



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 6, 2009

SECRETARY

DOCKETED
USNRC

January 6, 2009 (8:30am)

The Honorable Christopher H. Smith
United States House of Representatives
Washington, D.C. 20515

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED JANUARY 13, 2009

Dear Congressman Smith:

I am responding to your letter of December 4, 2008, in which you register your concerns regarding, among other things, the public availability of AmerGen's three-dimensional analysis of the structural integrity of the containment drywell liner, prepared in connection with the license renewal application for the Oyster Creek Nuclear Generating Station (Oyster Creek).

Under NRC regulations, the Commission has an adjudicatory role in the Oyster Creek license renewal proceeding. An appeal is currently pending before the Commission with respect to the Oyster Creek license renewal application, specifically related to the analysis referenced in your letter. Due to the nature of the Commission's role, all members of the Commission must remain impartial while this case is pending. At this time, therefore, the Commission cannot discuss or comment on issues involved in this matter. However, I am referring your letter to the Office of Nuclear Reactor Regulation, which is responsible for reviewing the Oyster Creek license renewal application.

A copy of your letter and this response will be served on the participants in the Oyster Creek proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook".

Annette L. Vietti-Cook

cc: Oyster Creek Service List

CHRISTOPHER H. SMITH

4TH DISTRICT, NEW JERSEY

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Congress of the United States
House of Representatives

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DEAN, NEW JERSEY DELEGATION

December 4, 2008

Chairman Dale E. Klein
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Dear Chairman Klein:

On November 19, 2008, Oyster Creek Nuclear Generating Station announced that they had concluded a 25-day refueling and maintenance shutdown.

I remain deeply concerned that the NRC allowed the refueling process to begin and also allowed operations to resume without first requiring AmerGen to finalize and make public—for independent review—the three-dimensional structural analysis to which the company committed in February, 2007. Now that the refueling is complete, it is essential that AmerGen's 3-D analysis be concluded and made public in its entirety *prior* to any decision by the Commission on relicensing. This will ensure that the decision is made with the benefit of additional critical information and—perhaps most importantly—with the benefit of a real, independent, in-depth review of the industry-sponsored analysis of the structural integrity of the shell and whether the shell can satisfy all safety requirements before any extended period of operation (beyond April, 2009) is contemplated.

As you know, AmerGen has agreed only to release a “summary” of its 3-D analysis. While the “summary” may be a hundred or more pages, the reported refusal of the NRC staff and the company to guarantee citizen access to the actual data upon which the “summary” is based will likely raise more questions about safety, transparency and accountability. In addition, I have serious concerns about the announced intention of the NRC staff regarding the forthcoming analysis. Thankfully, the ASLB Memorandum of October 29, 2008, challenged the NRC staff's initial ill-advised plan *not* to “perform an in-depth review of the completed AmerGen model and 3-D analysis.” I am pleased that the ASLB has called for a “**more rigorous**” review and has recommended that the staff perform or “**have performed**” a comprehensive and in-depth review of the work done by AmerGen. Still, the staff's initial approach revealed a lack of vigilance and only served to further undermine public confidence in the staff's ability to comprehensively oversee safety issues.

12/8....To SECY/RAS to Prepare ExParte Response for Signature
of Secretary...Date due: Dec 19...Cpy to: RF, OCA...08-0614

The New Jersey Department of Environmental Protection has put forth a similar request for a timely 3-D analysis and has restated the need for the NRC to carefully and independently review the data of any industry-sponsored study. The NJDEP has also requested that its experts receive the 3-D analysis in its entirety for their review. I agree that this is essential. Regrettably, public confidence in the independence of the industry-sponsored analysis and NRC staff review of the same is low. In fact, last year's IG report, coupled with Commissioner Jaczko's dissenting comments in the Commission's October 6, 2008 Memorandum and Order underscore problems leading to a lack of public confidence in the independence and integrity of NRC staff analysis of information provided by licensee applicants. Given the enormous interest in this case and the Commission's own "apparent interest in the adequacy of AmerGen's analysis" (October 29 Memorandum, page 15) the ASLB's recommendation for an in-depth review, especially the recommendation to have it "performed," (most likely by a third party) is the best way forward.

I think it is critical to note that some activities that transpired during the 2008 refueling and shutdown may have only exacerbated public concern about the relicensing process and need for transparency. For instance, the industry press release announcing the end of the refueling outage reports that there were multiple inspections of the drywell shell and inspections of the epoxy coating and states that their "team of inspectors confirmed that this coating remains in good shape." It is troubling that the release does not mention that the same inspections resulted in a required notification to the Commission about the discovery, on October 31st, of a blister in the epoxy coating in Bay 11 along with a six inch rust stain and three additional bumps which they later determined to be three more epoxy blisters. Nor was there any mention in the press release of the discovery of several cracks and some rust stains in the moisture seal at the drywell shell interface with the exterior floor of the sand region in Bay 3. Nor was it reported that the NRC staff in its November 17, 2008 Preliminary Notification of Event or Unusual Occurrence (PNO) stated that there are ongoing evaluations of the cause of the blistering and of the attempts to mitigate water leakage from the reactor refueling cavity.

