

January 30, 2006

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'S RESPONSE TO LICENSING BOARD'S ORDER
DIRECTING SUPPLEMENTAL BRIEFING

INTRODUCTION

On January 23, 2006, the Atomic Safety and Licensing Board ("Board") issued an Order (Directing Supplemental Briefing on Hearing Request) ("Order") directing the New Jersey Department of Environmental Protection ("NJDEP"), AmerGen Energy Company, LLC ("AmerGen"), and the U.S. Nuclear Regulatory Commission Staff ("Staff") to file supplemental briefs regarding NJDEP's second proposed contention advanced in its Request for Hearing and Petition to Intervene ("Petition"), filed November 14, 2005. See Order at 2-3. The Staff hereby files its response to the Board's Order.

DISCUSSION

NJDEP's second proposed contention concerns the cumulative usage factor ("CUF") used by AmerGen in its license renewal application ("LRA"). See Petition at 6. NJDEP contends that AmerGen's use of a CUF of 1.0 for metal fatigue evaluations for the reactor coolant pressure boundary and associated components, rather than the 0.8 CUF used at the time of Oyster Creek's initial licensing, violates NRC regulations. See Petition at 6; Order at 2. NJDEP contends that 10 C.F.R. §§ 50.55a©)(4) and 54.21(a)(3) require that AmerGen use a CUF of 0.8 and not the 1.0 CUF specified by a more recent edition of the ASME Boiler and Pressure Vessel Code.

See Petition at 6-7.¹

The Board, in its Order, notes that Exhibit 1 of AmerGen's Answer states that AmerGen intends to revise the Updated Final Safety Analysis Report ("UFSAR"), and hence its 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 by changing the CUF from 0.8 to 1.0. See Order at 3. The Board expresses its view that "until this revision is implemented, the license renewal application is not based upon the now-effective CLB [current licensing basis] as required by 10 C.F.R. § 54.21(a)(3)," and directs that NJDEP, AmerGen, and the Staff provide additional briefing "addressing the requirements of the governing regulations with regard to this issue." *Id.*

The Board, in its Order, states its belief that 10 C.F.R. § 54.21(a)(3) requires the use of the CUF used in the "now-effective" CLB. See Order at 3. However, this interpretation of 10 C.F.R. § 54.21(a)(3) is incorrect, as § 54.21(a)(3) merely requires that a licensee 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."²

¹ As the Staff notes in its Answer to NJDEP, the purpose of 10 C.F.R. § 50.55a(c)(4), which is cited by NJDEP, is to permit a licensee to make use of the original construction code if the licensee so chooses. See Final Rule, Industry Codes and Standards, Amended Requirements, 64 Fed. Reg. 51,370, 51,380-81 (1999). However, NRC regulations permit a licensee to voluntarily update to a later version of the ASME code that has been endorsed by the NRC and incorporated into section 50.55a by reference. See 10 C.F.R. § 50.55a; 64 Fed. Reg. at 51,380-81; see also "NRC Staff Answer to Request for Hearing and Petition to Intervene of the State of New Jersey Department of Environmental Protection," dated December 20, 2005 (replacement copy) at 16-17.

² Current licensing basis (CLB) is defined in the NRC's license renewal regulations, in part, as:

the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the licensee that are docketed in effect).

10 C.F.R. § 54.3(a).

It does not require that the LRA be based on the CLB as of the time the LRA is submitted, and does not prevent a licensee or the NRC from making changes to the CLB in the course of the renewal review process or during the period of extended operation.

In fact, NRC regulations explicitly contemplate changes to the CLB during the license renewal review process. NRC regulations provide:

(b) CLB changes during NRC review of the application. Each year following submittal of the license renewal application and at least 3 months before scheduled completion of the NRC review, an amendment to the renewal application must be submitted that identifies any change to the CLB of the facility that materially affects the contents of the license renewal application, including the FSAR supplement.

10 C.F.R. § 54.21(b). Therefore, NRC regulations do contemplate changes to the CLB after the LRA is submitted.

In its proposed rule for license renewal, the Commission proposed that the CLB become fixed at the time of application and remain fixed during the review. See Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,953 (1991). The Commission, however, changed course in the final rule and revised the definition of the CLB to remove the restriction that fixed the CLB as of the time the renewal application was submitted.

See *id.* at 64,649, 64,653-54; 10 C.F.R. § 54.3. In doing so, the Commission acknowledged the expectation that a licensee could make or request changes to the CLB during the license renewal review process and provided for that in the regulation. See 56 Fed. Reg. at 64,953-54; 10 C.F.R. § 54.21(b).

When a licensee makes or requests changes to the CLB after submitting its LRA, these changes must be made under existing regulatory practice, e.g., under 10 C.F.R. § 50.59. See 56 Fed. Reg. at 64,653-54. Renewal applicants are required to update the application by describing changes in the licensing basis, explaining any additional measures needed to ensure that the effects of aging can be managed during the renewal term, and any change in the

effectiveness of programs credited for managing age-related degradation. *Id.* Whether a licensee has correctly identified the potential impact of such changes in its renewal application may be litigated in a hearing on the renewal application. *Id.*

The Board cites 10 C.F.R. § 54.21(a)(3), but this provision is not directly applicable to NJDEP's concern regarding the CUF. Rather, it is 10 C.F.R. § 54.21(c), relating to time-limited aging analyses ("TLAAs"), that is applicable here. TLAAs are defined in § 54.3 as "those licensee calculations and analyses" that, among other things, "are contained or incorporated by reference in the CLB." Section 54.21(c) requires a list of TLAAs and a demonstration that each TLAA meets either § 54.21(c)(1)(i), (ii), or (iii). A program to manage aging effects under § 54.21(c)(1)(iii) is required only if the applicant cannot demonstrate under sub-paragraphs (i) or (ii) that the TLAA remains valid for the period of extended operation. Section 54.21(d) is applicable to both §§ 54.21(a) and (c), and requires an FSAR supplement containing a summary description of the programs and activities for managing the effects of aging and the evaluations of time-limited aging analyses for the period of extended operation determined by paragraphs (a) and (c).

AmerGen has committed to making a change to its CLB and will update its UFSAR to reflect a CUF of 1.0 by the beginning of the period of extended operation. See Letter from C.N. Swenson, "Additional Commitments Associated with Application for Renewed Operating Licence - Oyster Creek Generating Station," dated December 9, 2005 (ADAMS Accession No. ML053490219).

That commitment will become part of the CLB as it is defined in NRC license renewal regulations, see 10 C.F.R. § 54.3(a), upon AmerGen's updating its UFSAR. See 10 C.F.R. § 54.21(d).

Respectfully submitted,

/RA/

Daniel Hugo Fruchter
Counsel for NRC Staff

Dated at Rockville, Maryland
this 30th day of January, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO LICENSING BOARD'S ORDER DIRECTING SUPPLEMENTAL BRIEFING" 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 30th day of January, 2006.

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