

June 29, 2007 (3:09pm)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:

E. Roy Hawkens, Chair

Dr. Paul B. Abramson

Dr. Anthony J. Baratta

In the Matter of:)	
)	June 29, 2007
AmerGen Energy Company, LLC)	
)	Docket No. 50-219
(License Renewal for Oyster Creek Nuclear)	
Generating Station))	
)	

JOINT MOTION FOR CLARIFICATION

In accordance with 10 C.F.R. § 2.323(a), AmerGen Energy Company, LLC (“AmerGen”), Citizens¹ and the NRC Staff seek clarification from the Board on two issues discussed in its June 19, 2007 Memorandum and Order (Denying AmerGen’s Motion for Summary Disposition) (“June 19 Order”). Specifically, the parties seek clarification on certain language on page 8, and certain language in footnote 10. Clarification of these aspects of the Board’s June 19 Order will further define the scope of the hearing and thereby conserve party and Board resources by focusing the testimony and, thereby, avoiding unnecessary future litigation, including the filing of motions in limine following direct testimony.

¹ Citizens are 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.

I. Discussion

A. **Current Licensing Basis**

The discussion of AmerGen's analysis of the 2006 UT results on page 8 of the June 19 Order states that a challenge concerning an unexplained deviation from established, valid practices would:

go to the heart of the admitted contention, because it would be relevant to determining whether AmerGen's most recent assessment of UT measurements provides a reasonable assurance of safe operation until the next scheduled UT monitoring is performed.²

The parties respectfully request the Board to clarify whether, in addition to addressing AmerGen's commitment to conduct UT monitoring in the sand bed region at four-year intervals during the period of extended operation that would commence in April 2009, Citizens are permitted to address the interval between the 2006 UT monitoring and the next scheduled monitoring in 2008. AmerGen and the NRC Staff believe that any challenge to the adequacy of AmerGen's UT monitoring program prior to the period of extended operation would amount to a challenge to the safety of current operations of the plant (*i.e.*, the current licensing basis) that is "beyond the scope of a license renewal review because 'those issues already [are] monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight.'"³

B. **Methods for Analysis of Ultrasonic Testing Results**

AmerGen also requests clarification of certain language in footnote 10 of the June 19 Order. The parties agree that the language must be read in conjunction with other

² June 19 Order at 8 (emphasis added).

³ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-07 (slip op. at 7) (Feb. 27, 2006) (quoting *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, *footnote continued*))

language in the Order that precludes a general challenge to AmerGen's statistical methods for analyzing UT data. Specifically, on page 5, the Board states that, "AmerGen is correct in arguing that Citizens are precluded from raising challenges regarding . . . the established methods for analyzing UT results" The Board then states on page 7 as follows:

To be clear, the relevant factual issues that remain litigable in this proceeding pertain to: . . . (3) corrosion rate – including the uncertainties related to its determination [FN 10] – that reasonably may be expected in the sand bed region.

Footnote 10 states:

Uncertainties relating to the corrosion rate may derive from a variety of sources, including the limited accuracy of the measurement method used, the use of a limited number of data points, and the *method used to analyze and interpret the data*. Thus, in addressing uncertainties, the parties may provide evidence associated with the measurement technique *as well as with the interpretation of the data*. The Board's consideration of this information will be for the purpose of determining how much the actual values of thickness can reasonably be expected to differ from the measured values, which, in turn, will inform the Board's judgment regarding whether AmerGen has demonstrated that its UT monitoring plan is sufficient to ensure adequate safety margins.⁴

Thereafter on Page 8 the Board states:

Similarly, although Citizens may not challenge the derivation or validity of the established acceptance criteria or the methodology for analyzing UT results, they are not precluded from arguing that AmerGen's application of acceptance criteria and analytic methodology to the 2006 UT results was inconsistent with past practice. See Citizens' Answer at 5-8, 10. Such a challenge, if advanced by Citizens, would not be an attack on the validity of AmerGen's *established* acceptance criteria and methodology for analyzing UT results. Rather, it would be an assertion that AmerGen's *unexplained deviation* from established, valid practices casts doubt on the most recent analysis.

Units 3 & 4), CLI-01-17, 54 N.R.C. 3, 8 (2001)); *see also* 10 C.F.R. §§ 54.3(a) (defining current licensing basis), 54.29 ("Standards for issuance of a renewed license").

⁴ June 19 Order at 7 n.10 (emphasis added).

The parties disagree on the interpretation of the language concerning analytic methodology in the Order. Citizens' position is that the Order prevents them from raising challenges to established statistical techniques, but allows them to first address which statistical techniques have been established by AmerGen, and then employ or extend those techniques to derive estimates of uncertainty in both the measurements themselves and in parameters derived from the measurements, such as mean thicknesses and past corrosion rates. For example, Citizens intend to show that AmerGen established that it should take account of the uncertainty in the measurements before comparing them to the acceptance criteria, but only occasionally took account of this uncertainty. See Citizens Answer at 10; Oyster Creek Safety Evaluation Report at 4-55 (establishing a data analysis methodology that includes consideration of uncertainty).

AmerGen believes that Citizens clearly cannot challenge any of the statistical techniques applied. Moreover, AmerGen believes that Citizens cannot employ or extend those techniques to derive estimates of uncertainty, as doing so essentially constitutes a challenge to the statistical techniques themselves or the means by which they were applied.

The NRC Staff view is that the Board's Order is unclear as to what constitutes an "established" or "valid" practice and whether, if Citizens came forward with evidence showing the lack of such practices, Citizens would be permitted to show what statistical techniques would be appropriate.

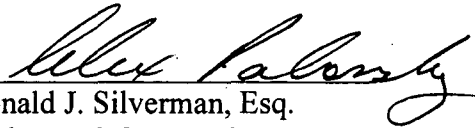
In light of the differing interpretations of the Board's order and the question stated above, the parties request that the Board clarify its ruling regarding the scope of the

Board's inquiry into AmerGen's statistical techniques and the application of those techniques for analyzing UT results.

II. Conclusion

For the foregoing reasons, the Parties respectfully request that the Board provide the clarifications described above. Counsel for Citizens and the NRC Staff have authorized the undersigned AmerGen counsel to submit this joint motion on their behalf.

Respectfully submitted,



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Dated in Washington, D.C.
this 29th day of June 2007.

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Joint Motion for Clarification" were served this day upon the persons listed below, by e-mail and first class mail, unless otherwise noted.

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