

February 11, 2009 (3:18pm)

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**Before the Commission**

In the Matter of:	)	February 11, 2009
Exelon Generation Company, LLC	)	
(License Renewal for Oyster Creek Nuclear Generating Station)	)	Docket No. 50-219

**EXELON'S ANSWER TO CITIZENS' MOTION TO REOPEN THE RECORD  
AND TO POSTPONE FINAL DISPOSITION OF THE LICENSING DECISION**

In accordance with 10 C.F.R. §§ 2.323(c), 2.326, and 2.342(d), Exelon Generation Company, LLC ("Exelon") hereby files its Answer opposing Citizens' Motion of February 2, 2009.<sup>1</sup> The Motion attempts to compel the Commission to once again unnecessarily delay issuance of the renewed license for Oyster Creek—not through legitimate issues of fact or law, but rather through self-serving mischaracterizations of the NRC Staff's Inspection Report.<sup>2</sup> When the Inspection Report is read as a whole, it clearly demonstrates that Citizens have fabricated an issue, where none exists.

Given the extremely late stage of this proceeding—well over three years after the license renewal application was submitted and more than one year after the Board's Initial Decision<sup>3</sup>—Citizens face an extraordinary burden to demonstrate that they are entitled to reopen the record and indefinitely postpone the issuance of the renewed license. As further explained below,

<sup>1</sup> Motion 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; and New Jersey Environmental Federation to Reopen the Record and to Postpone Final Disposition of the Licensing Decision (Feb. 2, 2009) ("Motion").

<sup>2</sup> Inspection Report No. 05000219/2008007 (Jan. 21, 2009), available at ADAMS Accession No. ML090210734 ("Inspection Report").

<sup>3</sup> AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327 (2007).

Citizens have not carried this burden, so the Motion must be denied. Exelon thus urges the Commission to deny this Motion on legal grounds and not to remand it to the Board for further litigation of Citizens' misleading statements. Such a result would lead to unwarranted delay and introduce even greater, unnecessary uncertainty into otherwise sound and well-functioning regulatory and adjudicatory regimes under 10 C.F.R. Parts 2 and 54.<sup>4</sup>

### **I. CITIZENS' MOTION TO REOPEN MUST BE DENIED**

Citizens allege that new information presented in the Staff's Inspection Report undermines the Board's finding that Exelon's aging management program for the drywell shell is adequate.<sup>5</sup> As explained below, however, none of the information Citizens present in any way undermines the Board's holding in LBP-07-17.<sup>6</sup>

To reopen the record of this closed proceeding, Citizens must show that their motion is timely; that it addresses a significant safety or environmental issue; and that a materially different result would be or would have been likely had the newly-proffered evidence been considered initially.<sup>7</sup> The moving party has an "elevated burden to lay a proper foundation for

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<sup>4</sup> The Commission postponed its February 4, 2009 affirmation session and has postponed two other previous affirmation sessions to accommodate Citizens' various baseless motions. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, slip op. (June 17, 2008) (denying Citizens' motion for a stay); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, slip op. (Oct. 6, 2008) (denying Citizens' request to suspend various license renewal proceedings, including Oyster Creek's, and Citizens' "supplemental" motion on the same topic); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, slip op. (Nov. 6, 2008) (upholding the denial of Citizens' motion to reopen regarding metal fatigue and "supplemental" motion on the same issue). It is also worth noting that Citizens' Motion is an attempt to "do over" their Commission Notification (Jan. 23, 2009) ("Citizens' Notification" or "Notification"). Pages 2 through 8 of the Motion essentially restate the Notification. The Staff responded to Citizens' Notification by explaining that it could not be considered, because it improperly attempted to supplement Citizens' pending Petition for Review (Jan. 14, 2008) ("Petition") by rearguing the merits. *See* NRC Staff's Response to Recent Letters and Notification to the Commission (Jan. 28, 2009). Apparently recognizing their error, Citizens now repackage their Notification as this Motion to take yet another opportunity to supplement their Petition.

<sup>5</sup> *See* Motion at 13-14.

<sup>6</sup> *See Oyster Creek*, LBP-07-17, 66 NRC at 340-41, 354.

