

RAS 11393

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 03/22/06

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Before Administrative Judges:

E. Roy Hawken, Chairman
Dr. Paul B. Abramson
Dr. Anthony J. Baratta

In the Matter of

AMERGEN ENERGY COMPANY, LLC

(License Renewal for Oyster Creek Nuclear
Generating Station)

Docket No. 50-0219-LR

ASLBP No. 06-844-01-LR

March 22, 2006

MEMORANDUM AND ORDER

(Denying NIRS's Motion for Leave to Add Contentions or
Supplement the Basis of the Original Contention)

I. INTRODUCTION

On September 15, 2005, the Commission issued a Notice of Opportunity for Hearing (70 Fed. Reg. 54,585 (Sept. 15, 2005)) concerning an application by AmerGen Energy Company, LLC ("AmerGen") to renew its operating license for the Oyster Creek Nuclear Generating Station ("Oyster Creek") for twenty years beyond the current expiration date of April 9, 2009. As relevant here, in November 2005, six organizations¹ – hereinafter referred to collectively as NIRS – filed a timely joint request for a hearing, seeking to raise a contention challenging AmerGen's License Renewal Application ([NIRS] Request for Hearing and Petition to Intervene (Nov. 14, 2005) [hereinafter NIRS Petition]). On February 27, 2006, this Board issued a

¹ The six organizations are Nuclear Information and Resource Service ("NIRS"), 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.

Memorandum and Order in which we granted NIRS's hearing request. See LBP-06-07, 63 NRC ___, ___ (slip op. at 2) (Feb. 27, 2006).²

Meanwhile, on February 7, 2006, while NIRS's hearing request was still pending, we received the motion that underlies this Memorandum and Order – namely, NIRS's request to add two new contentions to its hearing request or, in the alternative, to supplement the basis of its original contention. See Motion for Leave to Add Contentions or Supplement the Basis of the Current Contention (Feb. 7, 2006) [hereinafter NIRS Motion].

For the reasons discussed below, we deny NIRS's Motion.

II. BACKGROUND

NIRS's Motion to add new contentions or, in the alternative, to supplement the basis of its original contention is based on what it characterizes as new, previously unavailable information that allegedly is material to this proceeding. NIRS explains that on January 17, 2006, the NRC Staff provided the public with notice that, on January 31, 2006, it would conduct a telephone conference call with the Nuclear Energy Institute and other industry representatives to discuss "proposed interim staff guidance for license renewal associated with the corrosion of the Mark I steel containment drywell [liner]" (NIRS Motion, Exh. A, Memorandum from Linh Tran to Jacob I. Zimmerman at 1 (Jan. 17, 2006)). The Staff invited interested members of the

² In NIRS's Petition, it sought to challenge the adequacy of AmerGen's aging management program for measuring corrosion in and above the sand bed region of Oyster Creek's drywell liner, which is a pressure boundary surrounding the reactor vessel. Thereafter, in its Reply Brief, NIRS sought to expand its contention to include the region below the sand bed region. In our Memorandum and Order granting NIRS's hearing request, we concluded that NIRS's contention (1) was not admissible to the extent it challenged AmerGen's aging management program *above* the sand bed region, and (2) was waived, and hence inadmissible, to the extent it challenged AmerGen's aging management program *below* the sand bed region. However, we concluded that NIRS's contention – limited to the sand bed region – was admissible. See LBP-06-07, 63 NRC at ___ (slip op. at 32-33 & n.28).

public to participate in this conference call via a toll-free telephone number or in person at designated locations (id. at 2).

NIRS states that, incident to the conference call, the NRC Staff distributed a PowerPoint presentation which stated that the Staff's purpose in proposing interim staff guidance for license renewal is "to detect and monitor corrosion in the inaccessible areas of the drywell [liner]" (NIRS Motion, Exh. B, Teleconference Between Staff and Stakeholders, Potential License Renewal—Interim Staff Guidance on Corrosion of Mark I Steel Containment Drywell Shell at 10 (Jan. 31, 2006)). The PowerPoint presentation stated the Staff's tentative view that the refueling seal above the drywell liner "needs to be brought into the scope of license renewal," because although the seal is a non-safety related component, it can – as a result of leakage onto, and concomitant corrosion of, the drywell liner – "impair the capability of primary containment to mitigate the consequences of an accident" (ibid.). Accordingly, the NRC Staff proposed revising NUREG-1800, Rev. 1, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants [hereinafter LRA Standard Review Plan], to state that operating experience at Mark I steel containments indicates that the likely cause of water found in the bottom outside areas of the drywell liner is leakage from the seal between the refueling cavity and the drywell (id. at 12). The Staff also proposed revising NUREG-1801, Rev. 1, Generic Aging Lessons Learned (GALL) Report [hereinafter GALL Report], to recommend the performance of a "root cause analysis" when the "potential for corrosion is indicated in the inaccessible areas of the drywell" (id. at 11, 12).