Perhaps even more disconcerting is an explanation about the six inch rust stain offered by AmerGen in its November 17, 2008 UPDATED COMMISSION NOTIFICATION. In an attempt to downplay the 2008 discovery of the 4 epoxy blisters and the six inch rust stain, AmerGen states they have now confirmed that the six inch rust stain was visible in the "as left" video recording of Bay 11 "taken for information purposes, and not as part of the visual inspection—at the end of the 2006 outage." This explanation in and of itself raises disturbing questions. If this six inch rust stain is in fact the same stain recorded in 2006, how is it only now being reported to have been recorded on the "as left" video? This would mean that the 2006 visual inspection method employed was either not good enough to detect the blister and the six inch rust stain; was not properly conducted; was not properly reported; or all of the above. The NRC must conduct a vigorous investigation to get to the bottom of this considerable lapse.

In addition, in its November 17, 2008 UPDATED COMMISSION NOTIFICATION, AmerGen also concludes that the examination of the blistered area identified "trace amounts of chlorine" which they believe are most likely the cause of the corrosion. Does the NRC agree? Are any steps being taken to increase our understanding about the cause of the ongoing corrosion that was observed?

In Section III D of the November 17, 2008 UPDATED COMMISSION NOTIFICATION, AmerGen concludes that its Aging Management Program for the drywell shell remains "adequate" and its license renewal commitments, including visual inspections, "provide reasonable assurance" that any coating degradation will be detected and corrected before significant corrosion of the underlying drywell shell can occur. Thus, while they predicate the future success of their AMP, in part, on visual inspections, they do not explain how the 2006 visual inspection missed the six inch rust stain in the first place. The eventual, but significantly delayed, report about the visual observation of this real hazard does not provide assurances of safety, it only adds to public concern. Given the fact that there was ultrasonic testing (UT) of the drywell thickness in areas around and behind the blister, as well as at other locations during this 2008 refueling, it seems that only release and citizen review of the actual UT data will truly begin to address these concerns. In the interest of full transparency, and since the NRC reports that staff reviewed the UT data, the citizen groups should have this same opportunity.

In its October 29, 2008 Memorandum, the ASLB also recommended that the Commission consider directing the NRC staff to have Sandia review—for the first time—the actual test results used to justify modification of the capacity reduction factor and report whether the use of the modified factor is justified. Clearly the status of that recommendation and publication of any additional findings by Sandia are also critical to achieving transparency and moving towards restoring public confidence in the NRC relicensing process. It seems impossible to reach a finding that the drywell meets the safety requirements if the issue of appropriate reduction factor is unresolved and remains a point of contention between the ASLB and AmerGen.

I strongly urge that all studies related to safety issues at Oyster Creek be released in a timely and public fashion to ensure independent review and help improve public confidence in any safety assessment by the NRC and in the entire NRC relicensing process. Beyond this, I am specifically requesting an update on the status of AmerGen's 3-D analysis; the NRC's review of the analysis; the status of the investigation of the safety issues reported during the October/November 2008 shutdown; the request for release of the 2008 UT data; and the status the ASLB's recommendation to have Sandia specifically review the data on the capacity reduction factor. I thank you in advance for your consideration of these specific requests and look forward to your timely reply.

Sincerely,



CHRISTOPHER H. SMITH
Member of Congress

cc:

Representative Henry Waxman, Chairman, Committee on Oversight and Government Reform
Representative Tom Davis, Ranking Republican Member, Committee on Oversight and Government Reform

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM ANNETTE L. VIETTI-COOK TO CONGRESSMAN CHRISTOPHER H. SMITH RESPONDING TO HIS 12/4/08 LETTER (ENCLOSED) RE AMERGEN'S THREE-DIMENSIONAL ANALYSIS OF THE STRUCTURAL INTEGRITY OF THE CONTAINMENT DRYWELL LINER, PREPARED IN CONNECTION WITH THE LICENSE RENEWAL APPLICATION FOR THE OYSTER CREEK NUCLEAR GENERATING STATION have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Rulemakings & Adjudications Staff
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U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Mary C. Baty, Esq.
Marcia J. Simon, Esq.
Brian Newell, Paralegal

Administrative Judge
E. Roy Hawkens, Chair

Administrative Judge
Paul B. Abramson

Administrative Judge
Anthony J. Baratta

Emily Krause, Law Clerk

Docket No. 50-219-LR

LETTER FROM ANNETTE L. VIETTI-COOK TO CONGRESSMAN CHRISTOPHER H. SMITH
RESPONDING TO HIS 12/4/08 LETTER (ENCLOSED) RE AMERGEN'S THREE-
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DRYWELL LINER, PREPARED IN CONNECTION WITH THE LICENSE RENEWAL
APPLICATION FOR THE OYSTER CREEK NUCLEAR GENERATING STATION

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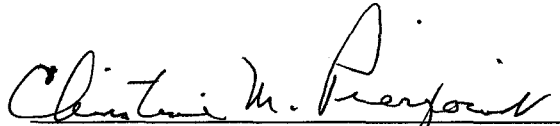
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Docket No. 50-219-LR
LETTER FROM ANNETTE L. VIETTI-COOK TO CONGRESSMAN CHRISTOPHER H. SMITH
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DRYWELL LINER, PREPARED IN CONNECTION WITH THE LICENSE RENEWAL
APPLICATION FOR THE OYSTER CREEK NUCLEAR GENERATING STATION

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of January 2009