

December 14, 2005

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 ANSWER TO REQUEST FOR HEARING AND
PETITION TO INTERVENE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the U.S. Nuclear Regulatory Commission Staff ("Staff") hereby answers the Request for a Hearing and Petition for Leave to Intervene of the Nuclear Information and Resource Service ("NIRS"), Jersey Shore Nuclear Watch, Inc. ("JSNW"), Grandmothers, Mothers and More for Energy Safety ("GRAMMIES"), New Jersey Public Interest Research Group ("NJPIRG"), New Jersey Sierra Club ("NJSC"), and the New Jersey Environmental Federation ("NJEF") (collectively, "Petitioners"). As set forth below, the Petitioners have demonstrated standing to intervene in this proceeding but have not proffered an admissible contention. Therefore, the Petition should be denied.

BACKGROUND

By letter dated July 22, 2005, AmerGen Energy Company, LLC ("AmerGen") submitted an application for renewal, pursuant to 10 C.F.R. Part 54, of Operating License No. DPR-16 for the Oyster Creek Nuclear Generating Station ("OCNGS" or "Oyster Creek") for an additional 20 years.¹ The current operating license for the OCNGS expires April 9, 2009.

On September 15, 2005, the NRC published a notice of acceptance for docketing and

¹ See Letter from C.N. Swenson, Site Vice President, Oyster Creek Nuclear Generating Station [OCNGS], to U.S. NRC (July 22, 2005) (Agencywide Documents and Access Management System ("ADAMS") Accession No. ML052080172).

opportunity for hearing regarding the license renewal application ("LRA").² On November 14, 2005, Petitioners filed a Request for Hearing and Petition for Leave to Intervene on AmerGen's LRA.³ On December 9, 2005, this Atomic Safety and Licensing Board was established to preside over this proceeding. See "Establishment of Atomic Safety and Licensing Board," dated December 9, 2005.

DISCUSSION

A. Petitioners' Standing

1. Legal Requirements for Standing

Any person or organization who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so.

Section 189a.(1)(A) of the Atomic Energy Act of 1954, as amended ("AEA" or "Act"), 42 U.S.C. § 2239(a)(1)(A), states:

In any proceeding under this Act, for the granting, suspending, or amending of any license...the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

The Commission's regulations in 10 C.F.R. § 2.309(d)(1) provide that a request for hearing or petition to intervene must state:

- (i) The name, address and telephone number of the petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be

² See [AmerGen], Oyster Creek Nuclear Generating Station; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DRP-16 for an Additional 20-Year Period, 70 Fed. Reg. 54,585 (Sept. 15, 2005).

³ See "Request for Hearing and Petition to Intervene" ("Petition"). The Petition was served upon the Staff by e-mail at 5:00 p.m. on November 14, 2005, while Petitioners' exhibits were served upon the Staff by first class mail. The Staff notes that while two notices of appearance were filed on behalf of Petitioners, the notices of appearance did not contain all the information required by 10 C.F.R. § 2.314(b). To ensure proper communication between all parties, those appearing on behalf of the Petitioners should submit new notices of appearance containing all the necessary information.

made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

Additionally, the relevant case law provides that, to attain standing, a petitioner must demonstrate that:

(1) It has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;

(2) The injury can fairly be traced to the challenged action; and

(3) The injury is likely to be redressed by a favorable decision.

See, e.g., Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

To establish standing, there must be an "injury in fact" that is either actual or threatened. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (citing *Wilderness Soc'y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)). The injury must be "concrete and particularized," not "conjectural" or "hypothetical." *Sequoia Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). As a result, standing will be denied when the threat of injury is too speculative. *Id.* Furthermore, the alleged "injury in fact" must lie within the "zone of interests" protected by the statutes governing the proceeding; either the AEA or the National Environmental Policy Act ("NEPA").

Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999).