NIRS asserts that information contained in the NRC Staff's conference call and PowerPoint presentation reveals that the NRC Staff has concluded that (NIRS Motion at 3-4): (1) "corrosion of the Mark I reactor drywell liner is a major safety-related issue that has not received sufficient attention to date" and thus the entire drywell liner, particularly inaccessible

areas, must be monitored and evaluated for corrosion; and (2) licensees should conduct a root cause analysis for potential sources of water that may enter the drywell liner including from the refueling seal, which should be brought within the scope of license renewal. NIRS therefore seeks leave – based on this allegedly new and material information – to admit the following two new contentions (id. at 11, 13):

1. AmerGen's monitoring regime for the inaccessible areas of the drywell liner is inadequate and must at least include ongoing, regular, direct measurements of thickness at all areas where corrosion could have occurred for the life of the plant and clear acceptance criteria for the measurements; and
2. In addition to direct testing of the thickness of the drywell liner, AmerGen must conduct a root cause analysis of the corrosion problem and implement a verifiable program to eliminate leakage of water onto the drywell liner.

Alternatively, NIRS seeks to supplement its original contention with the allegedly new information arising from the conference call (id. at 10).

AmerGen and the NRC Staff filed responses opposing NIRS's Motion. See AmerGen's Answer to [NIRS's] Motion for Leave to Add Contentions or Supplement the Basis of the Current Contention (Feb. 17, 2006) [hereinafter AmerGen Opposition]; NRC Staff's Response to Motion for Leave to Add Contentions or Supplement the Basis of the Current Contention (Feb. 17, 2006) [hereinafter NRC Staff Opposition].

III. ANALYSIS

A. NIRS Has Not Satisfied The Regulatory Requirements For Adding New Contentions

After the regulatory time limit has expired for filing a petition to intervene, a petitioner may submit a new contention only with leave of the presiding officer upon a showing that (10 C.F.R. § 2.309(f)(2)(i)-(iii)):

- (i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

Additionally, to add a new contention, a petitioner must satisfy the following standard admissibility requirements in 10 C.F.R. § 2.309(f)(1): (1) specify the issue to be raised; (2) briefly explain the basis for the contention; (3) demonstrate that the issue is within the scope of the proceeding; (4) demonstrate that the issue is material to the proceeding; (5) provide a concise statement of the alleged facts or expert opinion that support the petitioner's position; and (6) demonstrate that a genuine dispute exists on a material issue of law or fact, and include specific references to allegedly deficient portions of the application.

AmerGen and the NRC Staff argue that NIRS's request to add two new contentions should be denied because: (1) the allegedly new information does not satisfy the "new contention" requirements of section 2.309(f)(2); and (2) in any event, the newly offered contentions do not satisfy the standard admissibility requirements of section 2.309(f)(1). See AmerGen Opposition at 2; NRC Staff Opposition at 2-3. We agree.³

³ AmerGen and the NRC Staff argue that, before NIRS may introduce its newly presented contentions, it must also satisfy 10 C.F.R. § 2.309(c)(1), which states that "[n]ontimely . . . contentions" shall only be admitted upon the determination of the Licensing Board "based upon a balancing of . . . [eight] factors." See AmerGen Opposition at 14-16; NRC Staff Opposition at 7-10. Because we conclude that the information underlying NIRS's contentions is neither new nor materially different from previously available information (*infra* pp. 6-8, 11-12), we agree with AmerGen and the NRC Staff that, in the present circumstances, NIRS's newly presented contentions are nontimely, because NIRS failed to submit them "in a timely fashion based on the availability of the . . . information" (10 C.F.R. § 2.309(f)(2)(iii)). Accordingly, NIRS's newly presented contentions must satisfy section 2.309(c)(1) to be admitted. Cf. Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813, 821 n.21 (2005) (observing that if a new contention is "timely" under 10 C.F.R. § 2.309(f)(2)(iii), it is "neither logical nor sensible" to require a petitioner to satisfy the requirements of 10 C.F.R. § 2.309(c) for "nontimely" filings). NIRS made no attempt to show that its newly presented contentions satisfy section 2.309(c), and this omission provides an independent and sufficient basis for not admitting its belated contentions. See Baltimore Gas & Elec. (continued...)

