

June 28, 2006 (7:35am)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:
E. Roy Hawkins, Chair
Dr. Paul B. Abramson
Dr. Anthony J. Baratta

In the Matter of:)	
)	June 27, 2006
AmerGen Energy Company, LLC)	
)	Docket No. 50-219
(License Renewal for Oyster Creek Nuclear)	
Generating Station))	
)	
)	

**AMERGEN'S ANSWER TO CITIZENS'
MOTION FOR LEAVE TO SUPPLEMENT THE PETITION**

On June 23, 2006, Citizens¹ filed a "Motion for Leave to Supplement the Petition" (Motion) seeking an unspecified amount of time to supplement their "Petition to Add a New Contention" (Petition) filed on that same date. Citizens' Petition is based upon the Atomic Safety and Licensing Board's (Board) direction in its June 6, 2006 Memorandum and Order, LBP-06-16 (Memorandum and Order). In the Board's Memorandum and Order, it held that Citizens' initial contention regarding the Oyster Creek Nuclear Generating Station (OCNGS) drywell shell is moot, but nevertheless gave Citizens the opportunity to submit a new contention. In doing so, the Board was very

¹ Citizens are comprised of 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. Citizens did not consult with counsel for AmerGen in advance of filing their Motion, contrary to 10 CFR § 2.323(b). In this instance, AmerGen is not objecting to Citizens' Motion on that basis.

explicit with respect to the permitted scope of the new contention:

[T]he substance of [the new contention] must be limited to the sand bed region, and ...must be limited to AmerGen's *new* UT program for that region *as reflected in its docketed commitment of April 4, 2006*.

Memorandum and Order at 9. (Emphasis added).

On June 1, 2006, the NRC Staff held a public meeting to discuss with AmerGen specific, detailed questions about the OCNGS drywell shell. The Staff asked AmerGen to respond to those questions in writing. On June 20, 2006, AmerGen submitted to the NRC a letter containing its answers to the questions raised by the NRC Staff. In the letter, AmerGen stated that it would modify its prior commitment to perform UT measurements in the sand bed region of the drywell shell every ten years. In particular, AmerGen stated that it would perform an additional set of UT measurements during the second refueling outage following the UT measurements that will be taken prior to the period of extended operation (*i.e.*, approximately four years after those pre-renewal period measurements). On June 21, counsel for AmerGen e-mailed that letter to counsel for Citizens. On the basis of that letter, Citizens are now requesting leave to "supplement" their Petition.

AmerGen does not object to Citizens submitting yet another new petition based upon the new UT monitoring commitments for the sand bed region of the drywell shell under the following conditions.²

² NRC Staff counsel has advised counsel for AmerGen that the Staff supports AmerGen's position. Citizens' counsel has advised that Citizens: does not object to submitting a single comprehensive petition in lieu of a "supplement" if Citizens are given either 30 days from the date they received notice of AmerGen's new commitments (July 21) or 20 days from the date of the Board's decision on this matter; does not object to affording AmerGen and the Staff 25 days to respond to the petition; but objects to the remainder of this Answer.

1. Citizens' new petition must be specifically limited to AmerGen's "new UT program" for the sand bed region, as previously directed by the Board in its June 6 Memorandum and Order. The Petition that Citizens filed on June 23 raises matters that go well beyond AmerGen's new UT program. In particular, Citizens' new proposed contention attempts to raise new issues regarding, among other things, the adequacy of the acceptance criteria against which UT thickness measurements are compared, the spatial "scope" of AmerGen's monitoring efforts, AmerGen's quality assurance program for UT measurements, and its statistical analysis methods for analyzing UT measurement results. *See* Petition at 4, 10. These matters go well beyond the limited opportunity afforded to Citizens to submit a new contention. Therefore, so long as Citizens' new petition is limited to the adequacy of AmerGen's new UT measurement commitments for the sand bed region, AmerGen does not object to the filing of such a petition.

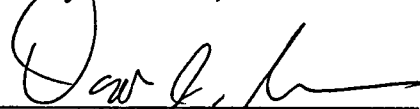
2. Citizens should not be permitted to file a separate "supplement" to their June 23 Petition, as they have requested. Instead, Citizens should be required to submit a *single* new petition containing all of their bases for the new contention. Requiring AmerGen and the Staff to respond to two separate petitions would be difficult and burdensome, and would not be conducive to the development of a clear record in this proceeding. Accordingly, Citizens should be required to submit a single petition that supersedes their June 23 Petition in its entirety.

3. In their Motion, Citizens did not specify any date for the submittal of their new petition. The Board should direct that Citizens submit their petition on July 11 – 20 days after the date they received notice of AmerGen's new commitment.

4. Finally, Citizens' Motion requests that AmerGen and the Staff be given only ten days to respond to their new petition. Under 10 CFR § 2.309(h)(1), AmerGen and the Staff are afforded 25 days for such a response. The Board should direct that AmerGen's and the Staff's responses be due 25 days after service of Citizens' new contention.

With the specific conditions discussed above, AmerGen does not object to Citizens' filing of a new petition in this proceeding. Given Citizens' Motion, it is now unclear whether or not AmerGen will need to respond to Citizens' June 23 Petition. AmerGen would need to respond by July 18, 2006. Accordingly, AmerGen respectfully requests that the Board rule on this matter as expeditiously as possible.

Respectfully submitted,



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Dated in Washington, D.C.
this 27th day of June 2006

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

In the Matter of:)

) June 27, 2006

AmerGen Energy Company, LLC)

) Docket No. 50-219

(License Renewal for Oyster Creek Nuclear
Generating Station))
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_____)

CERTIFICATE OF SERVICE

I hereby certify that copies of "AmerGen's Answer to Citizens' Motion for Leave to Supplement the Petition" were served this day upon the persons listed below, by E-mail and first class mail, unless otherwise noted.

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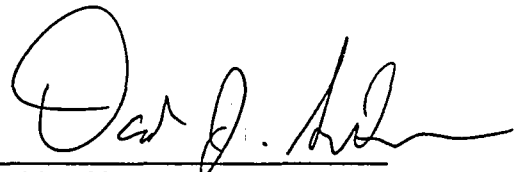
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