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March 31, 2009 (8:30am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF THE SECRETARY
BEFORE THE COMMISSION

In the Matter of)
)
AMERGEN ENERGY COMPANY, LLC)
)
(License Renewal for the Oyster Creek)
Nuclear Generating Station))
)

Docket No. 50-0219-LR

March 30, 2009

**COMMISSION NOTIFICATION AND SUBMISSION OF SUPPLEMENTAL
INFORMATION IN SUPPORT OF PENDING MOTION AND PETITION**

I. INTRODUCTION

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") hereby provide this notification that Exelon's March 6, 2009 notification of completeness of commitments was inaccurate, because it has failed to meet at least one commitment that was also a license condition. Citizens also provide information showing that the license renewal application for the Oyster Creek Nuclear Generating Station (the "Oyster Creek LRA") was neither timely nor sufficient. The first of these deficiencies means that even if the Commission were to renew Oyster Creek's license prior to the expiration of the current license on April 9, 2009, Oyster Creek could not operate beyond that date because it has failed to meet a license condition. The other deficiencies mean that unless the Commission renews

TEMPLATE = SECY-043

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Oyster Creek's license prior to April 9, 2009, the licensee will not possess a valid license to operate the plant thereafter.

Finally, Citizens are providing the Commission with supplemental information that became available to them on March 25, 2009. This information further confirms that the State of New Jersey does not believe that the existing approach to aging management of the drywell shell is adequate. It also further illustrates the need for additional evidentiary proceedings to ascertain critical facts and for the NRC Staff to supplement the Safety Evaluation Report.

II. CITIZENS HAVE NOTIFIED THE STAFF ABOUT EXELON'S FAILURE TO MEET ITS COMMITMENTS AND SOME OF THE DEFICIENCIES IN THE OYSTER CREEK LRA

Exhibit 1 attached to this Notification provides a letter Citizens wrote to the NRC Staff pointing out Exelon's failure to meet at least one of its commitments and some of the many deficiencies with the Oyster Creek LRA. In summary, Exhibit 1 shows that, contrary to the express requirement of the Advisory Committee on Reactor Safeguards ("ACRS") and Exelon's commitment, Exelon has failed to test the sensitivity of its estimates of the buckling strength of the containment system to variations in the extent of the severely corroded areas. The ACRS recommended this requirement because the extent of these areas has not been well-defined. The Staff then incorporated this requirement into a license condition.

In addition, Exhibit 1 shows that when it was filed in July 2005, the Oyster Creek LRA was incomplete, inaccurate and insufficient to provide reasonable assurance that aging management would ensure adequate protection of public health and safety during any period of extended of operation. For example, the Oyster Creek LRA omitted operating experience showing that the interior of the drywell had water below the concrete floor periodically, even though this condition was known to the licensee and gives rise to the possibility of additional corrosion occurring from the interior. In addition, the Oyster Creek LRA stated that corrosion of

the drywell had been arrested, even though the licensee had not measured the wall thickness for over ten years. The licensee also stated in the Oyster Creek LRA that the coating on the drywell did not show signs of deterioration even though it had not done a complete inspection of the coating at that time. Moreover, the August 18, 2006 SER was issued with open items because at that time, the Oyster Creek LRA did not contain the information required to satisfy 10 C.F.R. § 54.21. Finally, there is no dispute that in July 2005, the Oyster Creek LRA did not contain the Water Quality Certification from the State of New Jersey that was an essential pre-requisite for the approval of the application.

Section 9(b) of the Administrative Procedure Act (“APA”), 5 U.S.C. § 558(c), protects those who hold licenses allowing continuing activities to occur and submit “timely and sufficient” applications for license renewal “in accordance with agency rules” from bureaucratic delays by extending the expiration date until the licensing agency has made a final determination on the renewal. Here the relevant agency rule is 10 C.F.R. § 2.109(b), which states:

If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

Thus, both the rule and the statute require an application to be simultaneously timely and sufficient. Here, the license is scheduled to expire on April 9, 2009, meaning that the rule required a sufficient application to be filed by April 9, 2004. Here the application was clearly insufficient because the application was not even filed until July 22, 2005. Letter from Swanson to NRC, dated July 22, 2005. However, on August 10, 2004, the licensee retroactively attempted to cure the lateness of this application by applying for an exemption from the requirements of 10 C.F.R. § 2.109(b), which was subsequently granted. 69 Fed. Reg. 78,054-55 (December 29,