Further, a petitioner must also establish a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2),

LBP-98-27, 48 NRC 271, 276 (1998), *aff'd*, CLI-99-4, 49 NRC 185 (1999). A determination that the injury is fairly traceable to the challenged action, however, does not depend “on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Finally, the redressability element of standing requires a petitioner to show that its claimed actual or threatened injury could be cured by some action of the decisionmaker. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 14 (2001).

An organization may satisfy the standing criteria of 10 C.F.R. § 2.309(d)(1) based either on its own interests or those of its members. To establish “organizational standing,” the organization must allege with particularity that the proposed action will cause an “injury in fact” to the organization itself, with respect to its own organizational interests. The asserted “injury” to the organization must meet the three-part judicial test for the standing of a “person.” See *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646 (1979) and discussion *supra* at 3-4.

Alternatively, an organization can plead standing based on representing the interests of its members, a doctrine known as representational standing. To achieve representational standing, an organization must demonstrate that it has at least one individual member who has standing to participate, in accordance with a three-part judicial test. *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-94 (1979). The organization must: (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354, *aff'd in part, rev'd in part on other grounds*, CLI-98-021, 48 NRC 185 (1998).

2. Petitioners Have Demonstrated Standing to Intervene in this Proceeding.

Petitioners state the following with respect to their interests in this proceeding.

[NIRS] is a nonprofit corporation with over 6000 members, a number of whom live within the State of New Jersey of whom make their residences and places of occupation and recreation within fifty (50) miles of [OCNGS]. (sic)

[JSNW] is a citizen organization...with more than 900 supporters who live within the fifty (50) mile radius of the Emergency Planning Zone of Oyster Creek.

[GRAMMIES] is an organization of concerned citizens within the emergency planning zone of the [OCNGS]. There are one hundred and fifty members who either reside, recreate, or are employed within the 50-mile emergency planning zone.

[NJSC] has approximately 23,000 members statewide a number of reside, recreate and work within the 50 mile emergency planning zone for Oyster Creek. (sic)

[NJEF] is a non-profit organization that is part Clean Water Action with 110,000 members in New Jersey and 90 member groups.⁴

[NJPIRG] has 25,000 citizen members, many of whom live within the 50-mile radius of the [OCNGS]

The Declarations of members and supporters are annexed to this Request for a Hearing and Petition to Intervene, with each individual declarant identifying his or her affiliation with each of the petitioning organizations.

Petitioners, as organizational intervenors, believe that their members' interests will not be adequately represented without this action to intervene, and without the opportunity to participate as full parties in this proceeding. If the Oyster Creek license is extended without first resolving the Petitioners'-Intervenors' safety concern, this nuclear generating

⁴ In the Petition, the New Jersey Environmental Federation identifies itself, the number of its members, and the location of its office in Belmar, New Jersey, but does not state, as do the other Petitioners, that it has members who live within the 50-mile EPZ of Oyster Creek. See Petition at 2. However, Petitioners offer a declaration of Amy Goldsmith, who states that she is a member of NJEF and lives within 50 miles of the OCNGS. See Petition at Declarations. In addition, service of two additional Petitioners' Declarations was made upon the NRC on November 17, 2005. See "Certificate of Service for Additional Petitioners' Declarations," November 14, 2005. Therefore, by the Staff's count, it now possesses one declaration in support of standing of each of the groups identified in the petition, and two declarations on behalf of JSNW.

station may operate unsafely and pose an unacceptable risk to the environment and jeopardize the health, safety, and welfare of the respective Petitioners' members who live, recreate, and conduct business within the vicinity of the nuclear power station.

Petition at 1-3. As stated above, there are two means for an organization to demonstrate standing in an NRC adjudicatory proceeding. First, an organization may assert injury to its organizational interests and demonstrate that these interests are protected by the AEA or NEPA. See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 529-39 (1991). Second, an organization may base standing on the interests of the members that it represents. *Id.* at 530-31.

a. Petitioners Have Failed to Demonstrate That They Have Organizational Standing.

