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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before the Commission

In the Matter of:	)	February 27, 2009
Exelon Generation Company, LLC	)	
(License Renewal for Oyster Creek Nuclear Generating Station)	)	Docket No. 50-219

**EXELON'S ANSWER OPPOSING CITIZENS' PETITION TO REQUIRE THE NRC TO  
SUPPLEMENT THE SAFETY EVALUATION REPORT FOR OYSTER CREEK**

Let us be clear. The exterior surface area of the drywell shell in the sand bed region at Oyster Creek is approximately 101,016 square inches.<sup>1</sup> The area of degraded coating that is the primary driver for *four* of Citizens' filings over the *past month* was approximately 1 to 2 square inches.<sup>2</sup> This tiny area, and the tiny amount of corrosion found there (approximately 0.003 inches), in no way poses a significant safety issue.<sup>3</sup> Exelon does not claim that corrosion on the exterior drywell shell cannot occur under any circumstances; indeed, the Atomic Safety and Licensing Board's ("Board") Initial Decision assumed that corrosion was a possibility.<sup>4</sup> Exelon, however, has an Aging Management Program that, among other things, provides multiple measures designed to prevent, identify, and in a timely manner address any corrosion that may

<sup>1</sup> See Citizens' Exh. 42.

<sup>2</sup> Inspection Report No. 05000219/2008007, at 11 (Jan. 21, 2009) available at ADAMS Accession No. ML090210106 ("Inspection Report"); see also AmerGen's Updated Commission Notification at 2-3 (Nov. 17, 2008) ("Updated Notification").

<sup>3</sup> Inspection Report at 11; see also Exelon's Answer to Citizens' Motion to Reopen the Record and Postpone Final Disposition of the Licensing Decision at 3-5 (Feb. 11, 2009) ("Exelon's Answer"); NRC Staff's Response in Opposition to Citizens' Motion to Reopen the Record and to Postpone Final Disposition of the Licensing Decision at 14, 16 (Feb. 12, 2009) ("Staff's Answer").

<sup>4</sup> See AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 366 (2007).

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be found during the period of extended operation.<sup>5</sup> Citizens, on the other hand, continue to inaccurately characterize the discovery of a tiny corroded area during the 2008 refueling outage as a significant safety issue in what has become a transparent attempt to repeatedly delay the NRC's issuance of a renewed license for Oyster Creek.

Thus, in accordance with 10 C.F.R. § 2.323(c), Exelon Generation Company, LLC ("Exelon") hereby files its Answer opposing Citizens' Petition to Require Supplementation of the Safety Evaluation Report for Oyster Creek Nuclear Power Plant (Feb. 19, 2009) ("Petition").<sup>6</sup> The Petition must be denied because it seeks relief that is prohibited under regulation and longstanding precedent—including precedent in this proceeding. And the "Petition" is, effectively, an unauthorized reply to Exelon and the Staff's responses to Citizens' Motion to Reopen. It also expresses Citizens' desire to substitute their judgment for that of the NRC Staff and insert themselves as the primary regulator of the Oyster Creek plant. No law or regulation, however, permits an intervenor the opportunity to claim this unprecedented right. The primary responsibility for protection of the public health and safety through the licensing process rests with the Commission and its Staff, not with any intervenor.<sup>7</sup>

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<sup>5</sup> See *id.* at 334-35, 341, 350-63.

<sup>6</sup> Because this Petition was filed as a "general motion" under 10 C.F.R. § 2.323, there is no right of reply. Exelon anticipates, based on past experience, that Citizens will seek to reply because they could not have anticipated the arguments made in this Answer. See 10 C.F.R. § 2.323(c). Exelon submits that such a request would be frivolous and respectfully requests that the Commission deny any such request as expeditiously as practicable.

