

June 28, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of |) | |
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| ENERGY NUCLEAR GENERATION CO. |) | |
| ENERGY NUCLEAR OPERATIONS, INC. |) | Docket No. 50-293-LR |
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| (Pilgrim Nuclear Power Station) |) | ASLBP No. 05-848-02-LR |
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NRC STAFF RESPONSE TO
ENERGY'S MOTION FOR SUMMARY
DISPOSITION OF PILGRIM WATCH CONTENTION 1

INTRODUCTION

On June 8, 2007, Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc., (collectively, Entergy), filed a motion for summary disposition of Pilgrim Watch's Contention 1.¹ Pursuant to 10 C.F.R. § 2.1205(b), the staff of the NRC (Staff) hereby files its response in support of Entergy's summary disposition motion. For the reasons stated below, the motion for summary disposition should be granted.

BACKGROUND

This matter arises from an application for license renewal, filed pursuant to 10 C.F.R. Part 54, on January 25, 2006 by Entergy to renew the operating license for the Pilgrim Nuclear

¹ See Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 18, 2007) (Entergy's Motion).

Power Station (Pilgrim) for an additional twenty-year period.² On May 25, 2006, Pilgrim Watch filed a petition to intervene in this matter.³ Two of Pilgrim Watch's contentions were admitted by the Atomic Safety and Licensing Board (Board) on October 16, 2006.⁴ Pilgrim Watch

Contention 1 reads:

The Aging Management Program proposed in the Pilgrim Application for license renewal is inadequate with regard to aging management of buried pipes and tanks that contain radioactively contaminated water, because it does not provide for monitoring wells that would detect leakage.

LBP-06-23, 64 NRC at 315.

Entergy filed its summary disposition motion asserting that, as to the issues raised in Contention 1, there are no material facts in issue and, thus, Entergy is entitled to a decision as a matter of law. Entergy bases its motion on the declaration of Alan Cox.⁵ The Staff now files its response and accompanying affidavit⁶ in support of Entergy's Motion.

DISCUSSION

1. Legal Standards Governing Motions for Summary Disposition

Pursuant to 10 C.F.R. § 2.1205(a), motions for summary disposition must be in writing, must include a written explanation of the basis for the motion, and must include affidavits to support statements of fact. In ruling on a motion for summary disposition, the presiding officer

² See Letter from Michael Balduzzi, Entergy Nuclear Operations, to U.S. NRC, Re: License Renewal Application, (January 25, 2006) (Agencywide Documents and Access Management System (ADAMS) Accession No. ML060300028).

³ See Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) (Pilgrim Watch Petition).

⁴ See Memorandum and Order (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch), LBP-06-23, 64 NRC 257 (2006).

⁵ See Entergy's Motion at 1.

applies the standards for summary disposition set forth in 10 C.F.R. § 2.710(d)(2). See 10 C.F.R. § 2.1205(c). A moving party is entitled to summary disposition of a contention as a matter of law if the filings in the proceeding, together with the statements of the parties and the affidavits, demonstrate that there is no genuine issue as to any material fact. See 10 C.F.R. §§ 2.1205 and 2.710(d)(2); see also *Advanced Medical Sys., Inc.* (One Factory Row, Geneva, Ohio), CLI-93-22, 38 NRC 98, 102-03 (1993); *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 179-80 (2005).

A party seeking summary disposition bears the burden of demonstrating that a lack of a genuine issue of material fact. See *Sequoyah Fuels Corp. & General Atomics Corp.* (Gore, Okla. Site Decontamination and Decommissioning Funding), LBP-94-17, 39 NRC 359, 361, *aff'd*, CLI-94-11, 49 NRC 55 (1994). The evidence submitted must be construed in favor of the non-moving party. *Id.* Affidavits submitted in support of summary disposition must be executed by individuals qualified by “knowledge, skill, experience, training, or education,” and must be sufficiently grounded in facts. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 NRC 71, 80-81 (*citing* Fed. Rule of Evid. 702); *Bragdon v. Abbott*, 524 U.S. 624, 653 (1998) (stating that expert testimony must have a traceable, analytical basis in objective fact before it may be considered on summary judgment)).

A party opposing a motion for summary disposition cannot rely on mere allegations or denials of the moving party's facts; rather, the non-moving party must set forth specific facts demonstrating a genuine issue of material fact. See 10 C.F.R. § 2.710(b); *Advanced Medical Sys.*, CLI-93-33, 38 NRC at 102. Bare assertions and general denials, even by an expert, are insufficient to oppose a properly supported motion for summary disposition. *Duke Cogema*, LBP-05-04, 61 NRC at 81 (*citing Advanced Medical Sys.*, CLI-93-33, 38 NRC at 102); *Houston*

⁶ Affidavit of Dr. James A. Davis Concerning Summary Disposition of Pilgrim Watch Contention 1. (Affidavit).

Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981). Although the burden is on the moving party to show there is no genuine issue of material fact, the non-moving party must controvert any material fact proffered by the moving party or that fact will be deemed admitted. *Advanced Medical Sys.*, CLI-93-33, 38 NRC at 102-03.

Admission of a party in a proceeding based on one acceptable contention neither precludes summary disposition nor guarantees a party a hearing on its contentions. *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1258 n.15 (1982) (citing *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980)). For a board to find the existence of a genuine issue of material fact, "the factual record, considered in its entirety, must be enough in doubt so that there is a reason to hold a hearing to resolve the issue." *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), LBP-83-46, 18 NRC 218, 223 (1983).

2. Scope of the License Renewal Hearing

The scope of a license renewal proceeding is limited. Review of safety issues is limited to "a review of the plant structures and components that will require an *aging* management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited *aging* analyses." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 363-64 (2002) (citations omitted) (emphasis in original). See also *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-4-15, 60 NRC 81, 90, *aff'd*, CLI-04-36, 60 NRC 631 (2004); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998); 10 C.F.R. §§ 54.4, 54.21 (a) and (c). License renewal focuses on the potential detrimental effects of aging that are not routinely addressed by

ongoing regulatory oversight programs. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 3-4 (2001).

The objective of the license renewal review is to determine whether the detrimental effects of aging, which could adversely affect the functionality of systems, structures, and components⁷ that the Commission determines require review for the period of extended operation, are adequately managed. Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,464 (1995). The license renewal review is intended to identify any additional actions that will be needed to maintain the functionality of the systems, structures, and components in the period of extended operation. *Id.* The Statement of Considerations (SOC) describes two principles of license renewal formulated by the Commission. The first principle is: with the possible exception of the detrimental effects of aging on the functionality of certain plant systems, structures, and components in the period of extended operation and possibly a few other issues related to safety only during extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provides and maintains an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security. *Id.* The Commission believed that the regulatory process would ensure that this principle remained valid during extended operation of a plant as long as the detrimental effects of aging on the functionality of

⁷ The Commission excluded from the aging management review for license renewal “structures and components that perform active functions and structures and components that are replaced based on qualified life or specified time period.” Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,464 (1995) 10 CFR § 54.4 defines the scope of license renewal. There are three categories of systems, structures, and components discussed in § 54.4: “(1) all safety-related systems, structures, and components; . . . (2) all nonsafety-related systems, structures, and components that support the function of a safety- related system, structure, or component or whose failure could prevent a safety-related system, structure, or component from satisfactorily fulfilling its intended function(s); . . . [and] (3) those systems, structures, and components whose functionality may be relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission’s regulations for Fire Protection, Environmental Qualification, Pressurized Thermal Shock, Anticipated Transients Without Scram, and Station Blackout. *Id.* at 22465.

certain systems, structures, and components in the period of extended operation were addressed. *Id.*

The second principle of license renewal is that: “the plant-specific licensing basis must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term.” *Id.* The Commission believed this principle would be accomplished through application of age-related degradation management for systems, structures, and components that are important to license renewal. *Id.*

When taken together, these principles provide that, so long as the aging effects are adequately managed through the period of extended operation, the current licensing basis ensures adequate safety for design basis events, and therefore need not be considered in a license renewal review. *Id.* In *Turkey Point*, the Commission reaffirmed that safety issues reviewed when the facility was first licensed and that are routinely monitored and assessed by ongoing agency oversight and agency mandated licensee programs are not included within the scope of renewal. *Turkey Point*, CLI-01-17, 54 NRC at 7 (*citing* 10 C.F.R. Part 54). The Commission noted that license renewal reviews were not intended to duplicate the Commission’s ongoing review of operating reactors. *Id.* (*quoting* Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991)). In establishing the license renewal process, the Commission did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant’s current licensing basis to re-analysis during license renewal review. *Id.* at 9. Adjudicatory hearings in individual license renewal proceedings share the same scope of issues as the Staff review. *Id.*

