

August 21, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
AMERGEN ENERGY COMPANY, LLC ) Docket No. 50-0219-LR  
 )  
(Oyster Creek Nuclear Generating Station) )  
 )

NRC STAFF ANSWER TO PETITION TO ADD  
A NEW CONTENTION AND PETITION SUPPLEMENT

INTRODUCTION

In accordance with the schedule set forth by the Board, the Staff of the Nuclear Regulatory Commission ("Staff") hereby answers Citizens'<sup>1</sup> "Petition to Add a New Contention," dated June 23, 2006 (June 23 Petition), and Citizens' "Supplement to Petition to Add a New Contention, dated July 25, 2006 (July 25 Petition).

For the reasons set forth below, the Staff does not oppose the admission of the new contention as supplemented, to the extent the proffered contention is based on new information in recent AmerGen commitments (that is materially different from information previously available), has adequate factual or expert support, and raises a genuine dispute on a material issue. Accordingly, claims that are not based on new information or not adequately supported (claims 1, 3, 4, 6, 7) should be rejected because Citizens have not satisfied the contention pleading requirements in 10 C.F.R. §§ 2.309(f)(2), 2.309(c)(1) or 2.309(f)(1).

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<sup>1</sup> The six organizations are 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.

## BACKGROUND

On February 27, 2006, the Atomic Safety and Licensing Board (“Board”) granted Citizens’ intervention petition, ruling the proceeding would be conducted under 10 C.F.R. Part 2, Subpart L. LBP-06-07, 63 NRC 188 (2006). The admitted contention stated:

AmerGen’s License Renewal Application fails to establish an adequate aging management plan for the sand bed region of the drywell liner, because its corrosion management program fails to include periodic UT [ultrasonic test] measurements in that region throughout the period of extended operation and, thus, will not enable AmerGen to determine the amount of corrosion in that region and thereby maintain the safety margins during the term of the extended license.

*Id.* at 217.<sup>2</sup>

In LBP-06-16, the Board found that Citizens’ contention of omission had been rendered moot by AmerGen’s docketed commitment to perform periodic UT measurements in the sand bed region of the drywell prior to entering the period of extended operation (and every ten years thereafter), but declined to issue an order dismissing the contention. LBP-06-16, slip op. at 8-9. Instead, the Board gave Citizens the opportunity to file a new contention raising a specific substantive challenge to AmerGen’s new periodic UT program for the sand bed region. *Id.* at 9. Specifically, Citizens was instructed that “[a]ny such filing – the substance of which must be limited to the sand bed region, which must be limited to AmerGen’s new UT program for that region as reflected in its docketed commitment of April 4, 2006 – shall address the remaining factors in 10 C.F.R. 2.309(f)(2), as well as the admissibility factors in 10 C.F.R. § 2.309(f)(1).” *Id.*

Subsequently, Citizens submitted a new contention based on AmerGen’s April 4, 2006 commitment (April 4 commitment) and sought permission to supplement that petition based on AmerGen’s June 20, 2006 commitment (June 20 commitment). See June 23 Petition; Motion for Leave to Supplement the Petition, dated June 23, 2006. In that filing, Citizens’ contention

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<sup>2</sup> Both AmerGen and the Staff appealed the Board’s decision to admit Citizens’ contention. See “AmerGen Notice of Appeal of LBP-06-07 Granting Admission of Petitioners’ Contention on Drywell Corrosion,” dated March 14, 2006; and “NRC Staff Notice of Appeal of LBP-06-07,” dated March 14, 2006. The appeals are pending before the Commission.

challenged the adequacy of acceptance criteria for ultrasonic test (UT) measurements, the frequency for monitoring, the scope of monitoring, the quality assurance of measurements, and the analytical methods used to evaluate UT measurements. *See, e.g.*, June 23 Petition at 4. Appended to the petition was a Memorandum by Rudolf Hausler,<sup>3</sup> dated June 23, 2006 (Hausler June 23 Memorandum), a Transcript of a June 1, 2006, public meeting between the Staff and AmerGen, and hearing file and disclosure documents produced in April and May 2006.