With respect to organizational interests, Petitioners have not satisfied the requirement to demonstrate an "injury in fact." In their Petition, Petitioners state that "their members' interests will not be adequately represented without this action to intervene, and without the opportunity to participate as full parties in this proceeding." Petition at 2. Petitioners further state that if their safety concerns and environmental issues are not resolved before renewing the Oyster Creek license, the plant "may operate unsafely and pose an unacceptable risk to the environment, and jeopardize the health, safety and welfare of the respective Petitioners' members who live, recreate, and conduct business within the vicinity of the nuclear power station." Petition at 2-3.

Generalized concerns, such as these, do not result in any distinct and palpable harm sufficient to confer standing. See *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983). For an organization to have standing to participate in an adjudicatory proceeding, it must demonstrate more than a desire to vindicate its "own value preferences." See *Sierra Club*, 405 U.S. at 740. It must show that it has itself suffered an injury and thus has a "direct stake in the outcome." *Id.* at 738, 740. Petitioners' recitation of

their generalized environmental and safety concerns amounts to a mere expression of an “interest” in a problem, which is insufficient to confer standing. *Id.* at 739; Petition at 2-3. Petitioners do not evidence that any harm would be directly experienced by the organizations and do not demonstrate that any of the Petitioners have any real and actual “stake in the outcome.” *See Sierra Club*, 405 U.S. at 738, 740. Further, Petitioners have not alleged any tangible “injury in fact” to any of their organizational interests that is fairly traceable to the license renewal application. The concerns articulated by Petitioners are thus insufficient to establish their “interest in the proceeding” under 10 C.F.R. § 2.309(d)(1). For these reasons, NIRS, JSNW, GRAMMIES, NJEF, NJSC, and NJPIRG have each failed to establish organizational standing.

b. Petitioners Have Demonstrated Representational Standing.

Petitioners have established representational standing. To demonstrate standing based on the interests of its members, a group must show that the licensing action it challenges may injure the group or someone the group is authorized to represent. *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-94-14, 46 NRC 55, 56 (1997). The organization must identify at least one member by name and address, demonstrate how that member’s interests may be affected, and show that the group is authorized to request a hearing on behalf of that member. *Yankee Rowe*, LBP-98-12, 47 NRC at 354-55. The Declarations accompanying the Petition identify individuals who will be affected by issuance of a renewed license by name, address, and organizational affiliation. *See* Petition at Declarations. Each Petitioner presents the Declaration of at least one member. *Id.* Furthermore, each Declaration states that:

I believe that the application for a license extension of the Oyster Creek nuclear generating station is sufficiently inadequate as written and my interests will not be adequately represented without this action to intervene and without the opportunity of the Petitioner to participate as a full party in this proceeding on my behalf.

Petition at Declarations. Therefore, Petitioners have satisfactorily demonstrated that affected

members have authorized each of their respective organizations to represent them in the proceeding by attaching declarations to the Petition and by expressing their desire to be represented by their respective organizations. *See id.*

Additionally, to achieve representational standing, the organization must show that it represents a member who would have individual standing based on possible injury. It has been recognized that a member of an organization may base his or her standing upon a showing that his or her residence is within the geographical area that might be affected by an accidental release of fission products. *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001). This approach “presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity.” *Id.* The Commission’s general “rule of thumb” in reactor licensing proceedings is that persons who reside or frequent the area within a 50-mile radius, the Emergency Planning Zone, (“EPZ”) of the facility are presumed to have standing. *See id.* at 148-49. This practice has been applied to license renewal proceedings.⁵ *See id.* In this case, each declarant indicates that he or she resides, works, or recreates within the EPZ. *See* Petition at Declarations. Therefore, the Petition demonstrates that each declarant would have standing in his or her own right, based on proximity to the OCNGS. For these reasons, Petitioners have satisfied the requirements necessary to establish representational standing. Accordingly, Petitioners have met the requirements for standing to intervene in this proceeding.

