

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

Docket No. 50-0219-LR

AMERGEN ENERGY COMPANY, LLC

ASLBP No. 06-844-01-LR

(License Renewal for Oyster Creek Nuclear
Generating Station)

January 10, 2006

ORDER

(Directing Supplemental Briefing on Hearing Requests)

Pending before the Board are two Requests for Hearing and Petitions for Leave to Intervene ("Petitions") dated November 14, 2005, challenging the Oyster Creek Nuclear Generating Station ("Oyster Creek") License Renewal Application submitted by AmerGen Energy Company, LLC ("AmerGen") to the Nuclear Regulatory Commission ("NRC") on July 22, 2005. One Petition was filed by the New Jersey Department of Environmental Protection [hereinafter referred to as New Jersey], and the other Petition was filed by the 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 [hereinafter referred to collectively as NIRS]. On December 12 and 14, 2005, AmerGen and the NRC filed oppositions to the Petitions.

The Board, having reviewed the above submissions, hereby directs additional briefing consistent with the following instructions:

1. Regarding NIRS's contention concerning the drywell liner corrosion management program, for present purposes it may be assumed that NIRS raises valid techni-

cal issues concerning the effectiveness of the program. NIRS, AmerGen, and the NRC Staff shall provide additional briefing, **not to exceed ten (10) pages**, that explains in further detail the **legal basis** for concluding that this contention falls within or without the scope of this license renewal proceeding. In particular, the brief shall: (1) relying with specificity on applicable caselaw, describe with precision the **legal framework** for defining the scope of the proceeding as it relates to the drywell liner corrosion management program; and (2) explain why or why not **as a matter of law** the drywell liner corrosion management program falls within this legal framework. We emphasize that the parties should not reiterate the technical aspects of their arguments; rather, the Board is interested in a further explication of the **legal standards** for determining the boundaries of the scope of this proceeding as it applies to the drywell liner corrosion management program.¹

¹ The Board is aware that a license renewal safety review seeks to “mitigate the ‘detrimental effects of aging resulting from operation beyond the initial license term’” and, accordingly, that Commission rules “‘focus[] the renewal review on plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation.’” Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001) (quoting 60 Fed. Reg. 22,461, 22,463, 22,469 (May 8, 1995)). We seek greater specificity as to the

ambit of this legal standard. To assist us in fleshing out the meaning and actual applicability of this standard, we ask the participants to discuss what they view as **illustrative examples** of contentions concerning plant systems, structures, and components that fall within and without this standard, and explain why such examples are similar to or distinguished from NIRS's contention concerning the drywell liner corrosion management program.

2. Regarding New Jersey's contention concerning the combustion turbines, New Jersey, AmerGen, and the NRC Staff shall provide additional briefing, **not to exceed five (5) pages**, identifying with specificity the **contractual agreement (or its equivalent)** which demonstrates that AmerGen can rely on First Energy to maintain, inspect, and test the combustion turbines in accordance with AmerGen's aging management plan. Additionally, the participants shall **explicitly state what would happen** (with cites to any governing regulatory, licensing, or contractual provision) if the combustion turbines become unavailable, or if AmerGen's aging management plan for the combustion turbines is not properly implemented. Finally, the participants shall **explain why the regulatory requirements** in 10 C.F.R. § 50.63 and the General Design Criteria for Nuclear Power Plants (Appendix A, Part 50, Criterion 17) are sufficient (or not) to ensure that Oyster Creek will have an adequate source of backup power.

The supplemental briefs shall be due on **Tuesday, January 17, 2006**.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

[Original signed by:]

E. Roy Hawkens, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 10, 2006

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