

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

DOCKETED
USNRC

July 3, 2006 (11:55am)

In the matter of
Entergy Corporation
Pilgrim Nuclear Power Station
License Renewal Application

Docket # 50-293

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

July 3, 2006

**PILGRIM WATCH REPLY TO NRC'S AND ENTERGY'S ANSWERS TO
NOTICE OF ADOPTION OF CONTENTION BY PILGRIM WATCH**

Pursuant to 10 C.F.R. § 2.309(h)(2), Pilgrim Watch hereby replies to the Nuclear Regulatory Commission staff answer to Pilgrim Watch dated June 15, 2006. Pilgrim Watch has standing to adopt the contention submitted by the Commonwealth of Massachusetts and has met the requirements of 10 C.F.R. § 2.309(f) to do so. In the alternative, Pilgrim Watch incorporates by reference the contention and reports submitted by the Commonwealth of Massachusetts.

BACKGROUND

Pilgrim Watch filed a Request for a Hearing and Petition to Intervene in the license renewal for Pilgrim Nuclear Power Plant on May 25, 2006. In that Petition Pilgrim Watch submitted five of its own Contentions pursuant to the requirements of 10 CFR § 2.309. On May 26, 2006, the Attorney General of the State of Massachusetts filed a "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

TEMPLATE < SECY-037

SECY-02

Protect Against Spent Fuel Accidents.” In that Petition the State of Massachusetts raised a Contention that the Environmental Report for Renewal of the Pilgrim Nuclear Power Plant fails to satisfy NEPA because it does not address the environmental impacts of severe spent fuel pool accidents.

On June 5, 2006, Pilgrim Watch filed Notice that it was adopting the contention filed by the Commonwealth of Massachusetts. In accordance with 10 C.F.R. § 2.309(f)(3), Pilgrim Watch consulted with the Commonwealth and agreed that the Attorney General of the Commonwealth shall be the representative with respect to that contention. In addition, Pilgrim Watch adopted the Reports prepared in support of the contention by Gordon R. Thompson entitled “Risks and Risk-Reducing Options Associated with Pool Storage of Spent Nuclear Fuel at the Pilgrim and Vermont Yankee Nuclear Power Plants” and by Jan Beyea entitled “Report To The Massachusetts Attorney General On The Potential Consequences Of A Spent-Fuel-Pool Fire At The Pilgrim Or Vermont Yankee Nuclear Plant.” Pilgrim Watch declared that it has standing to adopt and pursue the Commonwealth’s contention as demonstrated in support of Pilgrim Watch’s Petition. In addition, Pilgrim Watch declared that it has the resources and expertise to pursue this contention in the event that a designated representative cannot.

On June 15, 2006, the staff of the Nuclear Regulatory Commission agreed with Pilgrim Watch’s adoption of the contention 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. On June 26, Entergy filed an Answer to the Notice of Adoption as part of its Answer to Pilgrim Watch's Request for a Hearing and Petition to Intervene. Pilgrim Watch hereby replies to both of these answers.

DISCUSSION

As noted by the NRC staff, the Commission's regulations do not specify how one party to a proceeding must request to adopt the contentions of another. 10 C.F.R. § 2.309(f)(3) states only that, "If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention." The NRC Staff conceded that the use of the terms "requestor/petitioner" implies that a contention adoption request would be timely if made prior to any ruling on contentions. In addition, the board has previously held that a motion to adopt contentions should be filed within 10 days of the date the contentions were filed, or at the latest, within 10 days after the Board admitted the contentions. *In the Matter of Entergy Nuclear Vermont Yankee, L.L.C, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), ASLBP No. 04-832-02-OLA, p.3 (2005). In that decision the Petitioner requesting adoption had previously submitted an admissible contention but had failed to give notice of adopting another Petitioner's contention in a timely manner. Both this decision and the wording of the relevant regulation make it clear that a contention adoption request needs to be made

early in a proceeding. In the present case, Pilgrim Watch was aware of this requirement and submitted its request within 10 days of the Massachusetts contention being filed.


In the authority cited by the NRC staff in its answer to Pilgrim Watch, the board's decision to allow the request to adopt did not hinge on the requestor submitting an admissible contention, because it had already decided the issue of admissibility. Rather, the "provisional" aspect of its decision related to the necessity that the adopting party be required later to demonstrate its independent ability to litigate the issue upon the departure of the original sponsor. *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).

Neither the NRC regulations, nor the previous decisions by the board, dictate that in order for one Petitioner to adopt a contention of another it must already have an admitted contention of its own. Rather, a Petitioner must have *submitted* a petition (and thus be a petitioner himself) and must also meet the standing requirements of the rules in order that he be able to sign on to another Petitioner's contention. When those are in place the adoption is provisional on the adopter demonstrating its independent ability to litigate the issue upon the departure of the original sponsor. To interpret the rules otherwise could lead to the odd result that a Petitioner with a contention admitted in some narrow area of technical expertise could adopt an environment or health contention of another Petitioner, but a Petitioner who has submitted a related environmental contention that was not accepted, would not be able to adopt the other contention – regardless of his background or expertise on the topic.

In the case of Pilgrim Watch, the ability to adopt the contention *prior* to a decision about admissibility is particularly important because at least one of the contentions we have submitted is directly related to that submitted by the Commonwealth of Massachusetts. Contention 4 of the Pilgrim Watch Petition is that “The Environmental Report Fails To Address Severe Accident Mitigation Alternatives (SAMAs) Which Would Reduce the Potential for Spent Fuel Pool Water Loss and Fires.” While Pilgrim Watch independently submitted adequate bases to support this contention, the subject of the contention also relates to and is supported by the contention and bases (including reports that were not available at the time of our filing) submitted by the Commonwealth of Massachusetts.

Entergy asserts that Pilgrim Watch has not shown good cause for adopting the Massachusetts contention, has not shown sufficient expertise to show it would assist with the contention and has not shown “why the Attorney General’s sponsorship of its contentions is insufficient to protect Pilgrim Watch’s interest.” (Entergy Answer, p. 61). None of these are requirements of 10 CFR 2.309(f)(3). In fact, as discussed above, the approval of adoption could be provisional on Pilgrim Watch demonstrating its “independent ability to litigate the issue *upon the departure of the original sponsor.*” (emphasis added) *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). There is certainly no requirement that Pilgrim Watch demonstrate that the Attorney General’s sponsorship is insufficient – indeed we have designated him our representative for this contention as required by the rule.

If the board disallows the Pilgrim Watch request to adopt or makes it provisional upon the admissibility of a Pilgrim Watch contention, then, in the alternative, Pilgrim Watch hereby requests to incorporate by reference the contention and accompanying reports submitted by the Commonwealth of Massachusetts. As discussed in *Consolidated Edison*, “. . .the agency has permitted incorporation of others’ contentions or issues in the past and the practice is also consistent with that of the federal courts . . .” *Id.* at 132.


Molly H Bartlett, attorney for Pilgrim Watch

July 3, 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of:

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

ENTERGY NUCLEAR OPERATIONS, INC.

(Pilgrim Nuclear Power Station)

License Renewal Application

July 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Pilgrim Watch Reply to Entergy Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch, and "Pilgrim Watch Reply to NRC's and Entergy's Answers to Notice of Adoption of Contention by Pilgrim Watch" have been served upon the following persons by U.S. Mail, first class.

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