The Board deemed the June 23 Petition as being the final submission regarding AmerGen's April 4 commitment, but afforded Citizen's the opportunity to supplement the petition to address the June 20 commitment, indicating that the supplement should be "a self-contained document that shall not 'incorporate by reference' any aspect of the June 23 Petition." Order (Granting NIRS's Motion for Leave to Submit a Supplement to its Petition, dated July 5, 2006 (July 5 Order), at 3. Specifically, the Board stated that

This supplement – which shall set forth any new bases or contentions(s) NIRS seeks to add to its June 23 Petition, and /or any bases assert in that Petition NIRS now seeks to withdraw – must be limited to AmerGen's UT program for the sand bed region as reflected in AmerGen's docketed commitment of June 20, and be based on new information contained in that commitment.

On July 25, 2006, Citizens filed its supplement, amending its contention to (1) include the revised claim that the UT monitoring frequency is "too low in the absence of adequate monitoring for moisture and coating integrity," (2) add that the monitoring for moisture and coating integrity is inadequate, and (3) add that the response to wet conditions and coating failure is inadequate. *See* July 25 Petition at 7-8.<sup>4</sup> Appended to the July supplement is another Memorandum from Rudolf Hausler, a letter from Richard Biel and J. Kirk Brownlee of Stress Engineering Services, Subject: "Cursory Check of Structural Analyses, Oyster Creek

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<sup>3</sup> Although not attached to either the June 23 nor the July 25 Petition, a resume detailing Dr. Hausler's the qualifications was previously provided as Exhibit 14 to Citizens initial intervention petition reply. *See* LBP-06-07, 63 NRC at 220.

<sup>4</sup> Citizens also edited the contention to clarify that the methods to analyze "UT" results are flawed. July 25 Petition at 7-8.

Drywell Vessel, dated July 15, 2006, and resumes for Messrs. Brownlee and Biel.

The Staff answer to the petitions is set forth below.

### DISCUSSION

#### I. Legal Standards for Admission of Late-Filed Contentions

The first step in addressing a new contention under NRC regulations is to determine if it is timely and otherwise meets the requirements of 10 C.F.R. § 2.309(f)(2). *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC at \_\_\_ (slip op. at 3-4) (2006). Late-filed contentions may be admitted with leave of the presiding officer only upon a showing that:

- (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.

10 C.F.R. § 2.309(f)(2).<sup>5</sup>

Further, under Commission regulations, a nontimely contention may be admitted only upon the presiding officer's determination that it should be admitted after balancing the following eight factors, all of which must be addressed in the petitioner's filing:

- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the

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<sup>5</sup> The criteria in section 2.309(f)(2)(i)-(iii) apply when a contention submitted after the initial filing deadlines is not based on new information in Staff environmental documents. See 10 C.F.R. § 2.309(f)(2).

proceeding on the requestor's/petitioner's interest;

- (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
- (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
- (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1).<sup>6</sup>

Petitioners seeking admission of a late-filed contention bear the burden of showing that a balancing of these factors weighs in favor of admittance. *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 (1998) (noting that the Commission has summarily dismissed petitioners who failed to address the factors for a late-filed petition). The first factor, whether good cause exists for the failure to file on time, is entitled to the most weight. *State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993). Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (quoting *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, & 3), ALAB-431, 6 NRC 460, 462 (1977)). The fifth and sixth factors, the availability of other means to protect the petitioner's interest and the ability of other parties to represent the petitioner's interest, are less important than the other factors, and are therefore entitled to less weight. See

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<sup>6</sup> The Board relies on *Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC \_\_\_\_ (slip op. at 3-7 & n.14) for the proposition that only "non-timely filings" need to address the late-filing requirements in 2.309(c). However, the Commission has indicated that because any contention filed after the initial petition deadline is late-filed, the factors in 10 C.F.R. § 2.309(c) and (f) should be addressed. See *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 625 (2004). The Commission noted that the 60-day filing period provides ample time to prepare adequately supported contentions and that the regulations allow late-filed contentions where there is a compelling justification. *Id.* at 623 & n.20 (citing 10 C.F.R. § 2.309(c)).