2004). By its terms, the exemption required the licensee to submit the Oyster Creek LRA by July 29, 2005. *Id.* at 78,055. The exemption did not address the question of sufficiency under the APA, but merely stated that the Oyster Creek LRA would be regarded as timely if the LRA was acceptable for docketing. *Id.* As discussed below, Citizens believe that this exemption was improperly granted because the exemption actually contradicted the underlying purpose of the rule, which is to encourage applicants to make timely and sufficient applications. However, notwithstanding the invalidity of the exemption, there is no doubt that as of July 29, 2005, the Oyster Creek LRA was insufficient to allow the agency to issue a license, which is the appropriate test for whether an application is sufficient.¹ Thus, in absence of a decision from the Commission, the licensee may not operate beyond April 9, 2009 because its LRA was non-existent on April 9, 2004 and was insufficient to allow a renewed license to be issued on July 29, 2005.

III. The Oyster Creek LRA Was Untimely

As discussed above, the licensee allowed the critical date of April 9, 2004 to pass without making any request to the NRC. Thus, the Oyster Creek LRA became late as of that date. Although four months later, the licensee requested an exemption from the rule requiring license renewal applications to be submitted 5 years before the expiration of a license, that request in itself was already too late because the NRC could not legally turn back the hands of time. This is

¹ In *Bankers Life and Casualty Co. v. Callaway*, 530 F.2d 625 (5th Cir. 1976), an application for renewal of a dredge and fill permit was found to be insufficient due to lack of required local approvals at the time it was filed. 530 F.2d at 633. Similarly, in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Federal Power Commission*, 530 F.2d 625 (5th Circuit, 1976) the court explicitly stated that Northern States Power Company could not rely on the protection of Section 9(b) of the APA to continue operating a dam in the Chippewa river during license renewal proceedings. Because the Chippewa Indians refused to give their consent to the renewal of North State's license, and that consent was necessary for the Commission to act, the license application was not sufficient.

best illustrated by case law applying New York State's equivalent of Section 9(b) of the APA. In *In the Matter of Stephentown Concerned Citizens v. Herrick*, 223 A.D.2d 862 (N.Y. App. Div. 1996), the New York Department of Conservation ("DEC") had informed Troy Sand, the operator of a gravel pit, of the need to file a renewal application 30 days prior to the expiration date of May 23, 1993. *Id.* at 863. When Troy Sand failed to file a timely application, the DEC informed Troy Sand that mining could only continue if a timely application had been filed. *Id.* However, when Troy Sand filed a late application, the DEC informed that operator that he could continue mining in the areas authorized by the original permit. *Id.* When a community group objected to the continued mining, the court ordered Troy Sand to cease mining operations, because "there is not authority for the proposition that an applicant making such an untimely request may continue its operations in the interim." *Id.* at 865.

Even if the NRC has the legal authority to allow applicants to use the exemption process to turn back the hands of time, that process is itself highly constrained. Through the operation of 10 C.F.R. § 54.14, the applicable exemption process is that given in 10 C.F.R. § 50.12. That Section requires exemptions to be authorized by law and prevents even the consideration of exemptions, unless one of the following special circumstances are present:

- (i) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission; or
- (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or
- (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; or
- (iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

- (v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or
- (vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such condition is relied on exclusively for satisfying paragraph (a)(2) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

Here, AmerGen alleged that application of the 5 year rule is not necessary to achieve the underlying purpose of the rule. Amergen Energy LLC Application for Exemption from the Requirements of 10 CFR §2.109(b), attached to Letter from Benjamin to NRC, dated August 10, 2004 (“Exemption Request”) at 8. This was the basis of the approval of the exemption, which found that the NRC would have ample time to process the application. 69 Fed. Reg. 78,054, 78,055 (December 29, 2004). AmerGen also claimed undue hardship and compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, but this was not approved. 69 Fed. Reg. at 78,055. Thus, the sole basis for granting the exemption was the Staff’s erroneous assumption that the Commission would pass upon the Oyster Creek LRA before April 9, 2009. This reasoning is not only factually incorrect, it is logically specious. If the Staff thought that the Commission had ample time to process the late application, the exemption would have been entirely unnecessary and should not have been granted.²

