

**RAS 11561**

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

**DOCKETED 04/19/06**

**SERVED 04/19/06**

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

April 19, 2006

**MEMORANDUM AND ORDER**

(Prehearing Conference Call Summary, Initial Scheduling Order,  
and Administrative Directives)

In the above-captioned proceeding, this Licensing Board granted a hearing request by six organizations<sup>1</sup> – hereinafter referred to collectively as NIRS – to challenge an application by AmerGen Energy Company, LLC (“AmerGen”) to renew its operating license for the Oyster Creek Nuclear Generating Station (“Oyster Creek”) for twenty years beyond the current expiration date of April 9, 2009. See LBP-06-07, 63 NRC \_\_, \_\_ (slip op. at 2) (Feb. 27, 2006). On April 10, 2006, we convened a telephonic pre-hearing conference call to discuss case management and scheduling. This Memorandum and Order summarizes significant aspects of that call, establishes an initial scheduling order, and provides administrative directives that shall apply to the conduct of this proceeding.

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<sup>1</sup> The six organizations are 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.

## I. SUMMARY OF CONFERENCE CALL

During the conference call of April 10, 2006 (which was transcribed), counsel for the parties (AmerGen, NIRS, and the NRC Staff) and New Jersey<sup>2</sup> – addressed each of the topics listed in the Board’s order of April 5, 2006. See Notice of Conference Call at 1-2 (Apr. 5, 2006) (unpublished). The following discussion summarizes significant aspects of that conference call.

### A. Mandatory Disclosure

The Board observed that it had received correspondence from the parties suggesting that the mandatory disclosure process was proceeding apace. See Transcript (“Tr.”) at 7. The parties indicated that, in an effort to amicably resolve any potential discovery disputes arising from the initial disclosures, they would submit a motion to extend the time allowed for seeking to compel discovery arising out of those disclosures until May 5, 2006 (id. at 7-11). The parties filed their joint motion on April 12, 2006, and on the same day, the Board issued an Order granting the motion. See Order (Extending Time to File Motions Relating to Initial Mandatory Disclosures) (Apr. 12, 2006) (unpublished). Consistent with the parties’ request, the Order does not extend to potential disputes over whether any documents are properly categorized in the initial mandatory disclosures as proprietary.

The parties requested an increase in the interval for supplementing mandatory disclosures from 14 days (10 C.F.R. § 2.336(d)) to 30 days (Tr. at 17-18). The Board granted that request (id. at 18).

Counsel for AmerGen indicated that he would submit a Proposed Protective Order and Proposed Non-Disclosure Declaration (Tr. at 19). After the other parties have had an oppor-

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<sup>2</sup> New Jersey presently has neither the status of a party or an interested state in this proceeding (10 C.F.R. § 2.315(c)); however, it was agreed that the parties and the Board would, for the time being, provide New Jersey with courtesy copies of filings and submissions. See Transcript (“Tr.”) at 16-17.

tunity to review and comment upon these proposed documents, the Board will issue an appropriate Memorandum and Order (ibid.).

**B. Safety And Environmental Evaluations**

Counsel for the NRC Staff stated that the projected time frames for issuance of the final Safety Evaluation Report (“SER”) and Supplemental Environmental Impact Statement (“SEIS”) continued to be December 2006 and January 2007, respectively (Tr. at 21).

Counsel for AmerGen observed (Tr. at 22) that the SER with open items was scheduled to be issued in August 2006, and that – in the interest of expedition (10 C.F.R. § 2.332(d)), and in the absence of new or additional contentions<sup>3</sup> – it may be appropriate to use the August 2006 report as the triggering event for a hearing consistent with the model milestones for Subpart L hearings provided in 10 C.F.R. Part 2, Appendix B (II). The Board is mindful of its authority, in the interest of expedition, to conduct a hearing on a safety issue prior to issuance of the final SER. The Board will thus give serious consideration to scheduling requests that seek to promote an expedited proceeding, provided it can be achieved consistent with the development of a complete record. However, absent such a scheduling request, and absent any new or additional contentions, the Board will assume that any eventual hearing will be keyed to issuance of the final SER consistent with the model milestones for Subpart L hearings (infra Part II).

**C. Settlement**

The Board advised the parties that it stood ready to provide assistance if they wished to employ “alternate dispute resolution to address the issues without the need for litigation” (10

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<sup>3</sup> Currently pending before the Commission is an appeal by New Jersey challenging the Board’s February 27, 2006 Memorandum and Order (LBP-06-07) rejecting its proposed environmental-related contentions as inadmissible. Pending before the Board is a motion from NIRS asking the Board to reconsider its March 22, 2006 Memorandum and Order (LBP-06-11) denying NIRS’s motion to amend its existing contention or add additional safety-related contentions. As the Board indicated during the conference call (Tr. at 23, 25-26), a decision by the Commission or the Board that results in additional contentions will impact the scheduling in this proceeding.

