

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF THE SECRETARY

ATOMIC SAFETY AND LICENSING BOARD

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

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In the Matter of	)	
	)	Docket No. 50-0219-LR
AMERGEN ENERGY COMPANY, LLC	)	
	)	ASLB No. 06-844-01-LR
(License Renewal for the Oyster Creek	)	
Nuclear Generating Station)	)	June 23, 2006

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**PETITION TO ADD A NEW CONTENTION**

**PRELIMINARY STATEMENT**

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 (collectively “Citizens” or “Petitioners”) submit this Petition at the invitation of the Atomic Safety and Licensing Board (“ASLB”) in its decision of June 6, 2006 in this proceeding. In accordance with that decision, Citizens now seek to add a new contention alleging that AmerGen Energy Co. LLC (“AmerGen”) must set forth a monitoring program for the sand bed region of the drywell shell that ensures that adequate safety margins are maintained throughout the licensing period, and that it has so far failed to do so. Citizens request a hearing on this issue in accordance with 10 C.F.R. § 2.309.

**BACKGROUND**

This proceeding concerns the aging of the steel containment vessel of the Oyster Creek Nuclear Generating Station that is termed the drywell shell. The shell provides containment in the

event of an accident. The lower portion of the shell is spherical with an inside diameter of 70 feet. Ex. NC 8 at 47. It is free standing from an elevation of 8 feet 11.75 inches from the bottom. Id. at 40. For around 3 feet 4 inches above that level to elevation 12 feet 3 inches, the exterior of steel liner used to have sand supporting it, but the sand was removed 1992. Id. at 47-48. This exterior portion of the drywell shell is termed the sand bed region. An interior floor is at elevation 10 feet 3 inches, id. at 47, and concrete curbs around the edge of the floor go up to the 11 foot elevation. Ex. NC 10. In the sand bed region, the design thickness of the vessel was 1.154 inches. Ex. NC 8 at 40.

Citizens initially contended that the testing of the extent of corrosion at all levels of the drywell shell proposed in AmerGen's license renewal application was inadequate to assure the continued integrity of this safety-critical structure for the period of the license extension. Petition at 3. To support this contention, Petitioners showed that the drywell shell is a safety-critical structure that acts both as a pressure boundary and as a structural support. Id. at 4. Petitioners then showed that water leakage onto the exterior of the drywell shell has caused significant corrosion, particularly in the sand bed region, where the N.R.C. regarded the corrosion as a "threat to drywell integrity." Id. at 4-6. Petitioners showed further that N.R.C. in 1986 regarded ultra-sonic testing of the sand bed region and other accessible areas of the drywell liner as "essential . . . for the life of the plant." Id. at 7.

Petitioners asserted that the potential for ongoing corrosion means that ongoing comprehensive testing is required to ensure the remaining razor-thin safety margins are met throughout any extended life of the plant. Indeed, Petitioners' Exhibit 5 at pages 8 and 12 showed that while AmerGen reported the "current thinnest" area to be 0.8 inches in December 1992, the actual thinnest areas are less than 0.736 inches, which was the original basis for evaluation. Multiple measurements in bays 1 and 13 and isolated measurements in bays 11, 15, and 17 were below 0.736 inches. Id. at 12.

The ASLB admitted a narrowed version of the initial contention pertaining to the need for ultrasonic (“UT”) testing of the drywell in the sand bed region. LBP-06-07, 63 NRC 188 (2006). In that decision, the Board decided that Citizens had adequately demonstrated representational standing. LBP-06-07 at 3-6. Because this issue is res judicata, this Petition does not address this issue further, but relies upon Citizens’ previous accepted demonstration of standing. The ASLB recently found that a new commitment made by AmerGen on April 4, 2006 to use UT testing to verify the thickness of drywell shell in the sand bed region every ten years had rendered the initial contention moot. LBP-06-16 (June 6, 2006). The ASLB also invited Citizens to submit a new contention concerning the adequacy of AmerGen’s newly proposed UT testing regime for the sand bed region. *Id.* at 9.

