

May 12, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Entergy Nuclear Generation Co. and)	
Entergy Nuclear Operations, Inc.)	Docket No. 50-293-LR
)	
)	ASLBP No. 06-848-02-LR
(Pilgrim Nuclear Power Station))	

NRC STAFF'S ANSWER IN OPPOSITION TO COMMONWEALTH OF MASSACHUSETTS
MOTION TO HOLD LICENSING DECISION IN ABEYANCE PENDING COMMISSION
DECISION WHETHER TO SUSPEND THE PILGRIM PROCEEDING TO REVIEW THE
LESSONS OF THE FUKUSHIMA ACCIDENT

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff ("Staff") hereby files its response in opposition to Commonwealth of Massachusetts Motion to Hold Licensing Decision in Abeyance Pending Commission Decision Whether to Suspend the Pilgrim Proceeding to Review the Lessons of the Fukushima Accident ("Motion").¹ The Motion is based on a misunderstanding of the license renewal process and it fails to show why resolution of the contentions in this proceeding should be delayed. Therefore, the Motion should be denied.

¹ Commonwealth of Massachusetts Motion to Hold Licensing Decision in Abeyance Pending Commission Decision Whether to Suspend the Pilgrim Proceeding to Review the Lessons of the Fukushima Accident (May 2, 2011) (Agencywide Document Access and Management System ("ADAMS") Accession No. ML111220326).

PROCEDURAL BACKGROUND

The history of this license renewal proceeding spans almost five years. It has been discussed in full in prior filings.² Accordingly, only those portions of the procedural history directly relevant to the discussion below will be addressed herein.

By letter dated January 27, 2006, Entergy Nuclear Operations, Inc. (“applicant”) submitted an application for renewal of Operating License No. DPR-35 for the Pilgrim Nuclear Power Station (“Pilgrim”) for an additional 20 years.³ On May 25, 2006, Pilgrim Watch filed a petition to intervene in this matter and submitted five contentions for consideration by the Board.⁴ The Board granted the petition and admitted two contentions.⁵ The Board granted the applicant’s motion for summary disposition with respect to the contention that challenged the applicant’s analysis of severe accident mitigation alternatives (“SAMA”).⁶ After an evidentiary hearing on the remaining contention, which challenged the adequacy of the applicant’s aging management program for buried pipes and tanks, the Board disposed of that contention in favor of the applicant.⁷

Pilgrim Watch filed an appeal and on March 26, 2010, the Commission issued CLI-10-

² See e.g., NRC Staff’s Answer in Opposition to Pilgrim Watch Request for Hearing on New Contention (Jan. 7, 2011) (ADAMS Accession No. ML110070837).

³ Letter from Michael A. Balduzzi, Entergy Nuclear Operations, to U.S. NRC, Re: License Renewal Application (Jan. 25, 2006) (ADAMS Accession No. ML060300026).

⁴ Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) (ADAMS Accession No. ML061630125).

⁵ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 341 (2006).

⁶ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131 (2007). Judge Young dissented from the Board’s Order. *Id.* at 156.

⁷ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-08-22, 68 NRC 590 (2008).

11, reversing in part, affirming in part, and remanding the SAMA contention as limited by the Commission's Order, to the Board for further proceedings.⁸

Pilgrim Watch then filed two new contentions. On November 29, 2010, it filed a request for a hearing on a new contention, asserting that, "[u]ntil and unless some third party assumes responsibility for cleanup after a severe nuclear accident, to pre-accident conditions, sets a cleanup standard, and identifies a funding source", Entergy should be required to implement all mitigation alternatives identified by an analysis that is based on a conservative source term and not reduced by the use of a discount factor or probabilistic analysis.⁹ On December 13, 2010, Pilgrim Watch filed a contention challenging the adequacy of the applicant's aging management program for non-environmentally qualified inaccessible cables.¹⁰

At a hearing on March 9, 2011, the Board heard argument on the remanded SAMA contention and the admissibility of the 2010 contentions regarding the implementation of SAMA mitigation alternatives and inaccessible cables.¹¹ The Board's decision on the remanded SAMA contention and the admissibility of the two new contentions is pending.

Between April 14 and April 18, a number of entities filed a petition with the Commission, seeking suspension of twenty-three reactor licensing and reactor design certification

⁸ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC ____ (slip op. at 39).

⁹ Pilgrim Watch Request for Hearing on a New Contention (Nov. 29, 2010) (ADAMS Accession No. ML103420305).

¹⁰ Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station (Dec. 13, 2010) (ADAMS Accession No. ML103500400).

¹¹ Transcript of Hearing Regarding Pilgrim Nuclear Power Station in Plymouth, Massachusetts on March 9, 2011 (ADAMS Accession No. ML110740699).

proceedings, including the Pilgrim license renewal proceeding, until the Commission completes its review of technical and policy issues related to the event at the Fukushima Daiichi reactors in Japan.¹² The Commonwealth of Massachusetts (“Massachusetts”) was not among the petitioners who filed the Emergency Petition. On April 19, 2011, the Commission issued a scheduling order that provided that “[a]ny person may file an answer to the petition, or a brief amicus curiae no later than Monday, May 2, 2011.”¹³

On May 2, 2011, Massachusetts filed the motion that is the subject of this pleading, as well as a response to the Emergency Petition pursuant to the Commission’s scheduling order.¹⁴

On May 12, 2011, Pilgrim Watch filed a contention in which it asserted that “the Environmental Report is inadequate post Fukushima Daiichi because Entergy’s SAMA analysis ignores new and significant lessons learned regarding the possible off-site radiological and economic consequences in a severe accident.”¹⁵

¹² Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (“Emergency Petition”) (April 14 – 18, 2011) (ADAMS Accession No. ML111040587).

