

May 12, 2011

**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))	

**ENERGY’S ANSWER OPPOSING COMMONWEALTH’S JOINDER IN PETITION
TO SUSPEND THE LICENSE RENEWAL PROCEEDING FOR THE PILGRIM
NUCLEAR POWER PLANT AND REQUEST FOR ADDITIONAL RELIEF**

I. INTRODUCTION

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively “Entergy”) hereby answer and oppose the Commonwealth of Massachusetts (“Commonwealth”) Joinder in Petition to Suspend the License Renewal Proceeding for the Pilgrim Nuclear Power Plant, and Request for Additional Relief.¹ The Commonwealth provides no basis for the additional relief that it seeks, and both its Request and the Emergency Petition² should be denied.

In its Request, the Commonwealth joins in the Emergency Petition request to suspend the Pilgrim license renewal proceeding “until the NRC completes its review” of Fukushima related events concerning “[spent fuel pool] accidents and risks, and current NRC practices and regulations on these and related issues.” Request at 3. However, going beyond the relief requested in the Emergency Petition, the Commonwealth further requests the Commission “to

¹ 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) (“Request”).

² 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 (April 14 – 18, 2011) Corrected April 18, 2011 (“Emergency Petition”).

provide the Commonwealth an additional thirty days to submit further expert support for its request for suspension of the Pilgrim relicensing proceeding and, following that submittal, . . . to consider the new and significant information arising from the Fukushima accident” before acting on the Pilgrim license renewal application. The Commonwealth further requests the Commission “to direct the Pilgrim ASLB” to refrain from “making any final decision on the Pilgrim relicensing . . . until the Commission considers this new and significant information.”³

The Commonwealth has provided no basis for its extraordinary relief. The Commonwealth’s claim that Fukushima constitutes new and significant information primarily rests on the Declaration of Dr. Arjun Makhijani filed in support of the Emergency Petition. However, as set out in Entergy’s Answer to the Emergency Petition,⁴ Dr. Makhijani’s Declaration presents no new and significant information that would materially impact the conclusions of the GEIS⁵ and result in an impact finding different from that codified in 10 C.F.R. Part 51 for spent fuel pool (“SFP”) risks. Other than referring to Dr. Makhijani’s Declaration, the Commonwealth’s Request rests solely on the unsupported claims of its counsel that both Fukushima and the NRC’s response to Fukushima show that the NRC improperly denied the Commonwealth’s Rulemaking Petition on SFP risk and that Fukushima presents new and significant information. Other than counsel’s argument and characterization, no support for these propositions is provided. In this respect, the fact that the NRC has established a Task Force to study and evaluate what occurred at Fukushima does not constitute a determination of

³ Request at 3; see also Request at 13.

⁴ Entergy’s Answer Opposing Petition to Suspend Pending Licensing Proceedings (May 2, 2011) (“Entergy’s Answer”) at 21-27.

⁵ NRC’s Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437 (May 1996) (“GEIS”).

new and significant information that would materially impact the finding for SFP risks codified in 10 C.F.R. Part 51, as is apparently and improperly presumed by the Commonwealth.

Likewise, no basis is provided for the Commonwealth's requests for an additional thirty days to submit expert testimony in support of its request for a suspension or to order the Pilgrim ASLB to refrain from issuing, and hold in abeyance, its pending decisions on Pilgrim license renewal. Both requests would unduly extend the Pilgrim license renewal proceeding, which is already in its sixth year. The Commission on its own accord established a schedule for responding to the Emergency Petition that provided additional time for responses, and the Commonwealth has provided no basis for extending the schedule on its behalf. It has not explained why the current schedule could not be met, or what material of relevance would be provided by its expert testimony. Nor has it explained or provided any basis, other than counsel characterization, why, at this late stage of the proceeding, issues that were previously decided on both the Pilgrim docket and the rulemaking docket should be reopened.⁶ Likewise, the Commonwealth provides no basis for the Commission to direct the Pilgrim ASLB to hold its license renewal decisions in abeyance. The Commission strongly disfavors holding proceedings in abeyance while external events are considered, and the Commonwealth has provided no reason to do so here.

In short, the Commission should deny the Commonwealth's additional requests for relief as well as the Emergency Petition.

⁶ As stated, the Makhijani Declaration, the only factual predicate provided by the Commonwealth, provides no such basis.

