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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

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

Tuesday, August 14, 2007
9:20 a.m.

BEFORE:

PAUL B. ABRAMSON, Administrative Judge

ANTHONY J. BARATTA, Administrative Judge

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1 APPEARANCES:

2 On Behalf of Amergen Energy Co., LLC:

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5 Of: Morgan, Lewis & Bockius LLP

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7 Washington, D.C. 20004

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10 Resources Service:

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16 On Behalf of the Nuclear Regulatory Commission:

17 MITZI YOUNG, ESQ.

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1 ALSO PRESENT:

2 JAMES DAVIS

3 PAUL GUNTER

4 LOUISE LUND

5 MICHAEL MODES

6 TIMOTHY O'HARA

7 ARTHUR SALOMON

8 KAREN VALLOCH

9 DEBRA WOLF

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P-R-O-C-E-E-D-I-N-G-S

9:33 a.m.

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3 JUDGE ABRAMSON: Let's go on the record.
4 This is a conference call in Docket No. 50-0219-LR,
5 the Matter of Amergen Energy Company's licensing
6 renewal application for Oyster Creek Nuclear
7 Generating Plant. Today is the 14th of August.

8 Let's go through a roll call with the
9 parties here. Here with me in the hearing room is our
10 law clerk, Debra Wolf, and our able managing
11 assistant, Karen -- What is it?

12 MS. VALLOCH: Valloch.

13 JUDGE ABRAMSON: Valloch, right. How's
14 that for drawing a blank? Judge Baratta is on the
15 line. Judge Hawkens will not be joining us. Let's go
16 down the names of the parties and I'll ask you that
17 you spell your names for the court reporter please.
18 Start with Amergen, Morgan Lewis.

19 MR. POLONSKY: This is Alex Polonsky. The
20 last name is spelled P as in Peter, O-L-O-N-S-K-Y.

21 MS. SUTTON: And Kathryn Sutton, K-A-T-H-
22 R-Y-N S-U-T-T-O-N.

23 JUDGE ABRAMSON: And is there anybody on
24 from your client?

25 MS. SUTTON: No sir.

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1 JUDGE ABRAMSON: Okay. For NIRS?

2 MR. WEBSTER: This is Richard Webster and
3 that's W-E-B-S-T-E-R, from Rutgers Environmental Law
4 Clinic.

5 JUDGE ABRAMSON: And you have one of your
6 clients on with you.

7 MR. WEBSTER: And I believe that Paul
8 Gunter is on the line, although I haven't heard him
9 yet.

10 MR. GUNTER: Yes. Paul Gunter on behalf
11 of Nuclear Information and Resource Service, G-U-N-T-
12 E-R, and I'll be on mute.

13 JUDGE ABRAMSON: And for the staff?

14 MS. YOUNG: Good morning. This is Mitzi
15 Young, M-I-T-Z-I Y-O-U-N-G, counsel for the NRC Staff.
16 With me is Mary Baty, B-A-T-Y. Also in the room here
17 listening are technical members of the staff, James
18 Davis, Michael Modes, Arthur Salomon.

19 JUDGE ABRAMSON: Will you spell the names
20 for us please, Ms. Young?

21 MS. YOUNG: Sure. James Davis, J-A-M-E-S
22 D-A-V-I-S. Michael Modes. Modes is M-O-D-E-S.
23 Arthur Salomon. Salomon is S-A-L-O-M-O-N. And Louise
24 Lund. Lund is L-U-N-D. And listening on mute will be
25 Timothy O'Hara who also called in, O'H-A-R-A. That

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1 completes the staff list.

2 JUDGE ABRAMSON: Okay. Good. Let's
3 proceed with this. This conference call was convened
4 at the request of Morgan Lewis who I understand made
5 some attempt to contact either of the parties. Staff,
6 were you contacted directly by Morgan Lewis about
7 this?

8 MS. YOUNG: Yes, we were.

9 JUDGE ABRAMSON: And, Mr. Webster, were
10 you contacted?

11 MR. WEBSTER: Well, Morgan Lewis and I did
12 speak this morning. Yes.

13 JUDGE ABRAMSON: All right. The purpose
14 of this and the sole purpose of this is to try to
15 resolve any question you may have about our August 9
16 Memorandum and Order. So let's proceed with this.
17 Since Amergen asked for this call, why don't we start
18 with Amergen. What questions do you have and what can
19 we do to help clarify this?

