

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 11974

DOCKETED 07/14/06

ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 07/14/06

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Richard F. Cole
Nicholas G. Trikouros

In the Matter of:

ENTERGY NUCLEAR GENERATION
COMPANY AND ENTERGY NUCLEAR
OPERATIONS, INC.
(Pilgrim Nuclear Power Station)

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

July 14, 2006

ORDER

(Regarding Need for Further Briefing on Definition of "New and Significant Information"
As Addressed in Participants' Petitions, Answers and Replies Relating to
Massachusetts Attorney General Contention and Pilgrim Watch Contention 4;
Setting Deadlines for Briefs and Responses; and Scheduling Telephone Conference)

During the course of oral argument in this proceeding¹ on the sole contention of the Massachusetts Attorney General, and Pilgrim Watch Contention 4, Counsel for Entergy was asked whether there existed any guidance on "a definition of what would constitute new and

¹This proceeding involves the application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Entergy) to renew the operating license for its Pilgrim Nuclear Power Station for an additional twenty-year period commencing in 2012. In response to a March 27, 2006, notice of opportunity for hearing on the proposed license renewal, Petitioners Pilgrim Watch and the Massachusetts Attorney General (Massachusetts AG or Attorney General) filed, on May 25 and 26, respectively, requests for hearing and petitions to intervene in accordance with 10 C.F.R. § 2.309. See Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) [hereinafter "Pilgrim Watch Petition"]; Massachusetts Attorney General's Request for a Hearing and Petition for Leave 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) [hereinafter "Attorney General Petition"]. On June 6 the Acting Secretary of the Commission referred the hearing request and intervention petition to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action in accordance with 10 C.F.R. § 2.346(i), and on June 7 this Licensing Board was established to preside over the proceeding.

significant information in [§] 51.53(c)(3)(iv).” Tr. 106-07. Although a number of other important issues call for our consideration in deciding whether to admit the contentions in question, the need for this particular question arose out of the central relevance, as illustrated in the filings of the parties in this proceeding to date, of the issue, whether Petitioners have in their contentions presented any information that might be said to be “new and significant” such that it should have been included in the Applicant’s Environmental Report, as stated at 10 C.F.R.

§ 51.53(c)(3)(iv).²

When asked the question, Counsel for the Applicant stated that he was “not aware of any Commission guidance on that point.” Tr. 107. Nor did NRC Staff Counsel step in to provide any response or identify any definition of “new and significant” information.

Subsequent to oral argument, the Licensing Board located the definition provided in the Introduction/“General Guidance to Applicants” section of *Regulatory Guide 4.2S1 - Supplement 1 to Regulatory Guide 4.2 Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses* (September 2000) [hereinafter “Reg. Guide 4.2S1”]. The definition provided in this section is referenced in Chapter 5 of Reg. Guide 4.2S1, entitled “Assessment of New and Significant Information,” wherein information that Applicants “should” provide relating to “new and significant information” is described by the NRC Staff.

²See, e.g., Attorney General Petition at 1, 4, 15, 17, 21, 22, 23, 30-33, 38; Entergy’s Answer to Massachusetts Attorney General’s Request for a Hearing, Petition to Intervene, and Petition for Backfit Order (June 22, 2006) at 5, 13-16, 18; NRC Staff’s Answer Opposing Massachusetts Attorney General’s Request for Hearing and Petition to Intervene and Petition for Backfit (June 22, 2006) at 7, 11, 12, 16, 18, 20; Massachusetts Attorney General’s Reply to Entergy’s and NRC Staff’s Responses to Hearing Request and Petition to Intervene with Respect to Pilgrim License Renewal Proceeding (June 29, 2006) at 1-13, 16, 17, 19; Pilgrim Watch Petition at 50, 57; Entergy’s Answer to the Request for Hearing and Petition to Intervene by Pilgrim Watch and Notice of Adoption of Contention (June 26, 2006) at 4, 49, 50, 56, 57; NRC Staff’s Response to Request for Hearing and Petition to Intervene Filed by Pilgrim Watch (June 19, 2006) at 36, 37, 39, 40, 42, 43, 45, 48; Pilgrim Watch Reply to NRC Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch (June 27, 2006) at 19, 21-23, 25, 26; Pilgrim Watch Reply to Entergy Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch (July 3, 2006) at 27, 29, 31, 34.