<sup>7</sup> 10 C.F.R. § 2.326(a).

its claim.”<sup>8</sup> As a part of that burden, the motion must be accompanied by an affidavit that separately and specifically supports *each* of the applicable criteria in Section 2.326(a).<sup>2</sup> The presiding officer may conclude that the movant has failed to carry this burden by examining the newly-available evidence.<sup>10</sup> As explained below, Citizens fail to meet any of these requirements.

**A. Citizens Fail to Show that The Record Should Be Reopened**

Citizens’ Motion fails to raise a significant safety issue or demonstrate that a materially different result is likely if the Commission considers their new information. In short, it lacks substantive merit. Instead, as explained below, the Motion consists primarily of Citizens’ counsel’s and expert’s misinterpretations of the Inspection Report and efforts to present information out of context and in a self-serving manner.

1. *Citizens Fail to Show that There Is a Significant Safety Issue*

Citizens’ entire Motion can be distilled down to two arguments, neither of which raise a significant safety issue: (1) “it is likely that there are sources of water to the drywell other than the refueling cavity” which suggests that water could be present in the sand bed region all the time (*i.e.*, not just during refueling outages);<sup>11</sup> and, therefore, (2) corrosion of the drywell shell beneath the epoxy coating could be widespread and ongoing.<sup>12</sup> Citizens fail to carry their burden

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<sup>8</sup> *Oyster Creek*, CLI-08-28, slip op. at 13 (quoting *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, CLI-05-12, 61 NRC 345, 350 (2005)). Otherwise, “there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings.” *Oyster Creek*, CLI-08-28, slip op. at 13 n.38.

<sup>2</sup> 10 C.F.R. § 2.326(b); *see also Oyster Creek*, CLI-08-28, slip op. at 16 (“Section 2.326(b) requires motions to reopen to be accompanied by affidavits of qualified experts presenting the factual and/or technical bases for the claim that there is a significant safety issue . . . .”); *id.* at 22-23 (explaining the requirement to show through affidavits that the materially different result standard is met).

<sup>10</sup> *See, e.g., Tenn. Valley Auth.* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, & 2B), ALAB-463, 7 NRC 341, 352 (1978); *Private Fuel Storage*, CLI-05-12, 61 NRC at 353-55 (upholding the Board’s denial of a motion to reopen, based on the weakness of the evidence proffered by the movant and based on contrary documents relied upon by the respondent).

<sup>11</sup> Motion at 12.

<sup>12</sup> *See id.* at 7.

of supporting these allegations through affidavit, much less with any relevant, material, or reliable evidence, as required under 10 C.F.R. § 2.326(b).<sup>13</sup> Crucially, even if—for the sole purpose of argument—Citizens are hypothetically correct about the presence of a new source of water and continuous, ongoing corrosion beneath the epoxy that coats the exterior surface of the drywell shell in the sand bed region,<sup>14</sup> the loss of metal is insignificant, as stated directly and clearly in the Inspection Report.

Specifically, the Inspection Report explains that the loss of metal under the blistered areas in Bay 11 was approximately 0.003 inches.<sup>15</sup> Exelon concludes that this corrosion took place over a 16-year period.<sup>16</sup> But even if it occurred over a two-year period, as Citizens’ allege,<sup>17</sup> it would not present a significant safety issue because the Board found that there was at least 0.064 inches of margin remaining.<sup>18</sup> Citizens’ “analysis” also ignores that the blistered area discovered in Bay 11 was less than 2.5-inches in diameter.<sup>19</sup> The 0.064 inches of margin that the Board identified relates only to the “general buckling” acceptance criterion of 0.736 inches; a

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<sup>13</sup> *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-775, 19 NRC 1361, 1367 (1984); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-08-12, slip op. at 10 (citing 10 C.F.R. §§ 2.326(b); 2.337(a)), *aff’d*, CLI-08-28, slip op.

<sup>14</sup> Citizens rely on the blistered area in the epoxy coating in Bay 11 to assert—through counsel only—that the entire epoxy coating system is in “a late stage of coating failure.” Motion at 3. This bare assertion is contrary to the available information. See Inspection Report at 10-11. And it is difficult to fathom how a small blistered area in one bay represents such a failure. The Staff reached no such conclusion. See *id.* at 1, 11.