II. DISCUSSION

A. The Commonwealth Makes no Showing of New and Significant Information

The Commonwealth's Request for additional relief is premised on the claim that Fukushima presents "new and significant information" that the NRC is legally obligated to consider under NEPA. See Request at 3. However, in making this argument, the Commonwealth ignores the criteria for establishing new and significant information. As set forth in Entergy's Answer to the Emergency Petition, it is well established that a supplemental EIS is only required where new information "provides a seriously different picture of the environmental landscape." Entergy Answer at 20-21. The Commission has adopted this standard (id. at n.22), and as articulated in the Commission's denial of the Commonwealth's rulemaking petition,⁷ for new information to be significant for an issue addressed in the GEIS, the new information must be "[i]nformation that was not considered in the analyses summarized in NUREG-1437 and that leads to an impact finding different from that codified in 10 CFR Part 51."⁸

The Commonwealth makes no attempt to meet this criterion. Other than referring to Dr. Makhijani's Declaration, which presents no new and significant information for the reasons set forth in Entergy's Answer,⁹ the Commonwealth provides only argument of counsel to support its claims. The Commonwealth's Request is replete with claims that the events at Fukushima and the NRC's response to Fukushima show that the NRC's "rulemaking denial [of the

⁷ The Attorney General of Commonwealth of Massachusetts; the Attorney General of California; Denial of Petitions for Rulemaking, 73 Fed. Reg. 46,204 (Aug. 8, 2008) ("Rulemaking Denial").

⁸ Id. at 46,208 (emphasis added).

⁹ Entergy Answer at 21-27.

Commonwealth's SFP claims] was erroneous."¹⁰ Repeating claims that it made unsuccessfully upon judicial review, the Commonwealth characterizes the Commission's decision as "flawed," improperly relying on mitigation measures, and giving "undue weight to the agency's flawed secret studies."¹¹ These characterizations are inappropriate, as the Commission's decision was upheld on judicial review.¹² Moreover, none of the Commonwealth's claims suggest that any of the allegedly new and significant information arising from the Fukushima event would lead to an impact finding different from the finding of "Small" for on-site storage of spent fuel codified in 10 C.F.R. Part 51, Appendix B.

In this respect, the Commonwealth ignores the multi-layered approach of the Commission's denial of the Rulemaking Petition. The Commission relied on (1) the conservative bounding studies of NUREG-1738,¹³ which found that, even with its very conservative assumptions, the "risk of an SFP fire" is "low and well within the Commission's Safety Goals," and is "substantially lower than reactor risk;" (2) other more realistic studies subsequently performed by Sandia National Laboratories that showed the risk to be lower yet; and (3) mitigation strategies implemented at all plants subsequent to September 11, 2001, that enhance spent fuel cooling and the potential to recover SFP water level and cooling prior to a potential SFP zirconium fire.¹⁴

While the Commonwealth argues that Fukushima belies the Commission's reliance on the Sandia studies and availability of mitigation, it ignores the Commission's reliance on

¹⁰ Request at 2-3; see also e.g., id. at 3, 8, 10-11, 12, 12-13.

¹¹ Id. at 3.

¹² New York v. NRC, 589 F.3d 551 (2d Cir. 2009) (per curiam).

¹³ NUREG-1738, Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants (Feb. 2001).

¹⁴ Rulemaking Denial, 73 Fed. Reg. at 46,207-209.

NUREG-1738. The results of the conservative bounding studies of NUREG-1738 of a “very low likelihood” of a SFP zirconium fire¹⁵ paralleled the results of NUREG-1353,¹⁶ which was the basis relied upon in the GEIS for determining that the “likelihood of a fuel-cladding fire is highly remote.”¹⁷ In this respect, NUREG-1738 is identified as the “key document” in the draft 1 Revision of the GEIS¹⁸ and is the primary basis for the draft Revision 1 conclusion that spent fuel pool accidents are a Category 1 issue.¹⁹ As explained in Entergy’s Answer at 24-25, the conservative bounding analysis of NUREG-1738, which assumed that a zirconium fire would occur if the spent fuel assemblies were uncovered, bounds the events at Fukushima.

Moreover, the Commonwealth’s claims that Fukushima belies the NRC’s reliance on the Sandia studies and the availability of mitigation measures to avoid SFP fires are merely arguments of counsel with no factual basis. For example, counsel argues that the NRC’s assumption that “there will be a ‘significant amount of time’ following the exposure of the spent fuel to remedy the situation prior to the onset of fire or other accident conditions, and its undue reliance upon mitigation measures to do so, appears inconsistent with the SFP accidents or explosions at Fukushima.”²⁰ However, NUREG-1738 calculated that it would take

¹⁵ NUREG-1738 at ix, xi, 5-3.

¹⁶ NUREG-1353, Regulatory Analysis for the Resolution of Generic Issue 82, Beyond Design Basis Accidents in Spent Fuel Pools (Apr. 1989).

¹⁷ GEIS at 6-72 – 6-75. The GEIS referenced the Commission’s 1990 Review and Revision of the Waste Confidence Decision. In turn, the 1990 Review and Revision of the Waste Confidence Decision relied upon a series of technical studies of which NUREG-1353 was the primary technical study. See generally Nuclear Energy Institute Comments on the Massachusetts Attorney General’s Petition for Rulemaking to Amend 10 C.F.R. Part 51 (PRM-51-101) (Mar. 19, 2007) at 8-13 (ADAMS Accession No. ML070790678).

¹⁸ Draft Report for Comment, NUREG-1437, Volume 2, Revision 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (July 2009) Appendix E, Environmental Impact of Postulated Accidents, E.3.7 Impact from Accidents at Spent Fuel Pools, at E-33.

