RAS J-216

April 8, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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 FOR RECONSIDERATION OF CLI-10-11

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") oppose Pilgrim Watch's Motion for Reconsideration of CLI-10-11 (April 5, 2010) ("PW Motion"). Pilgrim Watch's Motion does not meet the NRC's standards for seeking reconsideration. Those standards provide:

> 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.

10 C.F.R. § 2.323(e). The Commission applies this standard "strictly." Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 N.R.C. 399, 400 (2006) (emphasis added). Motions for reconsideration may not be used simply to reargue matters already considered and rejected, Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-18, 58 N.R.C. 433, 434 (2003), or to make arguments that could have previously been made. Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3) CLI-09-8, 69 N.R.C. 317, 328 & n. 48 (2009). See also Consumers Energy Co. (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-

21, 65 N.R.C. 519, 522 ("petitioners argument must be new, and petitioners must not previously have been able to make that argument"); Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,207 (Jan. 14, 2004) ("reconsideration should be an extraordinary action and should not be used as an opportunity to reargue facts and rationales which were (or should have been) discussed earlier") (emphasis added). Pilgrim Watch does not come close to demonstrating the existence of any clear and material error in the Commission's 40 page decision, which explicates each of its rulings, but rather simply quarrels with the Commission's conclusions. Further, Pilgrim Watch does not show that it could not reasonably have anticipated any of the portions of the CLI-10-11 with which it takes issue.

As a general matter, Pilgrim Watch complains that it could not anticipate that the Commission would exclude from consideration inputs not originally pled, "misunderstand what is encompassed in 'economic infrastructure,'" or otherwise not share the same understanding of the scope of Contention 3. See PW Motion at 2 n.3. However, Pilgrim Watch was on notice from the outset of this proceeding that the Commission's contention admissibility standards require, among other things, specificity. 10 C.F.R. § 2.309(f)(1)(i), (v), & (vi). The burden was on Pilgrim Watch to be specific in its original pleading of Contention 3, and therefore Pilgrim Watch should have anticipated specificity-based challenges to the contention. Indeed, it is telling that the bulk of Pilgrim Watch's Motion attempts to explain what the contention as pled really meant. See PW Motion at 3-7. Pilgrim Watch could have offered these explanations in its original pleading (and should have under to 10 C.F.R. § 2.309) but failed to do so. This in itself is grounds for rejecting the Motion. Big Rock Point ISFSI, CLI-07-21, 65 N.R.C. at 522 ("petitioners must not previously have been able to make [the] argument").

Pilgrim Watch incorrectly asserts that the Commission "rewrote Contention 3" to exclude "input data" concerning the effects of a spent fuel accident and to exclude inputs concerning decontamination/interdiction clean up costs and health costs. PW Motion at 2. The Commission did no such thing. Rather, the Commission applied longstanding precedent that the bases of a contention may be examined to determine its scope, and that Intervenors therefore may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset. CLI-10-11 at 28. Although Pilgrim Watch accuses the Commission of selectively quoting these decisions (PW Motion at 3), Pilgrim Watch identifies no error in this precedent. Further, Pilgrim Watch cannot claim that this precedent was unanticipated, because Entergy cited it in its brief, to which Pilgrim Watch had an opportunity to reply. See Entergy's Brief in Response to CLI-09-11 (June 25, 2009) at 16-17.

Pilgrim Watch then incorrectly argues that its original contention did indeed challenge decontamination/interdiction costs. PW Motion at 3-5. The only discussion of decontamination/interdiction costs in Pilgrim Watch's original petition in fact makes it abundantly clear that Pilgrim Watch was not challenging these costs calculated by the MACCS2 model, but rather was asserting that there were additional economic costs not considered by the model:

> One of the cited criticisms of the MACCS2 Code is that "the economic model included in the code models only the economic cost of mitigative actions." The MACCS2 model analysis of economic costs include the cost of decontamination, the cost of condemnation of property that can not be decontaminated to a specified level, and a lump sum compensation payment to all members of the public who are forced to relocate either temporarily or permanently as a result of the accident. These would include the costs associated with the emergency phase (*i.e.*, evacuation and short-term relocation), costs associated with the intermediate phase (*i.e.*, per-diem costs for relocation for the duration of the intermediate phase), and decontamination or interdiction for the longer term. (1997 User Guide, section 7) Nowhere in the assessment of the economic costs of a severe accident does the model account for the loss of economic activity in Plymouth County. The valuations include only the assessed value of the property, ignoring

> business value. The fact that the building is an on-going business with inventory, equipment, and income generation capability is not taken into account.

