

DOCKETED  
USNRC

September 21, 2010 (10:10a.m.)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
Entergy Corporation  
Pilgrim Nuclear Power Station  
License Renewal Application

Docket # 50-293

September 21, 2010

**MEMO REGARDING PROPOSED SCHEDULE**

At the conclusion of the September 15, 2010 Teleconference Call, Judge Young asked Pilgrim Watch to respond regarding the proposed schedule, and the availability of a witness who was unable to be on the call.

Pilgrim Watch submits that the schedule initially proposed by Judge Young during the Teleconference call, pre-trial filings in mid-January, 2011 and a hearing in mid-March, 2011, be followed, at least for the first phase directed to meteorological modeling. If, as Pilgrim Watch expects, the Board finds deficiencies in Entergy's meteorological modeling, then filings for second phase, directed to what additional SAMAs might be justified, should be due two or three months after the Board issues its written decision on phase 1, and the second phase hearing should commence sometime after that.

This schedule, proposed by Judge Young for phase 1 and realistically providing for phase 2, makes sense. At this juncture what experts (in addition to Dr. Egan and perhaps Dr. Lyman) will be required, what work is within scope for them to prepare -- for either phase 1 or phase 2; and how that work fits their present schedule is not and cannot be known. The Board's refusal to respond to Pilgrim Watch's Motion for Clarification filed September 9, 2010, and the Board's lack of response to Pilgrim Watch's question, posed during the call September 15, 2010, asking

*Template Key - 037*

DS-03

what the time interval for preparation would be between phase 1 of the hearing (focused on meteorology and NRC's practice regarding using mean consequence values) and phase 2 (focused on yet to be clearly defined cost consequences) only increase uncertainty.<sup>1</sup>

As we explained during the conference call on May 4, Pilgrim Watch is unfunded and unable to fully compensate experts for their time. They have work commitments for other "full-freight" clients; and their calendars for the fall and winter have continued to fill since our first scheduling conference, May 4. In contrast, we doubt that Entergy's witnesses are not fully compensated; that NRC Staff's witnesses outside the agency are not fully compensated' or that NRC employee witnesses are not simply doing their job.

Unlike Entergy and NRC Staff, PW has no legal or support staff to prepare for and meet a more rushed schedule. Consider that Pillsbury had three lawyers on the September 15<sup>th</sup> call; and NRC had three or more; and neither Pillsbury nor NRC Staff are wanting for legal associates, paralegals, secretaries, copy room and mail clerks. The contrast in resources between Pilgrim Watch and those now pressuring to "do it faster" is obvious - they have the resources necessary to "fast track," Pilgrim Watch does not.

---

<sup>1</sup> The Board's failure to respond to the motion, and statements made by the Board at the September 15 telephone conference, leaves unclear and undecided, for example:

- a. What will the ASLB consider and decide in determining whether there are meteorological modeling deficiencies;
- b. What issues will be open for adjudication if the ASLB finds that there are meteorological modeling deficiencies in Entergy's analysis; and
- c. If the Board finds there are meteorological modeling deficiencies, will the hearing on the effect of those deficiencies be bifurcated allowing sufficient time to prepare for phase 2?

Without knowing the answers to these questions, there is no rational way in which the remand can proceed, at least without causing Pilgrim Watch significant and unnecessary harm.

During the September 15 telephone conference, Judge Young commented that Pilgrim Watch's recourse was to file a motion with the NRC Commission. Pilgrim Watch is doing so, including a request that the remand be stayed until these necessary predicate issues have been decided.

The schedule that Judge Young initially proposed is one that PW and its witnesses can meet, albeit with difficulty, for phase 1 of the hearing – meteorology and, if as we anticipate the issue is found to have been timely raised, mean consequence values.

During the conference calls on September 15 and, earlier, on May 4, Entergy said the time expended to date on this adjudication had been a burden and the schedule should be fast tracked. At least one reason that Entergy seeks a “fast track” is clear – Pilgrim Watch will not be able to keep up. We also remind the Board that it is neither PW’s, Entergy’s nor the Board’s fault that the Commission took nearly two years to make a decision on PW’s Petition for Review, filed November 12, 2008; and over two months to rule on Pilgrim Watch’s Response to Judge Paul Abramson’s Decision on the Recusal Motion filed June 16, 2010. Nor is it any party’s fault that the Commission failed to make clear the scope of the remand.

Contrary to the picture that Entergy seeks to paint, an extended process is not unusual. Vermont Yankee filed their application the same date as Pilgrim and the adjudication process there continues. We also remind the Board that Pilgrim Watch, unlike Entergy, was willing to expedite the proceeding and supported the Board’s recommendation to appoint a settlement judge.

Last, although we appreciate that public interest groups and citizens can sometimes try the Board’s and parties’ patience; it is worthwhile to take a minute to consider the benefits derived from citizen/public interest group’s participation. We respectfully direct the Board’s attention to what Atomic Safety and Licensing Board Judge Michael Farrar said in his concurring opinion in the Matter of Shaw Areva Mox Services (Mixed Oxide Fuel Fabrication Facility) June 27, 2008.

