

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

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

In the Matter of:)	
)	May 9, 2007
AmerGen Energy Company, LLC)	
(License Renewal for Oyster Creek Nuclear Generating Station))	Docket No. 50-219
)	

**AMERGEN REQUEST FOR LEAVE TO FILE MOTION
TO STRIKE CITIZENS' RESPONSE TO NRC STAFF**

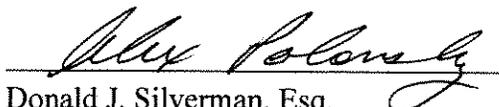
On May 7, 2007, Citizens submitted "Citizens' Response to NRC Staff" ("Response"). Under the Subpart L rules that apply to this proceeding,¹ and this Board's scheduling order,² Citizens' Response is an impermissible pleading. AmerGen does not believe it is required to request leave

¹ See Memorandum and Order (Denying NIRS's Motion to Apply Subpart G Procedures) (June 5, 2006) (unpublished).

² Memorandum and Order (Prehearing Conference Call Summary, Case Management Directives, and Final Scheduling Order) (Apr. 17, 2007) (unpublished).

to file a Motion to Strike under 10 C.F.R. §§ 2.1204 and 2.323. However, out of an abundance of caution, AmerGen respectfully requests leave to file the attached Motion to Strike.³

Respectfully submitted,



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COUNSEL FOR

AMERGEN ENERGY COMPANY, LLC

Dated in Washington, D.C.
this 9th day of May 2007

³ Pursuant to 10 C.F.R. § 2.323(c), both Citizens and the NRC Staff would be afforded the opportunity to submit answers to AmerGen's Motion to Strike. Answers must be limited to the legal argument presented in the Motion to Strike.

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)	Docket No. 50-219
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Generating Station))	
)	

AMERGEN MOTION TO STRIKE

In accordance with 10 C.F.R. § 2.323(a), AmerGen Energy Company, LLC (“AmerGen”) hereby moves to strike “Citizens’ Response to NRC Staff” (May 7, 2007) (“Response”) in its entirety.¹ Citizens’ Response is an unauthorized pleading under the 10 C.F.R. Part 2, Subpart L rules that govern this proceeding,² and this Board did not authorize such a pleading in its April 17, 2007 Order.³ Citizens assert on page 1 of their Response, without any explanation or basis, that 10 C.F.R. §§ 2.1205(c) and 2.710(a) allow them to file their Response. However, the Subpart L rules do not authorize their responsive pleading. Section 2.1205(b) permits only a single Answer to a summary disposition motion. An additional response would be authorized under Section 2.710(a)

¹ Citizens 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.

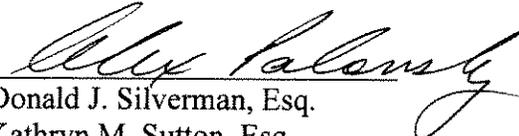
² See Memorandum and Order (Denying NIRS’s Motion to Apply Subpart G Procedures) (June 5, 2006) (unpublished).

³ Memorandum and Order (Prehearing Conference Call Summary, Case Management Directives, and Final Scheduling Order) (Apr. 17, 2007) (unpublished).

in Subpart G, but this provision simply does not apply to this Subpart L proceeding. Nor does the reference to Subpart G in Section 2.1205(c) authorize this pleading, because it merely provides the presiding officer with the substantive standards to be used in ruling on motions for summary disposition, and does not incorporate by reference all of the provisions of Section 2.710. To read the regulations otherwise would render Section 2.1205 unnecessary and meaningless.

Citizens' Response is unauthorized under 10 C.F.R. § 2.1205. Therefore, the Board should strike it in its entirety.⁴

Respectfully submitted,


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Dated in Washington, D.C.
this 9th day of May 2007.

COUNSEL FOR AMERGEN ENERGY
COMPANY, LLC

⁴ Pursuant to 10 C.F.R. § 2.323(a), AmerGen counsel attempted to, but did not reach Citizens' counsel to discuss this Motion. Counsel for the Staff has not yet taken a position on the Motion.

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)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of "AmerGen Request for Leave to File Motion to Strike Citizens' Response to NRC Staff" and "AmerGen Motion to Strike" were served this day upon the persons listed below, by E-mail and first class mail, unless otherwise noted.

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* Original and 2 copies
** First Class Mail only



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