<sup>7</sup> See Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (rejecting comments suggesting that the Part 2 rules should provide more liberal opportunities for late-filed contentions based on the SER because the "commenters' proposal appears to be based on the misapprehension that absent consideration in a hearing, safety concerns will not be addressed by the NRC."). The letter from the State of New Jersey that Citizens rely upon acknowledges that NRC is the "cognizant regulatory agency" for Oyster Creek. Exh. PSER 2, at 2. However, Citizens ignore this aspect of New Jersey's letter when they repeatedly—and disingenuously—purport to speak for the State. See Petition at 3, 12, 13, 16.

## I. CITIZENS' PETITION SEEKS UNAUTHORIZED RELIEF

In this, their latest filing, Citizens demand that the Commission “instruct the NRC Staff to supplement the Safety Evaluation Report (‘SER’) for the Oyster Creek nuclear power plant.”<sup>8</sup> Citizens acknowledge that the “performance of the NRC Staff” is not a proper subject for litigation before the Board, but nevertheless trample forward over the Commission’s Rules of Practice, amorously claiming that “it is appropriate for Petitioners to raise the issues before the Commission, which has ultimate supervisory authority.”<sup>9</sup> Not surprisingly, no further explanation or justification can, or is, offered in the Petition.

This is because the relief Citizens’ seek is unauthorized, and they know it, because the Commission told them so only four months ago. Specifically, in response to a similar demand by Citizens and other groups that the Commission suspend various license renewal reviews pending a “comprehensive overhaul” of the Staff’s review process,<sup>10</sup> the Commission ruled that:

The purpose and scope of a licensing proceeding is to allow interested persons the right to challenge the sufficiency of the application. The NRC has not, and will not, litigate claims about the adequacy of the Staff’s safety review in licensing adjudications. Each of Petitioners’ pleadings, however, simply builds upon the fundamentally flawed premise that Petitioners do have that right.<sup>11</sup>

Citizens argue that the prohibition on litigation of the Staff’s performance in safety reviews is merely a jurisdictional issue, based on a concern that “it is inappropriate to give the ASLB the role of supervising the NRC Staff.”<sup>12</sup> Thus, according to Citizens, they may make

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<sup>8</sup> Petition at 1.

<sup>9</sup> *Id.* at 5 (*citing Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)*, CLI-02-23, 56 NRC 230, 236-37 (2002)).

<sup>10</sup> *AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-08-23, slip op. at 2 (Oct. 6, 2008).

<sup>11</sup> *Id.* at 18 (citations omitted) (emphasis added).

<sup>12</sup> Petition at 5 (*citing Changes to Adjudicatory Process*, 69 Fed. Reg. at 2202). Nothing in the cited reference supports Citizens’ claim that the Commission’s prohibition on litigation of the Staff’s safety review is driven by such a concern. In fact, in appropriate circumstances Boards are granted jurisdiction over the Staff’s

demands regarding the Staff's performance directly to the Commission, "pursuant to its inherent supervisory authority."<sup>13</sup> This argument ignores the Commission's decision, which appears in the *very next paragraph* of CLI-08-23 and in the block quotation above. Safety issues in an NRC licensing proceeding are limited to challenges to an *application*, not to the Staff's performance, regardless of whether such issues are raised before the Commission or the Board.<sup>14</sup>

In their next adjudicatory pirouette, Citizens suggest that they are not necessarily seeking a hearing.<sup>15</sup> Indeed, they certainly cannot obtain a hearing on the claims raised in the Petition because they fail to invoke or address the requirements for obtaining one at this late stage in the proceeding under the standards for motions to reopen in 10 C.F.R. § 2.326.<sup>16</sup> Instead, Citizens dance around Section 2.326 and claim that they are merely petitioning the Commission to exercise its supervisory authority to "order the Staff to revise the SER,"<sup>17</sup> citing various statutory provisions, regulations,<sup>18</sup> and case law.<sup>19</sup> None of the authorities that Citizens rely upon grants

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performance of its review under the National Environmental Policy Act ("NEPA"). *Oyster Creek*, CLI-08-23, slip op. at 18 n.64. Boards also "should inquire whether the NRC staff performed an adequate review" of uncontested issues in a mandatory hearing. See *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 39 (2005).