Information that has become available since Citizens since filed the initial contention has now clarified many issues. For example, AmerGen has recently reported that over 20 areas in the sand bed region are now thinner than 0.736 inches and these areas have an average thickness of 0.703 inches. Ex. NC 2 at 13. In addition, the thinnest single measurement to date is 0.603 inches. Ex. NC 1 at 7. Citizens have also been able to discover the various acceptance criteria that are proposed, more details about the spatial scope of the monitoring, and how the results would be analyzed. To avoid repetition, this Petition presents the details of the support for the new contention in the Section on basis.

### **ARGUMENT**

The proposed new contention satisfies the regulatory requirements by providing a specific statement of the contention, an explanation of basis, a demonstration that it is within the scope of the proceedings, and a demonstration of material issues that are in dispute. In addition, the proposed new contention is timely, because it is based on highly significant new information, including AmerGen’s newly proposed testing regime.

## **A. Specific Statement of the Contention**

In order to bring a contention before the Commissioners, Citizens must "[p]rovide a specific statement of the issue of law or fact to be raised or controverted." 10 C.F.R. § 2.309(f)(1)(i). The contention is:

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 monitoring frequency is too low and is not adaptive to possible future narrowing of the safety margins, the scope of the 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 results are flawed.

## **B. Explanation of Basis**

### **1. Legal Requirements**

At this preliminary stage, Citizens do not have to submit admissible evidence to support their contention, rather they have to "[p]rovide a brief explanation of the basis for the contention," 10 C.F.R. § 2.309(f)(1)(ii), and "a concise statement of the alleged facts or expert opinions which support the ... petitioner's position." 10 C.F.R. § 2.309(f)(1)(v).

This rule ensures that "full adjudicatory hearings are triggered only by those able to proffer ... minimal factual and legal foundation in support of their contentions." In the Matter of Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999) (emphasis added). The Commission has clarified that, "an intervener need not . . . prove its case at the contention stage . The factual support necessary to show a genuine dispute exists need not be in affidavit or formal evidentiary form, or be of the quality necessary to withstand a summary disposition motion." In the Matter of Georgia Institute of Technology, CLI-95-12, 42 N.R.C. 111, 118 (1995). Thus, the Commission has indicated that where petitioners make technically

meritorious contentions based upon diligent research and supported by valid information and expert opinion, the requirement for an adequate basis is more than satisfied.

## **2. Factual Issues Already Addressed By The ASLB**

Citizens already demonstrated a basis for their initial contention about the lack of adequate UT testing. The initial petition and documents supporting that contention are incorporated into this pleading by reference. As recognized by the ASLB in its decision admitting the initial contention, Citizens had ample basis for the following points:

- i) the drywell shell is a safety structure, LBP-06-07 at 26;
- ii) water intruded into the sand bed region causing severe corrosion; id. at 33.
- iii) water either is intruding, or could intrude in the future, leading to corrosive conditions on the outside of the drywell shell, id. at 36;
- iv) the epoxy coating that was applied to protect the sand bed is now beyond its rated life and may be deteriorating, id. at 31, 36;
- v) corrosion could occur even if the epoxy coating had not visibly deteriorated, id. at 36-37;

## **3. Proposed Monitoring For The Sand Bed Region Of The Drywell Shell**

AmerGen has recently committed to perform visual inspections of the epoxy coating once before the end of the licensing period, and every ten years thereafter. Letter from Michael P. Gallagher, AmerGen, to NRC (Apr. 4, 2006). In addition, AmerGen has committed to performing UT measurements in the sand bed region at the same locations where UT measurements were conducted in 1996 prior to any license extension and at ten year intervals thereafter. Id.

Statistically significant deviations from the 1992, 1994, and 1996 UT results will result in:

- i) performing additional confirmatory UT testing;
- ii) notifying the NRC within 48 hours of the identified condition;
- iii) conducting visual inspection of the external surfaces where corrosion may be occurring;

- iv) performing an engineering evaluation to assess the extent of corrosion and whether additional inspections are required to assure drywell integrity;
- v) performing an operability determination and justification for operation until the next inspection.

