

August 27, 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 MOTION IN LIMINE REGARDING  
CITIZENS' RESPONSE TO BOARD QUESTION 12

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Order (Prehearing Conference Call Summary, Case Management Directives, and Final Scheduling Order)" (April 17, 2007) (unpublished) ("April 17 Order"), at 6, the staff of the U.S. Nuclear Regulatory Commission ("Staff") submits this motion to exclude Citizens' response to question number 12 propounded by the Atomic Safety and Licensing Board ("Board") in "Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification)" (August 9, 2007) (unpublished) at 11-12. For the reasons set forth below, the Staff requests that the Board exclude from the evidentiary record or otherwise not consider Dr. Rudolf Hausler's response to Board question number 12.

DISCUSSION

The Staff has briefed the scope of this proceeding, the litigable issues in this proceeding, and what is admissible evidence. See NRC Staff Motion in Limine Regarding Citizens' Initial Presentation on Drywell Contention (July 27, 2007) ("Staff July 27 Motion"). In its July 27 Motion, the Staff argued the Citizens' had not demonstrated that Dr. Hausler was qualified by knowledge, skill, training, or education to provide an expert opinions on structural mechanics or American Society of Mechanical Engineers (ASME) Code Section III. See July 27 Motion at 6.

Dr. Hausler's response to Board Question 12 should be excluded or otherwise not

considered because Dr. Hausler explicitly stated in his August 16, 2007 testimony that he is not qualified to respond to Board question number 12. See Prefiled Rebuttal Testimony of Dr. Rudolf H. Hausler Regarding Citizens' Drywell Contention (August 16, 2007) at A5 (stating, "I will answer question 12 to the best of my ability in this pre-filed testimony, even though I am not a structural engineer). It is incumbent that the Board receive accurate and reliable information. Dr. Hausler's lack of expertise casts doubt on the accuracy and reliability of his answer to Question 12. Therefore, his answer to that question should be excluded or otherwise not considered.

Pursuant to 10 C.F.R. § 2.323(b), Staff counsel contacted counsel for the other parties to resolve the issues raised in this motion. Counsel for AmerGen supports this motion. Citizens will respond to the motion as appropriate when filed.

#### CONCLUSION

For the reasons discussed above, the subject motion should be granted.

Respectfully submitted,

**/RA/**

Mary C. Baty  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 27th day of August, 2007

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CERTIFICATE OF SERVICE

I hereby certify that copies of the " NRC STAFF MOTION IN LIMINE REGARDING CITIZENS' RESPONSE TO BOARD QUESTION 12" 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 27th day of August, 2007.

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