¹³ Order (April 19, 2011) (ADAMS Accession No. ML111091152).

¹⁴ Commonwealth of Massachusetts Response to Commission Order Regarding Lessons Learned from the Fukushima Daiichi Nuclear Power Station Accident, Joinder in Petition to Suspend the License Renewal Proceeding for the Pilgrim Nuclear Power Plant, and Request for Additional Relief (May 2, 2011) (ADAMS Accession No. ML1112203072).

¹⁵ Pilgrim Watch Request for Hearing on Post Fukushima SAMA Contention (May 12, 2011) (ADAMS Accession No. ML_____).

DISCUSSION

First, the Motion appears to be based on a misapprehension regarding issuance of the renewed license. Massachusetts states that it is requesting the Board “to hold its decision in abeyance whether to relicense the Pilgrim Nuclear Power Plant ... until the [Commission] issues a decision on the pending petition to suspend the Pilgrim relicensing proceeding” (emphasis supplied). Massachusetts’ concern is that the Board may act and issue the renewed license before the Commission can address the issues raised in the Emergency Petition for Suspension. As a legal matter, such a concern is not warranted. The Director of Nuclear Reactor Regulation (“NRR”), not the Board, issues renewed licenses. See 10 C.F.R. § 4.29; *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400, n.18 (2008). If a renewed license is issued for the Pilgrim Nuclear Power Station, this Board will not issue it; the Director of NRR will issue it. Thus abeyance in this proceeding will not stop the Board from issuing the renewed license because the Board would not issue the renewed license in any event. Furthermore, per established Commission practice, the Director of NRR “will issue a renewed license in contested proceedings only after notice to and authorization by the Commission.” *Id.*, citing Memorandum from Annette Vietti-Cook, Secretary, to William D. Travers, Executive Director of Operations re: Staff Requirements – SECY 02-0088 – Turkey Point Nuclear Plant, Units 3 and 4, Renewal of Full-Power Operating License (June 5, 2002) (ADAMS Accession No. ML021560479). Because this is a contested proceeding, and will remain a contested proceeding at least until the time the Board issues decisions on the matters currently pending before it and the time to appeal those decisions has passed, the NRC Staff must obtain Commission approval to issue Pilgrim a renewed license. To obtain Commission approval, the Staff would have to prepare a Commission paper that would be served on all parties to the proceeding. Thus holding the Board’s decision in

abeyance is not necessary to preclude issuance of a renewed license without Commission approval nor is issuance of a renewed license imminent.

Second, grant of the motion for abeyance will have the effect of keeping the Board from resolving the admitted contention in this proceeding and ruling on the admissibility of two pending contentions, a result that is not justified and which Massachusetts failed to address. The admitted contention questions the adequacy of the meteorological modeling in the licensee's severe accident mitigation alternatives ("SAMA") analysis.¹⁶ The two pending contentions assert that the Board should order the licensee to implement all of the mitigative provisions identified in the SAMA analysis¹⁷ and that the aging management program for non-environmentally qualified inaccessible cables and splices at Pilgrim Nuclear Power Station is inadequate.¹⁸ Massachusetts has not explained how the events at Fukushima are relevant to these contentions and thus why resolution of these contentions should be delayed pending the Commission's decision on the Emergency Petition. Nevertheless, grant of the request to hold this proceeding in abeyance would stop the Board from moving forward on these contentions.

CONCLUSION

As demonstrated above, Massachusetts' request to hold this proceeding in abeyance will not address the concern Massachusetts has raised; it will not prevent the Board from issuing a renewed license because the Board cannot issue a renewed license; instead, it will prevent

¹⁶ Order (Confirming Matters Addressed at September 15, 2010, Telephone Conference) (Sept. 23, 2010) (ADAMS Accession No. ML1026604282).

¹⁷ Pilgrim Watch Request for Hearing on a New Contention (Nov. 29, 2010) (ADAMS Accession No. ML1034203051).

¹⁸ Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station (Dec. 13, 2010) (ADAMS Accession No. ML103500400).

the Board from ruling on contentions that are unrelated to the events at Fukushima Daiichi, a result that Massachusetts has not addressed or justified. For these reasons, Massachusetts' Motion to Hold Licensing Decision in Abeyance Pending Commission Decision Whether to Suspend the Pilgrim Proceeding to Review the Lessons of the Fukushima Accident should be denied.

Respectfully submitted,

/Signed Electronically By/

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Dated at Rockville, Maryland
this 12th day of May 2011

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NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-293-LR
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER IN OPPOSITION TO COMMONWEALTH OF MASSACHUSETTS MOTION TO HOLD LICENSING DECISION IN ABEYANCE PENDING COMMISSION DECISION WHETHER TO SUSPEND THE PILGRIM PROCEEDING TO REVIEW THE LESSONS OF THE FUKUSHIMA ACCIDENT" have been served upon the following by the Electronic Information Exchange, this 12th day of May, 2011:

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