

November 8, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENERGY NUCLEAR GENERATION CO.)	
ENERGY NUCLEAR OPERATIONS, INC.)	Docket No. 50-293-LR
)	
(Pilgrim Nuclear Power Station))	ASLBP No. 05-848-02-LR
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NRC STAFF RESPONSE TO
ENERGY'S MOTION FOR RECONSIDERATION OF LBP-07-12

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 On October 17, 2007, the Atomic Safety and Licensing Board (Licensing Board or Board) issued a memorandum and order denying the Summary Disposition Motion.² On October 29, 2007, Entergy filed a motion for reconsideration.³ Pursuant to 10 C.F.R. § 2.323(c), the Nuclear Regulatory Commission staff (Staff) hereby files its response in support of Entergy's

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

² 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 Potential Need for Monitoring Wells to Supplement Program), LBP-07-12, 66 NRC __ (2007).

³ Entergy's Motion for Reconsideration of LBP-07-12 (October 29, 2007) (Reconsideration Motion).

reconsideration Motion. For the reasons stated below, the Staff submits that the motion 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 Power Station (Pilgrim) for an additional twenty-year period.⁴

On October 17, 2007, the Licensing Board denied Entergy's motion for summary disposition of Pilgrim Watch Contention 1, which 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-07-12, 66 NRC at __, slip op. at 2. The Board denied the motion, finding a genuine dispute on the issue of whether the aging management program (AMP) relating to buried pipes and tanks is adequate alone or whether leak detection devices (e.g., monitoring wells) are required to assure that the pipes and tanks will "perform their intended functions and thereby protect public health and safety." LBP-07-12, 66 NRC at __, slip op. at 16. The Board further noted that:

. . . prevention of leaks *per se* is not a stated objective of any relevant aging management program. On the other hand, prevention of an aging-induced leak large enough to compromise the ability of buried piping or tanks to fulfill their intended safety function is indeed a clear goal of an AMP. Thus, at issue here is the following fundamental question: Do the AMPs for buried pipes and tanks, by themselves, ensure that such safety-function-challenging leaks will not occur, or

⁴ See Letter from Michael Balduzzi, Entergy Nuclear Operations, to U.S. NRC, Re: Licensee Renewal Application, (January 25, 2006) (Agencywide Documents and Access Management System (ADAMS) Accession No. ML060300028).

must some sort of leak detection devices such as the monitoring wells proposed by Intervenors be installed to meet that obligation?

Id. at 17.

Entergy's Reconsideration Motion requests that LBP-07-12 be reconsidered pursuant to 10 C.F.R. § 2.323(e). The errors cited by Entergy are:

1) The Board is required to grant the Summary Disposition Motion as a matter of law because Pilgrim Watch failed to offer an expert affidavit or other competent evidence to controvert the adequacy of Entergy's aging management program (AMP) for buried pipes and tanks. Reconsideration Motion at 1-2.

2) The Board should have accepted conformance with the Generic Aging Lessons Learned (GALL) Report, NUREG-1801, as "substantial evidence" that the AMP is adequate. *Id.* at 2.

3) A hearing should not be granted where the Intervenor has not proffered any material evidence demonstrating its ability to contribute meaningfully to the proceeding. *Id.* at 2-3.

DISCUSSION

1. Legal Standards Governing Motions for Reconsideration

The standard governing reconsideration are specified in 10 C.F.R. § 2.323(e), which permits reconsideration "upon a showing of compelling circumstances, such as a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid." The standard is strictly applied. See *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400 (2006). A party seeking reconsideration should bring "decisive new information" or demonstrate a "fundamental . . . misunderstanding of a key point" by the Licensing Board. See, e.g., *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622 (2004). "Reconsideration petitions must establish an error in a . . . decision, based upon an

elaboration or refinement of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-1, 55 NRC 1, 2 (2002).

2. Legal Standards Governing Motions for Summary Disposition

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, 2.710(d)(2). 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., Inc.* (One Factory Row, Geneva, Ohio), CLI-93-22, 38 NRC 98, 102 (1993). Bare assertions and general denials, even by an expert, are insufficient to oppose a properly supported motion for summary disposition. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 81 (2005) (citing *Advanced Medical Sys.*, CLI-93-33, 38 NRC at 102). 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. 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).

3. Scope of the License Renewal Hearing

The scope of a license renewal proceeding is limited. Review of safety issues is confined 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-04-15, 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 components that the Commission determines require review for the period of extended operation, are adequately managed, and to identify any additional actions that will be needed to manage the effects of aging. Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,464 (1995). 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, 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.* "[T]he 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.* Thus, 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). License renewal reviews are 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.*

4. The Board Erred in Finding that there are Genuine Issues of Material Fact as to Contention 1

The Staff submits that Entergy has met its burden to show compelling circumstances in that it was a clear and material error for the Board to hold that there are genuine issues of material fact as to Contention 1. As discussed below, Pilgrim Watch did not produce any competent evidence that refuted the Staff's and Entergy's evidence that the AMP is adequate and consistent with GALL. Thus, there is no basis to find that the AMP for the buried pipes and tanks is inadequate and that the Board erred in finding that a dispute as to whether monitoring devices are required to ensure that the pipes and tanks will perform their intended function was a genuine issue of material fact within the scope of this hearing.