¹⁹ Id. at E-32-E-37. NUREG-1738 is also one of the primary technical studies relied upon in the recent updating of the waste confidence decision. See Waste Confidence Decision Update, 75 Fed. Reg. 81,037, 81,069-70, 81,073 (Dec. 23, 2010).

²⁰ Request at 12.

approximately 100 hours, or four days, for the water in a spent fuel pool to boil off before the uncovering the spent fuel assemblies.²¹ The Commonwealth provides no factual basis to conclude that less than 100 hours was available at Fukushima or that the types of mitigative measures put in place at U.S. plants after September 11 (*e.g.*, “an independently-powered, portable, SFP coolant makeup and spray capability system”²²) could not have been implemented during that that timeframe. Moreover, Pilgrim consists of a single unit and would not be faced with the potential of accident scenarios at multiple plants as was the case at Fukushima.

The Commonwealth also argues that “the NRC, by its own conduct in establishing a Task Force to revisit these SFP risk issues and regulatory practices, itself suggests that Fukushima presents sufficient new and significant information not previously given due consideration by the NRC in its licensing decisions.”²³ It goes without saying that the simple fact that the NRC has established a Task Force to study and evaluate what occurred at Fukushima is not a determination of new and significant information that would lead to an impact finding for SFP risks different from that codified in 10 C.F.R. Part 51. Moreover, while the Commission is taking the logical step of studying the Fukushima event for lessons learned, it has repeatedly reiterated confidence in the safety of U.S. plants. See Entergy Answer at 10. Indeed, the Executive Director reported to the Commission on April 28, 2011 that “to date we have not identified anything that requires immediate action.”²⁴ Thus, the Commonwealth’s logic

²¹ *E.g.*, NUREG-1738 at 2-1, 3-35.

²² Rulemaking Denial, 73 Fed. Reg. at 46,209 (emphasis added).

²³ Request at 11; see also *id.* at 8, 12-13.

²⁴ Briefing on the Status of the NRC Response to Events in Japan and Briefing on Station Blackout (Apr. 28, 2011), Transcript at 31 (ADAMS Accession No. ML111220427). Similarly, the lead of the NRC Task Force, Dr. Charles L. Miller, reported to the Commission in the 30-day update of the task force activities that, “[t]o date the task force has not identified any issues that undermine our confidence in the continued safety and emergency planning of U.S. plants.” “Task Force Activities 30-Day Update” (May 12, 2011).

is faulty and its reliance on the NRC's creation of a Task Force to study Fukushima provides no basis for concluding the presence of new and significant information.

B. No Basis is Provided for the Commonwealth's Specific Requested Relief

Likewise, the Commonwealth provides no basis to support its requests for an additional thirty days to submit expert testimony in support of its request to suspend the Pilgrim license renewal proceeding or for the Commission to order the Pilgrim ASLB to refrain from issuing, and hold in abeyance, its pending decisions on Pilgrim license renewal. As previously discussed, both requests would unduly extend the Pilgrim license renewal proceeding, which is already in its sixth year. The Commission, on its own accord, established a schedule for responding to the Emergency Petition that provided additional time for responses, and the Commonwealth has provided no basis for extending the schedule on its behalf. It has neither explained why the current schedule could not be met nor attempted to identify either the material to be provided by its expert testimony or its relevance. The Commonwealth's utter failure to address the standard for determining new and significant information – clearly set out in the Commission's Rulemaking Denial – and its focus on seeking to re-litigate claims previously rejected by the Second Circuit²⁵ strongly suggest that the only function that would be served by additional Commonwealth submittals would be further delay of the Pilgrim proceeding.

Likewise, the Commonwealth has provided no basis for the Commission to direct the Pilgrim ASLB to hold in abeyance its pending decisions on Pilgrim license renewal. As explained in Entergy's Answer to the Commonwealth's Motion filed with the Pilgrim Board requesting the same relief from the Board,²⁶ applicants for a license are entitled to a prompt

²⁵ New York v. NRC, *supra* n. 12, 589 F.3d 551.

²⁶ Entergy's Answer Opposing Commonwealth's Motion to Hold Licensing Decision in Abeyance (May 12, 2011).

resolution of disputes concerning their applications. Consequently, the Commission strongly disfavors suspending or holding proceedings in abeyance while external events are being considered because such action is fundamentally inconsistent with the Commission's responsibility to render timely decisions. Moreover, as explained in Entergy's Answer to the Commonwealth's Motion to the Board, there is already an adequate procedure in place to protect the Commonwealth's interest without delaying issuance of a decision on the matters before the Board.

III. CONCLUSION

For all of the above stated reasons, the Commonwealth's Request should be denied.

Respectfully submitted,

/Signed electronically by Paul A. Gaukler/

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Dated: May 12, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of “Entergy’s Answer Opposing Commonwealth’s Joinder in Petition to Suspend the License Renewal Proceeding for The Pilgrim Nuclear Power Plant and Request for Additional Relief,” dated May 12, 2011, was provided to the Electronic Information Exchange for service on the individuals below, this 12th day of May, 2011.

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