⁵ The Staff would note that although licensing boards have presumed standing based on proximity to a nuclear power plant in license renewal cases, the Commission has never done so, and, in several cases, has expressly declined to apply a proximity presumption in license renewal cases. *See, e.g., Duke Energy Corporation* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333, 346 n.2 (1999).

B. Petitioners' Proposed Contention

Although Petitioners have demonstrated standing to intervene pursuant to 10 C.F.R. § 2.309(d)(1), Petitioners have nonetheless failed to submit an adequate petition, because they have failed to proffer an admissible contention.

1. Legal Standards Governing the Admission of Contentions

To gain admission to a proceeding as a party, in addition to satisfying the criteria for standing, a petitioner must submit at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f). See 10 C.F.R. § 2.309(a). The regulations require a petitioner to:

- (i) Provide a specific statement of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1).⁶ The Commission has emphasized that its rules on contention admissibility establish an evidentiary threshold more demanding than a mere pleading requirement and are “strict by design.” *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

The contentions should refer to the specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contentions. *Millstone*, CLI-01-24, 54 NRC at 358 (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 333 (1999)). The petitioner must submit more than “bald or conclusory allegation[s]” of a dispute with the applicant. *Id.*

The scope of a license renewal proceeding is limited in both the safety and environmental contexts. The scope of Commission review determines the scope of admissible contentions in a renewal hearing absent a Commission finding under 10 C.F.R. § 2.335 (formerly § 2.758). *See* 60 Fed. Reg. 22,461, 22,482 n.2; *Turkey Point*, LBP-01-06, 53 NRC at 152. Review of safety issues is limited to “a review of the plant structures and components that will require an *aging* management review for the period of extended operation and the plant’s systems, structures and components that are subject to an evaluation of time-limited *aging* analyses.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 363-64 (2002) (citations omitted) (emphasis in original). *See also* *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 90 (2004), *aff’d*, CLI-04-36, 60 NRC 631 (2004);

⁶ Although the Commission recently revised its Rules of Practice in 10 C.F.R. Part 2, the provisions of § 2.309 “incorporate the longstanding contention support requirements of former § 2.714 - no contention will be admitted for litigation in any NRC adjudicatory proceeding unless these requirements are met.” Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004).

Balt. Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998); 10 C.F.R. §§ 54.4, 54.21 (a) & (c).

The scope of the environmental review is limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c). See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 11-13 (2001). As reflected in *Turkey Point*, consideration of environmental issues in the context of license renewal proceedings is specifically limited by 10 C.F.R. Part 51 and by the NRC's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants" (NUREG-1437) ("GEIS"). *Id.* A number of environmental issues potentially relevant to license renewal are classified in 10 C.F.R. Part 51, Subpart A, Appendix B as "Category 1" issues, which means that "the Commission resolved the[se] issues generically for all plants and those issues are not subject to further evaluation in any license renewal proceeding." *Turkey Point*, LBP-01-06, 53 NRC at 152-53, *aff'd*, CLI-01-17, 54 NRC at 13. The remaining issues in Appendix B, designated as "Category 2," must be addressed by the Applicant in its environmental report, and in the NRC's supplemental environmental impact statement for the facility at issue pursuant to 10 C.F.R. §§ 51.71(d) and 51.95(c). *Id.*

2. Petitioners Have Not Proffered an Admissible Contention.

For the reasons set forth below, Petitioners' proffered contention is not admissible.

