

RAS 11912

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

DOCKETED 07/05/06

SERVED 07/05/06

Before Administrative Judges:

E. Roy Hawken, Chairman
Dr. Paul B. Abramson
Dr. Anthony J. Baratta

In the Matter of

AMERGEN ENERGY COMPANY, LLC

(Oyster Creek Nuclear Generating Station)

Docket No. 50-0219-LR

ASLBP No. 06-844-01-LR

July 5, 2006

ORDER

(Granting NIRS's Motion for Leave to Submit a Supplement to its Petition)

On February 27, 2006, this Board granted a hearing request submitted by six organizations¹ – hereinafter referred to collectively as NIRS – opposing 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 188 (2006). This Board admitted one contention for litigation; namely, NIRS's challenge to AmerGen's aging management program for measuring corrosion in the sand bed region of Oyster Creek's drywell liner to the extent that the program “fails to include periodic [ultrasonic testing (“UT”)] measurements in that region throughout the period of extended operation (LBP-06-07, 63 NRC at 217).

On April 4, 2006 – after this Board had granted NIRS's Petition to Intervene – AmerGen docketed a commitment to perform periodic UT measurements in the sand bed region of the drywell liner throughout the period of extended operation. Subsequently, on April 25, AmerGen

¹ 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.

filed a motion seeking to dismiss NIRS's contention as moot on the basis of its newly docketed commitment. On June 6, this Board issued a Memorandum and Order, in which we concluded that NIRS's contention, as admitted by the Board, was a contention of omission that had subsequently been cured as a result of AmerGen's docketed commitment (LBP-06-16, 63 NRC ____ (slip op. at 6-8) (June 6, 2006)).

Instead of dismissing NIRS's contention, the Board gave NIRS the opportunity to file, within 20 days of the date of our Order, a new contention raising a specific substantive challenge to AmerGen's new periodic UT program for the sand bed region (LBP-06-16 (slip op. at 9)). NIRS was instructed that "[a]ny such filing – the substance of which must be limited to the sand bed region, and which must be limited to AmerGen's new UT program for that region as reflected in its docketed commitment of April 4, 2006 – shall address the remaining factors in 10 C.F.R. § 2.309(f)(2), as well as the admissibility factors in 10 C.F.R. § 2.309(f)(1)" (*ibid.*)

On June 23, 2006, NIRS timely filed its new contention. See [NIRS] Petition to Add a New Contention (June 23, 2006) [hereinafter June 23 Petition]. Contemporaneously, NIRS filed a motion seeking leave to supplement its Petition on the basis of AmerGen's June 20, 2006 docketing of a new commitment concerning its aging management program for the Oyster Creek drywell liner. See [NIRS] Motion for Leave to Supplement the Petition at 1 (June 23, 2006).

AmerGen does not object to NIRS's request to seek leave to supplement its June 23 Petition (see AmerGen's Answer to [NIRS's] Motion for Leave to Supplement the Petition (June 27, 2006) [hereinafter AmerGen Answer]). In the interest of efficiency and litigative economy, however, AmerGen urges that NIRS be required to submit "a single new petition containing all of their bases for the new contention" (AmerGen Answer at 3).² AmerGen advises that NIRS

² The Staff did not submit a response to NIRS's Motion. AmerGen noted in its
(continued...)

does not object to submitting such a document, nor does it object to AmerGen and the Staff having 25 days to respond to the new Petition (id. at 2. n.2).

The Board shares the parties' desire for an efficient and economical procedure. In our judgment, those goals will be achieved best by having NIRS submit its request to supplement based on AmerGen's June 20 commitment in a separate document, subject to the conditions set forth in the following paragraph. In response, AmerGen and the Staff may each file a single Answer that addresses NIRS's June 23 Petition and its subsequently filed supplement.

The Board deems NIRS's June 23 Petition to be its final submission regarding AmerGen's April 4 commitment, and we will consider the admissibility vel non of the contention contained therein on its own merits. However, given AmerGen's recent docketing of a new commitment on June 20, NIRS may submit a supplement to its June 23 Petition. This supplement – which shall set forth any new bases or contention(s) NIRS seeks to add to its June 23 Petition, and/or any bases asserted in that Petition NIRS now seeks to withdraw – must be limited to AmerGen's UT program for the sand bed region as reflected in AmerGen's docketed commitment of June 20, and be based on new information contained in that commitment. In addition, NIRS's supplement must demonstrate that it satisfies the criteria of 10 C.F.R. § 2.309(f)(2) and the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). In that connection, the Board will not accept any further augmentation on the part of NIRS with regard to the arguments made in its June 23 Petition, insofar as those arguments are not directly impacted by AmerGen's June 20 commitment. Finally, we expect NIRS's supplement to contain fully developed arguments – that is, NIRS's supplement shall be a self-contained document that shall not “incorporate by reference” any aspect of its June 23 Petition.

²(...continued)

Answer, however, that NRC Staff counsel supports AmerGen's position (AmerGen Answer at 2 n.2).

Therefore, consistent with the above conditions and the following constraints, NIRS's Motion is granted, and the parties are hereby directed as follows: Within 20 days of the date of this Order (July 25, 2006), NIRS may submit a supplement to its June 23 Petition relating to AmerGen's June 20 commitment and subject to the instructions set forth above. Within 25 days of NIRS's submission, the NRC Staff and AmerGen may each file a single Answer that addresses NIRS's June 23 Petition and its subsequently filed supplement (10 C.F.R. § 2.309(h)(1)). NIRS may file a reply to any answer within 7 days (id. § 2.309(h)(2)).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA by:/

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 5, 2006

³ Copies of this 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 ORDER (GRANTING NIRS'S MOTION FOR LEAVE TO SUBMIT A SUPPLEMENT TO ITS PETITION) 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
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of July 2006