

April 7, 2010 (9:33am)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

April 7, 2010

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
Before the Atomic Safety and Licensing Board

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'S  
MOTION TO RESCHEDULE TELEPHONE CONFERENCE**

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") oppose Pilgrim Watch's Motion to Reschedule Setting Telephone Conference (April 6, 2010) ("Motion"). Pilgrim Watch's request to postpone the April 8 conference call until the week of May 16 is unreasonable and would result in unacceptable delay in the resolution of the remanded issues.<sup>1</sup> Entergy therefore submits that the conference call on April 8 should proceed, with or without witnesses, so that a schedule for the remanded proceeding can be established promptly. The prompt establishment of a schedule is essential to the expeditious resolution of this adjudicatory proceedings, for which NRC policy calls. See Statement of Policy on the Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 20, 24 (1998).

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<sup>1</sup> Pilgrim Watch's Motion identifies the dates after April 8 when Entergy's counsel and witnesses would be available, but does not mention that Entergy communicated that it is also available on April 8 and is opposed to re-scheduling the conference call. In particular, in response to Pilgrim Watch's inquiry, Entergy responded:

Entergy and its witnesses are available on April 8, April 21, the first week in May, and May [21]. However, we would oppose delaying the conference call until May and suggest that we proceed with the conference call on April 8 without witnesses to at least establish a schedule.

Email from D. Lewis to M. Lampert (April 6, 2010).

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Pilgrim Watch bases its request in part on the inability of its witnesses to participate in the call, which the Board had indicated would be helpful.<sup>2</sup> Motion at 1. While such participation might be helpful in identifying available hearing dates, Entergy respectfully submits that the schedule and procedure for the remanded proceeding can be discussed without the witnesses being present. The inability of witnesses to participate in no way justifies delaying the establishment of a schedule by over a month..

Pilgrim Watch also bases its request on its Motion for Reconsideration of CLI-10-11 currently before the Commission and argues that the Commission's ruling on this motion "may change the shape of the hearing and the number of witnesses required." Id. Contrary to Pilgrim Watch's suggestion, the Board and parties should assume that the scope of the remanded proceeding is as specified in CLI-10-11, and should proceed with the expeditious resolution of the remanded issues. Moreover, in light of the Commission's careful explanation of its rulings in its 40-page decision, and the high standards that a motion for reconsideration must meet under 10 C.F.R. § 2.323(e),<sup>3</sup> any speculation that the scope of the proceeding may change is unreasonable – and certainly not a basis for open ended postponement of the remanded proceeding.

Finally, Pilgrim Watch states that Mr. Lampert's husband recently had heart surgery and required another medical procedure on April 5. Id. Entergy wishes Ms. Lampert's husband well but does not understand why a medical procedure completed yesterday would preclude Ms. Lampert from participating in a conference call on Thursday, which she could do from home.

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<sup>2</sup> Pilgrim Watch's Motion states that Pilgrim Watch and its witnesses are unable to commit to either April 20 or April 21. Motion at 1. Entergy understood from its communications with Pilgrim Watch that Pilgrim Watch's witnesses are unavailable on April 8, but based on Pilgrim Watch's Motion, perhaps this is not the case.

<sup>3</sup> 10 C.F.R. § 2.323(e) provides:

Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid.

Further, when Ms. Lampert first contacted Entergy's counsel to discuss an extension, Entergy inquired whether the reason was personal or because of the unavailability of witnesses, and Ms. Lampert responded that it was the latter.

In contested license renewal proceedings, the Commission's long-standing goal has been a hearing schedule allowing the issuance of a Commission decision in about two and one half years from the date that the application was received. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant), CLI-98-14, 48 N.R.C. 39, 42 (1998); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 N.R.C. 123, 126 (1998). In this proceeding, Entergy's application to renew the Pilgrim operating license was filed in January 2006 and has thus been pending for over four years.

Further, continued delay in a final decision on Entergy's application is injurious. Apart from the significant financial costs (not only the litigation costs, but significant monthly capital carry costs), the uncertainty in whether Entergy's renewal application will be granted makes business and investment decisions extremely difficult. Pilgrim's operating license expires in 2012, which at this juncture makes it unclear whether Entergy should be investing in plant improvements to support extended operation. The uncertainty also makes decisions on fuel procurement challenging and is an impediment to Entergy's ability to enter into contracts for the sale of the plant's power beyond its current expiration date. Finally, the uncertainty is unfair to plant employees, who are left to guess at the prospects for continued employment beyond the next two years.

Accordingly, Entergy submits that the Licensing Board should proceed with the conference call on April 8 and should thereafter issue a hearing schedule that will result in decision on the remanded issues within six months. A proposed schedule is attached. This schedule would

be consistent with the Commission's longstanding commitment to the expeditious completion of adjudicatory proceedings. Statement of Policy on the Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. at 24. As the Commission stated, "applicants for a license are . . . entitled to a prompt resolution of disputes concerning their applications." Id. at 19.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'DL', with a horizontal line underneath.

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Dated: April 7, 2010

Proposed Schedule for Evidentiary Hearing on Contention 3

Commission Decision – Friday, March 26, 2010

1. Updates to mandatory disclosures – end of April, every 15 days thereafter
2. Final witness lists – May 14, 2010
3. Simultaneous filing of statements of position, written direct testimony and exhibits – June 14, 2010
4. Simultaneous filing of rebuttal statements, testimony and exhibits – June 28, 2010
5. Proposed questions for judges to pose to witnesses, under 2.1207 – July 6, 2010
6. Motions in limine – July 6, 2010
7. Responses to motions in limine – July 16, 2010
8. Evidentiary Hearing – During week of July 26
9. Proposed findings of fact and conclusions of law – 2 weeks days after conclusion of hearing
10. Responses to proposed findings of fact and conclusions of law – 1 week after submission of proposed findings
11. Board Decision – 60 days after conclusion of hearing

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(Pilgrim Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Opposition to Pilgrim Watch's Motion to Re-schedule Telephone Conference" 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 7th day of April, 2010.

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