*id.* at 74.<sup>7</sup>

In addition to fulfilling the requirements of 10 C.F.R. § 2.309(f)(2), a petitioner must also show that the late-filed contention meets standard contention admissibility requirements. See *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 362-363 (1993). The NRC strictly limits the contentions that may be raised so that individual licensing adjudications are limited to deciding "genuine, substantive safety and environmental issues placed in contention by qualified intervenors." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999), quoting H.R. Rep. No. 97-177, at 151 (1981). The Commission has noted that "the subject of the contention must be appropriate for adjudication in an individual licensing proceeding," and that "[n]o contention is to be admitted for adjudication if it attacks applicable statutory requirements or Commission regulations, if it raises issues that are not applicable to the facility in question, or it raises a question that is not concrete or litigable." *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 129 (2004).

In addition to these substantive requirements, a petitioner seeking to raise a contention in an adjudicatory hearing must meet the strict pleading standards found in section 2.309(f)(1).

*Id.* This regulation requires a petitioner to:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing . . . ; and

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<sup>7</sup> When these cases were decided, there were only five factors. The cases remain applicable, however, as they discuss the five factors most pertinent to this discussion. Factors (ii), (iii), and (iv), which relate to the petitioner's standing, were included in 2004. Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,239 (Jan. 14, 2004). They are not at issue in the current petitions.

- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reason for the petitioner's belief.

10 C.F.R. § 2.309(f)(1). Failure to comply with any of these requirements may be grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

The Commission has emphasized that its rules on contention admissibility establish an evidentiary threshold more demanding than a mere pleading requirement and are "strict by design." *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

Each contention should refer to the specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contentions. *Millstone*, CLI-01-24, 54 NRC at 358 (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 333 (1999)). A petitioner must submit more than "bald or conclusory allegation[s]" of a dispute with the applicant," but instead "must 'read the pertinent portions of the license application, . . . and . . . state the applicant's position and the petitioners opposing view.'" *Millstone*, CLI-01-24, 54 NRC at 358 (quoting Final Rule, "Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168, 33,171, 33,170 (Aug. 11 1989).

A contention of omission cannot be transformed into a contention that challenges a broad series of disparate new claims without adequate basis and support. *See Duke Power Co.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002). A late contention must be based on data or conclusion that differ



significantly from what was submitted in the license application and cannot raise arguments that could have been raised previously if publicly available information about the facility had been examined. See *id.* at 385-86.

License renewal focuses on the potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3 (2001).

## II. Citizens' Proffered New Contention

Citizens' new contention, as amended by the July 25 Petition, states as follows:

AmerGen must provide an aging management plan for the sand bed region of the drywell shell that ensures that safety margins are maintained throughout the term of any extended license, but the proposed plan fails to do so because the acceptance criteria are inadequate, the scheduled UT monitoring frequency is too low in the absence of adequate monitoring for moisture and coating integrity and is not sufficiently adaptive to possible future narrowing of the safety margins, the monitoring for moisture and coating integrity is inadequate, the response to wet conditions and coating failure is inadequate, the scope of the UT monitoring is insufficient to systematically identify and sufficiently test all the degraded areas of the shell in the sand bed region, the quality assurance for the measurements is inadequate, and the methods proposed to analyze the UT results are flawed.

