

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 12759

DOCKETED 12/20/06
ATOMIC SAFETY AND LICENSING BOARD PANEL

SERVED 12/20/06

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Paul B. Abramson
Dr. Richard F. Cole

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

December 20, 2006

ORDER

(Establishing Schedule for Proceeding and Addressing Related Matters)

This 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 which Petitioner Pilgrim Watch filed a request for hearing and petition to intervene.¹ We granted this petition and admitted two contentions in a Memorandum and Order issued October 16, 2006.² The towns of Plymouth and Duxbury, Massachusetts, have also requested and are being permitted to participate in this proceeding as interested governmental bodies under 10 C.F.R.

¹See Pilgrim Nuclear Power Station License Renewal Application, ADAMS Accession Nos. ML060300028, ML060830611; 71 Fed. Reg. 15,222 (Mar. 27, 2006); Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006).

²See LBP-06-23, 64 NRC __ (slip op.) (Oct. 16, 2006). In our Memorandum and Order, we also denied the intervention petition of the Attorney General of Massachusetts, based on its failure to submit an admissible contention. See *id.* at __, __ (slip op. at 31, 112).

§ 2.315(c).³ In this order we establish a schedule for the proceeding and address certain related matters.

First, we address matters relating to disclosures under 10 C.F.R. § 2.336. Next, we touch on a procedural issue that arose during a telephone conference held November 20, 2006, for the purpose of discussing scheduling matters with the parties and participants as provided at 10 C.F.R. § 2.332.⁴ Finally, having considered all of the parties' comments with regard to the schedule for this proceeding,⁵ we establish a detailed schedule to be followed in the proceeding, except insofar as changes in the NRC Staff's estimated dates of completion and issuance of its preliminary and final Safety Evaluation Report (SER) and final Supplemental Environmental Impact Statement (SEIS)⁶ — on which we base the schedule — or other appropriate matters necessitate changes therein.

I. Disclosures Under 10 C.F.R. § 2.336

A. From and to Towns of Plymouth and Duxbury

Entergy has filed comments indicating that its counsel has conferred with representatives of the towns of Duxbury and Plymouth concerning disclosure-related matters, and that Entergy and the towns have reached agreement on certain items.⁷ No party having

³See Request of Town of Plymouth to Participate as of Right Under 2.315(c) (June 16, 2006); Town of Duxbury Request and Notice of Intent to Participate in Hearing (Nov. 3, 2006); Notice of the Town of Plymouth of Participation in Certain Contentions (Nov. 6, 2006); Tr. at 503.

⁴See Tr. at 494-556; see *also* Order (Regarding Schedule for Proceeding and Related Matters) (Nov. 29, 2006) (unpublished) [hereinafter Nov. 29, 2006, Order].

⁵See Entergy's Comments on Proposed Schedule (Dec. 8, 2006) [hereinafter Entergy Comments]; E-mail from Molly Bartlett (Dec. 8, 2006); Tr. at 494-556.

⁶See Letter from Susan L. Uttal (Oct. 30, 2006); Letter from Susan L. Uttal (Dec. 1, 2006).

⁷See Entergy Comments.

expressed any objection to these items, the Licensing Board hereby APPROVES them as submitted (with one revision, in the final clause of subparagraph (iii) below). Therefore:

- i. Plymouth and Duxbury are not required to make the disclosures specified in 10 C.F.R. § 2.336 unless and until they decide that they are going to submit testimony advocating a position on one of the contentions (or unless they are otherwise granted party status);
- ii. If Plymouth or Duxbury decides that it will participate by submitting testimony on a contention, it will, 30 days prior to filing such testimony, provide the disclosure specified in 10 C.F.R. § 2.336(a)(1) (identifying the testifying expert and bases for the expert's opinion), and include any specific documents upon which the expert witness will rely, but need not provide any broader disclosures (i.e. it need not attempt to disclose all documents relevant to the admitted contentions); and
- iii. Entergy will serve Plymouth and Duxbury with copies of its written disclosures (the pleadings served on the Board and parties), which will include the identification of witnesses and bases for their opinion, but will not provide documents that are provided separately on compact disks to the parties (Pilgrim Watch and the NRC Staff), unless a future request is made for appropriate cause.

B. Supplemental Disclosures

As previously indicated,⁸ supplemental disclosures shall be provided every 30 days, up to the date the final SER and/or SEIS is issued. Thereafter, such disclosures shall be provided every 14 days, up to a date one week prior to the date for submission of the parties' statements of position, written direct testimony and exhibits. For any additional information that may arise at any time during the period after the last disclosure prior to the submission date for testimony, etc., and continuing through such submission date until the completion of the hearing and the closing of the record, such disclosures shall be made on a daily basis. These requirements shall apply to parties as well as to a participant town that decides to submit testimony, starting from the date of the first disclosure set forth in § I.A above.