C.F.R. § 2.338). NIRS indicated that AmerGen had made a settlement offer last week, but that NIRS presently lacked the necessary information to evaluate the offer. The Board encouraged AmerGen to provide NIRS with the information that would allow it to fully evaluate the offer, and it emphasized that the “fair and reasonable settlement and resolution of issues . . . is encouraged” (*ibid.*). See Tr. at 23-24.

**D. Preliminary Motions**

Counsel for AmerGen indicated that it would likely be filing two motions in the near future: (1) a motion to dismiss NIRS’s contention on the basis of mootness; and (2) a motion to suspend the mandatory disclosure process pending the Board’s disposition of the motion to dismiss. See Tr. at 20.

Counsel for NIRS indicated that it is considering whether a motion for a Subpart G hearing is warranted. See Tr. at 26.

**E. Summary Disposition Motions**

Although no party evinced an intent to file a motion for summary disposition on the currently admitted contention, no party waived its right to file such a motion at a later date. See Tr. at 26.

**F. Venue**

Counsel for NIRS and New Jersey expressed the view that any eventual hearing should be held in New Jersey and proximate to Oyster Creek, so that affected and interested members of the public could attend (Tr. at 27). Counsel for AmerGen and the NRC Staff had no objection to such a venue (*id.* at 28, 30).

The Board observed that the questions raised in NIRS’s contention involve technical matters, and that if the bulk of evidence underlying such matters is proprietary, it may be necessary to close the hearing (Tr. at 28-29). The parties evinced the view that the public has

an interest in this proceeding, and that it would be well to ensure that the hearing is open to the public to the extent possible (id. at 29-30).

## II. SCHEDULE

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, we establish the following scheduling requirements for this initial stage of the proceeding:

1. The parties shall comply with the mandatory disclosure provision of 10 C.F.R. §§ 2.336 and 2.1203, as modified by this Board's Order of April 12, 2006, which granted the parties' joint motion to extend the time until May 5, 2006 to file motions relating to initial mandatory disclosures.

2. Pursuant to the parties' request during the prehearing conference call (supra p. 2), the interval for supplementing the initial disclosure with information and documents that are subsequently developed or obtained is enlarged from 14 days to 30 days. In its monthly report advising about the existence vel non of additional mandatory disclosures, counsel for the NRC Staff shall advise as to whether the predicted dates for issuance of the draft SEIS (predicted for June 2006), the SER with open items (predicted for August 2006), the final SER (predicted for December 2006), and the final SEIS (predicted for January 2007) have changed. The Staff's report shall update this estimate on a monthly basis, even if only to reflect no change.

3. Consistent with 10 C.F.R. § 2.332(b), it is presumed that the scheduling of significant events in this proceeding will be keyed to the issuance of the final SER, as provided in the model milestones for Subpart L hearings. However, as recognized in subsections 2.332(b) and (d), and as discussed in part during the prehearing conference call (supra p. 3 & n.3), the schedule may be modified based, for example, on the existence of new or additional contentions, the complexity of issues presented, or the ability to expedite the proceeding without adversely affecting the development of the record or impeding the fair resolution of the issues.

4. Insofar that counsel for NIRS intends to argue, pursuant to 10 C.F.R. § 2.310(d), that all or part of the hearing in this case should be conducted pursuant to the procedures in Subpart G (supra p. 4), such motion must be filed by May 8, 2006. If, subsequent to that date, a party receives new information that warrants seeking a Subpart G hearing, the party may file a timely motion requesting such a hearing.

5. The convening of future prehearing conferences will be addressed in subsequent orders. Additional scheduling orders will be issued following such conferences.

### **III. ADMINISTRATIVE DIRECTIVES**

Pursuant to 10 C.F.R. §§ 2.319 and 2.332(a), the following standard administrative directives shall apply to this proceeding.

#### **A. Notice of Appearance**

If they have not already done so, within 7 days after receipt of this Memorandum and Order, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, if an attorney or representative has a facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well. Counsel or representatives who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information within the same 7 days.

#### **B. Good Faith Consultation**

To maximize the early resolution of issues without Board intervention, motions will be summarily rejected if they are not preceded by a sincere attempt to resolve the issues and include the certification specified in 10 C.F.R. § 2.323(b). Each party shall endeavor to make itself available for consultation and shall cooperate in attempting to resolve the issues. Without

revealing the substance of any settlement discussions, the required certification shall state if the other potential party was not available or refused to discuss the matter.