<sup>13</sup> Petition at 4 (*paraphrasing Oyster Creek*, CLI-08-23, slip op. at 17).

<sup>14</sup> *E.g.*, *Oyster Creek*, CLI-08-23, slip op. at 18; *Changes to Adjudicatory Process*, 69 Fed. Reg. at 2202.

<sup>15</sup> See Petition at 6 ("[E]ven if the Commission believes that Citizens do not have the right to a hearing on material issues that involve supervision of the Staff, Citizens have an inherent right to petition their government to take appropriate action."); see also *id.* at 17 (failing to request a hearing in the request for relief). If this is the case, then the Commission certainly can proceed with the issuance of the renewed license and consider the merits of this Petition separately at a later date. *Cf. AmerGen Energy Co., LLC* (*Oyster Creek Nuclear Generating Station*), CLI-08-13, 67 NRC 396, 400 ("A license renewal may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review.").

<sup>16</sup> In any event, as explained in Section III, below, the Petition is not timely, nor does it raise a significant safety issue, nor does it demonstrate that a materially different result is likely, contrary to 10 C.F.R. § 2.326.

<sup>17</sup> Petition at 17.

<sup>18</sup> See Petition at 1 (*citing* 42 U.S.C. §§ 2201(c), 2239(a)(1)(A); 10 C.F.R. § 54.27, all of which address the opportunity for a public hearing). The remaining statutory and regulatory provisions Citizens cite speak to the safety responsibilities of the Commission and the Staff, *not* to any opportunity for public intervention. See 42 U.S.C. §§ 2133(d), 2201(b), 2232(a); 10 C.F.R. § 54.29.

<sup>19</sup> The very cases Citizens cite, however, make it crystal clear that the right to public intervention in an NRC hearing is a limited one. See *Commonwealth Edison Co.* (*Byron Nuclear Power Station, Units 1 & 2*), ALAB-

intervenors the right, under a general motion and outside of the hearing process or any other regulatory provision, to specifically direct the Staff's performance of its duties.

## II. CITIZENS' PETITION IS AN UNAUTHORIZED FILING

The Petition is effectively an unauthorized reply to Exelon and the Staff's Answers to the Motion to Reopen. It is, therefore, Citizens' *fourth* attempt to litigate the same set of issues.<sup>20</sup> And although Citizens state that this Petition "is not part of Citizens' appeal of LBP-07-17,"<sup>21</sup> as explained below, Citizens' actions and intent belie this statement.<sup>22</sup>

This Petition is effectively a reply brief because it relies upon the *exact* same facts as Citizens relied upon to submit their Motion to Reopen.<sup>23</sup> The Petition on its face invokes the

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678, 15 NRC 1400, 1420, 1420 n.36 (1982) (imposing restrictions on the number of contentions to be litigated, and expressing confidence in the Staff's ability to address "those aspects of reactor operation not considered in an adjudicatory proceeding"); *South Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895-96 (1981) (reversing the Board's grant of late intervention, while recognizing that unlitigated safety issues nevertheless "fall within the province of the staff"); *Union of Concerned Scientists v. NRC*, 920 F.2d 50, 55-56 (D.C. Cir. 1990) (upholding the Commission's authority to establish a hearing schedule and limit late-filed contentions).

<sup>20</sup> Citizens' Commission Notification (Jan. 23, 2009); Citizens' Motion to Reopen the Record and to Postpone Final Disposition of the Licensing Decision (Feb. 2, 2009) ("Motion to Reopen"); Citizens' Motion For Leave To File A Reply To The NRC Staff's Opposition To Citizens' Motion To Reopen (Feb. 19, 2009); Petition.

<sup>21</sup> Petition at 6.