#### **4. Deficiencies In the Proposed Monitoring Regime**

As outlined in the contention and discussed in more detail below, Citizens have identified many deficiencies in the proposed monitoring regime. The NRC Staff also recently raised some similar issues regarding the accuracy of the previous results and the time between inspections. AmerGen's response to Staff's concerns was filed on June 20, 2006. However, as instructed in the ASLB's June 6, 2006 decision dismissing the initial contention, Citizens have based this new contention on the April 4<sup>th</sup> commitment made by AmerGen. LBP-06-16 at 9. Because the June 20, 2006 AmerGen response amends AmerGen's commitments, Citizens are filing an accompanying motion to supplement this Petition in response to the new commitments.

Turning to the substance, the proposed monitoring regime does not ensure that safety margins will be maintained throughout any renewed licensing period because the acceptance criteria are inadequate, the monitoring frequency is too low and is not adaptive to how close the shell thickness is to the acceptance criteria, degraded areas of the shell would not be systematically identified and sufficiently tested, the quality assurance for the measurements is inadequate, and the statistical techniques used in data analysis are flawed. This Section discusses these issues in detail.

These identified deficiencies are safety-critical, because the sand bed region of the shell is severely corroded making margins of safety much thinner than when the plant was first built. To maintain safety, the monitoring regime must be able to predict how fast the metal could corrode to safety-critical levels, and must ensure that testing of areas that are closest to the margins occurs before there is any possibility that the metal has corroded too much. For example, in parts, over 0.5 inches of metal has corroded away from the steel drywell shell, leaving a metal thickness of just

over 0.6 inches. According to AmerGen, no part of the drywell shell in the sand bed region should be thinner than 0.49 inches. Thus, the monitoring regime must ensure that a thinning of around 0.1 inches would be detected to ensure that the corrosion could not threaten the structural integrity of the shell. Monitoring once every ten years is inadequate for this purpose because corrosion rates of more than 0.03 inches per year have been observed under corrosive conditions.

**a) The Acceptance Criteria Are Inadequate**

To first establish the thickness acceptance criteria, AmerGen used modeling of a 36 degree slice of the drywell shell (called a bay) that assumed the sand bed region had uniform thickness. Ex. NC 1 at 7-8. That model showed that if the shell at the sand bed had a uniform thickness of 0.736 inches, it would be able to support itself. Id. at 8. In addition, further modeling showed that one contiguous area of one square foot in each bay could be thinner than 0.736 inches, provided it was thicker than 0.536 inches. Ex. NC 3 at 9. Furthermore, analysis showed that areas 2.5 inches in diameter could be as thin as 0.49 inches. Ex. NC 1 at 9.

To analyze the UT results, AmerGen initially analyzes whether the average wall thickness in each 6 inch by 6 inch monitored area is below 0.736 inches and whether each measurement is greater than 0.49 inches. Ex. NC 2 at 5. To evaluate areas where localized thickness is less than 0.736 inches AmerGen uses additional local wall acceptance criteria. Ex. NC 1 at 8. For small areas of less than 1 square foot, the mean thickness must be greater than 0.536 inches. Id. In addition, contiguous areas below 0.736 inches in average thickness should not exceed one square foot. Id. at 10.<sup>1</sup>

The latter acceptance criterion did not fully reflect the limitations in the modeling that was used to derive the results. For instance, the modeling assumed only one area thinner than 0.736

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<sup>1</sup> The wording of AmerGen's response is slightly ambiguous in this regard. However, reference to the original calculation C-1302-187-5320-024, attached as Citizens' Exhibit NC 3, at Sheet 9 confirms that the modeling on which this criterion was based showed adequate strength if a 1 foot by 1 foot square area in each bay was 0.536 inches thick, and the rest of the bay was uniformly 0.736 inches in thick.

inches in each bay, but in bay 13 alone there are a total of at least nine areas that are below 0.736 inches. Ex. NC 3 at 26. In fact, AmerGen has recently reported that over 20 areas in total are now thinner than 0.736 inches and these areas have an average thickness of 0.703 inches. Ex. NC 2 at 13. AmerGen has also recently recognized that the minimum required linear distances between thin areas has not been calculated, but it has asserted that safety will be maintained if the total area under 0.736 inches in the sand bed region is less than one square foot. Id. at 11. Applying this criterion, AmerGen recently estimated that 0.68 square feet of the sand bed area are thinner than 0.736 inches. Id. at 13. However, it is unclear how AmerGen derived this estimate and it is notable that no estimate of uncertainty was given. As discussed below, the area thinner than 0.736 inches is very sensitive to reductions in the thickness of the shell. Thus, the uncertainty of this estimate must be high.