Request for Hearing and Petition to Intervene By Pilgrim Watch (May 25, 2006) ("Petition") at 43-44 (emphasis added) (footnote omitted). Pilgrim Watch's identification of the mitigative actions modeled by MACCS2 presented no challenge to that modeling. Instead, Pilgrim Watch was clearly listing the costs modeled by the MACCS2 code to support its argument that other costs (costs other than those related to the mitigative actions – in particular, loss of economic activity) were not accounted for.

Similarly, Pilgrim Watch's discussion of Dr. Lyman's article, "Chernobyl on the Hudson," in no way challenged the ability of the MACCS2 code to quantify decontamination costs. Indeed, Pilgrim Watch stated that Dr. Lyman "performed a MACCS2 analysis" and "used only the MACCS2 economic cost parameters" to arrive at "realistic" conclusions. See PW Motion at 4 (quoting Petition at 45). The only claim that Pilgrim Watch made in this discussion is that economic costs of a severe accident "should include loss of economic infrastructure and tourism." Id.

In CLI-10-11, the Commission carefully examined each of the allegations concerning economic costs raised in Pilgrim Watch's original contention, and identified each of the specific bases for Pilgrim Watch's challenge to offsite economic costs. See CLI-10-11 at 29. Pilgrim Watch identifies no error in this discussion.

Likewise, Pilgrim Watch fails to demonstrate any error in the Commission's determination that Pilgrim Watch's health or cancer risk arguments and its claims of underestimated decontamination costs also were simply not reasonably inferable from the economic cost challenges proffered in Contention 3. Id. at 30-31. As the Commission held, "[t]hese claims simply

were not encompassed by the specific business-related bases – e.g., 'economic infrastructure and tourism' – proffered by Pilgrim Watch in Contention 3." Id. at 31. Rather than demonstrating an error (let alone a clear error required for reconsideration), Pilgrim Watch merely quarrels with the Commission's conclusion and argues lamely that "loss of economic infrastructure" includes decontamination and interdiction costs. PW Motion at 5. No reasonable person would interpret loss of infrastructure as encompassing cleanup costs. Moreover, had Pilgrim Watch intended an expansive definition of "loss of economic infrastructure" to include a panoply of economic losses, see PW Motion at 5-6, it could have raised these claims in Contention 3 as initially proffered, but did not. Therefore, Pilgrim Watch cannot seek reconsideration on these grounds. Big Rock Point ISFSI, CLI-07-21, 65 N.R.C. at 522; 69 Fed. Reg. at 2,207.

Referring to Entergy's motion for summary disposition and the NRC Staff's answer, Pilgrim Watch also argues speciously that both Entergy and the NRC Staff recognized from the outset that "inputs relating to decontamination [and] interdiction costs" were issues against which they would need to defend. PW Motion at 4-5. Entergy's motion for summary disposition, to which the Staff responded, merely identified the economic costs that are accounted for by the MACCS2 Code to show that the Code accounts for more than just mitigative actions (see Entergy Motion for Summary Disposition of Pilgrim Watch Contention 3 (May 17, 2007) at 25) and then presented the results of sensitivity analyses showing that inputs specifically challenged by Pilgrim Watch would not materially affect the outcome of the SAMA analysis. Entergy's summary disposition motion and sensitivity analysis, and the NRC Staff's response, did not address the methodology or assumptions by which decontamination and interdiction costs are computed in the MAACS2 Code, because Pilgrim Watch had given absolutely no indication that its Contention was intended to present any challenge to this issue. Thus, these pleadings in fact

demonstrate that neither Entergy nor the NRC Staff had any notice that the methods or assumptions for calculating decontamination and interdiction costs were intended to be at issue.

In addition, Pilgrim Watch argues that the Board "recognized that inputs relating to decontamination . . . were part of Contention 3" because the Board did not grant Entergy's and the NRC Staff's motions to strike Pilgrim Watch's assertions relating to decontamination costs. PW Motion at 5. The Board made no ruling on this portion of the motion to strike (and thus gave no indication that decontamination costs were part of the Contention), presumably because it had concluded, "it is clear on the face of the Pilgrim Petition that the only economic impact computations it intended to challenge were those relating specifically to loss of economic activity, loss of economic infrastructure and loss of tourism income. . ." Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-07-13, 66 N.R.C. at 131, 144 (2007).