However, AmerGen and the NRC Staff misconstrued the underlying purpose of the rule, which is to provide the NRC with a minimum of 5 years to decide license renewal proceedings and protect those who make timely and sufficient applications in accordance with agency rules

² By its terms the exemption did not become applicable until 6 months prior to the expiration of the license confirming that Staff did not believe the exemption was necessary when it was granted.

from delays caused by “time exigencies” within the agency. *Bankers Life and Casualty Co. v. Callaway*, 530 F.2d 625, 634 (5th Cir. 1976); 69 Fed. Reg. at 78,055. This approach provides a strong incentive for applicants to make timely, high quality applications and allow the NRC a minimum of 5 years for its deliberative process. Allowing an applicant who has made an untimely application and has asked the agency to decide on an LRA in less than 5 years the same protections given to those who make timely applications would reduce the incentive to file on time and unduly constrains the agency. Therefore the exemption should not have been considered because it conflicts with the underlying purpose of the rule. The exemption was therefore void ab initio.

In summary, the Oyster Creek LRA was over four months late. The purported exemption is void because the agency cannot retroactively make an untimely application timely and because the exemption conflicted with the underlying purpose of the rule. The licensee therefore cannot use the administrative extension doctrine of the APA to justify operating beyond April 9, 2009.

IV. Additional Information In Support of Pending Motion And Petition

Citizens have a Motion To Reopen and a Petition To Require Supplementation of the SER pending before the Commission. Exhibit 2 is a recently disclosed internal NRC E-mail that further illustrates the need to supplement the SER and have further evidentiary hearings to develop the record. The new information in Exhibit 2 that is relevant to the pending issues is as follows:

- i) Even though there was 0.5 inch deep standing water in some of the sandbed bays, that water did not reach the poly bottles designed to determine whether water is present in the bays.

- ii) The State of New Jersey concurs with Citizens that “water could enter a sand bed bay and go undetected” and has “no confidence . . . in AmerGen’s monitoring of the sand bed drains while the plant is online.”
- iii) Brightly rust colored water was found in Bay 17 on Friday 11/14. Because, the refueling cavity was drained on 11/12, this observation suggests that water from sources other than the refueling cavity could have entered the sandbed region.
- iv) The State of New Jersey concurs with Citizens that corrosion could be ongoing beneath the coating and could have gone undetected by the visual inspections conducted to date.

Moreover, Exhibit 2 makes it clear that Staff prevented the State disclosing these issues to the public between November 18 and January 21, 2009, when the inspection report concerning these issues was released. It is unclear how this action comports with the NRC’s stated commitment to transparency.

Respectfully submitted,

/s



Richard Webster, Esq.
EASTERN ENVIRONMENTAL LAW CENTER
Attorneys for Citizens

Dated: March 30, 2009

Exhibit 1



Ex. 1

VIA E-MAIL AND U.S. MAIL

March 24, 2009

Mr. Samuel J. Collins, Regional Administrator
United States Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406-1415

**Re: Request For Public Meeting And To Temporarily Cease Power Production at
Oyster Creek Nuclear Generating Station On April 9, 2009**

Dear Mr. Collins:

I am writing on behalf of my clients Nuclear Information and Resource Service, Inc., Jersey Shore Nuclear Watch, Inc., Grandmothers, Mothers and More for Energy Safety, New Jersey Public Interest Research Group, New Jersey Sierra Club, and the New Jersey Environmental Federation (collectively "Citizens"), who are parties to the ongoing relicensing proceeding for Oyster Creek Nuclear Generating Station ("Oyster Creek").¹ We understand from NRC Staff that an additional inspection at Oyster Creek is ongoing to check whether the licensee has properly carried out all of the actions to which it committed during the license renewal proceedings, as it has recently claimed.² This letter contains a number of requests relating to that inspection. Most importantly, because the licensee has failed to fully meet a license condition and has failed to provide an application for license renewal that was timely and sufficient, Oyster Creek must temporarily cease power production on April 9, 2009, unless the Commission acts on the pending request for license renewal before that date.