20 MR. POLONSKY: Thank you, Judge. We have
21 two primary questions. The first one can be found on
22 page four and there's a statement from the Board that
23 says, "Four May citizens argue that Amergen's input
24 are not sufficiently accurate." We interpret the word
25 "input" as Amergen's or not necessarily Amergen's but

1 Oyster Creek Nuclear Generating Station's raw UT data
2 and we just want to make sure we are correct in that
3 interpretation.

4 JUDGE ABRAMSON: That was the intent of
5 the Board that the raw data is not to be challenged,
6 but its interpretation and the uncertainties
7 associated with are in play. Is that correct, Judge
8 Baratta?

9 JUDGE BARATTA: Yes, that's correct.

10 MR. POLONSKY: Thank you. The second
11 question we had goes to question 12 of the twelve
12 questions that the Board asked at the end of its
13 August 9th Order. Question 12 which has five subparts
14 we have interpreted as asking questions specifically
15 about the derivation of the acceptance criteria, both
16 the buckling criteria and the pressure criteria.

17 JUDGE ABRAMSON: No, that's not correct.
18 What we -- This question is an effort by the Board to
19 resolve questions in our minds about how the data
20 should be presented and whether it matters at all
21 whether the data should be viewed as presented by Dr.
22 Hausler in the contour plots or whether it's quite
23 sufficient to do the averaging that Amergen or that
24 the Oyster Creek Generating Station has done. For
25 that reason, we are interested in and we think it

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1 necessary to understand the size and shape of the
2 elements in the finite element methodology. Are we
3 correct that this was a finite element methodology?

4 MR. POLONSKY: I couldn't answer that
5 question for you.

6 JUDGE ABRAMSON: And you have not talked
7 to your technical people to find that out.

8 MR. POLONSKY: We have talked with them,
9 but I couldn't answer that specific question for you.

10 JUDGE ABRAMSON: We're assuming that this
11 was done by finite element methodology which means
12 that the shell is divided into finite pieces with
13 certain dimensions and that within those dimensions
14 the physical properties are averaged and, if that's
15 the case, then what we are after is whether or not it
16 would matter at all if the data had been dealt with by
17 contour plots or by the simple averaging methodology
18 that Oyster Creek Generating Station used or that GE
19 used in its original analysis.

20 So this question is aimed at understanding
21 the size and shape of the elements in the region of
22 interest. You don't need to talk about the elements
23 over the whole dry well shell, just the region where
24 the corrosion has been, and what we want to know is
25 what are the size and shape of those elements and

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1 would it matter and our questions are quite clear, I
2 think, on that point.

3 MR. POLONSKY: Thank you for the
4 clarification, Your Honor. The concern I have, I
5 guess, is in how we answer this. We think we need
6 to go into the discussion of the GE analyses which are
7 the basis of Amergen's acceptance criteria. The Board
8 has asked that those answers be included not only in
9 the brief but in the testimony and we feel that by
10 discussing how GE came upon its analysis or how it
11 based its analysis and then we put that in our
12 testimony we're then opening up the GE analysis to
13 sur-rebuttal by citizens and, in effect, we will then
14 have opened up a part of the proceeding which we
15 thought the Board had closed which was the derivation
16 of the acceptance criteria.

17 JUDGE ABRAMSON: Yes, and we are not
18 interested in the derivation of the acceptance
19 criteria. We're really quite --

20 JUDGE BARATTA: Or what our criticisms of
21 it are. This is Judge Baratta. What Judge Abramson
22 points out what we're looking is really something
23 about the interpretation of the UT data to make sure
24 that whatever is being done is consistent with that.
25 That's basically what we're looking for. So any

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1 discussion really should be directed in that manner,
2 I think, or once the basic model, I guess, is
3 described. Is that correct, Judge Abramson?

4 JUDGE ABRAMSON: I think our questions are
5 self-explanatory, Mr. Polonsky, and if you had taken
6 the trouble to talk to your technical experts you
7 might have been able to realize this. Our final
8 question in Item 12 was whether or not this was
9 treading on the current licensing basis and we're
10 quite aware that the current licensing basis is
11 founded in the GE methodology.

12 So we're not -- We want to make sure there
13 is no challenge to the current licensing basis because
14 that's not proper fuel for this proceeding and by
15 focusing on the shapes of the elements, now remember,
16 your technical people have suggested that the
17 appropriate way to view this data is by how much
18 volume is missing from certain shell regions due to
19 corrosion. That to us if I put my technical hat on
20 sounds very much like what they're saying to you and
21 to us is that they're looking at a finite element and
22 they're looking at the physical properties of the
23 particular element that's been corroded.