Pilgrim Watch's argument concerning health costs and cancer risk is equally devoid of merit. That Pilgrim Watch's contention referred to "offsite health exposure" (see PW Motion at 6, quoting Petition at 26) is irrelevant, because as the Commission explained, the "reach of a contention necessarily hinges upon its terms coupled with its stated bases." CLI-10-11 at 28 (emphasis in original). Here, the radiological claims in the Contention's bases related solely to the adequacy of the Gaussian plume model and to the evacuation time estimates.

Finally, Pilgrim Watch's claim that the Commission erred in finding that spent fuel pool accidents were beyond scope (PW Motion at 7) is entirely baseless. Pilgrim Watch states that spent fuel pool accidents were mentioned in its Petition (id., citing Petition at 39), but this statement in the Petition challenged the emergency response assumptions in the SAMA analysis. Contention 3 made no claim that spent fuel pool accidents should be considered. Rather, Pilgrim Watch sought to raise spent fuel pool accidents in a separate contention (Contention 4) – which it

obviously would not have done if such claims were part of Contention 3. In any event, the Commission has clearly held that on-site management of spent nuclear fuel – including potential accident risks and their mitigation -- is a Category 1 issue that may not be challenged in a license renewal proceeding. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 21 (2001); Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-07-3, 65 N.R.C. 13, 21 (2007), aff'd Massachusetts v. U. S., 522 F.3d 115, 130 (1st Cir. 2008) (upholding the dismissal of an essentially identical contention raised by the Commonwealth of Massachusetts in this proceeding).

Pilgrim Watch also argues that the Commission may not limit Pilgrim Watch's evidence at hearing and suggests that CLI-10-11 might be interpreted to say that Pilgrim Watch has waived its right to present additional evidence. PW Motion at 7-8. Pilgrim Watch's interpretation of the Commission's decision is unreasonable. Entergy does not read the Commission's decision as precluding the presentation of additional testimony on matters properly within the scope of the remanded issues, but rather only precluding Pilgrim Watch's attempt to submit testimony on matters that have been resolved or that were never within the scope of the original contention.

In sum, Pilgrim Watch's Motion is so lacking in merit that it raises Entergy's concern that the Motion is simply part of an effort by Pilgrim Watch to delay resolution of the remanded issues by any means. Indeed, Pilgrim Watch also moved to postpone by over a month an April 8 conference call with the Licensing Board to discuss the schedule and scope of the remanded proceeding, in part based on its assertion that the Commission's "ruling on the pending motion [for reconsideration] obviously may change the shape of the hearing and the number of witnesses required." Pilgrim Watch Motion to Reschedule Setting Telephone Conference (April 6, 2010).

The Licensing Board has now rescheduled the conference call for May 4, 2010. Order (Re-scheduling Telephone Conference to Address Future Course of Proceeding) (April 7, 2010). As a result, it may be nearly six weeks from the Commission's March 26, 2010 issuance of CLI-10-11 before any schedule for completing the remanded proceeding is established. The Licensing Board's Order also identifies as one of the items to be discussed on the May 4, 2010 call as "how to proceed in light of the pending Pilgrim Watch Motion for Reconsideration of CLI-10-11. . . ." Id. at 2.

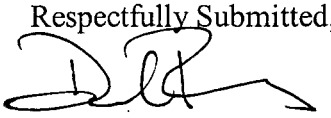
In contested license renewal proceedings, the Commission's long-standing goal has been a hearing schedule allowing the issuance of a Commission decision in about two and one half years from the date that the application was received. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant), 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. Accordingly, a prompt resolution of the remanded proceeding is in order.

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 very difficult 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.

For these reasons, Entergy respectfully submits that the Commission should not only deny Pilgrim Watch's Motion expeditiously, but that it would be appropriate for the Commission to provide direction to the Licensing Board to complete the hearing and issue a decision on the remanded issue within six months from the date of CLI-10-11. Such action would be consistent with the Commission's longstanding commitment to the expeditious completion of adjudicatory proceedings. See, e.g., Statement of Policy on the Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 24 (1998). As the Commission stated, "applicants for a license are . . . entitled to a prompt resolution of disputes concerning their applications." Id. at 19.

Respectfully Submitted,



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Dated: April 8, 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Opposition to Pilgrim Watch's Motion for Re-consideration of CLI-10-11" 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 8th day of April, 2010.

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