

January 28 2009

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 RESPONSE TO
RECENT LETTERS AND NOTIFICATION TO THE COMMISSION

INTRODUCTION

The staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to:
(1) letter to Dale E. Klein, Chairman of the U.S. Nuclear Regulatory Commission, from Alex S. Polonsky, counsel for Exelon Corporation ("Exelon"), regarding submission of the results of the three-dimensional structural analysis of the Oyster Creek drywell shell (Jan. 22, 2009) ("Exelon Letter"); (2) "Commission Notification" (Jan. 23, 2009) ("Citizens' Notification") filed by Citizens¹; and (3) letter to Dale E. Klein, Chairman of the U.S. Nuclear Regulatory Commission, from Richard Webster, counsel for Citizens, regarding the three-dimensional analysis of the Oyster Creek drywell shell (Jan. 26, 2009) ("Citizens' Letter").

For the reasons set forth below, these communications to the Commission should not be considered to the extent they attempt to argue the merits of Citizens' pending petition for review

¹ 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, and New Jersey Environmental Federation (collectively "Citizens").

of *AmerGen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 237 (2007) (“LBP-07-17”).²

DISCUSSION

In a previous decision in this proceeding, the Commission noted that communications to the Commission arguing the merits of the pending petition for review will not be considered.³ While the Staff has no objection to parties providing notice to the Commission of the status and availability of pertinent information, the Exelon Letter, Citizens’ Notification, and Citizens’ Letter go beyond notifying the Commission of the status and availability of information. The letters and the notification, to varying degrees, argue the merits of the information and attempt to supplement the respective party’s position on the merits of the pending Petition for Review of LBP-07-17 and other interlocutory decisions.

Exelon’s and Citizens’ letters concern the three-dimensional structural analysis (“3D Analysis”) of Oyster Creek’s drywell shell. The Exelon Letter transmitted a copy of Exelon’s 3D Analysis of Oyster Creek’s drywell shell “only for informational purposes,” and asserted that “submittal of this three-dimensional analysis is not necessary for the NRC’s finding of reasonable assurance.” Exelon Letter at 1. In response, Citizens’ Letter critiques the 3D Analysis and argues that “the submission of the 3D Analysis confirms that without further analysis we do not have reasonable assurance that the drywell at Oyster Creek meets the

² Citizens’ Petition for Review of LBP-07-17 and Interlocutory Decisions in the Oyster Creek Proceeding (January 14, 2008) (“Petition for Review”).

³ See *AmerGen Energy Co. LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC __ (slip op. at n.74) (stating that the Commission did not consider Citizens’ October 14, 2008, letter to Chairman Klein, with an attachment prepared by Citizens’ expert, Dr. Hopenfeld, to be part of the record).

CLB.” Citizens’ Letter at 3. Thus, to the extent that the two letters go beyond notifying the Commission of the availability of information, they should not be considered by the Commission.

The subject of Citizens’ Notification to the Commission was the Staff’s Inspection Report No. 05000219/2008008 (ADAMS Accession No. ML090210734) (Jan. 21, 2009) (“Inspection Report”).⁴ Under the auspices of bringing the Staff’s publicly available Inspection Report to the Commission’s attention, Citizens’ Notification argues that the Inspection Report supports Citizens’ Petition for Review by demonstrating that Oyster Creek’s drywell aging management program is inadequate. See, e.g., Citizens’ Notification at 2. Because Citizens’ Notification argues the merits of the case, it should be disregarded by the Commission.

CONCLUSION

For the reasons set forth above, the Commission should disregard attempts to argue the merits of the proceeding through communications to the Chairman.

Respectfully submitted,

/RA/

Mary C. Baty
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of January 2009

⁴ The Staff informed the parties of the inspection report and provided them with copies of the report on January 21, 2009. The Staff’s letter to the parties is available at ADAMS Accession No. ML090210734.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO RECENT LETTERS AND NOTIFICATION TO THE COMMISSION" 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 28th day of January 2009.

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