24 We would expect these elements are very
25 large because of the technology that was available at

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1 the time GE did this. So you need to speak with your
2 technical people. If you come back convinced that
3 this winds up going into derivation of the acceptance
4 criteria, you're welcome to send us a memorandum to
5 that effect and we'll consider it.

6 MR. POLONSKY: Thank you.

7 JUDGE ABRAMSON: I'm very unhappy with the
8 fact that you raised legal questions without talking
9 to your technical people about the nature of these
10 questions.

11 MR. POLONSKY: Your Honor, I have
12 contacted the technical people. Unfortunately, the
13 experts here we believe are at GE, not at Amergen, and
14 those experts are currently unavailable. So we're
15 trying to contact and work with them. We may end up
16 supplying testimony by someone from Amergen to the
17 best that they can answer these questions.

18 JUDGE ABRAMSON: If you need more time to
19 properly answer them, certainly you may ask.

20 MR. POLONSKY: I understand. We'll do our
21 best with the testimony that we can by this Friday and
22 inform the Board if we can't provide an adequate
23 answer.

24 MS. YOUNG: Judge Abramson, the Staff has
25 a question.

1 JUDGE ABRAMSON: Yes.

2 MS. YOUNG: Staff counsel's understanding
3 is that the dry well shell was broken into pie shaped
4 elements to do the finite model that was done by GE
5 before, I guess, 36 degree sections. So I'm having
6 trouble understanding what the Board's question
7 regarding the shape and size of elements. It seems
8 that the Board is asking really the shape and size of
9 the degradation modeled by GE, not the sections across
10 which the degradation was modeled.

11 JUDGE ABRAMSON: I don't believe that
12 that's correct, but are your technical people -- Do
13 you have any structural people in your technical group
14 that's there? Are any of these four people
15 structural?

16 MS. YOUNG: No, the structural people
17 weren't able to participate this morning.

18 JUDGE ABRAMSON: Okay. I think you also
19 need to talk to your structural people. My guess is
20 that they did this bay by bay as we understood it and,
21 yes, we understood they took certain radial segments.
22 But my guess is they're also vertical delineations
23 within that. You can't do a finite element, buckling
24 load analysis on one single vertical slice that goes
25 all the way to the top. So I think you need to talk

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1 to your technical people.

2 MS. YOUNG: Could you hold on for one
3 moment please?

4 (Pause.)

5 MS. YOUNG: Judge Abramson?

6 JUDGE ABRAMSON: Yes.

7 MS. YOUNG: This is Ms. Young for the
8 Staff again.

9 JUDGE ABRAMSON: Yes.

10 MS. YOUNG: My understanding that the
11 Board's question is asking whether Dr. Hausler's
12 contour plot is a better way of representing the
13 pattern of degradation for the dry well shell than
14 what the GE analysis modeled and to that extent, it
15 would be challenging the current licensing basis, but
16 we can --

17 JUDGE ABRAMSON: That is not what we're
18 asking. What we're asking is what's the size of the
19 elements and the shape of the elements over which
20 physical properties were averaged when GE did its
21 original analysis. Once you understand that, you will
22 know whether it matters at all how this data is
23 averaged or viewed. But you can't know that until you
24 answer the first question.

25 And if, in fact, it doesn't matter then

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1 the whole point is mute. If it matters, then it will
2 be as you say a challenge to the CLB and we'll deal
3 with that at that point. This is a technical matter
4 and, Counsel, you must be well aware. This is a court
5 dealing with technical issues. Let's make sure we get
6 the technical information right.

7 MR. WEBSTER: Judge, could I just ask a
8 question here because -- This is Richard Webster from
9 representing citizens.

10 JUDGE ABRAMSON: Yes.

11 MR. WEBSTER: My understanding is that
12 although the CLB is based upon the GE model the
13 current pattern of degradation is not part of the CLB.
14 Is that correct?

15 JUDGE ABRAMSON: The degradation that has
16 occurred to date, I think we'll have to deal with this
17 one perhaps in a hearing if this piece goes this far,
18 whether or not the current degradation is part of CLB.
19 Certainly, it is a matter of ongoing operation and
20 maintenance. So to the extent -- Remember that the
21 renewal proceeding is only dealing with what happens
22 during the license extension term. So the license
23 extension term starts from the current conditions. I
24 think that that's not -- That's not, however, the
25 point we are worried about here. The current

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1 licensing basis relies on the GE analysis and the GE
2 analysis used certain assumptions about the size of
3 how small it had to do to divide the structure in
4 order to get an accurate structure analysis. No
5 structure analysis treats this as a continuum. It
6 also divides it into what are called finite elements.

