

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE COMMISSION

_____)	
In the Matter of)	
)	Docket No. 50-0219-LR
AMERGEN ENERGY COMPANY, LLC)	
)	
(License Renewal for the Oyster Creek)	
Nuclear Generating Station))	May 6, 2008
_____)	

**MOTION FOR LEAVE TO FILE A REPLY TO THE NRC STAFF’S OPPOSITION TO
CITIZENS’ MOTION TO REOPEN**

PRELIMINARY STATEMENT

On April 28, 2008, the NRC Staff answered the motion to reopen this proceeding (the “Motion”) and the metal fatigue Petition (the “Petition”) filed by Nuclear Information and Resource Service, Inc., Jersey Shore Nuclear Watch, Inc., Grandmothers, Mothers and More for Energy Safety, New Jersey Public Interest Research Group, New Jersey Sierra Club, and the New Jersey Environmental Federation (collectively “Citizens”).¹ Because the Commission’s regulations in 10 C.F.R. § 2.323(c) do not permit the filing of replies to motions without leave from the presiding adjudicatory body, Citizens are filing this motion to obtain such leave. In conformance with 10 C.F.R. § 2.323(b), Citizens sought the consent of the NRC Staff and AmerGen Energy Co. LLC to the filing of the attached Reply, but both opposing parties objected to the filing of the Reply.

Replies to answers to motions are only permitted in “compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments

¹ Citizens received the Staff’s answer at 10 p.m., which extended Citizens’ time to reply by one day in accordance with 10 C.F.R. § 2.306.

to which it seeks to reply.” 10 C.F.R. § 2.323(c). Citizens find themselves in precisely such circumstances. Citizens could not have reasonably anticipated that, after notifying the Commission on April 3, 2008 about “significant new information” concerning metal fatigue and the need for additional analysis of the recirculation nozzles at the Oyster Creek Nuclear Generation Station, the Staff would argue that the information underlying that notice was neither new, nor significant. In addition, Citizens could not have anticipated that the Staff would make the impermissible argument that a violation of the ASME Code standard, which is incorporated into the regulations, would not be safety significant and would not likely lead to a different result in a license renewal hearing.

For the foregoing reasons, Citizens respectfully request that the Commission grant leave for Citizens to reply to the NRC Staff’s opposition to the Motion.

Respectfully submitted

/s

Richard Webster, Esq.
Eastern Environmental Law Center
Attorneys for Citizens

Dated: May 6, 2008