3. The Motion for Summary Disposition Should be Granted; There are no Material Facts in Issue

a. The Motion for Summary Disposition Should be Granted

The Staff has carefully reviewed the declaration and list of material facts that form the

basis of Entergy's Motion. The Staff agrees with Entergy that it is entitled to a decision as a matter of law on Pilgrim Watch Contention 1 because there are no genuine issues of material fact that require litigation. Entergy states that "the purpose of the AMPs for buried pipes and tanks is not to prevent radioactive contamination of the soil or groundwater, which is an 'everyday operational issue,' but to manage the aging effects of critical plant functions that prevent and mitigate design basis accidents or other functions of principal importance to plant safety." Entergy's Motion at 4. As indicated in Dr. Davis' Affidavit, attached hereto, the Staff agrees with Entergy. In addition, the Staff agrees that Entergy has correctly identified the underground pipes and tanks that are subject to aging management and that may contain radioactively contaminated water. *Id.* The Staff also agrees that installing a system to monitor possible leakage of radioactively contaminated water from buried pipes and tanks is beyond the scope of this proceeding. *Id.*

Entergy has listed 44 facts that it considers material and that it alleges are not in dispute. The Staff has determined that the statements contained in Entergy's Statement of Material Facts are correct, with two minor clarifications and corrections noted in the Staff's Affidavit. But, as indicated in the Affidavit, none of these disagreements would change the Staff's conclusion that the AMPs will adequately manage the effects of aging of underground pipes and tanks that may contain radioactively contaminated water so that the intended function(s) will be maintained consistent with the current licensing basis (CLB) for the period of extended operation, as required by 10 C.F.R. § 54.21(a)(3), and that monitoring wells are not required under 10 C.F.R. Part 54. Therefore, as explained further below, the Staff has concludes that no genuine dispute of material fact exists with respect to Contention 1 and Entergy's motion for summary disposition should be granted.

b. Monitoring for Radioactive Leaks is Outside the Scope of License Renewal

Although Pilgrim Watch has couched Contention 1 in terms of failure of the aging

management program to adequately manage aging of the buried pipes and tanks, it seems apparent that the real concern is not the aging of the pipes, but the possibility of leakage and ground contamination. Pilgrim Watch Petition at 11-13. But, because, as discussed below, the prevention of leakage is an everyday operating issue, the monitoring for radioactive leaks from underground pipes and tanks is outside the scope of this proceeding.

Contention 1 is concerned with possible leakage of radioactively contaminated water from underground pipes and tanks. But, as the Commission has stated on several occasions, the prevention radioactive emissions is not an intended safety function or other license renewal function. It is a current operating issue⁸ and is, thus, outside the scope of license renewal.

See, e.g., *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 37(2006) (allegations of possible release of excessive amounts of strontium-90 is an everyday operational issue that “would not be a reason for denying license renewal.”), citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637-38 (2004). See also *Turkey Point*, CLI-01-17, 54 NRC at 7, 15-17.⁹

Just as in *Millstone*, the allegation of possible release of water containing radioactivity in this matter “would not be a reason for denying license renewal.”

c. There is No Basis to Find that the AMPs are Inadequate

Should the Board determine that detection of radioactive leaks are an intended safety

⁸ The Staff notes that, as part of their ongoing responsibilities and requirements, all licensees are required to comply with 10 C.F.R. Part 20, concerning, *inter alia*, the limits for radiation doses and ALARA, in the operation of their facility.

⁹ In *Turkey Point*, the Commission affirmed the denial of admission of a contention alleging that “[t]he aquatic resources of Biscayne National Park will become contaminated with radioactive material... during the license renewal term which will endanger the health and safety of members of the public” *Id.* 15-16. In affirming the licensing board’s decision that the contention was outside the scope of license renewal, the Commission noted that it did not “identify any issue encompassed by the NRC safety review for license renewal, conducted under 10 C.F.R. Part 54, that focused on aging. *Id.* at 16.

function within the scope of this proceeding, the Staff submits that there is no basis to find that the AMPs for the buried pipes and tanks are inadequate. The Staff reviewed the LRA and performed an onsite audit of the AMPs. After a thorough review of the AMPs that will manage the aging of the buried pipes and tanks, the Staff concluded that they will adequately manage the effects of aging, as required under Part 54. See e.g., Affidavit at ¶ 27; SER at § B.1.2. The Staff's approval was not predicated on a requirement that monitoring wells be added to the program. *Id.* The AMPs are consistent with NRC guidance and with the GALL report. Affidavit at ¶ 12. There is nothing in the record that would indicate that the AMPs are inadequate. In fact, all evidence indicates that the AMPs, as approved by the Staff in the SER, are adequate to manage aging of the underground pipes and tanks.

CONCLUSION

For the reasons discussed above, the Staff supports Entergy's motion for summary disposition on Contention 1 and submits that it should be granted.

Respectfully submitted,

/RA/

Susan L. Uttal
Counsel for NRC staff

Dated at Rockville, Maryland
this 28th day of June, 2007