Even this revised one square foot acceptance criterion is a misinterpretation of the modeling results. The model did not look at whether other geometries, such as a long thin gash, would lead to failure even if the thin area is less than one square foot. It also did not look at a situation which approximates the real condition, where the exterior of the drywell is more like a golf-ball with alternating thinner and thicker regions. Thus, AmerGen should either use the model to find the smallest area that could allow buckling to occur and compare that to the worst case total thin areas, or it should input comprehensive measurements into the model to show that the worst case that could occur before the next scheduled measurements could not allow buckling. In both cases, AmerGen should take full account of the uncertainty in the current thin area and the potential for future corrosion to rapidly expand that area.

**b) Monitoring Frequency Is Too Long And Monitoring Periods Must Adapt To Safety Margins**

AmerGen has stated that it derived the proposed one in ten year testing frequency from the standard in-service interval. Ex. NC 4 at 63. This is totally inadequate. As discussed in the

memorandum of Dr. Hausler, dated June 23, 2006 and attached to this Petition, the proposed visual inspections of the coating cannot substitute for UT testing, because they are too infrequent and corrosion could occur behind the coating without being noted visually. Memorandum of Dr. R. Hausler, dated June 23, 2006 at 6. Furthermore, the current safety margins are, at best, razor thin. For instance, the thickness of small areas are now within around 0.083 inches of the safety margin, based on a measured thinnest point of 0.603 inches, a 0.03 inch allowance for uncertainty, and the acceptance criterion for such points of 0.49 inches. Id. The means of the six inch by six areas that are proposed to be measured again were within 0.07 inches of the safety margin in September 1994. Ex. NC 8 at 56. In addition, the acceptance criterion requiring the area per bay that is less than 0.736 inches thick to be less than one square foot in area would be violated if less than around 0.026 inches of corrosion occurs. Memorandum of Dr. Hausler, dated June 23, 2006 at 7.

A reasonable estimate of the worst case potential corrosion rate that may occur could be obtained by analyzing the pre-1992 data. Id. at 6, 13. Observed corrosion rates to 1990 ranged up to 0.035 inches per year and were very uncertain. Ex. NC 9 at 7. As an illustration, even if the worst case corrosion rate were 0.02 inches per year and no corrosion has occurred since 1992, the drywell shell could exceed AmerGen's acceptance criterion for area below 0.736 inches in about one year. Memorandum of Dr. Hausler, dated June 23, 2006 at 7. Other criteria could be exceeded in around 4 years. The uncertainty in the worst case corrosion rate means that the measurements must be made at considerably shorter intervals than those calculated here to ensure that a measurement is taken before any of the acceptance criteria are violated.

Thus, if a corrosive environment is present on the outside of the shell, UT measurements must be taken at least once every year, based on the current acceptance criteria. Id. Finally, the frequency of the measurements must be related to the time in which the shell could corrode beyond

the safety margin. Thus, if the next round of measurements shows any deterioration, the monitoring frequency would have to be increased. Id.

**c) The Proposed Scope Of The Monitoring Is Too Narrow**

The spatial scope of the monitoring must be sufficient to allow meaningful comparison with the acceptance criteria that are to be applied to the results. In addition, the monitoring must look for all anticipated aging effects. Looking first at the spatial scope of the monitoring, at present the proposed monitoring only covers twelve 6 inch by 6 inch areas and seven 6 inch by 1 inch areas. Ex. NC 2 at 5. Thus, of the around 300 square feet in the sand bed region, 3 square feet, or around 1% is proposed to be monitored. Memorandum of Dr. Hausler, dated June 23, 2006 at 15. Furthermore, because the monitoring points were initially selected by measuring from the inside and around two thirds of the sand bed region is not accessible from the inside, the proposed monitoring regime misses out known areas of the shell that are below 0.736 inches in thickness. Id. at 8.

