the Commission's narrow request to impermissibly resurrect a whole host of arguments that the Board (and the ACRS) considered and rejected. They also attempt to subvert the hearing process by raising extraneous issues for the first time and supplementing the record. Thus, Citizens and their expert abuse the Commission's request by impermissibly supplementing their petition for review on a wide range of topics. Specifically, they:

- reargue whether the drywell *currently* meets the required ASME safety factor of 2.0.¹³ This is outside the scope of license renewal, as it is an attack on the CLB. They also challenge the

⁸ See *id.* ("While I concur with my colleagues that further corrosion of the drywell is unlikely, it cannot be ruled out. Thus, I consider it essential to have a conservative best estimate analysis of the drywell shell before entering the period of extended operation.")

⁹ AmerGen Initial Brief in Response to CLI-08-10 (June 11, 2008) at 1-2 ("AmerGen Initial Brief"). Citizens also conclude their argument with a one-line request for document production. CR at 3. Mandatory disclosures, however, have ended, the record is closed, and the 3-D analysis remains outside the scope of the admitted contention because it is not needed to demonstrate reasonable assurance. See LBP-07-17, 66 NRC at 338, 367 n.55. Thus, this request must be denied.

¹⁰ See CR at 4.

¹¹ John F. O'Rourke Aff. ¶ 17 (June 11, 2008).

¹² *Id.* ¶ 11.

¹³ See, e.g., CR at 5 ("All indications are that the drywell is, at best, marginally above the factor of safety requirements but that there is a chance that it could already have violated the standards.")

analysis of record for the drywell shell.¹⁴ This analysis was used to derive acceptance criteria that are also part of the CLB.¹⁵ The ACRS heard testimony from the author—Dr. Clarence Miller—of the ASME Code Case that authorized the method used in this analysis and was fully satisfied that it is appropriate;¹⁶

- challenge the Board’s conclusion that AmerGen’s proposed four-year frequency is adequate in light of the overall aging management program for the drywell shell.¹⁷ Instead, Citizens impermissibly isolate the UT measurements, ignoring the multiple other components of the aging management program for the drywell shell that the Board considered in its Initial Decision;¹⁸
- challenge the scope (*i.e.*, the locations) of AmerGen’s UT measurements.¹⁹ The Board rejected Citizens’ multiple previous challenges to the scope of UT as untimely, so such challenges are outside the admitted contention.²⁰ Citizens conveniently omit any mention of these rulings.²¹ Dr. Hausler’s new declaration also raises similar objections,²² and proposes “advanced” techniques, other than UT, that he would prefer over a UT monitoring program.²³ The Board’s rejections of previous challenges to the scope of the UT measurements included Citizens’ earlier attempts to propose alternatives to UT monitoring;²⁴

¹⁴ Compare *id.* at 6-7 with Licensing Board Memorandum and Order (Denying Citizens’ Motion for Leave to Add a Contention and Motion to Add a Contention) at 3 n.6 (Apr. 10, 2007) (unpublished) (“GE’s analysis is considered the analysis of record for Oyster Creek and part of its current licensing basis.”) (citation and quotation omitted) (“Apr. 10 Order”).

¹⁵ Apr. 10 Order at 3 n.6; *see also* LBP-07-17, 66 NRC at 336 n.14 (noting Board’s determinations that challenges to “AmerGen’s modeling for deriving acceptance criteria” are not admissible).

¹⁶ *See* Letter from W. Shack, Chairman, ACRS, to Chairman D. Klein, “Report on the Safety Aspects of the License Renewal Application for the Oyster Creek Generating Station” (Feb. 8, 2007), *available at* ADAMS Accession No. ML070430429.

¹⁷ CR at 8 (“[I]t is impossible to determine an appropriate monitoring scope or frequency.”).

¹⁸ LBP-07-17, 66 NRC at 330 (“[W]e find that AmerGen has demonstrated that the frequency of its planned UT measurements, in combination with the other elements of its aging management program, provides reasonable assurance . . .”).

¹⁹ *See* CR at 2 (“AmerGen should be required to perform additional measurements of both the thickness and the shape of the drywell . . .”); *see also id.* at 6, 8.

²⁰ LBP-07-17, 66 NRC at 336 n.14 (*citing AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 249-51 (2006) (“LBP-06-22”)); Licensing Board Memorandum and Order (Denying Citizens’ Motion for Leave to Add Contentions and Motion to Add Contention) (unpublished) at 7-19 (Feb. 9, 2007).

²¹ *See* CR at 2, 6, 8.

²² Exh. CR 1, Att. 1 at 2 (“The only real solution to the problem is the acquisition of additional data (in areas not previously examined by UT) . . .”); *see also id.* at 5 (“We think that the question of whether the drywell meets the safety requirements can only be resolved by taking additional measurements in the areas of interest not previously explored in detail.”).

²³ *Id.* at 5-6

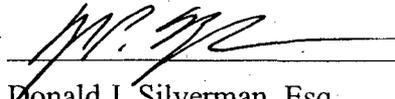
²⁴ *E.g.*, LBP-07-17, 66 NRC at 336 n.14; LBP-06-22, 64 NRC at 249-51. Thus, it is clear that Dr. Hausler provides this information now because the Board would not have entertained it.

- re-introduce a Stress Engineering report that the Board rejected nearly two years ago (Exh. CR 2), and submit, for the first time, a January 19, 2006 article from the “Annals of Nuclear Energy” (Exh. CR 3) that they allege supports their claim that “state-of-the-art analysis may provide sufficient certainty for licensing.”²⁵ The Board rejected this argument and the same Stress Engineering letter as outside the scope of the contention because it was not raised in a timely fashion.²⁶ And it is nothing short of chutzpah for Citizens to seek to introduce a new article dated January 2006, when the record is closed and the article was available more than a year before the parties filed their testimony with the Board,²⁷ and
- seek to rehabilitate Dr. Hausler’s contour plots, which the Board found to be fundamentally unreliable.²⁸ Citizens ignore this finding (and Dr. Hartzman’s actual testimony) when they claim that, “if Dr. Hartzman had continued to rely on Dr. Hausler’s plots [then] he would have predicted a safety factor of less than 1.9.”²⁹

III. CONCLUSION

For the reasons set forth above, in addition to the reasons set forth in AmerGen’s Answer and Initial Brief, the Commission should affirm the Board’s Initial Decision.

Respectfully submitted,



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²⁵ CR at 8.

²⁶ LBP-06-22, 64 NRC at 237-40.

²⁷ Exhibit CR 3 also addresses a wholly irrelevant topic. The article discusses the impact of “[m]odel uncertainties” on probabilistic risk assessment, Exh. CR 3 at 354, and is completely unrelated to uncertainties in the calculation of structural engineering safety factors, much less to the question of whether AmerGen’s commitment to conduct sensitivity analyses matches or bounds the requirements Judge Baratta would have imposed.

²⁸ LBP-07-17, 66 NRC at 349 n.30 (“we find that the contour plots are not reliable representations of the condition of the drywell shell”).

²⁹ CR at 5 (emphasis added).

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Dated in Washington, D.C.
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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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_____)

CERTIFICATE OF SERVICE

I hereby certify that copies of "AmerGen's Reply to Citizens' Response to CLI-08-10"
were served this day upon the persons listed below, by e-mail and first class mail.

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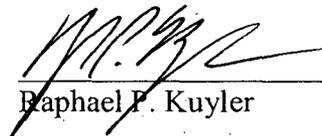
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