

RAS 13848

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

DOCKETED 07/11/07

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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

July 11, 2007

MEMORANDUM AND ORDER
(Clarifying Memorandum and Order Denying
AmerGen's Motion for Summary Disposition)

On June 19, 2007, the Licensing Board in the above-captioned proceeding issued a Memorandum and Order denying a March 30, 2007 Motion for Summary Disposition submitted by AmerGen Energy Company, LLC ("AmerGen").¹ On June 29, 2007, AmerGen submitted on behalf of itself, the NRC Staff, and the intervenors in this case – six organizations hereinafter referred to collectively as Citizens² – a Joint Motion for Clarification [hereinafter Joint Motion] on two principal aspects of the Board's June 19 Order. The Board's clarification is set forth below.

A. Current Licensing Basis

The parties request that the Board clarify the following statement on page 8 of the June 19 Order:

¹ Licensing Board Memorandum and Order (Denying AmerGen's Motion for Summary Disposition) (June 19, 2007) (unpublished) [hereinafter June 19 Order].

² The six organizations 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.

[Citizens may challenge whether] AmerGen's application of acceptance criteria and analytic methodology to the 2006 [Ultrasonic Testing ("UT")] results was inconsistent with past practice. . . . Such a challenge 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.

See Joint Motion at 2. Specifically, the parties question whether, based on the above statement, "Citizens are permitted to address the interval between the 2006 UT monitoring and the next scheduled monitoring in 2008" (ibid.). The answer to this question is "no."

Citizens may not challenge any aspect of AmerGen's UT monitoring program that applies prior to the period of extended operation (i.e., prior to 2009). Such a challenge would constitute an attack on AmerGen's current licensing basis and is beyond the scope of this proceeding.

Of course, as we previously explained (June 19 Order at 6), Citizens may rely upon relevant information arising from AmerGen's 2006 UT measurements to support their challenge to the frequency of AmerGen's UT monitoring program for the period of extended operation. But Citizens may not use such information as a wedge to expand the scope of the admitted contention (id. at 6 n.8).³

B. Methods For Analysis Of Ultrasonic Testing Results

The parties request that the Board clarify certain language in footnote 10 as it applies to subsequent language on page 8 of the June 19 Order (Joint Motion at 3). In footnote 10, the Board stated:

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*

³ If Citizens wish to challenge the adequacy of AmerGen's UT monitoring program for the current licensing term, they may file an enforcement action with the Executive Director for Operations (10 C.F.R. § 2.206).

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.

June 19 Order at 7 n.10 (emphasis added). Thereafter, the Board stated (*id.* at 8):

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. 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.

Although the parties agree that the June 19 Order "precludes a general challenge to AmerGen's statistical methods for analyzing UT data" (Joint Motion at 3), they disagree as to the extent to which Citizens may employ those methods for determining estimates of uncertainty in the measurements themselves and the parameters (such as mean thicknesses and past corrosion rates) derived from the measurements (*id.* at 4).

At the outset, we observe that the burden is on AmerGen (*see* 10 C.F.R. § 2.325) to demonstrate that the periodicity of its UT monitoring program – *i.e.*, testing every four years – will adequately maintain safety margins, such that during the period of extended operation the actual wall thickness will not be reduced below the acceptance criteria. To satisfy its burden, AmerGen must prove that its *established* technique for analyzing the UT data and calculating the rate of corrosion – *i.e.*, the methodology approved by the NRC Staff and relied upon in the Safety Evaluation Report ("SER")⁴ – utilizes inputs that are sufficiently accurate when account is taken of the associated uncertainties and corresponding variances. *See* SER Related to the

⁴ The NRC Staff expressed confusion as to what constitutes an "established" or "valid" practice" (Joint Motion at 4). In the context of this proceeding, the Board considers the methodology relied upon by the NRC Staff in approving AmerGen's application, as described in the SER, as being the established, valid practice.

License Renewal of Oyster Creek Generating Station, NUREG-1875, Vol. 2, at 4-53 to 4-55; id. at 4-59 to 4-61 (citing Calculation No. C-1302-187-5300, “Statistical Analysis of Drywell Thickness Data” [hereinafter Statistical Analysis]). This will assure the Board that the drywell shell will not violate the minimum required thickness during the four years between UT measurements, with a sufficiently high degree of confidence – i.e., a 95% confidence level (see SER at 4-60) – based on AmerGen’s estimates of the mean and the variance.

Although AmerGen bears this burden, Citizens are foreclosed from countering that the methods of calculation or uncertainties contained in AmerGen’s Statistical Analysis are inadequate, or that AmerGen must consider additional uncertainties in performing its analysis. This Board previously has rejected such arguments as not litigable (see June 19 Order at 2 n.4, 5-6; LBP-06-22, 64 NRC 229, 254-55 (2006)), and we have admonished Citizens not to attempt to raise them again (June 19 Order at 5-6).⁵

But it is open to Citizens to argue that AmerGen has not been consistent in applying the above-referenced Statistical Analysis and, accordingly, that AmerGen’s asserted corrosion rate is suspect (June 19 Order at 8). More specifically, Citizens may seek to demonstrate, for example, that (1) AmerGen has been inconsistent in its selection of inputs – i.e., actual UT measurements – for deriving the mean thickness and corrosion rate, (2) AmerGen has been inconsistent in the manner it has applied its selected uncertainties to those measurements, or (3) AmerGen has inconsistently used the variances in its comparison with the acceptance criteria. Such challenges would not constitute impermissible attacks on AmerGen’s established Statistical Analysis; rather, they would permissibly open to question whether AmerGen’s

⁵ Although Citizens are precluded from attacking, directly or indirectly, AmerGen’s established statistical techniques, we note that the NRC Staff gave extensive consideration to safety questions relating to these techniques (June 19 Order at 6 n.7).

asserted rate of corrosion can be relied upon for estimating the width of the drywell shell during the period of extended operation.⁶

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 11, 2007

⁶ Footnote 10 provided examples of uncertainties that AmerGen may or may not consistently have accounted for in determining the wall thickness and deriving the corrosion rate. Any alleged failure to consistently account for stated variables creates an uncertainty in estimates of corrosion rates, future wall thicknesses, and remaining safety margins.

⁷ Copies of this Memorandum and Order were sent this date by Internet e-mail to counsel for: (1) AmerGen; (2) Citizens; (3) the NRC Staff; and (4) New Jersey.

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 (CLARIFYING MEMORANDUM AND ORDER DENYING AMERGEN'S MOTION FOR SUMMARY DISPOSITION) 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 (CLARIFYING MEMORANDUM
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[Original signed by Evangeline S. Ngbea]

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Dated at Rockville, Maryland
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