

June 9, 2008

Vice President, Operations
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

SUBJECT: PILGRIM NUCLEAR POWER STATION - EXEMPTION FROM THE SCHEDULE
REQUIREMENTS OF 10 CFR 50.75(f)(3) (TAC NO. MD8205)

Dear Sir or Madam:

The Commission has approved the enclosed exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.75(f)(3) for the Pilgrim Nuclear Power Station. This action is in response to your application dated February 28, 2008, Agencywide Documents Access and Management System (ADAMS) accession number ML081000176. This application requested an exemption to the schedule requirement of 10 CFR 50.75(f)(3) that requires a preliminary decommissioning cost estimate to be submitted to the Nuclear Regulatory Commission (NRC) at or about 5 years prior to the projected end of operations.

A copy of the exemption is enclosed. The exemption has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

James Kim, Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-293

Enclosure:
Exemption

cc w/encl: See next page

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ADAMS ACCESSION NUMBER: ML081360326

*See memo dated May 5, 2008

OFFICE	LPL1-1/PM	LPL1-1/LA	LPL1-2/LA	PFPB/BC	OGC	LPL1-1/BC	DORL/D(A)
NAME	JKim	SLittle	ABaxter	ACosta*	JAdler	MKowal	TMcGinty
DATE	5/21/08	5/22/08	5/21/08	5/5/08	5/29/08	6/03/08	6/06/08

OFFICIAL RECORD COPY

Pilgrim Nuclear Power Station

cc:

Regional Administrator, Region I
U. S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406-1415

Senior Resident Inspector
U. S. Nuclear Regulatory Commission
Pilgrim Nuclear Power Station
Post Office Box 867
Plymouth, MA 02360

Chairman, Board of Selectmen
11 Lincoln Street
Plymouth, MA 02360

Chairman
Nuclear Matters Committee
Town Hall
11 Lincoln Street
Plymouth, MA 02360

Chairman, Duxbury Board of Selectmen
Town Hall
878 Tremont Street
Duxbury, MA 02332

Office of the Commissioner
Massachusetts Department of
Environmental Protection
One Winter Street
Boston, MA 02108

Office of the Attorney General
One Ashburton Place
20th Floor
Boston, MA 02108

MA Department of Public Health
Radiation Control Program
Schrafft Center, Suite 1M2A
529 Main Street
Charlestown, MA 02129

Massachusetts Emergency
Management Agency
Attn: John Giarrusso,
Nuclear Preparedness Manager
400 Worcester Road
Framingham, MA 01702-5399

Mr. William D. Meinert
Nuclear Engineer
Massachusetts Municipal Wholesale
Electric Company
P.O. Box 426
Ludlow, MA 01056-0426

Site Vice President
Entergy Nuclear Operations
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

General Manager, Plant Operations
Entergy Nuclear Operations
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

Director, Nuclear Safety Assurance
Entergy Nuclear Operations
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

Manager, Licensing
Entergy Nuclear Operations
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-550

Pilgrim Nuclear Power Station

cc:

Senior Vice President
Entergy Nuclear Operations, Inc.
P.O. Box 31955
Jackson, MS 39286-1995

Vice President, Oversight
Entergy Nuclear Operations, Inc.
P.O. Box 31995
Jackson, MS 39286-1995

Senior Vice President and COO
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Vice President, Operations
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

Mr. Michael Kansler
President & CEO/CNO
Entergy Nuclear Operations, Inc.
P.O. Box 31955
Jackson, MS 39268-1995

Mr. John F. McCann
Director, Nuclear Safety & Licensing
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Senior Manager, Nuclear Safety & Licensing
Entergy Nuclear Operations, Inc.
P.O. Box 31955
Jackson, MS 39268-1995

Assistant General Counsel
Entergy Nuclear Operations
440 Hamilton Avenue
White Plains, NY 10601

Ms. Stacey Lousteau
Treasury Department
Entergy Services, Inc.
639 Loyola Avenue
New Orleans, LA 70113

Mr. James Sniezek
5486 Nithsdale Drive
Salisbury, MD 21801-2490

Mr. Michael D. Lyster
5931 Barclay Lane
Naples, FL 34110-7306

Mr. Garrett D. Edwards
814 Waverly Road
Kennett Square, PA 19348

Mr. John Doering
P.O. Box 189
Parker Ford, PA 19457

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ENTERGY NUCLEAR OPERATIONS, INC.
PILGRIM NUCLEAR POWER STATION
DOCKET NO. 50-293
EXEMPTION

1.0 BACKGROUND

Entergy Nuclear Operations, Inc. (Entergy or the licensee) is the holder of Facility Operating License No. DPR-35, which authorizes operation of the Pilgrim Nuclear Power Station (Pilgrim). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Plymouth County, Massachusetts.

2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Section 50.75(f)(3), requires that "Each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission." Section 50.75(f)(5) requires a licensee at the same time to include, if necessary, plans to adjust funding levels to demonstrate a reasonable level of financial assurance, that funds will be available when needed for decommissioning. The current operating licensee expires on June 8, 2012.