<sup>15</sup> Inspection Report at 11. AmerGen’s Updated Commission Notification, dated Nov. 17, 2008, provided a slightly larger estimate of 0.0034 inches. Updated Commission Notification at 3.

<sup>16</sup> See Updated Commission Notification at 2-3; Inspection Report at 11. As explained below, Citizens’ expert appears to agree with this assessment.

<sup>17</sup> See Motion at 4-5; *but see* Motion, Exh. CRO1 (Declaration of Dr. Rudolf Hausler) (“Hausler Declaration”) ¶ 5.e (acknowledging, implicitly, that the Bay 11 blistered area was likely caused by problems “during the application of the coating”).

<sup>18</sup> *Oyster Creek*, LBP-07-17, 66 NRC at 350.

<sup>19</sup> Inspection Report at 11 (identifying unbroken blisters “within a 1 to 2 square inch area near the broken blister”).

criterion that applies to large areas.<sup>20</sup> However, areas smaller than 2.5 inches in diameter are evaluated against the “pressure criterion” of 0.490 inches.<sup>21</sup> The lowest ultrasonic testing (“UT”) measurement in the sand bed region obtained since 1992 is 0.602 inches, which results in 0.112 inches of margin when compared to the pressure criterion.<sup>22</sup> So even if the Commission agreed with Citizens that the Bay 11 blistered area developed in two years, Exelon could safely operate Oyster Creek for at least 20 more years before the pressure criterion would be exceeded, demonstrating the conservatism of the four-year UT inspection frequency in Exelon’s aging management program. This is why Citizens’ Motion ultimately presents no significant safety issue justifying a Motion to Reopen.<sup>23</sup>

2. *Citizens Fail to Demonstrate that a Materially Different Result Is Likely*

As explained in Section 1, above, Citizens’ claims fail to raise a significant safety issue. For the same reasons, Citizens also fail to carry their burden of demonstrating that a materially different result is likely.<sup>24</sup> In particular, Citizens fail to address or refute the information in the Inspection Report regarding the insignificant amount of corrosion identified in the blistered area in Bay 11.<sup>25</sup> Thus, because Citizens’ assertions are “contradicted by official documents whose

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<sup>20</sup> See LBP-07-17, 66 NRC at 350.

<sup>21</sup> *Id.* at 344.

<sup>22</sup> *Id.* at 349.

<sup>23</sup> Citizens allege that the Commission ought to assume that the corrosion rate in the sand bed region is 0.041 inches per year. Motion at 6-7. This corrosion rate is based on 0.002 inches of internal corrosion, and 0.039 inches of external corrosion. The 0.039 inches of external corrosion is based on the “highest historical corrosion rate ever measured in the Oyster Creek sand bed region,” before the corrosive sand was removed in 1992 and the epoxy coating system was applied. *Oyster Creek*, LBP-07-17, 66 NRC at 366. There is no justification to use this worst-case corrosion rate today, especially when the *total* corrosion beneath the blistered area in Bay 11 was analyzed in 2008 and determined to be 0.003 inches.

<sup>24</sup> *Oyster Creek*, CLI-08-28, slip op. at 22-23.

<sup>25</sup> Inspection Report at 11; see also Updated Commission Notification at 2-3.

legitimacy [they] have not challenged,” they have failed to carry their burden of demonstrating that there would be a materially different result if the record were reopened.<sup>26</sup>

3. Citizens’ Motion Is Untimely

Citizens’ Motion to Reopen is also untimely because it relies heavily upon information that has been available for months.<sup>27</sup> For example, Citizens incorrectly claim that the Inspection Report revealed, for the first time, that “[t]he observed ‘bumps’ [near the broken blister in Bay 11] were actually unbroken corrosion blisters that had not been previously observed or recorded on video.”<sup>28</sup> This information was available in November 2008.<sup>29</sup>

**B. Citizens’ Affidavit Is Insufficient to Support Reopening the Record**

A motion to reopen must be accompanied by an affidavit that separately and specifically supports *each* of the applicable criteria in Section 2.326(a).<sup>30</sup> But Dr. Hausler’s affidavit fails to specifically explain why Citizens’ new information raises a significant safety issue or demonstrates that a materially different result is likely.<sup>31</sup> This failure, alone, is sufficient, under 10 C.F.R. § 2.326(b), to reject the motion to reopen in its entirety.<sup>32</sup>

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<sup>26</sup> *Private Fuel Storage*, CLI-05-12, 61 NRC at 354 (internal quotations omitted).