In addition, because there was no attempt to expand the spatial scope of the measurements when points below 0.736 inches were observed at the edge of the grids, the monitoring protocol only incompletely tracks the thin areas that it does monitor. Id. at 9. The proposed monitoring regime makes also fails to systematically survey the shell for new thin areas. Id. at 8-9. Because the area of each bay below 0.736 inches is an important acceptance criterion and is particularly sensitive to corrosion, it is critical that the monitoring regime systematically identify and track the thickness of all areas that are below 0.736 inches. Id. It is likely that this will require monitoring from the outside of the drywell. Id. at 9.

In addition to expanding the area of monitoring, another type of UT testing must also be added, because the shell is vulnerable to fatigue cracking in pitted areas. Id. at 5. This could go undetected under the currently proposed testing regime.

**d) The Quality Assurance For The Measurements Is Inadequate**

Recently, the NRC concluded that the 1996 UT testing results are anomalous because they show that the drywell shell got dramatically thicker between 1994 and 1996. Transcript of Meeting on June 1, 2006, attached as Citizens' Exhibit NC 4 at 28, 31. Despite this, AmerGen has continued to use these data to predict the thickness of the drywell shell during any license renewal period. See e.g. Citizens' Exhibit NC 1 at 19-30. This is wholly unjustifiable. To eliminate this possibility in the future, AmerGen must revise its quality assurance plans to identify flawed data soon after it is taken and must undertake to carry out replacement measurements if it finds that the original measurements are questionable. Memorandum of Dr. Hausler, dated June 23, 2006 at 9-10.

**e) Statistical Analysis Of Results Is Flawed**

As the NRC has recognized, uncertainty is the key issue when analyzing the UT results. Ex. NC 4 at 63-64. In fact, there are a number of uncertainties, all of which need to be taken into account in the design of the monitoring regime. The first is that the UT results themselves are subject to uncertainty. This uncertainty means that the thickness at the time the measurement is taken is uncertain and it also means that the rate of corrosion is uncertain. Adding to the uncertainty in the corrosion rate is that conditions may change over time. For example, coatings may deteriorate, or the volume and composition of the water reaching the corroded area may change.

As Dr. Hausler discusses in detail in his memorandum, the current statistical techniques employed are inadequate to find either the worst case baseline from which corrosion could occur, or the worst case corrosion rate. Memorandum of Dr. Hausler, dated June 23, 2006 at 10-15. The key flaws identified by Dr. Hausler are:

- i) AmerGen has failed to use extreme value statistics to estimate the minimum current thickness of the drywell shell, id. at 5, 11, 14-15;
- ii) corrosion is assumed to be linear, whereas in reality the corrosion rate can increase rapidly in a non-linear fashion, id. at 3, 12;

- iii) analyzing corrosion rates using the average of the individual measurements taken in each grid is an invalid approach that leads to artificially low estimates of uncertainty, id. at 12;
- iv) the thinnest points measured in the grids have sometimes been omitted from the means, leading to artificially high estimates of the current mean thickness, id. at 12-13;
- v) an estimate of corrosion rate to 95% confidence is not sufficiently conservative for safety-critical issues, because one in twenty times the corrosion would be worse than the estimated rate, id.; and
- vi) AmerGen has ignored previous analysis showing that at least four valid measurements are required to make a valid estimate of the corrosion rate and the confidence limits. Id.

Thus, AmerGen must make comprehensive measurements of the current wall thickness as soon as possible. Id. at 15. It must also revise its statistical techniques to calculate worst case estimates for all the parameters that are to be compared to the acceptance criteria, and must also calculate a worst case corrosion rate, which can be used to determine the appropriate time before the next monitoring.