First, in the interest of transparency, we request that the inspection exit meeting be open to the public and that the time and place of the meeting be provided to us one week in advance. In this regard, we remain at a loss to understand why the NRC has so far refused to make the exit meetings regarding Oyster Creek inspections open to the

¹ In the Matter of AmerGen Energy Co., LLC (License Renewal for Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR.

² Letter from Rausch to NRC, dated March 6, 2009 *available at* ML090702894.



public.³ NRC policies clearly allow such meetings to be open to the public in “significant cases of high public interest,” but we have been repeatedly shut out from exit meetings concerning Oyster Creek. I trust you will not attempt to deny that the situation at Oyster Creek is a significant case of high public interest, as indicated most recently by letters from four Congressmen and the State of New Jersey to the Commission about Oyster Creek issues.

Second, despite Exelon’s claims, it has failed to fulfill at least one of the commitments that are the subject of the inspection. Commitment A.27(19) requires a three dimensional analysis of Oyster Creek’s containment system that “includes sensitivity studies to determine the degree to which the uncertainties in the size of the thinned areas affect Code margins.” Oyster Creek SER at A-31. This requirement stems from the requirements of the Advisory Committee on Reactor Safeguards (“ACRS”). Letter from ACRS to Chairman Klein, dated February 8, 2007. Submission of this study is also a license condition. Oyster Creek SER at 1-18. As noted by the Atomic Safety and Licensing Board (the “Board”), both the NRC Staff and the licensee testified at the hearing regarding license renewal that “compliance [with this commitment] is a license condition that must be completed prior to the period of extended operation.”⁴

The submitted three dimensional analysis does not fulfill the commitment, because it contains no attempt to vary the spatial extent of the severely corroded areas. *See* Letter from Gallagher to NRC, dated January 22, 2009 at 2. Furthermore, the submitted analysis also failed to conform to the recommendations of the Board regarding sensitivity and in other ways. For example, the Board recommended reducing the thickness of two adjacent Bays by 0.075 inches,⁵ but Exelon has only reduced the thickness of one Bay by 0.05 inches. Letter from Gallagher to NRC, dated January 22, 2009 at 2. My letter of January 23, 2009 to Chairman Klein also lays out a number of other deficiencies. For example, if Exelon had used the capacity reduction factor that Sandia National Laboratories found was appropriate the quoted margin for the refueling case would have been reduced by approximately 60%.

³ E-mails between Farrar and Webster, dated 1/16/2007; E-mail from Baty to Webster, dated January 9, 2009.

⁴ Initial Decision, In the Matter Of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station) (December 18, 2007) (the “Initial Decision”), LBP-07-17 at 54 n. 57.

⁵ Memorandum, In the Matter Of AmerGen Energy Co, LLC (License Renewal for Oyster Creek Nuclear Generating Station) (October 29, 2008) (the “Recommended Decision”) at 17



I understand that the inspection is utilizing inspection procedure 71003. That procedure requires the Staff to audit whether commitments and license conditions have been met. Because the completed analysis does not meet the requirements of the license, we request that you include the 3-D analysis in the sample of requirements covered by the on-going inspection. Furthermore, the deficiencies in the study mean that Exelon has failed to meet a license condition and a commitment. Finally, Exelon's study confirms that a study that conformed to the recommendations of Sandia National Laboratory, the ACRS, and the Board, would likely find that the containment could be failing to meet the CLB. Thus, there is both an open safety issue and Exelon has failed to meet at least one regulatory requirement for operating beyond the expiration of the current license on April 9, 2009. If the Commission has not made any determination regarding license renewal at that time, we therefore request the Staff to require temporary cessation of power generation at Oyster Creek on April 9, 2009, pending resolution of these issues.

