

RAS 11084

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

DOCKETED 01/23/06

SERVED 01/23/06

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 23, 2006

ORDER

(Directing Supplemental Briefing on Hearing Request)

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 Answers opposing the Petitions.

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

New Jersey's proposed Contention 2 states (New Jersey Petition at 6) (emphasis omitted):

10 C.F.R. § 50.55a(c)(4) states, "For a nuclear power plant whose construction permit was issued prior to May 14, 1984 the applicable Code Edition and Addenda for a component of the reactor coolant pressure boundary continue to be that Code Edition and Addenda that were required by Commission regulations for such component at the time of issuance of the construction permit." [AmerGen] appears unwilling to maintain this requirement for the proposed license extension period as presented in the application submitted . . . on July 22, 2005. As a result, [AmerGen] is also in violation of 10 C.F.R. § 54.21(a)(3) which states that the licensee must, as part of its application, "For each structure and component . . . demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation." CLB is defined in 10 C.F.R. § 54.3(a) as the current licensing basis for the plant.

In further explanation of this contention, New Jersey states that "Sections 3.1.26, 5.2.2.1 and 5.3.1.1 of the Oyster Creek [Updated Final Safety Analysis Report] document the original [reactor pressure vessel] Purchase Specification reactor vessel design requirements, including the allowable fatigue usage factor of 0.8 for the reactor pressure vessel" (New Jersey Petition at 7) (emphasis omitted). The cumulative usage factor ("CUF") of 0.8 is based on the ASME Code in effect at the time the Oyster Creek reactor vessel was designed. New Jersey maintains that in Section 4.3 of the Oyster Creek license renewal application, AmerGen makes extensive use of a CUF for fatigue evaluations for the reactor coolant pressure boundary and associated components of 1.0 rather than the 0.8 CUF specified by the Code Edition and Addenda that were required by Commission regulations at the time of issuance of the construction permit.

The Staff – in its Answer opposing New Jersey's Petition – states that the regulation cited by New Jersey, 10 C.F.R. § 50.55a(c)(4), "is intended . . . to permit a licensee to use the original construction code during the operational phase if it so chooses. . . . A licensee retains the option, under § 50.55a(c), to voluntarily update to a later version of the ASME code which

has been endorsed by § 50.55a” (NRC Staff Answer at 16). As indicated in Exhibit 1 of AmerGen’s Answer, AmerGen intends to revise the Updated Final Safety Analysis Report, and hence the licensing basis, “to incorporate an updated metal fatigue analysis limit for reactor coolant pressure boundary components, consistent with the current requirements of [10 C.F.R. § 50.55a] for operating plants,” by changing the CUF from 0.8 to 1.0. **It appears to the Board, however, that until this revision is implemented, the license renewal application is not based upon the now-effective CLB as required by 10 C.F.R. § 54.21(a)(3).**

New Jersey, AmerGen, and the NRC Staff are directed to submit supplemental briefs, **not to exceed five (5) pages, addressing the requirements of the governing regulations with regard to this issue.** The supplemental briefs shall be due on **Monday, January 30, 2006.**

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 23, 2006

¹ 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 REQUEST) 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 REQUEST)

Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information
and Resource Service
1424 16th 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]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of January 2006