

RAS 12991  
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February 1, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

DOCKETED  
USNRC

February 6, 2007 (9:45am)

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In the Matter of )  
 )  
Entergy Nuclear Operations, Inc. )  
 )  
(Vermont Yankee Nuclear Power Station) )  
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Docket No. 50-293-LR

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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In the Matter of )  
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Entergy Nuclear Operations, Inc. )  
 )  
(Vermont Yankee Nuclear Power Station) )  
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Docket No. 50-271-LR

**MASSACHUSETTS ATTORNEY GENERAL'S MOTION  
FOR LEAVE TO FILE MOTION FOR RECONSIDERATION AND  
CLARIFICATION OF CLI-07-03**

Pursuant to 10 C.F.R. §§ 2.323(e), Martha Coakley, the Attorney General of Massachusetts ("Attorney General")<sup>1</sup> moves for leave to request reconsideration and clarification of CLI-07-03, the U.S. Nuclear Regulatory Commission's ("NRC's" or "Commission's") Memorandum and Order of January 22, 2007. CLI-07-03 affirms decisions by the Atomic Safety and Licensing Boards ("ASLBs") in the Pilgrim and Vermont Yankee license renewal proceedings, which rejected the Attorney General's contentions seeking consideration of new and significant information regarding the

<sup>1</sup> Martha Coakley took the office of Massachusetts Attorney General on January 17, 2007, replacing Thomas F. Reilly.

environmental risks posed by continued high-density pool storage of spent fuel at the Pilgrim and Vermont Yankee plants during their license renewal terms.<sup>2</sup>

The Attorney General seeks reconsideration of CLI-07-03 in three related respects in which it is internally inconsistent, unclear, or potentially prejudicial to the Attorney General's claims. First, CLI-07-03 is unclear with respect to whether the NRC's decision represents final agency action for purposes of review under the Hobbs Act, 28 U.S.C. § 2342. Second, the NRC concluded that the Attorney General's request that the NRC apply the results of the final rulemaking petition to the individual Pilgrim and Vermont Yankee facilities is premature, because the individual licensing proceedings may not be concluded for a year or more. Yet the NRC did not clarify whether the Attorney General -- absent a judicial challenge now -- could contest a decision by the NRC in the future not to apply the final rulemaking to the two facilities when the licensing proceedings are completed. Third, more broadly, CLI-07-03 contains apparently conflicting statements with respect to whether, absent a judicial appeal now, the Attorney General may in the future seek enforcement of the National Environmental Policy Act ("NEPA") in the individual license renewal proceedings for Pilgrim and Vermont Yankee.

The Attorney General's motion meets the standard for reconsideration because it presents "a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated." 10 C.F.R. § 2.323(e). CLI-07-03 warrants reconsideration and clarification because it makes inconsistent representations with respect to whether the Attorney General has any continuing rights to

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<sup>2</sup> *Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station)*, LBP-06-23, 64 NRC (October 16, 2006); *Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)*, LBP-06-20, 64 NRC 131 (2006).

seek enforcement of NEPA in the individual license renewal proceedings. On the one hand, CLI-07-03 could be construed to exclude the Attorney General from further participation as a party to the license renewal proceedings.<sup>3</sup> On the other hand, the decision suggests that at a later point in time, the Commission will treat the Attorney General as a party to the individual license renewal proceedings if she submits a motion under 10 C.F.R. § 2.802 to suspend those proceedings pending completion of the proceeding on her rulemaking petition.<sup>4</sup>

Second, CLI-07-03 is ambiguous and therefore should be reconsidered and clarified with respect to its finality under the Hobbs Act, 28 U.S.C. § 2342. While CLI-07-03 could be interpreted to end the Attorney General's participation in the individual license renewal proceedings for Pilgrim and Vermont Yankee, it acknowledges that her substantive claims in those proceedings remain unresolved. Absent clarification, the Attorney General may be required to interpret CLI-07-03 as a final decision for purposes of the Hobbs Act. If so, to protect her rights, the Attorney General would have to decide now whether to file a petition for review of CLI-07-03, LBP-06-20, and LBP-06-23 within 60 days.

In conclusion, the Commission should entertain and grant the Attorney General's motion for reconsideration and clarification of CLI-07-03.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its Attorneys,

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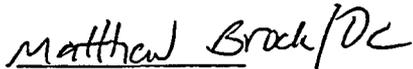
<sup>3</sup> CLI-07-03, slip op. at 2, 10.

<sup>4</sup> *Id.*, slip op. at 9 n.37.

ATTORNEY GENERAL  
MARTHA COAKLEY



Diane Curran  
Harmon Curran, Spielberg & Eisenberg, L.L.P.  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
202/328-3500  
[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)



Matthew Brock, Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
617/727-2200  
[matthew.brock@ago.state.ma.us](mailto:matthew.brock@ago.state.ma.us)

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