

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

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
November 25, 2008

ORDER

(Denying Citizens' Motion Seeking Clarification And Other Appropriate Relief)

On November 10, 2008, Citizens¹ filed a motion averring that "one aspect" of this Board's "findings of fact" in its October 29 Memorandum pertaining to AmerGen's planned comparisons of the thickness measurements in the sandbed region is not supported by the evidentiary record. See Citizens' Motion for Clarification of Certain Findings of Fact and Other Appropriate Relief at 1, 4 (Nov. 10, 2008) (unpublished) [hereinafter Citizens' Motion]. Citizens request that this Board "clarify where in the record the comparisons referred to are found, or modify the language of the memorandum" (ibid.).²

¹ The intervenors in this case – who refer to themselves collectively as Citizens – consist of the following six organizations: 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.

² Our October 29 Memorandum was in the nature of an advisory opinion responding to the Commission's narrow request that we consider whether the structural analysis that AmerGen has committed to perform on the Oyster Creek drywell shell matches or bounds the sensitivity analysis contemplated by Judge Baratta in his Additional Statement in LBP-07-17. See Commission Order (Aug. 21, 2008) (unpublished). To enhance our understanding of the issue, we asked for oral argument from counsel, with the understanding that counsels'

(continued...)

AmerGen and the NRC Staff oppose Citizens' motion.³ First, they both observe – quite correctly – that, contrary to Citizens' understanding, the October 29 Memorandum contains no findings of fact. See AmerGen's Opposition at 2; NRC Staff's Opposition at 4. Rather, relying on extant information in the evidentiary record that was briefed by the parties and discussed at oral argument, the Memorandum embodies the majority's considered judgment regarding the issue referred to the Board by the Commission (see supra note 2). Second, and in any event, AmerGen and the NRC Staff correctly observe that Citizens' Exhibit 46 provides sufficient evidentiary support for the statement of AmerGen's counsel regarding AmerGen's comparison of the internal and external sand bed region ultrasonic thickness measurements. See AmerGen's Opposition at 3; NRC Staff's Opposition at 5.

²(...continued)

statements were neither testimony nor evidence. See Licensing Board Memorandum and Order at 3 (Sept. 10, 2008) (unpublished). Following oral argument, a majority of this Board issued a Memorandum concluding we were "satisfied that AmerGen's proposed approach to performing the structural analysis will likely – subject to the suggestions discussed in . . . this Memorandum – match or bound the sensitivity analysis contemplated by Judge Baratta in his Additional Statement" (October 29 Memorandum at 2). In discussing AmerGen's planned analysis, the Memorandum cited to statements made at oral argument by AmerGen's counsel (see October 29 Memorandum at 9). Citizens allege that one of the statements made by AmerGen's counsel that is cited in the Memorandum – which Citizens characterize as a "finding of fact" – is not supported by the evidentiary record.

Judge Abramson attached a Separate Advisory Opinion to the October 29 Memorandum stating he was unable, on the present record, to provide a definitive answer to the referred issue, but that he concurred with the majority's recommendation that the "Commission direct its technical staff to engage appropriate expertise to conduct a thorough examination of [AmerGen's] analysis when submitted" (Separate Advisory Opinion at 4).

³ AmerGen's Answer Opposing Citizens' Motion for Clarification (Nov. 19, 2008) [hereinafter AmerGen's Opposition]; NRC Staff's Answer in Opposition to Citizens' November 10, 2008 Motion for Clarification (Nov. 19, 2008) [hereinafter NRC Staff's Opposition].

In short, as explained by AmerGen and the NRC Staff, Citizens' own exhibit provides sufficient evidentiary support for the statement made by AmerGen's counsel. Because Citizens' request for clarification has thus been answered, their alternative request that we modify the language of our Memorandum is rendered moot. We therefore deny Citizens' motion.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

/RA by E. Roy Hawkens for:/

Dr. Paul B. Abramson *

ADMINISTRATIVE JUDGE

/RA/

Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

* Judge Abramson agrees that the October 29 Memorandum contains no findings of fact, and for that reason he concurs with the denial of Citizens' motion.

Rockville, Maryland
November 25, 2008

⁴ Copies of this Memorandum 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 ORDER (DENYING CITIZENS' MOTION SEEKING CLARIFICATION AND OTHER APPROPRIATE RELIEF) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB ORDER (DENYING CITIZENS' MOTION SEEKING CLARIFICATION
AND OTHER APPROPRIATE RELIEF)

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LB ORDER (DENYING CITIZENS' MOTION SEEKING CLARIFICATION
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 25th day of November 2008