Third, because the expiration of the operating license is imminent and no Commission affirmation session is scheduled prior to April 9, 2009, we urgently request the Staff to confirm that the License Renewal Application ("LRA") for Oyster Creek was insufficient to allow the reactor to continue operating after its operating license expires in accordance with 10 C.F.R. § 2.109(b).⁶ This regulatory provision has its origin in the administrative procedure act ("APA"), which provides for temporary administrative extension of licenses that cover activities of a continuing nature if the licensee has made a timely and sufficient request for renewal, in accordance with agency rules. 5 U.S.C. § 558(c). Here, the relevant agency rules are found in 10 C.F.R. Part 54. Those rules require *inter alia* that:

1. The information provided in the LRA must be accurate and complete in all material respects. 10 C.F.R. § 54.13 and
2. The LRA demonstrates that the aging of long-lived passive components will be adequately managed during any period of extended operation. 10 C.F.R. § 54.21.

Here, the applicant knew or should have known that the Oyster Creek LRA was incomplete at the outset. In addition, as discussed in the SER, the Oyster Creek LRA failed to demonstrate that the proposed aging management programs were adequate. The applicant has tacitly recognized these deficiencies by adding further commitments. Most recently, the October 2009 inspection revealed that a number of assuring statements in

⁶ We are not making a similar request on timeliness. Although the applicant failed to apply for license renewal five years prior to the expiration of the license, as is required by 10 C.F.R. § 2.109(b), it subsequently obtained an exemption from this requirement from the Commission. We recognize that the Staff are not in a position to question validity of the Commission's action.



the Oyster Creek LRA that were based on incomplete or dated information were actually incorrect.

In one example of a glaring omission, the applicant admitted in a report to the ACRS that the Oyster Creek LRA failed to include known operating experience. Specifically, even though an internal memo from 1995 and a report from 1996 documented the intermittent presence of water in the trenches in the interior of the drywell shell, the licensee only recognized this condition after water had been found in October 2006.⁷ Thereafter, on December 3, 2006, the licensee proposed a new aging management program related to the potential for corrosion from the interior. AmerGen Ex. 3 at 8-2. In another important omission, the LRA failed to contain sufficient detail on the way the metal fatigue analysis has been conducted to reveal that a simplified technique that did not conform to the ASME code had been used for the recirculation nozzles. Affidavit of Dr. J Hopenfeld, dated April 15, 2008 at ¶ 8. This only became apparent after citizen intervenors highlighted a similar deficiency in the LRA for Vermont Yankee. *Id.* at ¶¶ 3-5. The Staff subsequently required the licensee to submit a detailed confirmatory analysis, which was the subject of a supplemental SER. Oyster Creek SER Supplement 1 at 4-1. Furthermore, the Oyster Creek LRA failed to mention that the licensee had committed to monitoring the sandbed drains for leakage in 1995, but this commitment had not been implemented since 1998. SER at 4-68.

During the course of the relicensing review, the NRC Staff concluded that the Oyster Creek LRA had provided insufficient information to allow the agency to find that the aging management programs were adequate. Therefore, the licensee had to enhance its commitments numerous times to obtain NRC Staff's approval. For example, the Staff found on August 18, 2006 "that the applicant had not provided sufficient information to conclude that the effects of aging for the primary containment would be adequately managed during the period of extended operation." SER at 3-424. In addition, the Staff found that the operating experience showed that the ongoing program for aging management of the drywell shell "had not been effective in managing the effects of aging in the drywell." SER at 3-143. The Staff therefore created five open items, which were only resolved after the licensee provided additional commitments. *Id.*

With regard to coating inspection, the Staff found that the "applicant had not provided sufficient information regarding the extent that coated surfaces will be examined during each inspection." SER at 1-17. To resolve this deficiency, on June 23, 2006 the applicant committed to more comprehensive inspection of the coating. *Id.* In addition, the Staff found that to adequately manage the aging of the drywell shell, monitoring of the extent to which water is leaking and reaching the sandbed region was

⁷ See AmerGen Ex. 3 (AmerGen Report to the ACRS, dated December 8, 2006) at 8-2.



required. SER at 3-115. The applicant therefore twice enhanced its commitments in this regard. *Id.*; 1-16.

With regard to monitoring of the sandbed region, Citizens' initial contention was based upon the Oyster Creek LRA's failure to propose any thickness monitoring at all. The licensee did not dispute this fact, but after contention was filed, it committed to a one-time measurement of the thickness in this area. *See* SER at B-7; Letter from Swenson to the NRC, dated December 9, 2005. The licensee enhanced this commitment on April 4, 2006 to include periodic thickness monitoring once every ten years. *See* SER at B-12; Letter from Hufnagel to Ashley, dated April 4, 2006. By the time of the initial hearing, the licensee had proposed thickness monitoring every four years. Initial Decision at 7. Thus, the Oyster Creek LRA initially failed to provide an adequate aging management program for monitoring the thickness of the sandbed region of the drywell shell.

Finally, the October 2008 outage has shown that the LRA for Oyster Creek was inaccurate and incomplete in at least the following areas:

1. Even though the applicant had not monitored corrosion in the sandbed region since 1996,⁸ the Oyster Creek LRA stated that corrosion in the sandbed region had been arrested and no further loss of material was expected. LRA at 3.5-20. The October 2008 inspection found further corrosion in the sandbed region.
2. Even though the applicant did not have a complete visual inspection,⁹ the Oyster Creek LRA stated that the drywell surfaces that were coated did not show signs of deterioration. LRA at 4-55. The October 2008 inspection found deterioration of the coating in the sandbed region, which the applicant acknowledged was present in 2006, when it carried out the first full inspection of the coating.

In short, because the LRA for Oyster Creek was far from sufficient when submitted, the applicant cannot take advantage of 10 C.F.R. § 2.109(b) to operate beyond April 9, 2009.

Yours sincerely,

Richard Webster, Esq.

⁸ *See* AmerGen Ex. 3 at 6-15.

⁹ *See* AmerGen Ex. 3 at 6-2.



c.c. Brain Harris, NRC OGC
Jill Lipoti, New Jersey Department of Environmental Protection

Exhibit 2

Karl → wty summary

~~TO BE WITHHELD FOR EXEMPTION 5~~

From: John Richmond, RI
Sent: Tuesday, November 18, 2008 1:55 PM
To: Doug Tiff; Marjorie McLaughlin; Nancy McNamara; Darrell Roberts; Marsha Gamberoni; David Pelton
Cc: Diane Screnci; Neil Sheehan; Richard Conte; Ronald Bellamy; Stephen Pindale; Jeffrey Kulp; Justin Heinly
Subject: OC Update to NJ DEP

I provided an update to Rich Pinney and Ron Zak this morning. They are the NJ state inspectors for OC.

They strongly expressed "concern" that our issued PN had withheld important and significant information from the public!

As examples, they cited the fact that the PN did NOT discuss:

1. Strippable coating de-lamination
2. disconnected tubing from sand bed drain line poly bottles
3. 1/2 inch deep standing water in the sand bed bays
4. no confidence [sic] in AmerGen's monitoring of sand bed drains, while the plant is on-line (e.g., water could enter a sand bed bay and go undetected)
5. brightly rust colored water found in bay 17, on Friday 11/14 [in other bays, the water was not described as brightly rust colored]
6. no proof that there is not large [entire surface] areas of rust under the epoxy coating (e.g., the issue may have been mischaracterized as only a small area of one identified blister, versus significant corrosion that has not been evaluated)
7. corrosion rate of steel shell, in a broken blister, would be the same as uncoated steel, and will be significantly higher than the predicted corrosion rate of the same steel inside an unbroken blister, because in the past, the sand bed region experienced the loss of at least 1/2 inch of steel due to corrosion

They also expressed concern for the long time to get the inspection report issued (mid Jan, based on an exit date of 1st week of Dec). They said that "kept a gag order" on them, and prevented them from informing the public!

We also discussed whether two specific commitments had been met (i.e., strippable coating to prevent water leakage, and monitoring of sand bed drains). They characterized both issues as clear examples of AmerGen's failure to meet LR commitments. We also discussed the ROP program concepts for documenting performance deficiencies, findings versus NCVs (violations), the more-than-minor thresholds typically used in ROP inspections, and inspection observations (separate from a finding).

I cautioned them, that our discussions were pre-decisional, and that there has been no discussion with the licensee regarding any potential report observations, findings, or conclusions of inadequate commitment implementation.

