

June 15, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC)	Docket No. 50-293-LR
)	
(Pilgrim Nuclear Power Station))	ASLBP No. 06-848-LR

NRC STAFF ANSWER TO NOTICE OF ADOPTION
OF CONTENTIONS BY PILGRIM WATCH

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the Nuclear Regulatory Commission (Staff) hereby answers the Notice of Adoption of Contention by Pilgrim Watch, dated June 5, 2006 (Notice). Although the Notice does not satisfy the requirements of 10 C.F.R. § 2.323(b),¹ the Staff has no objection to the proposed adoption provided that Pilgrim Watch is otherwise admitted as a party to this proceeding based on its initial petition to intervene and, if the initial sponsor of the contention is not admitted as a party to, or subsequently departs from, this proceeding, Pilgrim Watch then demonstrates an independent ability to litigate any adopted contentions.

BACKGROUND

By letter dated January 27, 2006, Entergy Nuclear Operations, Inc. (Entergy) submitted an application for renewal of Operating License No. DPR-35 for the Pilgrim Nuclear Power

¹ Pilgrim Watch does not certify that it tried to contact other participants in the proceeding, namely the NRC Staff or the Licensee, as required by 10 C.F.R. § 2.323(b). A motion is to be rejected if it does not include a certification that the movant's attorney or representative made a sincere effort to contact the other parties in the proceeding to resolve issues raised in the motion, and that those efforts were unsuccessful. 10 C.F.R. § 2.323(b).

Station (Pilgrim) for an additional 20 years.² The current operating license for Pilgrim expires June 8, 2012.

On March 27, 2006, the NRC published a notice of acceptance for docketing and opportunity for hearing regarding the license renewal application.³ In response to the notice of acceptance for docketing and opportunity for hearing published in the *Federal Register*, Pilgrim Watch and the Attorney General of the Commonwealth of Massachusetts filed intervention petitions. See Request for Hearing and Petition to Intervene, May 25, 2006; Massachusetts Attorney General's Request for a Hearing and Petition to Intervene with Respect to Entergy Nuclear Operations, Inc.'s Application for Renewal of the Pilgrim Nuclear Power Plant Operating License and Petition for Backfit Order Requiring New Design Features to Protect Against Spent Fuel Pool Accidents, May 26, 2006.

In a filing dated June 5, 2006, Pilgrim Watch provided notice that it was adopting the contention and supporting reports filed by the Massachusetts Attorney General, pursuant to 10 C.F.R. § 2.309(f)(3). Pilgrim Watch further indicated that it had consulted with an Assistant Attorney General of the Commonwealth of Massachusetts who agreed to the arrangement provided that the Commonwealth served as the representative for their respective contentions. Notice at 2.

DISCUSSION

The Staff does not object to Pilgrim Watch's request provided that Pilgrim Watch is admitted as a party to this proceeding based upon its initial petition, and, if the primary sponsor of the adopted contention, the Massachusetts Attorney General, is not admitted as a party or

² See Letter from Michael A. Balduzzi, Entergy Nuclear Operations, to U.S. NRC, Re: License Renewal Application, January 25, 2006.

³ See Pilgrim Nuclear Power Station; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR-35 for an Additional 20-Year Period, 71 Fed. Reg. 15,222 (March 27, 2006).

subsequently leaves this proceeding, Pilgrim Watch then demonstrates its independent ability to litigate any contentions adopted. See *Consolidated Edison Co. of New York & Entergy Nuclear Indian Point 2 LLC and Entergy Nuclear Operations, Inc.* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 131-33 (2001). In that case, the Commission provisionally permitted adoption at an early stage of a proceeding by a petitioner that had independently demonstrated standing to participate and had proffered at least one admissible issue. *Id.* at 132. The adoption was provisional because the proponent would be required later to demonstrate its independent ability to litigate the issue upon the departure of the original sponsor. *Id.* If Pilgrim Watch were allowed merely to adopt the contentions of another party without otherwise establishing standing and proffering its own admissible contention, there would be a circumvention of NRC pleading requirements.

The Commission's regulations do not appear to specify how or when a request to adopt a contention may be raised. See 10 C.F.R. § 2.309(f)(3). The use of terms such as adoption of contentions of "another . . . requestor/ petitioner," however, implies that a contention adoption request would be timely if made prior to any ruling on contentions. See *id.* See also *Louisiana Energy Services, L.P. (National Enrichment Facility)*, CLI-04-35, 60 NRC 619, 627 (2004) ("petitioners seeking intervention as a party under section 2.309 may chose to participate on other petitioners' contentions by *adopting* them") (emphasis in original).

CONCLUSION

For the foregoing reasons, although the motion has procedural defects, the Staff has no objection to Pilgrim Watch being allowed to provisionally adopt contentions proffered by the Massachusetts Attorney General, provided Pilgrim Watch is admitted as a party to this proceeding based on its initial petition and later demonstrates an independent ability to litigate

any adopted contentions if the initial sponsor is not admitted as a party to, or subsequently departs from, this proceeding.

Respectfully submitted,

/RA/

Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of June 2006

June 15, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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)	Docket No. 50-293-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	
)	ASLBP No. 06-848-02-LR
)	
(Pilgrim Nuclear Power Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO NOTICE OF ADOPTION OF CONTENTIONS BY PILGRIM WATCH" in the above-captioned proceeding have been served on the following by electronic mail and deposit in the U.S. Mail Service or by deposit in the U.S. Nuclear Regulatory Commission's internal mail system as indicated by a single asterisk(*), or by deposit in the U.S. mail system, as indicated by a double asterisk (**) this 15th day of June, 2006.

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