

**RAS 11007**

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

**DOCKETED 01/10/06**

**SERVED 01/10/06**

Before Administrative Judges:

E. Roy Hawkens, Chairman  
Dr. Paul B. Abramson  
Dr. Anthony J. Baratta

In the Matter of

AMERGEN ENERGY COMPANY, LLC

(License Renewal for Oyster Creek Nuclear  
Generating Station)

Docket No. 50-0219-LR

ASLBP No. 06-844-01-LR

January 10, 2006

ORDER

(Directing Supplemental Briefing on Hearing Requests)

Pending before the Board are two Requests for Hearing and Petitions for Leave to Intervene ("Petitions") dated November 14, 2005, challenging the Oyster Creek Nuclear Generating Station ("Oyster Creek") License Renewal Application submitted by AmerGen Energy Company, LLC ("AmerGen") to the Nuclear Regulatory Commission ("NRC") on July 22, 2005. One Petition was filed by the New Jersey Department of Environmental Protection [hereinafter referred to as New Jersey], and the other Petition was filed by the Nuclear Information and Resource Service ("NIRS"), 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 [hereinafter referred to collectively as NIRS]. On December 12 and 14, 2005, AmerGen and the NRC filed oppositions to the Petitions.

The Board, having reviewed the above submissions, hereby directs additional briefing consistent with the following instructions:

1. Regarding NIRS's contention concerning the drywell liner corrosion management program, for present purposes it may be assumed that NIRS raises valid techni-

cal issues concerning the effectiveness of the program. NIRS, AmerGen, and the NRC Staff shall provide additional briefing, **not to exceed ten (10) pages**, that explains in further detail the **legal basis** for concluding that this contention falls within or without the scope of this license renewal proceeding. In particular, the brief shall: (1) relying with specificity on applicable caselaw, describe with precision the **legal framework** for defining the scope of the proceeding as it relates to the drywell liner corrosion management program; and (2) explain why or why not **as a matter of law** the drywell liner corrosion management program falls within this legal framework. We emphasize that the parties should not reiterate the technical aspects of their arguments; rather, the Board is interested in a further explication of the **legal standards** for determining the boundaries of the scope of this proceeding as it applies to the drywell liner corrosion management program.<sup>1</sup>

2. Regarding New Jersey's contention concerning the combustion turbines, New Jersey, AmerGen, and the NRC Staff shall provide additional briefing, **not to exceed five (5) pages**, identifying with specificity the **contractual agreement (or its equivalent)** which demonstrates that AmerGen can rely on First Energy

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<sup>1</sup> The Board is aware that a license renewal safety review seeks to "mitigate the 'detrimental effects of aging resulting from operation beyond the initial license term'" and, accordingly, that Commission rules "focus[] the renewal review on plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation." Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001) (quoting 60 Fed. Reg. 22,461, 22,463, 22,469 (May 8, 1995)). We seek greater specificity as to the ambit of this legal standard. To assist us in fleshing out the meaning and actual applicability of this standard, we ask the participants to discuss what they view as **illustrative examples** of contentions concerning plant systems, structures, and components that fall within and without this standard, and explain why such examples are similar to or distinguished from NIRS's contention concerning the drywell liner corrosion management program.

to maintain, inspect, and test the combustion turbines in accordance with AmerGen's aging management plan. Additionally, the participants shall **explicitly state what would happen** (with cites to any governing regulatory, licensing, or contractual provision) if the combustion turbines become unavailable, or if AmerGen's aging management plan for the combustion turbines is not properly implemented. Finally, the participants shall **explain why the regulatory requirements** in 10 C.F.R. § 50.63 and the General Design Criteria for Nuclear Power Plants (Appendix A, Part 50, Criterion 17) are sufficient (or not) to ensure that Oyster Creek will have an adequate source of backup power.

The supplemental briefs shall be due on **Tuesday, January 17, 2006**.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>2</sup>

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E. Roy Hawkens, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 10, 2006

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<sup>2</sup> Copies of this order were sent this date by Internet e-mail to counsel for: (1) AmerGen; (2) New Jersey; (3) NIRS; and (3) the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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 foregoing LB ORDER (DIRECTING SUPPLEMENTAL BRIEFING ON HEARING REQUESTS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
E. Roy Hawkens, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Anthony J. Baratta  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Ann P. Hodgdon, Esq.  
Daniel Hugo Fruchter, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Michele R. Donato, Esq.  
P.O. Box 145  
106 Grand Central Avenue  
Lavallette, NJ 08735

Docket No. 50-219-LR  
LB ORDER (DIRECTING SUPPLEMENTAL  
BRIEFING ON HEARING REQUESTS)

Paul Gunter, Director  
Reactor Watchdog Project  
Nuclear Information  
and Resource Service  
1424 16<sup>th</sup> Street, NW, Suite 404  
Washington, DC 20036

Bradley M. Campbell, Commissioner  
New Jersey Department of  
Environmental Protection  
P.O. Box 402  
Trenton, NJ 08625-0402

Ron Zak  
New Jersey Department of  
Environmental Protection  
Nuclear Engineering  
P.O. Box 415  
Trenton, NJ 08625-0415

Suzanne Leta  
NJPIRG  
11 N. Willow St.  
Trenton, NJ 08608

Donald J. Silverman, Esq.  
Kathryn M. Sutton, Esq.  
Alex S. Polonsky, Esq.  
Morgan, Lewis, & Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004

Jill Lipoti, Director  
New Jersey Department of  
Environmental Protection  
Division of Environmental Safety and Health  
P.O. Box 424  
Trenton, NJ 08625-0424

J. Bradley Fewell, Esq.  
Exelon Corporation  
200 Exelon Way, Suite 200  
Kennett Square, PA 19348

Richard Webster, Esq.  
Rutgers Environmental Law Clinic  
123 Washington Street  
Newark, NJ 07102-5695

[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 10<sup>th</sup> day of January 2006