⁸See Nov. 29, 2006, Order.

C. Staff Updates and Provision of Safety and Environmental Documents

The NRC Staff shall notify the Board and parties as soon as reasonably practicable of any changes in the expected release dates of the preliminary/draft and final SER and SEIS, and in any event shall provide updates on the schedule for these documents at least monthly, on the first of each month. The Staff shall notify the Board and all parties and participants, using the electronic service list, on the dates that it provides copies of the preliminary SER and the final SER and SEIS, indicating the method of service and *providing notification of how to access the electronic versions of the documents.*

D. Proposed Protective Order, Privilege Logs, Privilege Disputes

The parties shall notify the Board as soon as possible should any disputes arise concerning any privilege claims, privilege log issues, or any protective order that might be needed.

II. Issues Relating to Potential Eyewitness(es) Whose Credibility is Challenged

In our October 16 Memorandum and Order, LBP-06-23, we ruled that this proceeding will be conducted in accordance with the informal adjudicatory procedures prescribed in Subpart L of 10 C.F.R. Part 2, noting also the possibility of allowing some cross-examination under 10 C.F.R. § 2.1204(b).⁹ The specific issue of how to deal with the possibility of a party questioning the credibility of (an) eyewitness(es) who is identified only during the course of a Subpart L proceeding and not at the outset, when the overall hearing procedure has already been selected, was recently addressed in another license renewal proceeding wherein that Board in its Initial Scheduling Order set deadlines pursuant to 10 C.F.R. § 2.310(d) for requests

⁹LBP-06-23, 64 NRC at __ (slip op. at 113).

to utilize 10 C.F.R. Part 2, Subpart G, procedures in such circumstances.¹⁰ In this proceeding, Entergy objected to our proposal to establish a similar deadline,¹¹ and we permitted the filing of briefs on the issue, which were submitted on December 1 and 8, 2006.¹²

Although we cannot, of course, predict every eventuality that the future may bring,¹³ we have, after due deliberation, determined that this issue, while presenting some interesting procedural and other questions, is, in the end, not yet ripe for consideration. Indeed, this issue may not require a ruling in this proceeding in any event, given that Intervenor Pilgrim Watch has not filed a brief on the issue. Thus, while Entergy has presented some strong arguments for the use of alternatives to Subpart G procedures, it is neither necessary nor efficient that we rule on the matter at this point. Instead, we counsel all parties that, should any such issues arise, they shall promptly be brought to our attention, setting forth with specificity any matters in dispute and the specific relief sought, so that any disputes that may arise can be resolved in a manner that is tailored more precisely to any matters at issue at that time.

III. Schedule for Proceeding

Except as necessary to accommodate changes in the NRC Staff's estimated dates for issuing the preliminary SER and final SER and SEIS, or any other appropriate circumstances shown to necessitate a change in the following schedule, this proceeding will be conducted

¹⁰Entergy Nuclear Generation Company, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), (Initial Scheduling Order) (Nov. 17, 2006) at 6 (unpublished), ADAMS Accession No. ML063210212.

¹¹See Tr. at 533.

¹²See Entergy's Brief on the Deadline for a Party to Request the Use of Subpart G Hearing Procedures (Dec. 1, 2006); NRC Staff's Response to Entergy's Brief on the Use of Subpart G Hearing Procedures (Dec. 8, 2006).

¹³For example, as the Schedule below illustrates, there may be future contentions filed that, if admitted, would call for future rulings on what type procedures to utilize for their resolution.

according to the following timelines and milestones, which, insofar as possible, comply with the Model Milestones at 10 C.F.R. Part 2, Appendix A.II, that serve as the starting point for the schedule.

- A. December 8, 2006 - Draft SEIS was issued and mailed to parties and participants.
- B. January 15, 2007 - Deadline for filing new contentions based on Draft SEIS (deadline arising from provision of document to parties by mail on December 8, 2006, see 10 C.F.R. § 2.306).
- C. January 26, 2007 - Deadline for filing answers to contentions based on Draft SEIS..
- D. February 2, 2007 - Deadline for filing replies on contentions based on Draft SEIS.
- E. 10 days after Board's ruling on contention - Deadline for notice of adoption of contention.
- F. March 1, 2007 - NRC Staff's estimated date for issuance of preliminary SER.
- G. April 2, 2007 - Deadline for filing new contentions based on preliminary SER.
- H. April 16, 2007 - Deadline for filing answers to contentions based on preliminary SER.
- I. April 23, 2007 - Deadline for filing replies on contentions based on preliminary SER.
- J. 10 days after Board's ruling on contention - Deadline for notice of adoption of contention.
- K. Week of May 7 or 14, 2007 - Site visit.
- L. June 11, 2007 - Deadline for filing any motions for summary disposition.
- M. June 29, 2007 - Deadline for responses to any motions for summary disposition.
- N. July 1, 2007 - NRC Staff's estimated date for issuance of Final SER.
- O. July 31, 2007 - Deadline for filing new contentions based on Final SER.
- P. August 14, 2007 - Deadline for filing answers to contentions based on Final SER.
- Q. August 21, 2007 - Deadline for filing replies on contentions based on Final SER..
- R. 10 days after Board's ruling on contention - Deadline for notice of adoption of contention.