...intervenor’s right to a hearing, which is an empty promise unless there is an opportunity to be heard “at a meaningful time and in a meaningful manner.” It is in that spirit that this concurrence respectfully suggests a need for Commission directives or policies that would enable agency adjudications to proceed differently

when circumstances call for it. Specifically, those adjudications should be conducted in a way that more nearly assures that the agency's hearing process — one of the means by which nuclear safety is promoted and the natural environment protected— makes the hearings mandated by the Atomic Energy Act “meaningful.”

The Petitioners were instrumental in focusing the Board's attention on the troubling matters... That they did so is a testament to the contribution that they, and others like them, can make to a proceeding. Moreover, in doing so they often labor under a number of disadvantages.

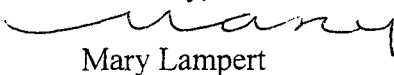
... once the initial petition is filed, facility proponents routinely press within the adjudicatory process to ensure that any attempt thereafter to cure any deficiencies — as in a response to the proponents' answers—is rejected as untimely.

... crucial adjudicatory pleading deadlines have practical exclusionary impact on only one of the parties — the petitioners.

Judge Farrar concluded by saying that, “The adjudicatory system—and its impact on public safety and environmental protection — benefits both from robust Staff performance and from meaningful intervenor participation.” Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01)

We respectfully request that the schedule proposed by Judge Young at the beginning of the September 15, 2010 Teleconference Call be followed for phase 1, and that the schedule proposed above for any phase 2, be followed – so that our participation can be meaningful.

Sincerely,

  
Mary Lampert

Pilgrim Watch, pro se  
148 Washington Street  
Duxbury, MA 02332



**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of

Docket # 50-293-LR

Entergy Corporation

Pilgrim Nuclear Power Station

License Renewal Application

September 21, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that Pilgrim Watch Memo Regarding the Proposed Schedule, was served September 21, 2010 in the above captioned proceeding to the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class.

Secretary of the Commission  
Attn: Rulemakings and Adjudications  
Staff  
Mail Stop 0-16 C1  
United States Nuclear Regulatory  
Commission [2 copies]

Administrative Judge  
Richard F. Cole  
Atomic Safety and Licensing Board  
Mail Stop -T-3-F23  
US NRC  
Washington, DC 20555-0001

Administrative Judge  
Ann Marshall Young, Chair  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
US NRC  
Washington, DC 20555-0001

Office of Commission Appellate  
Adjudication  
Mail Stop 0-16 C1  
United States Nuclear Regulatory  
Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
US NRC  
Washington, DC 20555-0001

Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
United States Nuclear Regulatory  
Commission  
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate  
Adjudication  
Mail Stop: 0-16C1  
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission  
Office of General Counsel  
Mail Stop: 0-15 D21  
Washington DC 20555-0001  
Susan L. Uttal, Esq.  
Andrea Jones, Esq.  
Brian Harris, Esq.  
Michael Dreher, Esq.  
Brian Newell, Paralegal

U.S. Nuclear Regulatory Commission  
Office of Nuclear Reactor Regulation  
Mail Stop: 011-F1  
Washington, DC 20555-0001

Lisa Regner, Project Mgr. Plant Lic.  
Branch 1-1, Operator Reactor Licensing  
Washington, DC 20555-0001

Paul A. Gaukler, Esq.  
David R. Lewis, Esq.  
Jason B. Parker, Esq.  
Pillsbury, Winthrop, Shaw, Pittman,  
LLP - 2300 N Street, N.W.  
Washington, DC 20037-1128

Katherine Tucker  
ASLB, Law Clerk  
U.S. Nuclear Regulatory Commission  
Mail Stop T-3-E2a  
Washington, DC 20555-0001

Martha Coakley, Attorney General  
Matthew Brock, Assistant Attorney  
General Commonwealth of  
Massachusetts  
Office of Attorney General  
One Ashburton Place  
Boston, MA 02108

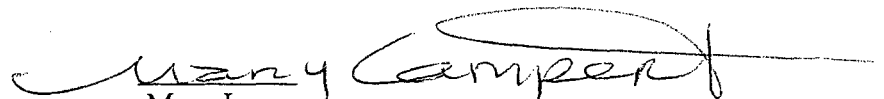
Mark Stankiewicz  
Town Manager, Town of Plymouth  
11 Lincoln Street  
Plymouth MA 02360

Sheila Slocum Hollis, Esq.  
Town of Plymouth MA  
Duane Morris, LLP  
505 9<sup>th</sup> Street, N.W. 1000  
Washington D.C. 20004-2166

Richard R. MacDonald  
Town Manager, Town of Duxbury  
878 Tremont Street  
Duxbury, MA 02332

Fire Chief & Director DEMA,  
Town of Duxbury  
688 Tremont Street  
P.O. Box 2824  
Duxbury, MA 02331

Terence A. Burke, Esq.  
Entergy Nuclear  
Mail Stop M-ECH-62  
Jackson, MS 39213



Mary Lampert  
Pilgrim Watch, pro se  
148 Washington St.  
Duxbury, MA 02332  
September 21, 2010