<sup>22</sup> The Commission should consider sanctions against Citizens for abusing the NRC's Rules of Practice in 10 C.F.R. Part 2. Those rules limit legal arguments to a Motion and an Answer, and a reply only under "compelling circumstances." 10 C.F.R. § 2.323(c). Similarly, a party is allowed only one appeal under Section 2.341. Yet Citizens *habitually* file multiple pleadings using the same facts, in an effort to either delay rulings or reargue deficient initial pleadings. *See, e.g., AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, slip op. (Nov. 6, 2008) (upholding the denial of two motions to reopen on the same metal fatigue issue); *Oyster Creek*, CLI-08-23, slip op. (denying Citizens' two requests to suspend various license renewal proceedings, including Oyster Creek's). In the instant Petition, as explained below, Citizens deliberately mischaracterize the record and fail to acknowledge Exelon's position, the Staff's findings, and the Board's findings in prior documents filed in this proceeding, forcing Exelon and the Staff to explain—yet again—why the issues Citizens raise are not significant or are otherwise flawed. This practice is misleading and wasteful of the resources of the Commission, the Staff, and the applicant. Citizens' disregard of the prohibition on litigation of the adequacy of the Staff's review—recently reiterated to Citizens in CLI-08-23—also may be sanctionable. *Cf. Fed. R. Civ. P. 11* (authorizing sanctions for (1) claims presented to "harass, cause unnecessary delay, or needlessly increase the cost of litigation"; and (2) claims that are not "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law").

<sup>23</sup> Compare Motion to Reopen at 2 (*citing* the Inspection Report as the only "New Information Available") with Petition at 1 ("This Petition is based upon the facts contained in inspection report No. 05000219/2008007 . . .").

very same arguments in the Motion to Reopen as a starting point for Citizens' new demands: "Citizens have already shown through their filing on February 2, 2009 . . . that the information in the Report undermines the initial decision of the Atomic Safety and Licensing Board . . . ." <sup>24</sup> All three of the specific issues that Citizens insist "must" now be documented in a supplemental SER match claims advanced in the Motion to Reopen. <sup>25</sup> Indeed, Citizens not only directly cite an exhibit proffered in support of the Motion to Reopen, <sup>26</sup> but also seek to incorporate their previous filings by reference into the instant Petition. <sup>27</sup>

The Petition even offers substantive reply arguments. In this regard, Citizens lament that, "[a]t least one member of the NRC Staff has apparently already rejected a number of Dr. Hausler's conclusions." <sup>28</sup> Citizens go on to repeatedly complain that the Staff failed to respond to their claims in the Motion to Reopen, including that it "completely ignored" Citizens' veiled and utterly unsupported stay request. <sup>29</sup> They also demand that "[t]he Staff must now document in a supplemental SER whether it concurs with the conclusions of Dr. Hausler and the State of New Jersey." <sup>30</sup> In other words, not only is the Petition a direct reply to the Staff, but Citizens seek to rewrite the rules governing motions to reopen (and stay requests) by demanding that the Staff demonstrate, either through affidavit or SER supplement, why Citizens' various assertions are not material or safety significant. This is yet another example in a growing number of

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<sup>24</sup> Petition at 1; *see also id.* at 11 ("The findings of the Report are summarized in Citizens' Motion to Reopen the Record, dated February 2, 2009 and Dr. Hausler's declaration of the same date attached thereto . . .").

<sup>25</sup> Compare Petition at 13-17 with Motion to Reopen at 3-9.

<sup>26</sup> *Id.* at 14 (citing "Ex CRO 1 ¶ 7"); *id.* at 15 (citing the same document).

<sup>27</sup> Petition at 11.

<sup>28</sup> *Id.* at 13 n.4. Dr. Hausler also responds substantively to the Staff's Answer. Exh. PSER 1 ¶ 12 (providing nearly three pages of unauthorized rebuttal testimony).

<sup>29</sup> Petition at 13 n.4.