Petitioners' Proposed Contention:

The Petitioners contend that the licensee's application is significantly deficient by failing to adequately and reasonably assure the continued integrity for the requested twenty (20) year license extension for the safety-related containment component, the drywell liner or drywell shell, by providing confirmatory ultrasonic testing (UT) measurements at all critical areas of the known degraded component to determine the actual remaining wall thickness of the vitally important containment component. Petitioners contend that failing to [do] so unreasonably jeopardizes the health and safety of the Petitioners' members. The Petitioners therefore contend that as part of this licensing proceeding that the applicant be required to conduct an adequate number of confirmatory UT measurements using state of the art equipment at all levels of the drywell liner, including multiple measurements at the area formerly known as the "sand bed region" and also be

required to submit the results to the United States Nuclear Regulatory Commission as publicly available documents as part of this license extension proceeding for the Petitioners' independent review and analysis. The Petitioners further contend that the applicant's new UT measurements at all critical areas, the NRC and the Petitioners' independent analysis shall concur with ASME standards governing the safety limitations of the known degraded drywell liner. The Petitioners further contend that the UT measurements be taken periodically for the life of the reactor at all critical levels of the drywell liner including the area formerly known as the "sand bed region" to include the requested 20-year extension to confirm that the actual corrosion measurements are as projected and that additional UT measurements be greatly expanded into areas not previously inspected.

Petition at 3-4 (emphasis in original). There are no stated bases for this contention.

Staff Response to Petitioners' Proposed Contention:

Petitioners' Proposed Contention is inadmissible. The Proposed Contention does not entitle the Petitioners to relief, does not establish a genuine dispute on a material issue of law or fact, and lacks sufficient basis and support.

Background

Although Petitioners' Proposed Contention alleges that the Oyster Creek LRA is deficient by failing to provide confirmatory UT testing at "all critical areas," see Petition at 3, a distinction should be drawn between the "sand bed" region of the drywell and the "upper" (above the sand bed) region. See Oyster Creek LRA at 3.5-19 - 3.5-20; see *a/so* Petitioners' Exh. 9. The memorandum attached to the Petition appears to deal only with the sand bed region, while the Proposed Contention makes reference to "all" levels of the drywell region, but seems primarily concerned with corrosion in the sand bed region as well. See Petition at 3, 13; at Memorandum from Dr. R. Hausler, Corro-Consulta, to P. Gunter, NIRS, Re: Oyster Creek Drywell Liner Corrosion (Nov. 10, 2005) ("Corro-Consulta Memorandum"). In 1995, the NRC approved changes to the Oyster Creek drywell corrosion monitoring program. Petitioners' Exh. 9. Pursuant to this program, UT measurements at critical locations of the upper drywell have been taken during every other refueling outage. See Petition at 12; Oyster Creek LRA at 3.5-21. Additionally, UT measurements were taken in the sand bed

region in 1996 and the epoxy coating was visually inspected in 2000 and 2004. Oyster Creek LRA at 3.5-20.

The Oyster Creek LRA addresses the issue of drywell thickness, stating, in part:

The Oyster Creek ASME Section XI, Subsection IWE aging management program (B.1.27) ensures that the reduction in vessel thickness will not adversely affect the ability of the drywell to perform its safety function.

The ASME Section XI, Subsection IWE aging management program:

- Performs periodic UT inspections at critical locations
- Performs calculations to track corrosion rates
- Projects vessel thickness based on conservative corrosion rates
- Demonstrates that the minimum required vessel thickness is maintained

Inspections conducted since 1992 demonstrate that as a result of corrective actions the corrosion rates are very low or in some cases have been arrested. The drywell surfaces that were coated do not show signs of deterioration. Drywell vessel wall thickness measurements indicate there is substantial margin to the minimum wall thickness, even when projected to the year 2029 using conservative estimates of the corrosion rates. Continued assessment of the observed drywell vessel thickness ensures that timely action can be taken to correct degradation that could lead to loss of the intended function. Additional information is provided in Reference 4.8.21.

....

The Oyster Creek ASME Section XI, Subsection IWE aging management program assures that the Oyster Creek drywell vessel thickness will not be reduced to less than the minimum required value in any future operation.