July 25 Petition at 7. This contention raises seven claims: 1) The "acceptance criteria are inadequate;" 2) The scheduled UT monitoring frequency is not adequate without adequate monitoring for moisture and coating integrity, and the frequency "is not sufficiently adaptive to possible future narrowing of the safety margins"; 3) The monitoring for moisture and coating integrity is inadequate; 4) The response to wet conditions and coating failure is inadequate; 5) The "scope of the UT monitoring is insufficient to systematically identify and sufficiently test all the degraded areas of the shell in the sand bed region"; 6) The "quality assurance for the measurements is inadequate"; and 7) The "methods proposed to analyze the UT results are flawed." See *id.* Citizens added items 3 and 4, above, revised claim 2 in the July 25 Petition.

### A. Portions of the Late-Filed Contention Are Timely Under 10 C.F.R. § 2.309(f)(2)

Citizens contention challenges AmerGen's aging management plan for corrosion in the sand bed region of the drywell. The commitments submitted on April 4 and June 20, 2006, both involve UT testing as part of an overall program to manage age-related degradation in the drywell.



To the extent that these matters stem from new information in AmerGen's April 4 and June 20 Commitments, the Staff does not object to the timeliness or scope of the contention. While it could be argued that Citizens lack permission to raise matters that are not associated with "AmerGen's UT program for the sand bed region," July 5 Order at 3, it is not clear what constitutes AmerGen's UT program and whether the program encompasses all visual and surface examinations, as well as UT measurements, in the sand bed region. Thus, Citizens arguably raise some issues within the scope of the Board's order. If, however, the term "UT program" merely means "ultrasonic testing," then Citizens may not raise claims having no direct nexus to testing unless Citizens address and satisfy the late-filing criteria in both 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

The April 4 commitment letter listed commitments: 1) A commitment to perform, prior to the period of extended operation, a visual inspection of the epoxy coating applied to the drywell exterior in the sand bed region in accordance with ASME Section XI, Subsection IWE; and 2) A commitment to perform UT thickness measurements of the drywell shell prior to the period of extended operation and every 10 years thereafter (e.g., comparing results from 1992, 1994, and 1996 UT measurements, conducting a visual inspection of the exterior surface in the sand bed region in areas where unexpected corrosion is detected, and performing engineering evaluation to determine if additional inspections are necessary to ensure drywell integrity). See Enclosure to Letter from Michael Gallagher to NRC, dated April 4, 2006.<sup>8</sup>

On June 20, 2006, AmerGen responded to questions raised during a June 1, 2006 public meeting regarding the drywell and added a commitment to perform additional UT on the drywell, as follows:

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<sup>8</sup> The April 4 letter indicates that AmerGen committed in its application to manage containment aging in accordance with its ASME Section XI, Subsection IWE program and committed to inspect the drywell shell in sand bed region in Letter 2130-05-20238 to the NRC, dated December 9, 2005 (ML053490219). The December 9, 2005, document states that AmerGen will perform one-time thickness measurements in some of the areas previously inspected in the 1990s. The Generic Aging Lessons Learned (GALL) Report indicates that the primary method specified in IWE is visual examination, but limited volumetric examination (ultrasonic thickness measurement) and surface examination may be necessary. See NUREG-1801, Rev. 1, at page XI S-1.

In addition to AmerGen's previous commitment to perform drywell sand bed region Ultrasonic Testing (UT) prior to the period of extended operation... AmerGen will perform additional UT inspection of this area two refueling outages after the initial inspection. Subsequent inspection frequency will then be established as appropriate, not to exceed 10-year intervals.

Letter 2130-06-20353, dated June 20, 2006 (ML0617440573). AmerGen also indicated that it would (1) do UT thickness measurements in the lower portion of the spherical region of the drywell shell, (2) monitor sand bed region drains daily during refueling outages and if leakage is detected, determine the source of the leakage and address the impact of the leakage, including verification of the condition of the drywell shell coating and moisture barrier (seal) in the sand bed region, and (3) perform UTs on any areas in the sand bed region where visual inspection indicates the coating is damaged and corrosion has occurred.