- S. July 27, 2007 - NRC Staff's estimated date for issuance of Final SEIS.
- T. August 27, 2007 - Deadline for filing new contentions based on Final SEIS.
- U. September 10, 2007 - Deadline for filing answers to contentions based on Final SEIS.
- V. September 17, 2007 - Deadline for filing replies on contentions based on Final SEIS.
- W. 10 days after Board's ruling on contention - Deadline for notice of adoption of contention.
- X. 30 days after date information received or reasonably available - Deadline for contentions based on other new information (with corresponding 2-week, 1-week, and 10-day deadlines for answers, replies and notices of adoption).
- Y. October 30, 2007 - Deadline for filing of final witness lists (may be extended with regard to new contentions, and/or, for good cause shown, with regard to any witness(es) relating to unanticipated disclosures as set forth at § I.B above).
- Z. December 3, 2007 - Simultaneous filing of statements of position, written direct testimony and exhibits under 10 C.F.R. § 2.1207(a)(1) (may be extended for new contentions).
- AA. December 17, 2007 - Simultaneous filing of rebuttal testimony and exhibits (may be extended for new contentions).
- BB. January 7, 2008 - Deadline for proposed questions for judges to pose to witnesses under §2.1207(a)(3) (may be extended for new contentions).
- CC. January 7, 2008 - Deadline for motions for cross-examination, with cross-examination plan (may be extended for new contentions).
- DD. January 7, 2008 - Deadlines for any motions in limine (may be extended for new contentions).
- EE. January 14, 2008 - Deadline for responses to motions to cross-examine and motions in limine (may be extended for new contentions).
- FF. February 26, 2008 - Begin hearing (unless new contentions necessitate later date).
- GG. March 11, 2008 - Fallback date for beginning hearing based on weather conditions.
- HH. Evening prior to beginning of hearing - Limited appearance session.
- II. 30 days after conclusion of hearing - Deadline for proposed findings of fact and conclusions of law.

JJ. 14 days after filing of proposed findings - Deadline for responses.

KK. 90 days after conclusion of hearing and closing of the record - Initial decision.

IV. Additional Direction for Parties and Participants

The parties and participants shall consult the Board's Order of November 29, 2006, regarding procedures on motions and general filing instructions, and should also consult the NRC procedural rules at 10 C.F.R. Part 2, particularly the introductory sections and Subparts C and L thereof.

If at any time a party or participant sees the need to hold another prehearing conference, by telephone or otherwise, to address any matter that may most efficiently be so handled (including the clarification or simplification of issues, or other items listed at 10 C.F.R. § 2.329), this should be requested by motion, joint or otherwise, according to the procedures for motions previously noted. The Board may also call for a prehearing conference as deemed necessary.

In filing statements of position, testimony and exhibits, the parties (and other participants, as applicable), should bear in mind the following considerations: A statement of position should be in the nature of a trial brief, or summary of a participant's position on matters at issue, that provides a precise "road map" of the party/participant's case, setting out affirmative arguments and any applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (stating with particularity how the witness, exhibit, or other evidence supports a factual or legal position). The written testimony shall be under oath or supported by an affidavit. The exhibits shall include all documents that the party or its witnesses refer to, use, or rely upon for their statements of position.

Finally, if at any time any parties believe that it would be helpful to have a settlement judge appointed to assist them in attempting to settle any matter or matters at issue in this proceeding, they may file a request to this effect, and the Board Chair will request the Chief Judge to appoint a settlement judge, who will act independently of the Board and refrain from any communication with the Board about any matters discussed in contemplation of settlement.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 20, 2006¹⁴

¹⁴Copies 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)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-293-LR
)
)
(Pilgrim Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (ESTABLISHING SCHEDULE FOR PROCEEDING AND ADDRESSING RELATED MATTERS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-293-LR
LB ORDER (ESTABLISHING SCHEDULE FOR PROCEEDING
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 20th day of December 2006