**C. Service on the Licensing Board and on Other Participants**

**1. Licensing Board Transmittal Information**

For each pleading or other submission filed before the Licensing Board or the Commission in this proceeding, subject to the requirement of subsection 4 below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.304(f) and serving a copy on every other participant in this proceeding in accordance with section 2.305(b), a participant should serve conforming copies on the Licensing Board as follows:

**a. Regular Mail** To complete service on the Licensing Board via first-class mail, a participant should send conforming copies to each of the Board members and the Board's law clerk at the following address:

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

For mail service, the NRC staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

**b. Overnight or Hand Delivery** To complete service on the Licensing Board via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to each of the Board members and the Board's law clerk at the following address:

Atomic Safety and Licensing Board Panel  
Mail Stop T-3F23, Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

It should be noted that use of the Board's regular mail address (see subsection a, above) on an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

**c. Facsimile Transmission** To complete service on the Licensing Board by facsimile transmission, a participant should (i) send one copy by rapifax to the attention of the Licensing Board Chairman at (301) 415-5599 (verification (301) 415-7399); and (ii) that same date, send conforming copies to each of the Board members and the Board's law clerk by regular mail at the address given in subsection a, above.

**d. E-Mail** To complete service on the Licensing Board by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to each of the Board members and the Board's law clerk (erh@nrc.gov, pba@nrc.gov, ajb5@nrc.gov, and daw1@nrc.gov); and (ii) send paper conforming copies that same date to each of the Board members and the Board's law clerk by regular mail at the address given in subsection a, above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen (15) pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to each of the Board members and the Board's law clerk by regular mail at the address given in subsection a, above.
- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen (15) pages, the pleading should be sent by e-mail and the paper conforming copy of the pleading with the attachments should be sent to each of the Board members and the Board's law clerk by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

**2. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail**

For service on the Licensing Board to be timely, any pleading or other submission served by: (i) hand delivery must be received by 4:30 p.m. Eastern Time on the due date; and (ii)



facsimile transmission or e-mail must be received by the Board no later than 11:59 p.m. Eastern Time on the due date.

**3. Service on Other Participants**

Whichever of the methods outlined above is used for service on the Licensing Board, the participant serving the pleading should employ the same or a comparable method to make service on other participants and the Office of the Secretary (e-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov); facsimile number: (301) 415-1101 (facsimile verification number: (301) 415-1966)).

**4. Receipt of All Filings**

Absent some other directive from the Licensing Board, all filings directed to the Board shall be served on the Board and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the Board, the participants may use any of the methods outlined above so long as the filing is timely received by the Board and the other participants.

**D. Limitations on Pleading Length and Reply Pleadings**

**1. Page Limitations**

Any motion filed after the date of this Memorandum and Order, and any related responsive pleadings to such a motion, shall not exceed ten (10) pages in length (including signature page) absent preapproval of the Licensing Board. A request for Board preapproval to exceed this page limitation shall be sought in writing no less than 3 business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must: (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

**2. Reply Pleadings**

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Licensing Board preapproval to file a reply shall be sought in writing no less than 3 business days prior to the time the reply will be filed.<sup>4</sup> A request to file a reply must: (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

**E. Motions for Extension of Time**

A motion for extension of time filed with the Licensing Board shall ordinarily be submitted in writing at least 3 business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must: (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the extension.

**F. Opposing a Request to Exceed Page Limitations, to File a Reply, or to Extend the Time for Filing a Pleading**

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Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Licensing Board, the Office of the Secretary, and counsel for the other participants in the particular proceeding by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

**G. Exhibits/Attachments to Filings**

If a participant files a pleading or other submission with the Licensing Board that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric

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<sup>4</sup> Although the agency's rules of practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within 10 days of the date of service of the response it is intended to address.

designation (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in Section D.1, above.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>5</sup>

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E. Roy Hawkens, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 19, 2006

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<sup>5</sup> Copies of this Memorandum and Order were sent this date by Internet e-mail to counsel for: (1) AmerGen; (2) New Jersey; (3) NIRS; and (4) 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 MEMORANDUM AND ORDER (PREHEARING CONFERENCE CALL SUMMARY, INITIAL SCHEDULING ORDER, AND ADMINISTRATIVE DIRECTIVES) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-219-LR  
LB MEMORANDUM AND ORDER (PREHEARING CONFERENCE  
CALL SUMMARY, INITIAL SCHEDULING ORDER, AND  
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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 19<sup>th</sup> day of April 2006