7 MR. WEBSTER: Right.

8 JUDGE ABRAMSON: And the older technology
9 that was used at the time of this application had less
10 capable computers and probably therefore used
11 relatively large elements. If those elements are
12 indeed very large, then the volume and surface area
13 over which these physical properties were averaged
14 when they did the analysis is very large and that's
15 the question we're trying to resolve.

16 Because if those areas, for example, are
17 80 feet by 90 feet, then changes in corrosion over a
18 one foot or two feet area won't matter. If those
19 elements are one foot by two feet, then differences in
20 corrosion pattern will matter and that's what we're
21 trying to find out. And that's, I believe, the basis
22 for the response we saw that said that the view of
23 this is that a certain volume of material is missing
24 from a region or from an element. But we don't know
25 this until we get proper answers from the people who

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1 did the analysis or understand the analysis.

2 MR. WEBSTER: Okay.

3 JUDGE ABRAMSON: It's not a matter for
4 lawyers to deal with. We'll deal with the legal
5 issues after we have the technical information.

6 MR. WEBSTER: Thank you. Could I ask one
7 question?

8 JUDGE ABRAMSON: Certainly.

9 MR. WEBSTER: This is again with regard to
10 Section 4 about the local buckling acceptance criteria
11 on pages five and six. I think from our perspective
12 we've shown that there was some inconsistency in both
13 the definition of what the acceptance criteria were
14 and in their application. The question I have is how
15 do we go from there to resolve which is the approach
16 acceptance criterion without getting into derivation.
17 We did take the route of looking at the SER and seeing
18 what the SER says. But it appears that NRC's
19 testimony is somewhat -- There is some tension there
20 between the NRC's testimony, the Staff testimony, and
21 the SER specific wording.

22 JUDGE ABRAMSON: I think we've been pretty
23 clear from the outset of this proceeding that citizens
24 can't challenge the derivation of the acceptance
25 criteria. You certainly may argue that they've been

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1 applied inconsistently and you can speak to which
2 criteria you think is better and why without going
3 into the derivation. I mean, the problem is we can't
4 go into the derivation. There are -- That's a limit
5 that we've established from the beginning.

6 MR. WEBSTER: But just to clarify then, we
7 can draw conclusions about which would be the
8 appropriate criterion to use of the various criteria
9 that have been suggested.

10 JUDGE ABRAMSON: Excuse us a moment.

11 (Pause.)

12 JUDGE ABRAMSON: I think we're going to
13 have to deal with this question more in depth at the
14 point it comes up, Mr. Webster. It is a difficult
15 question, but we clearly are expecting the citizens
16 will challenge that the acceptance criteria have not
17 been consistently applied and that will undoubtedly
18 lead us to have to deal with what are the appropriate
19 margins.

20 MR. WEBSTER: Okay. Thank you.

21 JUDGE ABRAMSON: Does Staff have any
22 questions?

23 MS. YOUNG: No, we think we understand the
24 Board's question.

25 JUDGE ABRAMSON: Anything further from

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1 Amergen?

2 MR. POLONSKY: No, we'll do the best
3 answer to the question if we can't get our GE experts
4 in line in time and, if so, we'll notify the Board.

5 JUDGE ABRAMSON: Okay. And anything
6 further from the Interveners?

7 MR. WEBSTER: No, Judge. Thank you.

8 MS. SUTTON: Can we hold on for one
9 second?

10 JUDGE ABRAMSON: Go ahead.

11 (Pause.)

12 JUDGE ABRAMSON: Judge Baratta, do you
13 have anything you want to add here?

14 JUDGE BARATTA: No. Are we going to talk
15 afterwards though?

16 JUDGE ABRAMSON: Yes, we can do that. One
17 thing that Ms. Wolf has noted that we don't want to
18 find ourselves in a last minute no man's land. So we
19 would ask Amergen that you let us know by close of
20 business on Thursday, 5:00 p.m. on Thursday, whether
21 or not you're going to need more time and whether or
22 not you're going to be able to give an answer that
23 you're comfortable with.

24 MS. SUTTON: Your Honor, we will do that.

25 JUDGE ABRAMSON: Thank you. Okay. With

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1 that.

2 (Off the record discussion.)

3 JUDGE ABRAMSON: Okay. The hearing is
4 finished. Thank you all for participating. Off the
5 record.

6 Whereupon, at 9:55 a.m., the above-
7 entitled matter was concluded.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: Oyster Creek Nuclear
Generating Station

Docket Number: 50-0219-LR

Location: (Teleconference)

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original transcript thereof for the file of the United
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