<sup>30</sup> *Id.* at 12-13.

attempts by Citizens to shift the “deliberately heavy” burden under 10 C.F.R. § 2.326 away from themselves and onto the other parties in this proceeding.<sup>31</sup>

As Citizens put it, this Petition “goes further” than the previous Motion to Reopen—not in the factual claims it raises—but *only* in the demand for relief.<sup>32</sup> Instead of seeking to reopen the record for a further hearing, they seek to have the Commission implement their desires directly, by instructing the Staff to reach the result that Citizens previously sought to reach through the mechanism of a reopened hearing. *Citizens admit that this is the only new point raised in this Petition.*<sup>33</sup> And as explained in Section I, above, this new point is excluded from litigation.

### III. THE PETITION IS MERITLESS

Regardless of how the Petition is analyzed—as an unauthorized reply, a second motion to reopen, or an unauthorized supplement to their Petition for Review<sup>34</sup>—it lacks substantive merit. Exelon’s Answer to Citizens’ Motion to Reopen explains why Citizens have failed to carry their burdens under 10 C.F.R. §§ 2.326 and 2.342. Briefly, even if all of the facts Citizens allege related to drywell shell corrosion—hypothetically and for the sole purpose of argument—are taken to be true, they nevertheless fail to raise either a significant safety issue or show that a materially different result would be likely.<sup>35</sup> Citizens also fail to show that any Board finding of material fact was clearly erroneous.<sup>36</sup> As to the specific statements made in the Petition:

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<sup>31</sup> Compare *id.* at 12-13, 13 n.4 with *Oyster Creek*, CLI-08-28, slip op. at 16, 21-23 (rejecting Citizens’ earlier attempt to rewrite Section 2.326).

<sup>32</sup> Petition at 6; *see id.* at 1.

<sup>33</sup> *Id.* at 6.

<sup>34</sup> Citizens’ Petition for Review of LBP-07-17 and the Interlocutory Decisions in the Oyster Creek Proceeding (Jan. 14, 2008).

<sup>35</sup> Exelon’s Answer at 4; *see generally id.* at 3-8.

<sup>36</sup> See 10 C.F.R. § 2.341(b)(4)(i).

- *“visual inspections alone are not adequate to detect the onset of corrosion and subsequent coating degradation”*<sup>37</sup>
  - This claim simply ignores the facts. The tiny blistered area in Bay 11 *was* discovered through visual inspection during the 2008 refueling outage. At the time of discovery, the blistered area of approximately 1-2 square inches had lost approximately 0.003 inches of underlying metal due to corrosion.<sup>38</sup> In other words, the problem was identified through visual inspections and corrected long before any safety significant degradation took place.<sup>39</sup> Exelon also does not rely upon visual inspections “alone.” It was the entire aging management program—taken as a whole—including visual inspections, various methods of water monitoring and UT measurements, that the Board found provides reasonable assurance.<sup>40</sup>
  
- *“the committed measures that involve monitoring of bottles connected to drains by long tubes are insufficient to reliably determine when water is present in the sandbed region . . . . Detecting whether water is present in the sandbed region by observing the bottles that are designed to catch the drainage water, as is currently proposed, is inherently unreliable. Water has been observed in the sandbed region when no water has reached the bottles for various reasons.”*<sup>41</sup>
  - These two claims ignore the Board’s factual findings and the multiple measures taken under Exelon’s aging management program. First, poly bottle monitoring is not the only method used to identify water; other measures include monitoring reactor cavity

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<sup>37</sup> Petition at 1-2.

<sup>38</sup> Inspection Report at 11.

<sup>39</sup> See *id.* at 10-11; Exelon’s Answer at 5. The facts regarding these blisters have also been in the record for months, so Citizens’ allegation on this point is egregiously late. See, e.g., Updated Notification at 2-3; *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-90-06, 31 NRC 483, 487 (1990) (holding a delay of four weeks to render a motion to reopen untimely).

