

May 24, 2007

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

May 24, 2007 (4:12pm)

Before the Atomic Safety and Licensing Board Panel

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	
)	
Entergy Nuclear Generation Company and)	Docket No. 50-293-LR
Entergy Nuclear Operations, Inc.)	ASLBP No. 06-848-02-LR
)	
(Pilgrim Nuclear Power Station))	

ENTERGY'S OPPOSITION TO PILGRIM WATCH REQUEST TO EXTEND TIME TO RESPOND TO SUMMARY DISPOSITION OF PILGRIM WATCH CONTENTION 3

Applicants Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby file their opposition to the May 22, 2007 "Request by Pilgrim Watch for Extension of Time to Reply to Entergy's Motion for Summary Disposition" of Pilgrim Watch Contention 3. Pilgrim Watch has not justified its request to essentially double the response time, and provides no explanation why, eight months after the admission of this contention, it is unprepared to respond to Entergy's motion. Further, Pilgrim Watch did not consult with counsel for Entergy prior to filing its request for an extension of time, as required by 10 C.F.R. §2.323(b). Therefore, Pilgrim Watch's motion should be denied.

The Commission has made clear that a license applicant is "entitled to a prompt resolution of disputes" concerning its application and that extension of times are to be granted "only when warranted by unavoidable and extreme circumstances." Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 19, 21 (1998). The Commission has cautioned parties to heed this guidance, Hydro Resources, Inc., 49 NRC 1, 5 n.2 (1999), and

both the Commission and the licensing boards have applied this standard in denying motions for extensions of time. See, e.g., Combustion Engineering (Windsor Site), 2002 WL 1009297, at *1 (NRC May 10, 2002) (denying motion for extension of time arguing that intervenor is “a state agency with limited resources”); Entergy Nuclear Vermont Yankee LLC (Vermont Yankee Nuclear Power Station), 2006 NRC LEXIS 72, at *9 (NRC ASLB March 24, 2006) (denying motion for extension of time arguing that intervenor inadvertently wrote the wrong deadline in a calendar); Florida Power and Light Company (Turkey Point, Units 3 and 4), 2000 WL 1911658, at *3-*4 (NRC ASLB Dec. 15, 2000) (denying motion for extension of time arguing that intervenor has work and family commitments); Carolina Power & Light Company (Shearon Harris Nuclear Power Plant), 2000 NRC LEXIS 112, at *4-*5 (NRC ASLB Oct. 19, 2000) (denying motion for extension of time arguing that intervenor’s access to agency documents was delayed and that applicant did not promptly provide documents to intervenor). The Licensing Board should apply this well established precedent here and reject Pilgrim Watch’s request for an extension of time to respond to Entergy’s motion for summary disposition of Pilgrim Watch Contention 3.

Entergy filed its motion for summary disposition on May 17, 2007 and under applicable Commission regulations, 10 C.F.R. § 2.1205(b), responses are due within 20 days or by June 6, 2007. Furthermore, by electronic mail of May 8, 2007 – nine days prior to filing the motion – counsel for Entergy advised then counsel for Pilgrim Watch, Ms. Bartlett, of Entergy’s intent to request summary disposition on Pilgrim Watch Contention 3. At the same time, counsel for Entergy provided Ms. Bartlett by electronic mail a copy of the expert report, “Radiological Dispersion and Consequence Analysis Supporting Pilgrim Nuclear Power Station Severe Accident Mitigation Alternative Analysis, Revision 0 (May 2007)” which serves as the primary

basis for Entergy's summary disposition motion.¹ Thus, Pilgrim Watch has known for two weeks of Entergy's intention to move for summary disposition on Pilgrim Watch Contention 3 and has known of Entergy's bases for the motion. Also, as required by 10 C.F.R. §2.323(b), counsel for Entergy and Ms. Bartlett subsequently communicated about the potential motion. No mention was made as part of these communications of her potential unavailability as counsel to Pilgrim Watch to respond to the motion.

As stated in the Commission's 1998 policy statement, an applicant is entitled to expeditious action and extension of times are to be granted only in unavoidable and extreme circumstances. Pilgrim Watch is seeking more than a three week extension of time to respond the motion – more than twice that allowed by Commission regulation not taking into account the Entergy's pre-notification of its intent and technical basis for the motion. The request for extension of time does not elucidate any extreme and compelling circumstances of why withdrawal of counsel necessitates this additional time to prepare what should essentially be a factual response based on Pilgrim Watch's preparation of its case as intended under the NRC's rules of practice.

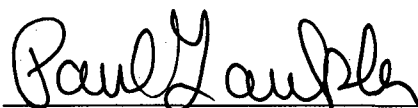
Indeed, Pilgrim Watch states that its Director, Mary Lampert, will now be representing Pilgrim Watch *pro se* going forward. Thus, Pilgrim Watch's request does not involve any need to obtain new legal representation. Further, Ms. Lampert has been involved in this proceeding from its inception, so Pilgrim Watch's request does not involve bringing in a new representative who is unfamiliar with the case. Further, the fact that Ms. Lampert is now representing Pilgrim

¹ Entergy filed Revision 1 of the report in support of its summary disposition motion, but as noted in the motion (at page 2 n. 2) Revision 1 only made corrections and incorporated some minimal changes to Revision 0 of the Report that had been previously provided to NRC Staff and Pilgrim Watch as part of Entergy's Fifth Supplemental Disclosure.

Watch pro se provides no basis for an extension. See, e.g., Entergy Nuclear, 2006 NRC LEXIS at *9 (holding a pro se party to the same “unavoidable and extreme circumstances” standard as represented parties). The only conclusion to be drawn is that Pilgrim Watch is seeking additional time because it had no basis for its original contention and has not made any subsequent effort to prepare a case. Such dalliance is not permitted under Commission rule or policy which places obligations upon the parties to proceed expeditiously in the resolution of contested issues.

Accordingly, Pilgrim Watch’s request to more than double its time to respond to Entergy’s motion for summary disposition of Pilgrim Watch 3 should be denied.

Respectfully Submitted,



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Dated: May 24, 2007

May 24, 2007

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Energy Nuclear Generation Company and) Docket No. 50-293-LR
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Opposition to Pilgrim Watch Request to Extend Time to Respond to Summary Disposition of Pilgrim Watch Contention 3" dated May 24, 2007, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 24th day of May, 2007.

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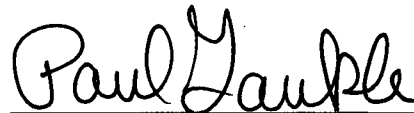
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