### **C. The Scope of License Renewal Includes Corrosion Of The Drywell Liner**

Petitioners are required to demonstrate that the issues raised in their contentions are within the scope of the proceeding, 10 C.F.R. § 2.309(f)(1)(iii). After extensive briefing of this issue, the ASLB concluded that corrosion of the drywell shell is within the scope of license renewal proceedings. In the Matter of AmerGen Energy Company (License Renewal for Oyster Creek Nuclear Generating Station), LBP-06-07 (slip op. at 39-40) (February, 26, 2006). That finding directly applies to the current contention, because it concerns the very same issue. Thus, the issue of scope is currently res judicata in this proceeding and is not subject to further dispute. However, the decision to admit the initial contention is currently on appeal to the Commission. Therefore, should the Commission amend the ASLB's finding regarding scope in its review of the AmerGen's

appeal, Citizens request an opportunity to file a supplemental briefing addressing the Commission's findings.

#### **D. Showing of Materiality**

The regulations require Petitioners to “[d]emonstrate that the issue raised in the contention is material to the findings the N.R.C. must make to support the action that is involved in the proceeding.” 10 C.F.R. § 2.309(f)(1)(iv). A showing of materiality is not an onerous requirement, because all that is needed is a “minimal showing that material facts are in dispute, indicating that a further inquiry is appropriate.” Georgia Institute of Technology, CLI-95-12, 42 N.R.C. 111, 118 (1995); Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,171 ( Aug. 11, 1989). Similarly, in Gulf States Utilities Co. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43 (1994), the Commission stated that, at the contention filing stage, “the factual support necessary to show that a genuine dispute exists need not be in formal evidentiary form, nor be as strong as that necessary to withstand a summary disposition motion.” 40 NRC at 51. Rather, the petitioner need simply make “a minimal showing that the material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate.” Id. (internal quotation marks omitted).

In admitting the initial Petition, the ASLB found that a genuine and material dispute existed about whether the then proposed aging management program, which did not include periodic UT measurements, would enable AmerGen to maintain safety margins during the term of any extended license. LBP-06-07 at 38-39. This new contention concerning AmerGen's April 4, 2006 commitment continues this material dispute, taking AmerGen's additional commitment into account.

Furthermore, in this Petition, Citizens have shown by reference to exhibits and expert opinion that the proposed monitoring by AmerGen is too limited in scope and too infrequent to

allow the current razor-thin safety margins to be maintained. In addition, Citizens have demonstrated that AmerGen has proposed to use flawed acceptance criteria and statistical methods to determine whether the results are significant and to project how quickly corrosion to safety critical levels could occur in the future. Thus, Citizens contend that the proposed program would fail to ensure that safety margins would continue to be met during any license renewal period.

In contrast, AmerGen has stated that the committed monitoring regime will ensure that it can maintain safety margins throughout any extended license term. AmerGen Motion to Dismiss The Admitted Contention at 8. It has also stated that it made the additional commitments to “provide assurance that the drywell shell will remain capable of performing its design functions throughout the license renewal period.” Letter from Michael P. Gallagher, AmerGen, to NRC (Apr. 4, 2006). Thus, at a high level the dispute is about the adequacy of the commitments to ensure that safety margins are maintained.

At the more detailed level, Citizens have identified a myriad of flaws in AmerGen’s approach, such as the failure to consider deterioration of the epoxy coating, the assumption that corrosion will be linear, and the failure to measure all the identified degraded areas. Thus, many more detailed material issues are also in dispute. Finally, because safety of the reactor hinges on the outcome of this dispute, it must be resolved before the NRC can issue any extended license.

#### **E. This Request Is Timely**

Petitioners may add new contentions after filing their initial petition, so long as they act in accordance with 10 C.F.R. § 2.309(f)(2). Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813 (2005). The Commission's regulations allow for a "new contention" to be filed 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)(i)-(iii).

In Vermont Yankee, the Board first admitted a contention of omission challenging an applicant's failure to perform structural and seismic analyses. The applicant subsequently performed structural and seismic analyses, after which it filed a motion to dismiss the contention as moot, which the Board granted. See Vermont Yankee, LBP-05-32, 62 NRC 813, 820. The Board gave the petitioner 20 days to file a new contention. Id. In response, the petitioner filed a contention challenging the sufficiency of the structural and seismic analyses. Id. In admitting the new contention, the Board held that the analyses were clearly information that was “not previously available” because it filled a prior omission, and that they were “materially different than information previously available” because something is obviously different than nothing. Vermont Yankee, LBP-05-32, 62 NRC 813, 820; 10 C.F.R. § 2.309(f)(2)(i)-(ii).