<sup>27</sup> *Public Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-90-06, 31 NRC 483, 487 (1990).

<sup>28</sup> Motion at 11.

<sup>29</sup> See Preliminary Notification of Event or Unusual Occurrence (Nov. 17, 2008), available at ADAMS Accession No. ML083220240; AmerGen’s Updated Commission Notification (Nov. 17, 2008) at 3.

<sup>30</sup> 10 C.F.R. § 2.326(b); see also *Oyster Creek*, CLI-08-28, slip op. at 16, 22-23.

<sup>31</sup> See generally Hausler Declaration.

<sup>32</sup> Citizens also rely extensively upon speculation. See Motion, *passim*. Even Citizens’ expert blatantly speculates on key factual points. See Hausler Declaration ¶ 5.f. Perhaps in light of the flimsy “evidence” they present, Citizens seek once again to avoid the deliberately heavy legal burden that they face, see *Oyster Creek*, CLI-08-28, slip op. at 22, by attempting to shift the burden of proof to Exelon. See, e.g., Motion at 12 (“the Commission must find that AmerGen met its burden of proof to demonstrate that the proposed AMPs [aging management programs] will provide reasonable assurance”); see also *id.* at 14-15.

Moreover, Dr. Hausler's affidavit is inadequate to support the proffered Motion because he simply states that he "agree[s]" with the statements in Citizens' Notification,<sup>33</sup> which are essentially repeated in the first 8 pages of the Motion. But an expert cannot simply "adopt" the statements and arguments in a pleading.<sup>34</sup>

In addition, the majority of the Motion is not supported by expert opinion. Although Dr. Hausler "agree[s]" with certain information in the Notification,<sup>35</sup> he does *not* specifically state that he agrees with Citizens' discussion of the motion to reopen criteria on pages 9 to 15 of the Motion, nor do these sections of the Motion cite any information in Dr. Hausler's Declaration. Rather, these opinions appear to be solely those of counsel.

Finally, Citizens' positions are contradicted by their own expert. For example, Citizens claim that the three unbroken blisters discovered near the Bay 11 rust stain developed rapidly; between 2006 and 2008—rather than over a 16-year period as Exelon concluded.<sup>36</sup> Yet again, this claim must be based solely on the deduction of Citizens' counsel,<sup>37</sup> because Dr. Hausler posits a theory of corrosion occurring over much longer periods of time.<sup>38</sup>

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<sup>33</sup> Hausler Declaration ¶ 4.

<sup>34</sup> See *Entergy Nuclear Vt. Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 560 n.16 (2004) (admitting this type of affidavit, but stating that the Board "is troubled" by its form and prohibiting the practice of "wholesale endorsement" in future filings). This point is particularly applicable here, where Dr. Hausler expresses his *retroactive* agreement with Citizens' earlier Notification. This approach deprives the tribunal "of the ability to make the necessary, reflective assessment of the opinion" purportedly offered by Dr. Hausler. *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006); *cf.*, e.g., *Bouygues Telecom, S.A. v. Tekelec*, 472 F.Supp. 2d. 722, 729 (E.D.N.C. 2007) ("the wholesale adoption of the opinion of another expert verbatim cannot be within the intent of Fed. R. Evid. 702"); *Insight Tech., Inc. v. SureFire, LLC*, 2007 U.S. Dist. LEXIS 83632, \*24 (D. N.H. Nov. 1, 2007) ("an expert is generally expected to provide substantial input to his affidavit or report so that an affidavit or report prepared entirely by counsel may be excluded").

<sup>35</sup> Hausler Declaration ¶ 4.

<sup>36</sup> See Updated Commission Notification at 2-3; Inspection Report at 11.

<sup>37</sup> See Motion at 4 (emphasis added).

<sup>38</sup> Hausler Declaration ¶ 5.e. Dr. Hausler states that the chlorides present on the drywell shell "during the application of the [epoxy] coating" may have "come from anywhere," *id.*, suggesting that the corrosion could have begun immediately after the epoxy coating was applied in the early 1990s.