1. NIRS's Request To Add A New Contention Challenging AmerGen's "Monitoring Regime For The Inaccessible Areas Of The Drywell Liner" Below And Above The Sand Bed Region Is Denied⁴

NIRS asserts that information contained in the NRC Staff's conference call and PowerPoint presentation reveals that "corrosion of the Mark I reactor drywell liner is a major safety-related issue that has not received sufficient attention to date" and thus the entire drywell liner, particularly inaccessible areas below and above the sand bed region, must be monitored and evaluated for corrosion (NIRS Motion at 3). We conclude that – contrary to NIRS's assertion – this information fails to satisfy the regulatory requirements for admitting a new contention based on previously unavailable information, because the information is neither new (10 C.F.R. § 2.309(f)(2)(i)), nor materially different than information that was previously available (*id.* § 2.309(f)(2)(ii)).⁵

³(...continued)

Co. (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 (1998). Even if NIRS had sought to admit its nontimely contentions under section 2.309(c), however, it appears to us that its effort would have been unavailing, because it would not have been able to show "[g]ood cause . . . for the failure to file on time" (10 C.F.R. § 2.309(c)(1)(i)), which would, in our judgment, be a determinative factor militating against admission of the belated contentions. See *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004) ("[O]ur contention admissibility and timeliness requirements 'demand a level of discipline and preparedness on the part of petitioners,' who must examine the publicly available material and set forth their claims and the support for their claims at the outset.") (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 428-29 (2003)).

⁴ As mentioned *supra* note 2, in our Memorandum and Order dated February 27, 2006, we admitted NIRS's contention challenging the adequacy of AmerGen's aging management program for monitoring corrosion in the sand bed region of the drywell liner. Thus, in the instant case, our inquiry is limited to determining whether to add a new contention that extends to the areas above and below the sand bed region.

⁵ The NRC Staff observes that the statements made by Staff members during the conference call, "as documented by Staff counsel's notes, greatly differ from, and in some cases directly contradict, NIRS's characterization of the call in its Motion" (NRC Staff Opposition at 4; *accord* AmerGen Opposition at 4). For this reason, the NRC Staff states that an "untranscribed conference call not concerning the facility or proceeding at issue should not serve as
(continued...)

The fact that the NRC Staff expressed concern during the January 31, 2006 conference call about corrosion above the sand bed region of the drywell liner at Mark I reactors hardly constitutes new information for NIRS. NIRS's Petition to Intervene focused on that precise issue at Oyster Creek, which is a Mark I reactor. Moreover, many of the exhibits that NIRS attached to its Petition to Intervene – including several that are over ten years old – documented the issue of corrosion at Oyster Creek above the sand bed region of the drywell liner. NIRS's attempt to characterize the information arising from the January 31, 2006 conference call as new or materially different from information that was previously available is wholly without merit.

Nor did the conference call of January 31, 2006 give rise to new information about potential corrosion below the sand bed region. NIRS's argument to the contrary is negated by the fact that it previously – and unsuccessfully – sought to raise the issue of corrosion below the sand bed region in its Reply Brief (supra note 2). If further evidence were needed to demonstrate that this information is not new, one need simply refer to NIRS's Motion, which states that its newly presented contention is supported by an exhibit attached to its Petition to Intervene (NIRS Motion at 12) (citing NIRS Petition, Exh. 5, NRC Presentation, Oyster Creek Drywell Corrosion Mitigation at 9 (May 5, 1993)). This exhibit, asserts NIRS, reveals that the concrete floor below the sand bed region was in poor condition and supports the conclusion that water could “run[] down into cracks and crevices in the concrete floor, creating conditions that are conducive to corrosion” (NIRS Motion at 12). The exhibit to which NIRS refers was written in

⁵(...continued)

the sole basis for [NIRS's] contention[s]” (NRC Staff Opposition at 4). The NRC Staff's concern is misdirected here. NIRS's Motion is not based solely on the untranscribed discussion that occurred during the conference call. Rather, NIRS submitted the written PowerPoint presentation prepared by the NRC Staff that specified the purpose, background, and basis for the conference call (NIRS Motion, Exh. B). We believe that this twelve-page document provides an adequate basis for considering the merits of NIRS's Motion.

1993. NIRS cannot be heard to argue, on the one hand, that information regarding potential corrosion below the sand bed region was previously unavailable, and then, on the other hand, rely on a document that is more than ten years old that allegedly supports its newly presented contention.

Significantly, the PowerPoint presentation that the NRC Staff provided incident to the January 31, 2006 conference call also undercuts NIRS's assertion that the conference call gave rise to new and materially different information about potential corrosion below the sand bed region. The presentation indicates that the NRC Staff's GALL Report – which was published in September 2005 – already addresses potential corrosion of inaccessible areas of the drywell liner that are “embedded” in concrete (NIRS Motion, Exh. B at 6). See also id., Exh. B at 7 (GALL Report addresses Aging Management Program for the “inaccessible areas” of the drywell liner that are “embedded” in concrete). Thus, the allegedly new information underlying NIRS's newly presented contention plainly was in existence when NIRS submitted its Petition to Intervene.⁶

In sum, we conclude that the information arising from the January 31, 2006 conference call relating to the monitoring of corrosion of the drywell liner was not new (10 C.F.R. § 2.309(f)(2)(i)) or materially different from previously available information (id. § 2.309(f)(2)(ii)). Nor, as mentioned supra note 3, was the newly presented contention submitted in a timely

⁶ AmerGen appears to be correct in stating that the conference call of January 31, 2006 “had nothing to do with the lower, embedded portions” of the drywell liner (AmerGen Opposition at 11). The PowerPoint presentation contrasted the concrete-embedded area *below* the sand bed region that the GALL Report addressed (NIRS Motion, Exh. B at 6, 7) with the areas in and above the sand bed region for which the “GALL Report does not provide sufficient guidance when . . . the distance between the [drywell] shell and the surrounding concrete is too small for performing visual examination” (id., Exh. B at 6). In other words, any contemplated revisions to NRC documents appear to be limited to providing guidance for monitoring areas in and above the sand bed region of the drywell liner and, thus, “cannot serve as a basis for admission of a contention that extends to [the area below the sand bed region]” (AmerGen Opposition at 11).

fashion (id. § 2.309(f)(2)(iii)). Accordingly, this information does not satisfy the threshold requirements of section 2.309(f)(2) for admitting a new contention.

Furthermore, even if we had concluded that the information from the January 31, 2006 conference call satisfied the “new contention” requirements of 10 C.F.R. § 2.309(f)(2), we would nevertheless reject NIRS’s newly presented contention challenging the adequacy of AmerGen’s corrosion monitoring program for the inaccessible areas above and below the sand bed region, because NIRS: (1) fails to demonstrate that a genuine dispute exists on a material issue (10 C.F.R. § 2.309(f)(1)(vi)); and (2) fails to specify any faulty portions of AmerGen’s License Renewal Application (ibid.).

NIRS grounds its contention on what it characterizes as NRC Staff “conclu[sions]” that “corrosion of the Mark I reactor drywell liner . . . has not received sufficient attention to date” and the need to provide additional “guidance for detecting and monitoring potential corrosion” of the liner, “particularly in inaccessible areas” below and above the sand bed region (NIRS Motion at 3). Contrary to NIRS’s assertion, however, the NRC Staff avers that it *never* disseminated agency *conclusions* during the conference call. The purpose of the conference call was to solicit input from knowledgeable and interested parties that might assist the NRC Staff in its decision-making process and to inform any future conclusions regarding the possible need to revise Staff guidance documents. More specifically, the intended function of the conference call was to “discuss” with industry representatives and interested members of the public proposed future revisions to two non-binding guidance documents – the LRA Standard Review Plan and the GALL Report (NIRS Motion, Exh. A at 1).

The NRC Staff’s communications during the conference call thus were *not* declarations of programmatic policy or regulatory conclusions that, for example, might be analogized to conclusions in an Environmental Impact Statement, which could trigger a petitioner’s right to

amend or file new contentions under 10 C.F.R. § 2.309(f)(2). See 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004). Rather, the conference call was analogous to a Staff-issued Request for Additional Information, which ordinarily may not be used to support admission of a new contention, because such a request, standing alone, generally does not give rise to a genuine dispute on material issues. See Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 337 (1999) (a petitioner may not ground a contention on the Staff's Request for Additional Information, when the request "show[s] only an ongoing Staff dialogue with [the applicant], not any ultimate Staff determinations"); accord Sacramento Municipal Utility Dist. (Rancho Seco Nuclear Generating Station), CLI-93-03, 37 NRC 135, 146-47 (1993)).

Thus, as a general rule, the NRC Staff's mere interest in an issue, its solicitation of public input on an issue, or its proposed revision to a generic guidance document will not – standing alone and lacking an articulated plant-specific safety concern – suffice as a contention's cornerstone. See Calvert Cliffs, CLI-98-25, 48 NRC at 350. NIRS provides no reason for deviating from this rule. Accordingly, its newly presented contention based on the NRC Staff's solicitation of public input regarding proposed revisions to Staff guidance documents is not admissible, because it fails to raise a genuine dispute on a material issue (10 C.F.R. § 2.309(f)(1)(vi)).⁷

Moreover, NIRS's contention is not admissible because it fails to link any specific information arising from the conference call to "specific portions of [AmerGen's License Renewal]

⁷ Insofar as NIRS's newly presented contention seeks to challenge AmerGen's monitoring program for the area above the sand bed region, AmerGen has committed to performing periodic UT measurements throughout the upper region of the drywell liner during the extended period of operation (LBP-06-07, 63 NRC at ___ (slip op. at 32 n.27)). NIRS's original contention failed to explain with specificity or support why AmerGen's corrosion monitoring program for this region is inadequate (ibid.). Its newly presented contention is similarly deficient and, therefore, also would be inadmissible for failing to demonstrate a genuine dispute on a material issue (10 C.F.R. § 2.309(f)(1)(vi)).

[A]pplication” that are deficient (10 C.F.R. § 2.309(f)(1)(vi)). This omission is not surprising, because nothing in the conference call of January 31, 2006 related specifically to AmerGen’s License Renewal Application or AmerGen’s aging management plan for the drywell liner. NIRS – rather than relying on information concerning an alleged deficiency specific to Oyster Creek – seeks to litigate matters arising from the conference call relating to “the generic issue of Mark I drywell shell corrosion and the Staff’s proposal for a generic response to that issue” (AmerGen Opposition at 5). This it may not do. It has long been established that “the introduction of essentially generic issues, not unique to any given reactor, would be inappropriate in an individual reactor licensing proceeding” absent evidence that the generic issue applied to that particular proceeding (Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-99, 6 AEC 53, 55 (1973)). Given the generic nature of the discussion during the January 31, 2006 conference call, as well as the purpose of the discussion (*i.e.*, to discuss *proposed* changes to *non-binding* guidance documents regarding a *generic* problem), the information arising from that discussion, standing alone, is insufficient to support an admissible contention. See Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 773 (1977).⁸

2. NIRS’s Request To Add A New Contention Directing AmerGen To “Conduct A Root Cause Analysis Of The Corrosion Problem” Is Denied

NIRS also argues that the information arising from the January 31, 2006 conference call justifies adding a new contention that requires AmerGen to conduct a root cause analysis of the corrosion problem and implement a verifiable program to eliminate leakage of water onto the drywell liner (NIRS Motion at 13-15). We agree with AmerGen and the NRC Staff that this

⁸ Even if the NRC Staff eventually revises its guidance documents, such action would not necessarily constitute a basis for amending a contention or admitting a newly presented contention, because these documents are not binding. Rather, they provide regulatory guidance, and “nonconformance [with] such guid[ance] does not equate to noncompliance with the regulations” (NRC Staff Opposition at 14). See generally River Bend, ALAB-444, 6 NRC at 773.

newly presented contention is not admissible. See AmerGen Opposition at 17-20; NRC Staff Opposition at 13-15.

First, we conclude that the information underlying the newly presented contention regarding a root cause analysis and the elimination of water leakage onto the drywell liner does not satisfy the “new contention” requirements of section 2.309(f)(2), because it is neither new (10 C.F.R. § 2.309(f)(2)(i)), nor materially different from previously available information (id. § 2.309(f)(2)(ii)). This is evidenced by the fact that the information arising from the conference call of January 31, 2006 is substantially similar to information contained in the exhibits attached to NIRS’s Petition to Intervene. See, e.g., NIRS Petition, Exh. 1, Office of Inspection and Enforcement, Information Notice No. 86-99, at 1 (Dec. 8, 1986) (discussing the leakage problem at Oyster Creek, and the actions taken to “identify and eliminate this water problem”); ibid. (stating that the then-licensee of Oyster Creek stopped the significant leakage that occurred during refueling when it repaired the bellows at the drywell to the cavity seal and replaced a gasket); id., Exh. 2, Office of Nuclear Reactor Regulation, Information Notice No. 86-99, Supp. 1, at 2 (Feb. 14, 1991) (discussing the leakage problem at Oyster Creek, and the actions taken to “investigate, identify, and correct leak paths into the drywell gap and plans to take more action to survey the leakage and prevent it”); id., Exh. 5, at 5 (May 5, 1993) (discussing plan to “stop in-leakage of water [and] take steps to ensure that it stays stopped”).⁹

Second, and in any event, NIRS’s newly presented contention about a root cause analysis and the elimination of water leakage fails to satisfy the admissibility requirements of 10 C.F.R. § 2.309(f)(1) for essentially the same reasons that NIRS’s other newly presented

⁹ Notwithstanding the above evidence, our February 27, 2006 Memorandum and Order concluded that NIRS has established a genuine dispute as to whether Oyster Creek has, in fact, eliminated all sources of corrosion-causing moisture from the drywell liner. See LBP-06-07, 63 NRC at ___ (slip op. at 43).

contention failed to satisfy that section. Specifically, NIRS's contention – based as it is on the NRC Staff's solicitation of public input regarding proposed revisions to Staff guidance documents – is not admissible, because it fails to raise a genuine dispute on a material issue (see supra pp. 9-10). Additionally, in light of the generalized nature of the January 31, 2006 conference call – which discussed *proposed* changes to *non-binding* guidance documents regarding a *generic* problem – the information arising from that discussion, standing alone, is insufficient to support an admissible contention, because it fails to identify an alleged deficiency that is specific to Oyster Creek or its License Renewal Application (supra pp. 10-11).¹⁰

B. NIRS's Request To Supplement Its Original Contention With The Allegedly New Information Is Denied

NIRS also requests that, if its Motion to add new contentions is denied, it be allowed to supplement its original contention with the information arising from the conference call of January 31, 2006 (NIRS Motion at 10). We are persuaded that NIRS's request must be denied. First, NIRS may not rely on 10 C.F.R. § 2.309(f)(2) to supplement its original contention, because the newly presented information is not new, not materially different from previously available information, and not timely presented (supra pp. 6-8, 11-12). Second, 10 C.F.R. § 2.309(c) does not provide a basis for allowing NIRS to use the newly presented information to supplement its original contention, because NIRS failed to demonstrate good cause for its belated use of the information (supra note 3). Third, and in any event, even if NIRS had included this information in the first instance with its Petition to Intervene, that information would not have altered our conclusion in LBP-06-07 regarding the admissibility of NIRS's contention

¹⁰ NIRS is simply incorrect in its belief that tentative, generic-based Staff positions can automatically give rise to a new contention (NIRS Motion at 14-15). As the NRC Staff correctly states, "NIRS may not simply rely on the Staff's interest in generically exploring an issue further as a basis for its contention regarding the license renewal application of a specific plant without some further support or documentation" (NRC Staff Opposition at 15).

pursuant to 10 C.F.R. § 2.309(f)(1). See supra pp. 9-12; AmerGen Opposition at 2-11; NRC Staff Opposition at 10-13.¹¹

IV. CONCLUSION

For the foregoing reasons, we deny NIRS's Motion to add new contentions or, in the alternative, to supplement the basis of its original contention.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD¹²

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA by Thomas Moore for/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 22, 2006

¹¹ This decision does not, of course, foreclose NIRS from introducing and relying on any relevant evidence that is otherwise admissible at the hearing on its admitted contention.

¹² Copies of this Memorandum and Order were sent this date by Internet e-mail to counsel for: (1) AmerGen; (2) NIRS; (3) New Jersey; and (4) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING NIRS'S MOTION FOR LEAVE TO ADD CONTENTIONS OR SUPPLEMENT THE BASIS OF THE ORIGINAL CONTENTION) (LBP-06-11) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-219-LR
LB MEMORANDUM AND ORDER (DENYING NIRS'S
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(LBP-06-11)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of March 2006