Because this commitment changed the frequency of inspections and inspections where coating damage is identified in visual inspections, the Staff does not object to the July 25 additions to the late-filed contention (claims 3 and 4, above) or the modification to claim 2, above, on the grounds of timeliness to the extent that those claims can be viewed as part of the "UT program" and are adequately supported. Similarly, the Staff does not view the claim regarding that the scope of UT monitoring (claim 5) as necessarily being untimely given that additional specificity regarding where measurements would be taken was provided in the April 4 commitment.

The Staff would object, however, to Citizens being permitted to challenge the overall adequacy of the Moisture and Coating Integrity Monitoring Program (claim 3), based upon the June 20 commitment that AmerGen will investigate and address the impact of leakage on the drywell shell, including verifying the condition of the drywell coating and moisture barrier in the sand bed region and performance of UTs where visual inspection indicates coating damage. See June 20 Commitment, Enclosure at 3. Citizens have not shown that information about the Moisture and Coating Integrity Monitoring Program was previously unavailable or that it is materially different from information previously available since the LRA indicated AmerGen's reliance on a visual inspections of the coating in the sand bed region. LRA at 3.5-19 to 3.5-20. Thus, Citizens fail to meet their burden to satisfy 10 C.F.R. § 2.309(f)(2).

Similarly, to the extent that claim 4 (the adequacy of the response to wet conditions and coating failure) can be considered part of a UT program and limited to its nexus with the performance of UTs in the sand bed region per the June 20 commitment (i.e., that sand bed region drains will be monitored daily during refueling outages and any corrosion identified through visual inspection measured and any leakage detected analyzed, the claim is not untimely.

However, Citizens' challenge to the acceptance criteria (claim 1) and safety margins for UT measurements do not appear to be timely under 10 C.F.R. § 2.309(f)(2) or satisfy the late-filing criteria in 10 C.F.R. § 2.309(c)(1).<sup>9</sup> Citizens have not shown that either commitment changed the acceptance criteria that AmerGen will use to compare the any new UT measurement to results obtained in 1992, 1994 or 1996 or that this information was not previously available to them. In fact, Citizens cited the 0.736" thickness criterion in the initial intervention petition. See Request for Hearing and Petition for Leave to Intervene, dated November 14, 2005, at 9. Consequently, claim should be rejected as failing to satisfy 10 C.F.R. § 2.309(f)(2).<sup>10</sup>

Similarly, concerns about quality assurance for UT measurements (claim 6) and methods proposed to analyze UT results (claim 7) do not appear to be based on availability of new information that is materially different from that previously available. See, e.g., Citizen's Brief in Opposition to AmerGen's motion to Dismiss and to Suspend Mandatory Disclosures, dated May 5, 2006, at 4-5. As noted above, AmerGen's proposal to perform a one-time UT examination dates back to December 2005 and concerns regarding quality assurance or analytical methods could have been raised previously. Thus, these claims should also be rejected.

In sum, contrary to 10 C.F.R. § 2.309(f)(3)(i)-(iii), claims 1, 3 (in part), 6, and 7 are not

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<sup>9</sup> Neither the June 23 nor July 25 Petition contains information that address the late-filing criteria in 10 C.F.R. § 2.309(c)(1). Citizens merely assert that they "believe they meet the requirement" and "would be happy to brief the issue in detail." July 25 Petition at 24.

<sup>10</sup> To the extent Citizens suggest that the criteria is inadequate to support the current inspection program supporting operation of the facility, their concern pertains to the current licensing basis for the facility and outside the scope of license renewal. See 10 C.F.R. § 50.30(b).

based on information that was not previously available, the information is not materially different from that previously available and the claim was not submitted in a timely fashion.