Therefore, the effects of loss of material on the intended function of the Drywell will be adequately managed in accordance with 10 C.F.R. 54.21(c)(1)(iii) for period of extended operation.

Oyster Creek LRA at 4-55. In the NRC Safety Evaluation Report for Oyster Creek referenced by Petitioners, the NRC approved the Oyster Creek drywell monitoring program, which provides for UT testing “at critical areas[.]” See Petitioners’ Exhibit 9; Oyster Creek LRA at 4-55.

Petitioners’ Proposed Contention Lacks Adequate Basis and Fails to Establish a Genuine Dispute on a Material Issue of Law or Fact.

Upper Drywell Region:

With respect to the upper region of the drywell, Petitioners raise no genuine dispute of material fact or law. While the contention requests that UT measurements be performed at critical areas, see Petition at 3, the Oyster Creek LRA and the NRC documents referenced in the Petition show that UT measurements are in fact being performed at critical locations in the upper region of the drywell in accordance with an NRC-approved monitoring system. See Petitioners' Exhibit 9. Petitioners also ignore the fact that the aging management program for the OCNGS drywell shell, ASME Section XI, Subsection IWE, does in fact include the performance of periodic UT inspections at critical locations of the drywell shell. See Oyster Creek LRA at 3.5-18 and 4-55. Petitioners' Proposed Contention does not dispute any of the factual assertions contained in the Oyster Creek LRA or cite or allege any specific deficiencies in the proposed aging management program. Nor do Petitioners assert that the OCNGS is not complying with the program or that the licensee's proposed program or implementation is in violation of any regulatory requirement. Therefore, Petitioners' Proposed Contention raises no genuine issue of material law or fact and lacks an adequate basis.

In addition, Petitioners' Proposed Contention appears to rely on outdated information regarding maximum drywell pressure, and, therefore, the applicable safety margin with respect to the drywell liner. The Petition cites an NRC document that summarizes a meeting in May 1993 in which the Oyster Creek Drywell Corrosion Mitigation Program was discussed. See Petition at 9; Petitioners' Exh. 4. Petitioners cite, in support of their contention, figures documenting UT measurements indicating safety margins regarding drywell liner thickness in different areas. See Petition at 9; Petitioners' Exh. 4. However, an Oyster Creek license amendment and Technical Specification ("TS") change in September 1993 readjusted the maximum pressure in the drywell from 62 pounds per square inch gauge ("psig") to 44 psig,

and the safety margin is, therefore, considerably higher than the Proposed Contention indicates.⁷ This change, Amendment 165, is referenced in the Oyster Creek LRA, which provides that, “[t]he new design pressure, coupled with measures to prevent water intrusion into the gap between the drywell shell and the concrete will allow the upper portion of the drywell to meet ASME code requirements.” Oyster Creek LRA at 3.5-20. Petitioners’ Proposed Contention does not dispute any specific statement of fact in the LRA and ignores this amendment.

Sand Bed Region:

With respect to the sand bed region, Petitioners contention is also deficient. Petitioners claim that UT measurements must be taken “at all levels of the drywell liner, including multiple measurements at the...sand bed region.” Petition at 3. AmerGen has committed to the NRC to perform one-time UT measurements in the sand bed region. See Letter from C. N. Swenson, Site Vice President, Oyster Creek Nuclear Generating Station, to U.S. Nuclear Regulatory Commission, “Additional Commitments Associated with Application for Renewed Operating License - Oyster Creek Generating Station” (Dec. 9, 2005). These one-time UT measurements will be taken from inside the drywell at locations tested in the 1990s such that the new measurements can be compared with the earlier testing results, and will be taken in accordance with the same ASME Code protocol used to take UT measurements at the upper region of the drywell *Id.* The purpose of these measurements is to “provide a high degree of assurance that the surface coating applied to the liner has arrested corrosion that was previously occurring there” and to “confirm that periodic [visual] inspections of the coating condition, already planned as part of the aging management program for the containment, will insure the long-term

