

October 29, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE OPPOSING PILGRIM WATCH'S MOTION
TO EXTEND ALL DEADLINES FOR FILINGS

INTRODUCTION

On October 17, 2007, Pilgrim Watch, by its representative Mary Lampert, filed a motion to extend all deadlines for filings by a minimum of thirty days¹ from those set in the Order (Establishing Schedule for Proceeding and Addressing Related Matters).² On October 17, 2007, the Atomic Safety and Licensing Board (Board) issued an order extending the deadline for filing final witness lists regarding Contention 1 from October 30, 2007 to November 30, 2007.³ The Board, however, deferred ruling on any further schedule changes until responses were received from the NRC staff (Staff) and Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Entergy). For the reasons discussed below, the Staff submits that Pilgrim Watch's motion should be denied.

¹ Pilgrim Watch's Motion Requesting that the Order Establishing the Schedule for the Proceedings be Reset to Extend All Deadlines for Filings at Minimum Thirty (30) Days (Oct. 17, 2007).

² Order (Establishing Schedule for Proceeding and Addressing Related Matters) (Dec. 20, 2006).

³ Order (Extending Deadline for Filing Witness Lists Regarding Contention 1) (Oct. 17, 2007).

DISCUSSION

Pilgrim Watch offers six points in support of its motion: 1) there has been a substantial period of time between the last substantive filings on the Motions for Summary Disposition on Contentions 1 and 3 and the Board decisions; 2) an assumption that the Board desired a “sizable time period” to prepare witness lists for the original October 30, 2007 filing date; 3) 10C.F.R. § 2.710(e) provides that orders granting or denying motions for summary disposition, along with the bases, will be issued no later than forty days after any responses to the motion for summary disposition were filed; 4) a 30-day extension is not burdensome because Pilgrim’s license does not expire until 2012; 5) Pilgrim Watch is not represented by counsel and has only volunteer experts; and 6) the desire to plan around the many holidays in December and early January.

Pilgrim Watch’s six points do not establish the general standard of good cause,⁴ much less meet the more stringent standards of “appropriate circumstances shown to necessitate a change” as required by the Board,⁵ or “unavoidable and extreme circumstances” as articulated by the Commission.⁶ First, Pilgrim Watch points out that some time has passed between the last substantive filing for summary dispositions of Contentions 1 and 3 and the Board’s orders on the matters. However, the Board denied Entergy’s motion for summary disposition of Contention 1 on October 17, 2007,⁷ thus allowing a month and a half for Pilgrim Watch to

⁴ 10 CFR 2.307.

⁵ Order (Establishing Schedule for Proceeding and Addressing Related Matters) at 5 (December 20, 2006).

⁶ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998); 63 Fed. Reg. 441,872 (1998).

⁷ Memorandum and Order (Ruling on Entergy’s Motion for Summary Disposition of Pilgrim Watch Contention 1, Regarding Adequacy of Aging Management Program for Buried Pipes and Tanks and (continued. . .)

compile its final witness list for Contention 1 according to the new, extended filing deadline of November 30, 2007.⁸ As to the witness list relating to Contention 3, any discussion regarding scheduling would be premature, as the Board has not yet issued its decision on the summary disposition motion.

Second, as stated above, the Board's October 17, 2007 order⁹ extended the deadline for filing the final witness list for Contention 1 until November 30, 2007. Therefore, at least with respect to Contention 1, this point is moot. As to Contention 3, it is premature.

Third, Pilgrim Watch improperly relies on subpart G timelines for Board orders following motions for summary disposition. Pilgrim Watch claims that the Board was required to issue their order no later than forty days following any filings of responses to the summary disposition motion.¹⁰ However, this proceeding is governed by subpart L; thus, pursuant to 10 C.F.R. § 2.1205, the Board has until fifteen days before commencement of the proceeding to issue their order. While §2.1205(c) does reference subpart G, it is only with regard to the standards applicable to motions for summary disposition, not timelines for Board decisions. Therefore, this argument is without merit.

Fourth, although it is true that Pilgrim's license does not expire until June 8, 2012, the mere fact that the date is some time in the future does not provide an adequate reason for extending deadlines. As previously stated, Pilgrim Watch must, at the very least, show good

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Potential Need for Monitoring Wells to Supplement Program) (October 17, 2007).

⁸ Order (Extending Deadline for Filing Witness Lists Regarding Contention 1) (Oct. 17, 2007).

⁹ Order (Extending Deadline for Final Witness Lists Regarding Contention 1) (October 17, 2007).

¹⁰ 10 CFR 2.710(e).

cause¹¹ and is also required by the Board to provide “appropriate circumstances shown to *necessitate* a change.”¹² A non-imminent license expiration date does not meet that standard.

Fifth, while Pilgrim Watch does not have an attorney and has only volunteer experts, that does not exempt it from its adjudicatory duties. The Board expects all participants in adjudications to fulfill their obligations, regardless of their relative resources.¹³

Sixth and finally, Pilgrim Watch references the upcoming major holidays throughout the month of December and early January as reasons to delay proceedings. This point is both untimely as well as lacking in basis. First, these dates were set on December 20, 2006.¹⁴ Pilgrim Watch was well aware of the holiday schedule at that time and has inappropriately waited ten months to address this issue. 10 CFR §2.232(a) requires all motions to “be made no later than ten (10) after the occurrence or circumstance from which the motion arises.” Second, none of the filing dates actually fall on any of the holidays listed,¹⁵ and in fact, are largely focused to avoid them.¹⁶ With proper planning, and almost one years’ advance notice, these

¹¹ 10 CFR 2.307.

¹² Order (Establishing Schedule for Proceeding and Addressing Related Matters) (Dec. 20, 2006) (emphasis added).

¹³ “While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.” *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981); *Wisconsin Electric Power Co.* (Point Beach Nuclear Power Plant, Unit 1), ALAB-696, 16 NRC 1245, 1261 n.29 (1982).

¹⁴ Order (Establishing Schedule for Proceeding and Addressing Related Matters) (Dec. 20, 2006).

¹⁵ The Staff notes that if the schedule was changed in accordance with Pilgrim Watch’s request, the date for filing statements of position, written direct testimony and exhibits would fall three days after New Year’s Eve.

¹⁶ Hanukkah takes place from December 5-12, 2007. Christmas is December 25, 2007. Kwanzaa is celebrated December 26, 2007-January 1, 2008. New Years Day is December 1, 2008. The (continued. . .)

deadlines can be met and certainly do not necessitate a change in schedule.

In summary, the Staff sees no unavoidable and extreme circumstances in the representations that Pilgrim Watch makes as a basis for their motion.

CONCLUSION

For the reasons discussed, the Board should deny Pilgrim Watch's motion.

Respectfully submitted,

/RA/

Kimberly A. Sexton
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of October, 2007

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simultaneous filing of rebuttal testimony and exhibits is scheduled for December 17, 2007 and the deadlines for proposed questions for judges to pose to witnesses, motions for cross-examination, with cross examination plan, and motions in limine is January 7, 2008.

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ENTERGY NUCLEAR OPERATIONS, INC) Docket No. 50-293-LR
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE OPPOSING PILGRIM WATCH'S MOTION TO EXTEND ALL DEADLINES FOR FILINGS" in the above-captioned proceeding have been served on the following by electronic mail and deposit in the U.S. Mail Service or by deposit in the U.S. Nuclear Regulatory Commission's internal mail system as indicated by a single asterisk(*), or by deposit in the U.S. mail system, as indicated by a double asterisk (**) this 29th day of October 2007.

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