In summary, by letter dated February 28, 2008, Agencywide Documents Access and Management System (ADAMS) accession number ML081000176, Entergy requested an exemption to the schedule requirement of 10 CFR 50.75(f)(3) to allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. The exemption request applies to the timing of the submission of the preliminary cost estimate and did not request an exemption from any of the information requirements of the regulation.

3.0 DISCUSSION

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. One of these special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

As documented in the Decommissioning Considerations for 1991 Rules and Regulations, the underlying purpose of 10 CFR 50.75(f)(3) is to provide a preliminary decommissioning plan, a cost estimate for implementing the plan, and any changes in funding necessary to ensure that there will be sufficient funds for decommissioning.

The NRC staff reviewed the licensee's evaluation in support of the subject exemption request. Entergy submitted the decommissioning funding status report for Pilgrim on March 26, 2008. The NRC staff calculated Pilgrim's required minimum funding assurance based on the formula under 10 CFR 50.75. The trust fund balances to the midpoint of decommissioning (December 2015), as effectively allowed under NRC regulations, was also calculated by applying a 2 percent real rate of return. Based on the formula amount, the Pilgrim

decommissioning trust fund has an excess of \$125 million as of December 31, 2007, and will have an excess of more than \$200 million by the time of expiration of the license.

Entergy submitted a license renewal application (LRA) for Pilgrim on January 25, 2006, which was approximately 6.5 years prior to the expiration date of the operating license for Pilgrim Station. In connection with the LRA, the final supplemental environmental impact statement was issued on July 27, 2007, and the safety evaluation report for the LRA was issued on June 28, 2007. Subsequently, the safety evaluation report was issued as NUREG-1891 on November 30, 2007. Although the licensee stated that the review of the LRA and milestones achieved constitute "a clear indication" that the LRA will be granted, the NRC does not agree.

Entergy's exemption request essentially relies on the fact that its LRA is pending before the NRC, certain milestones have been met, and that Entergy anticipates the NRC will render a final decision on the LRA on or about August 1, 2008. Entergy cites selected language from the statement of considerations for the proposed rule for license renewal, as well as language from the statement of considerations for the final license renewal rule, to support its exemption request. Entergy argues that the level of review, thus far, on the LRA and the achievement of certain milestones "represent a clear indication that the Pilgrim LRA would be ultimately approved." Therefore, the Commission should waive the requirement for a preliminary cost estimate, according to Entergy. Entergy further argues that "approximately four years prior to the expiration date of the current operating license . . . is within interpretation of the regulation" requiring a preliminary cost estimate at or about 5 years prior to the projected end of operations.

The NRC does not agree that the review, thus far, of the LRA and milestones achieved constitute "a clear indication" that the LRA will be granted. Moreover, the NRC does not agree that submitting a preliminary cost estimate less than 4 years prior to license expiration is within

interpretation of the requirements of 10 CFR 50.75(f)(3).¹ Therefore, based on the arguments presented by Entergy, an exemption is not warranted.

However, the NRC has considered the current funding levels of Pilgrim's decommissioning trust and the underlying purpose of 10 CFR 50.75(f)(3). Moreover, the NRC staff is not aware of any information indicating that the preliminary decommissioning cost estimate for Pilgrim is likely to be higher than the current minimum formula amount to such a degree that a problematic underfunding situation will exist that would require a full 5-year period to rectify.

Authorized by Law

This exemption would allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. As stated in Section 3.0 above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.75(f)(3), is to ensure that all power reactor licensees maintain minimum decommissioning funding assurance that a facility will be able to decontaminate to NRC standards before a license is terminated. The exemption request applies to the timing of the submission of the preliminary cost estimate and did not request an exemption from any of the information requirements of the regulation.

¹ If Entergy believes that submitting a preliminary cost estimate less than 4 years prior to the date of license expiration is "within interpretation of the regulation," then it is not clear why Entergy has filed this exemption request. The NRC staff notes that Entergy has not claimed that the "projected end of operations" unexpectedly moved to an earlier date as a result in change of circumstance (for example, early permanent shutdown), thus resulting in a period of time spent to submit a preliminary cost estimate well short of the 5 years.

Based on the above, no new accident precursors are created by allowing Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. Similarly, the probability of postulated accidents is not increased. Therefore, there is no undue risk (since risk is probability multiplied by consequences) to public health and safety.

Consistent with Common Defense and Security

The proposed exemption would allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. This change to the plant requirements for the preliminary decommissioning cost estimate submittal has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

One of the special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.75(f)(3), is to ensure that all power reactor licensees maintain minimum decommissioning funding assurance that a facility will be able to decontaminate to NRC standards before a license is terminated. The NRC staff finds that the preliminary decommissioning cost estimate for Pilgrim is not likely to be higher than the current minimum formula amount to such a degree that a problematic underfunding situation will exist that would require a full 5-year period to rectify.

Based upon consideration of the information in the licensee's submittal, the NRC staff concludes that this exemption meets the underlying purpose of the rule.

4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, a special circumstance is

present such that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants Entergy a schedule exemption from the requirement of 10 CFR 50.75(f)(3) to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (73 FR 32607).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of June 2008.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Timothy McGinty, Acting Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation