

August 31, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO AMERGEN MOTION
IN LIMINE REGARDING CITIZENS' REBUTTAL

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323 and the “Memorandum and Order (Prehearing Conference Call Summary, Case Management Directives, and Final Scheduling Order)” (April 17, 2007) (unpublished) (“April 17 Order”), at 6, the staff of the U.S. Nuclear Regulatory Commission (“Staff”) submits its answer to “AmerGen’s Motion in Limine Regarding Portions of Citizens’ Rebuttal” (Aug. 27, 2007) (“Motion”).¹ For the reasons set forth below, the Staff supports the Motion.

DISCUSSION

AmerGen Energy Company, LLC (“AmerGen”) requests that the Board exclude, or in the alternative, accord no weight to,² portions of “Citizens’ Rebuttal Regarding Relicensing of Oyster

¹ The six organizations -- 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 – are collectively referred to as “Citizens.”

² AmerGen explains that the Motion is framed in the alternative because, although the Board has previously declined to expunge irrelevant material and indicated that the Board will accord such material “no weight,” AmerGen maintains its position that inadmissible evidence cannot be admitted in this proceeding. See Motion at 2 n.4 (citing Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification) (Aug. 2, 2007) (unpublished) at 2). The Staff similarly maintains that immaterial or irrelevant portions of an admissible document should be excluded to the extent practicable in accordance with 10 C.F.R. § 2.337(a).

Creek Nuclear Generating Station: Rebuttal Statement and Exhibits” (Aug. 17, 2007) (“Citizens’ Rebuttal”), the attached testimony³ and exhibits because Citizens “impermissibly” challenge the Oyster Creek current licensing basis (CLB), “impermissibly” argue that AmerGen will violate its regulatory commitments, exceed the scope of rebuttal testimony and the scope of this proceeding, and present arguments without an evidentiary basis. The Staff agrees.

Citizens may not challenge the adequacy of monitoring the sand bed region for integrity of the epoxy coating and for moisture, challenge the spatial scope of AmerGen’s ultrasonic testing (UT) measurements or challenge AmerGen’s drywell minimum thickness acceptance criteria. See e.g., LBP-06-22, 64 NRC 229, 244-51, 237-240. “Citizens may not challenge any aspect of AmerGen’s UT monitoring program that applies prior to the period of extended operation (*i.e.*, prior to 2009)” since it would be “an attack on AmerGen’s the current licensing basis” and beyond the scope of the proceeding. Memorandum and Order Clarifying Order Denying AmerGen’s Motion for Summary Disposition) (July 11, 2007) (unpublished), at 2.

Citizens’ rebuttal testimony must be limited to responding to testimony by other parties, see April 17 Order at 5-6, or responding to the Board’s questions in the “Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification)” (Aug. 9, 2007) (unpublished) (“August 9 Order”). Thus, AmerGen is correct that Section II of Citizens’ Rebuttal, which explicates Citizens’ position regarding appropriate acceptance criteria, Citizens’ testimony challenging the scope of UT monitoring or the protective coatings monitoring program, and Citizens’ Rebuttal and testimony which exceeds the scope of the Board’s Question 10, should be accorded no weight (and are inadmissible). See Motion at 3-4, 6-8.

Similarly, although Citizens claim that Exhibit 39, Dr. Richard Hausler’s Memorandum,

³ Prefiled Rebuttal Written Testimony of Dr. Rudolf H. Hausler Regarding Citizens’ Drywell Contention (“Hausler Rebuttal Testimony”).

“Further Discussion of the Nature of the Corroded Surfaces and the Residual Wall Thickness of the Oyster Creek Dry Well” (Aug. 16, 2007), is Dr. Hausler’s “detailed response” to AmerGen and Staff testimony, see Hausler Rebuttal Testimony at A7, Exhibit 39 is not presented in question and answer format, the exhibit contains few specific references to testimony of other parties and the exhibit generally proffers arguments that should have been included in initial testimony. Thus, AmerGen’s request that the Board accord that document no weight should be granted. See Motion at 5-6.

AmerGen also correctly argues that Citizens speculate, without proper evidentiary support, that AmerGen will not adhere to its commitments, that a spot thinner than .049 inch would be observed on the drywell shell, that an interior drywell shell surface corrosion rate of 10 mils per year can occur, that the drywell shell currently violates acceptance criteria, and that galvanic corrosion occurs between dissimilar metals. See Motion at 4-5, 7-9. Thus, these statements should also be accorded no weight.

CONCLUSION

For the reasons discussed above, the AmerGen’s Motion should be granted.

Respectfully submitted,

/RA/

Mitzi A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 31st day of August, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO AMERGEN MOTION IN LIMINE REGARDING CITIZENS' REBUTTAL" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or as indicated by an asterisk, by electronic mail, with copies by U.S mail, first class, this 31st day of August, 2007.

E. Roy Hawkens, Chair
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ERH@nrc.gov

Anthony J. Baratta
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
AJB5@nrc.gov

Paul B. Abramson
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
PBA@nrc.gov

Office of the Secretary*
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
OCAmail@nrc.gov

Debra Wolf
Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
DAW1@nrc.gov

Suzanne Leta Liou
NJ Public Interest Research Group
11 N. Willow St.
Trenton, NJ 08608
sliou@environmentnewjersey.org

Richard Webster, Esq.*
Rutgers Environmental Law Clinic
123 Washington Street
Newark, NJ 07102-5695
rwebster@kinoy.rutgers.edu

J. Bradley Fewell, Esq.*
Exelon Corporation
4300 Warrenville Road
Warrenville, IL 60555
bradley.fewell@exeloncorp.com

Donald Silverman, Esq.*
Alex S. Polonsky, Esq.*
Kathryn M. Sutton, Esq.*
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, DC 20004
dsilverman@morganlewis.com
apolonsky@morganlewis.com
ksutton@morganlewis.com

/RA/

Mitzi A. Young
Counsel for NRC Staff