

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED 05/28/08  
SERVED 05/28/08

COMMISSIONERS

Dale E. Klein, Chairman  
Gregory B. Jaczko  
Peter B. Lyons  
Kristine L. Svinicki

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In the Matter of )

AmerGen Energy Company, LLC )

(License Renewal for Oyster Creek Nuclear )  
Generating Station) )

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) Docket No. 50-219-LR  
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**CLI-08-10**

**ORDER (REQUESTING ADDITIONAL BRIEFS)**

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) have petitioned for Commission review<sup>1</sup> of the Initial Decision of the Atomic Safety and Licensing Board, LBP-07-17.<sup>2</sup> In its decision, the Board rejected Citizens' challenge to the renewal of the operating license of AmerGen Energy

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<sup>1</sup> *Citizens' Petition for Review of LBP-07-17 and the Interlocutory Decisions in the Oyster Creek Proceeding* (January 14, 2008). Initially, petitioners referred to themselves collectively as "NIRS" — for ease of reference we use their later choice, "Citizens," throughout this decision.

<sup>2</sup> *AmerGen Energy Co. LLC (Oyster Creek Nuclear Generating Station)*, LBP-07-17, 66 NRC 327 (2007).

Company, LLC (AmerGen or Applicant) for its Oyster Creek Nuclear Generating Station (Oyster Creek). AmerGen<sup>3</sup> and the NRC Staff<sup>4</sup> filed answers opposing the petition for review. Citizens replied to AmerGen's and the Staff's filings.<sup>5</sup>

The initial decision included an "Additional Statement" by Judge Baratta,<sup>6</sup> one of two technical judges on the Board, in which he expressed his agreement with the majority except on the single question of "whether the Licensee has fully shown that there is reasonable assurance that the factor of safety required by the regulations will be met throughout the period of extended operation assuming a 4-year (every other refueling) inspection cycle."<sup>7</sup> In this connection, Judge Baratta expressed concern about the extent of knowledge about the current thickness of the drywell shell and wanted a "conservative best estimate analysis of the actual drywell shell" to be performed.<sup>8</sup>

To perform this analysis, Judge Baratta suggested imposing an additional requirement on the 3-dimensional (3-D) finite element structural analysis of the drywell shell that the Applicant committed to perform prior to the period of extended operation.

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<sup>3</sup> *AmerGen's Answer Opposing Citizens' Petition for Review of LBP-07-17 and the Interlocutory Decisions in the Oyster Creek Proceeding* (January 24, 2008) (AmerGen Answer).

<sup>4</sup> *NRC Staff's Answer to Citizens' Petition for Review of LBP-07-17* (January 24, 2008).

<sup>5</sup> *Citizens' Consolidated Reply Regarding Petition for Review of LBP-07-17 and the Interlocutory Decisions in the Oyster Creek Proceeding* (January 29, 2008).

<sup>6</sup> LBP-07-17, 66 NRC at 373 (Additional Statement).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 376.

The AmerGen commitment (Staff's proposed license condition 7<sup>9</sup>), on which Judge Baratta would impose the additional requirement, reads:

AmerGen will perform a 3-D finite element structural analysis of the primary containment drywell shell using modern methods and current drywell shell thickness data to better quantify the margin that exists above the Code required minimum for buckling. The analysis will include sensitivity studies to determine the degree to which uncertainties in the size of thinned areas affect Code margins. If the analysis determines that the drywell shell does not meet required thickness values, the NRC will be notified in accordance with 10 [C.F.R. Part] 50 requirements.<sup>10</sup>

On top of this commitment, Judge Baratta would specifically require AmerGen "to perform a series of sensitivity analyses, at least one of which includes the use of an extrapolation scheme to determine the thicknesses between the measured locations."<sup>11</sup>

In its Answer to Citizens' Petition for Review, in discussing this issue, AmerGen states that "[i]n fact, AmerGen has committed to conduct such an analysis, including sensitivity analyses that Judge Baratta refers to in his Additional Statement."<sup>12</sup>

In view of the foregoing, the Commission asks the parties to address the following:

Explain whether the structural analysis that AmerGen has committed to perform, and that is reflected in the Staff's proposed license condition, matches or bounds the sensitivity analyses that Judge Baratta would impose. In any event, explain whether additional analysis is necessary.

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<sup>9</sup> NRC Staff Exh. 1, at 1-18.

<sup>10</sup> AmerGen Exh. 10, encl. at 11.

<sup>11</sup> LBP-07-17, 66 NRC at 376.

<sup>12</sup> AmerGen Answer at 9.

Initial briefs on this question should be filed fourteen days from the date of this order, and are limited to ten pages in length. If desired, reply briefs may be filed seven days later, with a five-page limitation.

IT IS SO ORDERED.

For the Commission

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 28<sup>th</sup> day of May, 2008