<sup>40</sup> See *Oyster Creek*, LBP-07-17, 66 NRC at 334-35, 341, 350-63.

<sup>41</sup> Petition at 2, 12.

leakage and inspections of the sand bed itself.<sup>42</sup> These measures ensured that Exelon *did* identify and address the water leakage experienced during the 2008 refueling outage.<sup>43</sup> Second, the presence of water in the sand bed region itself will not cause corrosion—that could only happen if water contacts and remains on the surface of the drywell shell.<sup>44</sup> The Board found, however, that any water on the shell surface would rapidly evaporate after start-up following an outage.<sup>45</sup>

- “Measures to prevent water from reaching the sandbed region have proved ineffective and there are multiple indications that the refueling cavity may not be the source of water draining to the sandbed region of the drywell, including that the bottle catching the water draining from Bay 11 filled up 3 days after the refueling cavity was drained.”<sup>46</sup>
  - This statement begins by ignoring the Board’s recognition that it is possible for water to reach the sand bed region during refueling outages.<sup>47</sup> As a result, the Board *assumed* that water would be present when the reactor cavity is filled.<sup>48</sup> Although Citizens state that there are “multiple indications” of another source of water other than the refueling cavity, the only example they provide is refuted by the very Inspection Report from

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<sup>42</sup> See *Oyster Creek*, LBP-07-17, 66 NRC at 354. Citizens also mischaracterize the SER in a similar manner. Citizens claim that, “the Staff found that the applicant’s commitment to monitor bottles connected to the drains from the sandbed region by long plastic tubes would ‘provide reasonable assurance that *any* further incidents of water in the sandbed region will be systematically evaluated.’” Petition at 14-15 (*quoting* SER at 4-69) (emphasis added by Citizens). Citizens selectively quote the SER out of context. The Staff did *not* find that the monitoring of poly bottles *alone* will provide reasonable assurance, but that “*the applicant’s program* will provide reasonable assurance that any further incidents of water in the sandbed region will be systematically evaluated.” SER at 4-69 (emphasis added).

<sup>43</sup> See Inspection Report at 4-7; Updated Commission Notification at 4-5.

<sup>44</sup> See *Oyster Creek*, LBP-07-17, 66 NRC at 355 (“the salient question is whether water will leak from the refueling cavity liner at a sufficient rate to . . . enter *onto the exterior wall* in the sand bed region, thereby creating a corrosive environment”) (emphasis added).

<sup>45</sup> See *id.* at 352-53.

<sup>46</sup> Petition at 11-12.

<sup>47</sup> See *Oyster Creek*, LBP-07-17, 66 NRC at 366-68.

<sup>48</sup> *Id.* Indeed, Exelon committed to the Advisory Committee on Reactor Safeguards to complete an engineering study to identify cost-effective repair or replacement options to eliminate the refueling cavity liner leakage. SER at 5-5.

which they derived the example.<sup>49</sup> Citizens also disregard information that has been available for months regarding the source of the water identified in the sand bed region during the 2008 refueling outage: this water came from the reactor cavity.<sup>50</sup>

- *“At unknown times since the coating was applied, water has found its way beneath the protective coating and caused multiple corrosion blisters in a least bay 11. One broken blister caused a rust stain on the coating, indicating that the blister contained water until it burst.”*<sup>51</sup>

- This disingenuous statement ignores the evidence and the Board’s factual findings.

Citizens have long been aware that water “was present in the sand bed region during the 1994 and 1996 refueling outages – when the strippable coating was not used in the refueling cavity liner.”<sup>52</sup> And, as stated previously, the blistered area was tiny, and the corrosion beneath it was insignificant.

- *“loss of material due to aging at some locations in the small bore piping is significant and requires additional aging management . . . . A one-time inspection of piping that was supposed to confirm that there was no thinning of the wall thickness of certain pipes actually found that there was measureable [sic] thinning.”*<sup>53</sup>

- These two bare allegations begin from the false premise that Citizens have already established that this is a significant safety issue that demands reopening of the record.