Although the information in a regulatory guide is merely “guidance” and would not be binding on the Licensing Board in our rulings herein, it obviously represents the Staff’s recommendations to applicants for license renewal on the matter in question and is entitled to some “special weight” on a relevant subject.³ As such, the Licensing Board considers that the Staff and Applicant, in particular, as well as the Attorney General and Pilgrim Watch, should have the opportunity to address the relevance of the Reg. Guide material to the matters at issue in the two contentions and discussed in oral argument. In addition, the Town of Plymouth may wish to file a brief on the relevance of this material. Therefore, the NRC Staff, Entergy, and the Petitioners⁴ shall, and the Town of Plymouth may, file briefs on the preceding no later than July 21, 2006; and responses to each others’ briefs no later than July 26, 2006.

In addition, on July 27, 2006, at 10:00 a.m., a telephone conference will be held to follow up on the information provided in the parties’ briefs and responses, and to address other issues relating to the Massachusetts AG’s Contention and Pilgrim Watch’s Contention 4. Prior to the conference, information will be provided via e-mail to the electronic service list on the procedure for connecting in to the call.

In their filings, the participants should focus on, among other things they deem pertinent, the references in the definition in question to “(1) information that identifies a significant environmental issue that was not considered in NUREG-1437 and, consequently, *not codified in Appendix B to Subpart A of 10 CFR Part 51*, or (2) information that was not considered in the

³ See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-05-15, 61 NRC 365, 375 n.26 (2005) (“Nonetheless, guidance is ‘at least implicitly endorsed by the Commission’ and therefore ‘is entitled to correspondingly special weight,’” quoting *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290 (1998)); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001); *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 397 (1995).

⁴In view of the request of Pilgrim Watch to adopt the Massachusetts AG’s Contention, and the similarity of the contentions in question, the Petitioners may if they wish file joint briefs and responses.

analyses summarized in NUREG-1437 and *that leads to an impact finding different from that codified in 10 CFR Part 51.*⁵ It would also be helpful if each item of postulated “new and significant information” could be addressed separately in this regard (for example, separating information regarding accident initiators and accident consequences). During the telephone conference, participants should be prepared to respond to questions regarding the matters referred to above.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

/RA by E. Roy Hawkens for:/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 14, 2006⁶

⁵Reg. Guide 4.2S1, Introduction (emphasis added).

⁶Copies of this Order were sent this date by Internet e-mail to all counsel or representatives for participants.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (REGARDING NEED FOR FURTHER BRIEFING ON DEFINITION OF "NEW AND SIGNIFICANT INFORMATION" AS ADDRESSED IN PARTICIPANTS' PETITIONS, ANSWERS AND REPLIES RELATING TO MASSACHUSETTS ATTORNEY GENERAL CONTENTION AND PILGRIM WATCH CONTENTION 4; SETTING DEADLINES FOR BRIEFS AND RESPONSES; AND SCHEDULING TELEPHONE CONFERENCE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Ann Marshall Young, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the General Counsel
Susan L. Uttal, Esq.
Harry E. Wedewer, Esq.
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dianne Curran, Esq.
Harmon Curran, Spielberg & Eisenberg, L.L.P.
1726 M. Street N. W., Suite 600
Washington, D.C. 20036

Docket No. 50-293-LR
LB ORDER (REGARDING NEED FOR FURTHER BRIEFING ON DEFINITION OF "NEW AND SIGNIFICANT INFORMATION" AS ADDRESSED IN PARTICIPANTS' PETITIONS, ANSWERS AND REPLIES RELATING TO MASSACHUSETTS ATTORNEY GENERAL CONTENTION AND PILGRIM WATCH CONTENTION 4; SETTING DEADLINES FOR BRIEFS AND RESPONSES; AND SCHEDULING TELEPHONE CONFERENCE)

Matthew Brock, Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Terence A. Burke, Esq.
Entergy Nuclear
1340 Echelon Parkway
Mail Stop M-ECH-62
Jackson, MS 39213

Molly H. Bartlett, Esq.
52 Crooked Lane
Duxbury, MA 02332

Paul A. Gaukler, Esq.
David R. Lewis, Esq.
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1128

Mary E. Lampert
Director of Pilgrim Watch
148 Washington Street
Duxbury, MA 02332

Sheila Slocum Hollis, Esq.
Town of Plymouth MA
Duane Morris, LLP
1667 K. Street, N.W.
Suite 700
Washington, D.C. 20006

Mark D. Sylvia
Town Manager
Town Manager's Office
11 Lincoln Street
Plymouth, MA 02360

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of July 2006