It is also important to note that because, as explained above in Section A and in this section, Citizens rely solely upon groundless speculation—rather than evidence—to support their allegations, Citizens’ various attempts to impugn the credibility and integrity of AmerGen’s and the Staff’s witnesses and mischaracterize their testimony must also fail.<sup>39</sup>

For all these reasons, the Commission should deny Citizens’ Motion to Reopen the Record.<sup>40</sup>

## II. CITIZENS’ MOTION FOR A STAY MUST BE DENIED

Citizens allege that, because it is “unclear whether further actions are needed” to address the results of certain one-time inspections of piping identified in the Inspection Report, the Commission cannot make any final decision on the issuance of a renewed license at least until February 20, 2009 or until Exelon “resolves” Citizens’ various issues.<sup>41</sup> In effect, this is a demand for an indefinite stay.

This request must be denied because Citizens fail to address or meet the regulatory requirements associated with such relief. The Commission may grant a motion to stay issuance of the final license decision only if the factors considered in granting emergency injunctive relief

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<sup>39</sup> See Motion at 4, 6, 12-14. One example of this tactic is Citizens’ claim that “AmerGen witnesses confirmed that statistical analysis showed that there is ongoing corrosion in the upper drywell, albeit at a very low rate.” Motion at 13 (*citing* Tr. at 110:9-18). Citizens cite to an incorrect version of the transcript; the correct citation is to Tr. at 385:9-18 (Gallagher). Read in context, AmerGen’s witness was clearly describing a bounding calculation that was used in a conservative engineering analysis. There was no admission of any actual, ongoing corrosion in the upper drywell, much less any suggestion that there is an unknown source of water that causes this corrosion outside of times when the refueling cavity is filled with water.

<sup>40</sup> Citizens also demand cross-examination of Exelon and Staff witnesses in any reopened hearing. See Motion at 15. Citizens do not, however, address or meet the requirements for such a request under 10 C.F.R. §§ 2.310 or 2.1204. In any event, Citizens did not consult with Exelon or the NRC Staff regarding this demand, contrary to 10 CFR § 2.323. Both of these failures mandate the denial of Citizens’ cross-examination demand.

<sup>41</sup> Motion at 16. Citizens cite no legal authority for the duration of their 30-day delay request. The Commission, however, has held that a delay of four weeks in the submittal of a motion to reopen the record rendered the motion untimely, “given that the record had long since closed and the Commission’s immediate effectiveness decision was expected imminently.” *Seabrook Station*, CLI-90-06, 31 NRC at 487. This proceeding is at a similar stage, so Citizens’ demand for an even longer period of 30 days is untenable.

are satisfied.<sup>42</sup> The moving party must show that the relevant factors in 10 C.F.R. § 2.342(e) weigh in its favor.<sup>43</sup>

Citizens' style this aspect of their Motion as a request to "Postpone Final Disposition of the Licensing Decision."<sup>44</sup> This is a disingenuous attempt to sidestep the regulatory requirements for a stay. Having unburdened themselves from the law, Citizens do not address the standards of 10 C.F.R. § 2.342. This is "reason enough to deny" the request.<sup>45</sup>

Citizens describe an alternative test that, apparently, they desire the Commission to apply to their request to "postpone" any licensing decision. Under this alternative, amorphous standard, the Commission would be barred from issuing a license whenever an intervenor claims that it is "unclear whether further actions are needed."<sup>46</sup> In other words, under Citizens' new rule, the Commission could never make a final licensing decision if there is any possibility that an intervenor "may" request a new hearing.<sup>47</sup> This is not the standard for a stay set forth in 10 C.F.R. § 2.342. The Commission, moreover, has the obligation to conduct its adjudicatory proceedings with efficiency, economy and without unnecessary delays.<sup>48</sup> Citizens ask the Commission to disregard this obligation and follow a fabricated legal standard because they have identified an issue that they *may* wish to seek to litigate in the future.<sup>49</sup> The Commission must

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<sup>42</sup> *Oyster Creek*, CLI-08-13, slip op. at 4.