⁷ See Letter from Alexander W. Dromerick, Senior Project Manager, U.S. NRC, to John J. Barton, Vice President and Director, GPU Nuclear Corporation (Sept. 13, 1993), (ML No. 011200289).

integrity of the drywell shell in the sand bed region.” *Id.* This commitment appears to address Petitioners’ demands for “multiple measurements at the...sand bed region” and that such measurements “shall concur with ASME standards.” Petition at 3. Therefore, to the extent that Petitioners Proposed Contention requests such actions, Petitioners’ Proposed Contention is not valid as it does not raise any genuine issue of material law or fact.

The NRC-approved drywell inspection program referenced by Petitioners does not require that UT measurements be taken in the sand bed region, see Petitioners’ Exh. 9, but rather requires that the licensee perform visual inspections of the epoxy coating in the sand bed region. *Id.* The Petitioners suggest that visual inspection of the epoxy coating is not adequate for the period of extended operation because visual inspection was contemplated only for the original 40-year term. See Petition at 13. Petitioners, however, do not provide any claims or information that raise a genuine dispute of material law or fact regarding whether the inspection program at the sand bed region will adequately manage aging effects.

In support of their Petition, Petitioners include a document, which represents that it is the opinion of a Dr. Rudolf H. Hausler but is not signed or otherwise presented in affidavit form. See Petition at Corro-Consulta Memorandum. In addition, Petitioners do not provide Dr. Hausler’s qualifications or credentials and have not established his opinion as that of an expert on the subject matter, a burden borne by Petitioners. See, e.g., *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1404-05 (1977).

In addition, the opinion provided by Dr. Hausler actually contradicts Petitioners’ contention. Dr. Hausler opines, without support, that UT measurements through an epoxy coating would not be accurate. Petition at Corro-Consulta Memorandum. He also opines that optical measurements would be more accurate. *Id.* However, Petitioners’ Proposed Contention specifically requests UT measurements at the sand bed region, alleging that visual inspection would not be accurate. See Petition at 3-4. Dr. Hausler’s Memorandum also ignores the fact

that UT measurements at the sand bed region have been taken from inside the drywell shell since the epoxy coating was applied and will be taken from inside the drywell shell under AmerGen's additional commitment to perform UT testing at the sand bed region. See Petitioners' Exh. 4 at 2. Therefore, it is immaterial whether UT measurements through an epoxy coating are accurate. The Petition, therefore, does not provide expert opinion, basis, or factual information in support of the Proposed Contention with respect to the sand bed region.

Taken as a whole, the information that Petitioner supplies does not provide any basis for the claim that the CLB for the drywell liner will not be maintained due to the effects of aging. In fact, the information supplied by Petitioner indicates that, following the initial detection of corrosion in the drywell liner, necessary margins of safety and the current licensing basis have been maintained. See Petition at 5-13 and at Exhs. Confirmatory UT measurements in 1994 showed "no evidence of ongoing corrosion in the upper elevations of the drywell" and that "corrosion has been arrested in the sandbed region..." Petitioners' Exh. 6, at 1. Petitioners provide no basis or support to challenge those findings or suggest that the effects of aging during the period of extended operation will not be adequately managed.

Petitioners Proposed Contention raises no genuine material issue of law or fact and lacks proper basis and support. Therefore, Petitioners' Proposed Contention is inadmissible.

CONCLUSION

Petitioners have established standing to intervene in this proceeding, but have failed to proffer an admissible contention. Accordingly, the Licensing Board should deny the Petition.

Respectfully submitted,

/RA/

Ann P. Hodgdon
Daniel Hugo Fruchter
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of December, 2005

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO REQUEST FOR HEARING AND PETITION TO INTERVENE" 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 as indicated by an asterisk, or by electronic mail, with copies by U.S. mail, first class, as indicated by double asterisk, this 14th day of December, 2005:

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