The facts of the present case directly parallel the facts of Vermont Yankee. First, the Board admitted a contention challenging AmerGen's failure to provide a plan for periodic UT testing in the sand bed region of the drywell. AmerGen subsequently docketed a commitment to adopt aging management procedures that included performing visual and UT testing every 10 years over the 20-year relicensing period, after which it filed a motion to dismiss the contention as moot. Just like Vermont Yankee, the Board granted the mootness motion, but also invited Citizens to file a new contention concerning the adequacy of the new commitment within 20 days. Licensing Board Memorandum and Order (Contention of Omission is Moot, and Motions Concerning Mandatory Disclosure are Moot), LBP-06-16 at 2 (Jun. 6, 2006) (unpublished). In accordance with the Board's

Order, Citizens are now seeking to add this contention challenging the sufficiency of the proposed monitoring regime. Thus, like Vermont Yankee, the ASLB should now find that the new contention is based upon information that was “not previously available,” and that is “materially different than information previously available.” 10 C.F.R. § 2.309(f)(2)(i)-(ii).

Further supporting the conclusion that the April 4, 2006 commitment is materially different information is that the Board decided that it made Citizens’ previously admitted contention moot. Thus, it made a material difference to this litigation. Such a conclusion is further reinforced by noting that “something” (a UT testing plan) cannot be materially the same as “nothing” (no UT testing plan at all), meaning that the newly announced UT plan is "information ... materially different than information previously available." 10 C.F.R. § 2.309(f)(2)(ii). See Vermont Yankee, LBP-05-32, 62 NRC 813, 820.

In addition, at the time the initial Petition was submitted, Citizens had limited information about the drywell corrosion issue. For example, Citizens did not know what the 1996 measurements showed because, despite diligent efforts, Citizens had been unable to obtain those measurements. It was also unclear how AmerGen had changed the acceptance criteria for measurements that showed that the steel shell was already thinner than the initial 0.736 inch criterion. The Exhibits attached to this contention and upon which Dr. Hausler has based his June 23, 2006 memorandum have now clarified these issues, but they were not available to Citizens at the time the initial Petition was submitted. More specifically, Exhibits NC 1 and NC 2 were created in April 2006, Exhibit NC 4 was created in June 2006, and Citizens obtained the rest of the Exhibits from AmerGen through the document disclosure process. Thus, material new information has allowed Citizens to now submit a much more specific new contention, which therefore satisfies 10 C.F.R. § 2.309(f)(2)(i)-(ii).

Finally, because this contention is being filed within the timeframe specified by the Board's Order of June 2, 2006, it satisfies 10 C.F.R. § 2.309(f)(2)(iii). Furthermore, the Order also makes clear that “if NIRS satisfies the remaining factors in section 2.309(f)(2) - the parties need not address the requirements under 10 C.F.R. § 2.309(c), which apply to ‘nontimely filings.’” Licensing Board Memorandum and Order (Contention of Omission is Moot, and Motions Concerning Mandatory Disclosure are Moot), LBP-06-16 at n.12 (Jun. 6, 2006) (unpublished).

### **CONCLUSION**

For the forgoing reasons, the ASLB should grant this Petition to add the proposed new contention.

Respectfully submitted

/s/

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Attorneys for Petitioners

Dated: June 23, 2006

UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	Docket No. 50-0219-LR
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Nuclear Generating Station)	)	June 23, 2006
	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition with attachments and motion was sent this 22nd day of June, 2006 via email and U.S. Postal Service, as designated below, to each of the following:

Secretary of the Commission (Email and original and 2 copies via U.S Postal Service)  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attention: Rulemaking and Adjudications Staff  
Email: [HEARINGDOCKET@N.R.C..GOV](mailto:HEARINGDOCKET@N.R.C..GOV)

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