<sup>43</sup> Those factors are: (1) likelihood of success on the merits, (2) irreparable harm, (3) absence of harm to others, and (4) the public interest.

<sup>44</sup> Motion at 1.

<sup>45</sup> *Oyster Creek*, CLI-08-13, slip op. at 4.

<sup>46</sup> Motion at 9.

<sup>47</sup> *Id.* at 15.

<sup>48</sup> *E.g.*, *Nuclear-Fuel Servs., Inc.* (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

<sup>49</sup> Contrary to Citizens' claim, Motion at 15, the "UCS Cases" do not grant Citizens the unfettered right to litigate late-filed contentions. *See generally* *Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984); *Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990). The Commission explained this to Citizens only two months ago. *Oyster Creek*, CLI-08-28, slip op. at 27-28.

deny this request and remain mindful of the potential negative precedential impact of Citizens' desired change to the regulations.

Under the actual standards of Section 2.342, Citizens cannot show irreparable harm. As the Commission explained previously, "Citizens would not be irreparably harmed even if the license were at the point of issuance," because the renewed operating license "may be set aside (or appropriately conditioned) even after it has been issued."<sup>50</sup>

Because they cannot show irreparable harm, Citizens bear the burden of showing that success on the merits is "a virtual certainty."<sup>51</sup> To succeed on the merits, Citizens, at a minimum, need to show that they could successfully reopen the record to litigate their claims regarding Exelon's one-time inspection program.<sup>52</sup> Among other things, this means that they would need to show that it is a virtual certainty that their claim raises a significant safety issue *and* that it would ultimately lead to a materially different result. The admittedly "bare bones" information Citizens rely upon<sup>53</sup> and their failure to address any of the information regarding the one-time inspection program in Exelon's license renewal application<sup>54</sup> confirms that Citizens do not make the requisite showing.<sup>55</sup>

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<sup>50</sup> *Oyster Creek*, CLI-08-13, slip op. at 5.

<sup>51</sup> *Id.*

<sup>52</sup> Citizens also appear to demand, in their "Conclusion," that any stay continue past February 20, 2009, until Exelon "resolves" certain other allegedly "outstanding" issues. Motion at 16. Citizens present no justification for this further demand, so it also must be denied.

<sup>53</sup> *Id.* at 15.

<sup>54</sup> License Renewal Application, Oyster Creek Nuclear Generating Station, App. B, § B.1.24 (July 22, 2005) (One-Time Inspection).

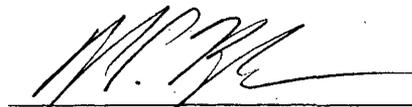
<sup>55</sup> For this reason, Exelon provides no response to Citizens' one-time inspection allegation. Exelon reserves the right to respond as authorized by 10 C.F.R. Part 2, however, should Citizens file a motion seeking to actually litigate this claim.

Having failed to make the requisite showing on the first two factors, there is no need to analyze the remaining two.<sup>56</sup>

### III. CONCLUSION

For the foregoing reasons, the Commission must deny Citizens' Motion in its entirety. Exelon urges the Commission to reschedule the Affirmation Session for the earliest possible date, and to deny all of Citizens' outstanding appeals.

Respectfully submitted,



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Dated in Washington, D.C.  
this 11th day of February 2009

COUNSEL FOR  
EXELON GENERATION COMPANY, LLC

<sup>56</sup> *Oyster Creek*, CLI-08-13, slip op. at 5. Briefly, however, Exelon would be harmed by the granting of a stay, through the additional delay and regulatory uncertainty that would stem from such an action. The public interest also favors the rejection of the stay request in order to maintain stability and consistency in the face of the Commission's increasing adjudicatory docket.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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	)	February 11, 2009
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(License Renewal for Oyster Creek Nuclear Generating Station)	)	Docket No. 50-219

**CERTIFICATE OF SERVICE**

I hereby certify that copies of "EXELON'S ANSWER TO CITIZENS' MOTION TO REOPEN THE RECORD AND TO POSTPONE FINAL DISPOSITION OF THE LICENSING DECISION" were served this day upon the persons listed below, by e-mail and first class mail.

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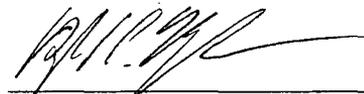
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