B. The Contention Is Admissible in Part

A contention “must show that a ‘genuine dispute’ exists with the applicant on a ‘material’ issue of law or fact.” *Duke Energy Corporation* (Oconee Nuclear Station Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333-34 (1999) (*citing* 10 C.F.R. § 2.714(b)(2)(iii) (now 10 C.F.R. § 2.309(f)(1)(vi))). The dispute at issue is “material” if its resolution would “make a difference in the outcome of the licensing proceeding.” *Id.* (*citing* Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989)).

In admitting the original contention, the Board found that the “genuine dispute” in this proceeding is “whether AmerGen’s aging management program for the heavily corroded sand bed region – which does not include periodic UT measurement – will enable AmerGen to determine the extent and continuation *vel non* of corrosion and thereby maintain the required safety margins during the term of the extended license.” LBP-06-7, 63 NRC 188, 221 (2006).

Only the concerns stated in claims 2 and 5 appear to be adequately supported and raise a genuine dispute with the AmerGen regarding the frequency and scope of UT measurements and associated monitoring of conditions that are conducive to corrosion. Citizens claim that UT measurements should be taken yearly based on current acceptance criteria and the scope of monitoring should be expanded to other areas to avoid the shell becoming vulnerable to fatigue cracking. See, e.g., June 23 Petition at 8-10 (*citing* Hausler Memorandum). Thus, Citizens have pled information that raises a genuine dispute regarding whether the scope and frequency of monitoring is sufficient to identify degradation. Consequently, the Staff does not object to the admission of the contention provided it is limited to these two claims.

### CONCLUSION

For the reasons discussed above, the Staff does not object to the admissibility of claims 2 and 5 in the late-filed contention as they appear to be based on new information that was not previously available prior to the recent commitments and Citizens provide adequate factual support and specificity to raise a genuine dispute with AmerGen.

Respectfully submitted,

**/RA/**

Mitzi A. Young  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 21st day of August 2006

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 PETITION TO ADD NEW CONTENTION AND PETITION SUPPLEMENT" 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 21st day of August, 2006.

E. Roy Hawken, Chair  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
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 Panel  
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  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
OCAAMail@nrc.gov

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

Lisa P. Jackson, Acting Commissioner\*  
New Jersey Department of  
Environmental Protection  
P.O. Box 402  
Trenton, NJ 08625-0402  
Lisa.Jackson@dep.state.nj.us

Jill Lipoti, Director\*  
New Jersey Department of

Environmental Protection  
Division of Environmental Safety and Health

P.O. Box 424  
Trenton, NJ 08625-0424  
Jill.Lipoti@dep.state.nj.us

Kathryn M. Sutton, Esq.\*  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004  
ksutton@morganlewis.com

Ron Zak\*  
New Jersey Department of  
Environmental Protection  
Nuclear Engineering  
P.O. Box 415  
Trenton, NJ 08625-0415  
Ron.Zak@dep.state.nj.us

Suzanne Leta\*  
New Jersey Public Interest Research Group  
11 N. Willow St.  
Trenton, NJ 08608  
sleta@njpirg.org

Donald Silverman, Esq.\*  
Morgan, Lewis, & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
dsilverman@morganlewis.com

Alex S. Polonsky, Esq.\*  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, DC 20004  
apolonsky@morganlewis.com

Paul Gunter, Director\*  
Reactor Watchdog Project  
Nuclear Information  
And Resource Service  
1424 16<sup>th</sup> Street, NW, Suite 404  
Washington, DC 20036  
pgunter@nirs.org

J. Bradley Fewell, Esq.\*  
Exelon Corporation  
200 Exelon Way, Suite 200  
Kennett Square, PA 19348  
bradley.fewell@exeloncorp.com

John A. Covino, Esq.\*  
Valerie Anne Gray, Esq.  
Deputy Attorneys General  
Division of Law  
Environmental Permitting and Counseling  
Section  
Hughes Justice Complex  
Trenton, NJ 08625  
john.covino@dol.lps.state.nj.us  
Valerie.Gray@dol.lps.state.nj.us

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

**/RA/**

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Mitzi A. Young  
Counsel for NRC Staff