As indicated in the affidavit of the Staff's expert, Dr. James A. Davis, the Staff reviewed the license renewal application and performed an onsite audit of the AMPs.⁵ After a thorough review of the AMP for the buried pipes and tanks, the Staff concluded that it would adequately manage the effects of aging, as required under Part 54. *See, e.g.*, Davis Affidavit ¶ 27. The

⁵ See Affidavit of Dr. James A. Davis Concerning Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 28, 2007) (Davis Affidavit).

Staff's approval was not predicated on a requirement that monitoring wells be added to the program. The AMP is consistent with NRC guidance and with GALL. *Id.* ¶ 12.

There is nothing in the record that would indicate that the AMP is inadequate. Pilgrim Watch produced no evidence to refute Entergy's determination and the Staff's determination, as discussed in the Davis affidavit, that the AMP is adequate to manage the effects of aging. Furthermore, Pilgrim Watch's expert made no effort to controvert the conclusion that the AMP is adequate.⁶ Nor did he challenge the conclusion that the AMP is consistent with the GALL report. He merely stated, in his declaration, that leaks can happen in underground pipes and no site can "guarantee"⁷ that leaks will not occur.⁸ Ahlfeld Declaration 1, ¶ 2. Nowhere did he opine that the leaks could become so severe as to compromise the safety function.

In sum, Pilgrim Watch did not produce any admissible evidence that would refute the Staff's or Entergy's evidence that the AMP is adequate to manage the effects of aging of the underground pipes and tanks, so that the intended function will be maintained consistent with the current licensing basis (CLB) through the period of extended operation. Therefore, Pilgrim Watch failed to show that a material issue of fact remains in dispute.

⁶ See Declaration of David Ahlfeld, PhD, PE in Support of Pilgrim Watch's Response Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3 [sic] (June 18, 2007) (Ahlfeld Declaration).

⁷ Even if this issue were in scope, the standard for regulatory compliance is "reasonable assurance" not a "guarantee."

⁸ Rather than supporting Pilgrim Watch's position that monitoring is within the scope of license renewal, Dr. Ahlfeld's statements that leaks can occur at any time and there can be no "guarantee" that

(continued...)

5. The Board Erred in Finding that Monitoring for Radioactive Leaks in Underground Pipes and Tanks is a License Renewal Issue

The Staff submits that it was a clear and material error for the Board to find that monitoring for radioactive leaks in the underground pipes and tanks is within the scope of license renewal.

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 of radioactive emissions is not an intended safety function or other license renewal function. It is a current operating issue, since all licensees are required, as part of their ongoing responsibilities and requirements, to comply with 10 C.F.R. Part 20, concerning, *inter alia*, the limits for radiation doses. Thus, it is 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).

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.” *Id.* The fact that Pilgrim Watch has put a different spin on the issue, by claiming that a leak could become large enough to affect the ability of the underground pipes and tanks to perform their intended functions, does not bring the issue into scope. The Board erred in finding the issue to be in scope.

(...continued)

they will not occur are clear confirmation that monitoring for leaks is a current operating issue.

The Board's decision that an AMP ought to prevent an "aging-induced leak large enough to compromise the ability of buried pipes or tanks to fulfill their intended safety function,"⁹ does not, and should not, bring the detection of leaks into the scope of license renewal. It cannot be brought into scope by postulating a leak that will become so big, so severe, that it will affect the safety function. If that were the case, any current operating issue may be posited to affect the ability of a system to fulfill its intended safety function, and there would be no current operating issue that would be considered out of scope. Clearly, that would completely subvert the intent of the license renewal regulations and the intent of the Commission 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. The Commission did not intend that license renewal reviews duplicate the Commission's ongoing review of operating reactors. See Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991). To include current licensing issues in license renewal would be an untoward expansion of the scope of license renewal beyond that expressed by the Commission and beyond the jurisdiction of the Board.

⁹ LPB-07-12, 66 NRC at __, slip op. at 17.

CONCLUSION

For the reasons discussed above, Entergy's Motion for Reconsideration of LBP-07-12 should be granted.

Respectfully submitted,

/RA/

Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 8th day of November, 2007

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO ENTERGY'S MOTION FOR RECONSIDERATION OF LBP-07-12" 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 or by deposit in the U.S. mail system, as indicated by a single asterisk (*) this 8th day of November 2007.

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