As Citizens have admitted, however, they have not even attempted to make such a showing.<sup>54</sup> Instead, they once again mischaracterize the Inspection Report as

documenting an allegedly “unexpected” and “significant” discovery that certain piping

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<sup>49</sup> See Inspection Report at 6; see also Staff’s Answer at 12-13.

<sup>50</sup> See Updated Notification at 4-5.

<sup>51</sup> Petition at 12.

<sup>52</sup> *Oyster Creek*, LBP-07-17, 66 NRC at 359 (citing AmerGen Exh. B, Pt. 5, A.14).

<sup>53</sup> Petition at 2, 12.

<sup>54</sup> See Motion to Reopen at 15; Exelon’s Answer at 10.

thicknesses were below acceptance criteria. The Inspection Report itself contradicts

Citizens' counsel's characterization:

The inspectors noted that for two UT sample locations, the measured piping thickness did not satisfy the acceptance criteria, and the results were evaluated within the corrective action program. *The inspectors did not identify any significant problems or concerns with Exelon's inspection activities.*<sup>55</sup>

\* \* \*

Citizens had an opportunity to present their case during a two-day-long evidentiary hearing in September 2007.<sup>56</sup> Dr. Hausler, Citizens' preferred expert, testified each day of that hearing. Yet the Board ultimately concluded that future corrosion would not be significant *even if* water leaked from the refueling cavity and migrated to the sand bed region, and *even if* the epoxy coating had *did not exist*.<sup>57</sup> The total corrosion calculated beneath the small blister in the epoxy coating that Exelon removed during the 2008 refueling outage was 0.003 inches, which fully confirms the Board's findings.<sup>58</sup>

Thus, regardless of how one construes this "general motion," it lacks merit. The Petition can be rejected as either: (1) an unauthorized reply to Exelon and the Staff on the pending Motion to Reopen or unauthorized supplement to that motion; (2) an unauthorized supplement to Citizens' Petition for Review; or (3) on its own merits as a failed new motion to reopen that does not invoke, address, or meet the standards of 10 C.F.R. § 2.326.

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<sup>55</sup> Inspection Report at 15 (emphasis added). Citizens also mischaracterize the SER—again. It does not state that the One-Time Inspection Program is "supposed to confirm that there was no thinning of the wall thickness of certain pipes." Petition at 12; *cf.* SER at 3-105 ("the One-Time Inspection program provides reasonable assurance that an aging effect does not occur or occurs so slowly as not affect the component or structure intended function").

<sup>56</sup> See Oyster Creek, LBP-07-17, 66 NRC at 338.

<sup>57</sup> See *id.* at 366-68.

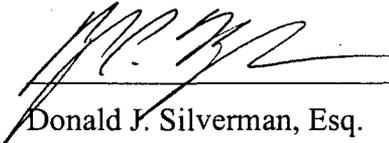
<sup>58</sup> See Inspection Report at 11.

**IV. CONCLUSION**

For the foregoing reasons, the Commission must deny Citizens' Petition in its entirety.

Exelon once again urges the Commission to cut off Citizens' extended and wasteful motion practice by rescheduling an Affirmation Session at the earliest possible date and denying all of Citizens' outstanding appeals, motions and petitions.

Respectfully submitted,



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Dated in Washington, D.C.  
this 27th day of February 2009

COUNSEL FOR  
EXELON GENERATION COMPANY, LLC

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

In the Matter of:	)	
	)	February 27, 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 OPPOSING CITIZENS' PETITION TO REQUIRE THE NRC TO SUPPLEMENT THE SAFETY EVALUATION REPORT FOR OYSTER CREEK" were served this day upon the persons listed below, by e-mail and first class mail.

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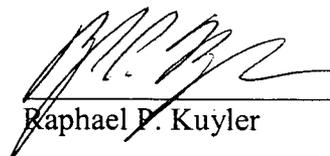
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