Of the 7 examples they cited above, there is an element of fact in each statement, but for the most part, they've attempted to inflate the significance of an item, by taking facts out of context or changing the circumstances. A few of things they said were just plain and simple, factually wrong.

Any thoughts on where we go next with the State?
John R.

B/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	Docket No. 50-0219-LR
AMERGEN ENERGY COMPANY, LLC)	
)	
(License Renewal for the Oyster Creek)	
Nuclear Generating Station))	March 30, 2009

CERTIFICATE OF SERVICE

I, Richard Webster, of full age, certify as follows:

I hereby certify that on March 30, 2009, I caused Citizens' Notification and Submission of Supplemental Information to be served via email and U.S. Postal Service (as indicated) on the following:

Secretary of the Commission (Email and original and 2 copies via U.S Postal Service)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemaking and Adjudications Staff
E-mail: HEARINGDOCKET@NRC.GOV

Office of Commission Appellate Adjudication (Email and U.S. Postal Service)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemaking and Adjudications Staff
E-mail: OCAAMail@nrc.gov

Administrative Judge
E. Roy Hawkens, Chair (Email and U.S. Postal Service)
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: erh@nrc.gov

Administrative Judge
Dr. Paul B. Abramson (Email and U.S. Postal Service)
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Dr. Anthony J. Baratta (Email and U.S. Postal Service)
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ajb5@nrc.gov

Law Clerk
Emily Krause (Email and U.S. Postal Service)
Atomic Safety & Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: DAW1@nrc.gov

Office of General Counsel (Email and U.S. Postal Service)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OGCMAILCENTER@NRC.GOV

Brian G. Harris (Email and U.S. Postal Service)
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555-0001
E-mail: brian.harris@nrc.gov

Alex S. Polonsky, Esq. (Email and U.S. Postal Service)
Morgan, Lewis, & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: apolonsky@morganlewis.com

Kathryn M. Sutton, Esq. (Email and U.S. Postal Service)
Morgan, Lewis, & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: ksutton@morganlewis.com

Donald Silverman, Esq. (Email and U.S. Postal Service)
Morgan, Lewis, & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: dsilverman@morganlewis.com

J. Bradley Fewell (Email and U.S. Postal Service)
Exelon Corporation
200 Exelon Way, Suite 200
Kennett Square, PA 19348
E-mail: bradley.fewell@exeloncorp.com

John Covino, DAG (Email and U.S. Postal Service)
State of New Jersey
Department of Law and Public Safety
Office of the Attorney General
Hughes Justice Complex
25 West Market Street
P.O. Box 093
Trenton, NJ 08625
E-mail: john.corvino@dol.lps.state.nj.us

Valerie Gray (Email)
State of New Jersey
Department of Law and Public Safety
Office of the Attorney General
Hughes Justice Complex
25 West Market Street
P.O. Box 093
Trenton, NJ 08625
E-mail: valerie.gray@dol.lps.state.nj.us

Paul Gunter (Email and U.S. Postal Service)
c/o Nuclear Information and Resource Service
6930 Carroll Ave., Suite 340
Takoma Park, MD 20912-4446
E-mail: paul@beyondnuclear.org

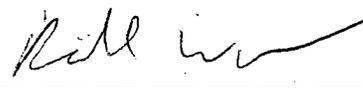
Edith Gbur (Email)
Jersey Shore Nuclear Watch, Inc.
364 Costa Mesa Drive. Toms River, New Jersey 08757
E-mail: gburl@comcast.net

Paula Gotsch (Email)
GRAMMIES
205 6th Avenue
Normandy Beach, New Jersey 08723
E-mail: paulagotsch@verizon.net

Jeff Tittel (Email)
New Jersey Sierra Club
139 West Hanover Street
Trenton New Jersey 08618
E-mail: Jeff.Tittel@sierraclub.org

Peggy Sturmfels (Email)
New Jersey Environmental Federation
1002 Ocean Avenue
Belmar, New Jersey 07319
E-mail: psturmfels@cleanwater.org

Michele Donato, Esq. (Email)
PO Box 145
Lavalette, NJ 08735
E-mail: mdonato@micheledonatoesq.com

Signed: /s/ 
Richard Webster

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