

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION**

In the Matter of)	
Entergy Nuclear Generation Co.)	Docket No. 50-293-LR
And Entergy Nuclear Operations, Inc.)	
(Pilgrim Nuclear Power Station))	May 19, 2011

**COMMONWEALTH OF MASSACHUSETTS REPLY TO 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**

On May 2, 2011, the Commonwealth of Massachusetts (Commonwealth) submitted a response to the Commission’s April 19, 2011 order regarding the lessons learned from the accident at the Fukushima Daiichi Nuclear Power Station.¹ On May 12, 2011, Entergy Nuclear Generating Company and Entergy Nuclear Operations, Inc. (collectively Entergy) submitted an answer opposing the Commonwealth’s Response.² The Commonwealth submits this Reply primarily to address an error of law raised in Entergy’s Answer, which is inconsistent with the National Environmental Policy Act, 42 U.S.C. § 4321 (NEPA).

The NRC must consider new and significant information arising from the accident at Fukushima before relicensing the Pilgrim nuclear power plant, whether or not that information ultimately leads the agency to modify its licensing requirements.

¹ Commonwealth of Massachusetts Response to Commission Order Regarding Lessons Learned from 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 No. ML111220353) (Commonwealth Response).

² Entergy’s Answer Opposing the Commonwealth’s Joinder in Petition to Suspend the License Renewal Proceeding for the Pilgrim Nuclear Power Plant and Request for Additional Relief (May 12, 2011)(Adams No. ML111320684) (Entergy’s Answer).

In its Answer, Entergy's argues that "[t]he Commonwealth makes no showing of new and significant information" that must be reviewed by the NRC prior to relicensing the Pilgrim Nuclear Power Plant because, according to Entergy, the Commonwealth has not made a showing that the information is certain to lead to a different impact finding for spent fuel pool (SFP) risks. See Entergy Answer at 7 (e.g. establishment of Task Force is not a determination that new and significant information would lead to a different impact finding).

That is not the law. Consistent with NEPA, before taking the major federal action to relicense the Pilgrim nuclear power plant for an additional twenty years, the NRC must take a hard look at the lessons of Fukushima, including the risks of SFP accidents, whether or not the NRC later determines that Fukushima warrants changes to NRC licensing practices. "*Regardless of its eventual assessment of the significance of the information*, the [agency] ha[s] a duty to take a hard look at the proffered evidence." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 385 (1989) (emphasis added). See also *United States v. Coalition for Buzzards Bay*, -- F.3d --, 2011 WL 1844221 (May 17, 2011)(1st Cir. 2011) at *10-11, (NEPA framework is designed to stimulate public participation in agency decision making; failure to take hard look at environmental consequences raised in public comment prior to decision making is reversible error).

The NRC must consider the lessons of Fukushima prior to relicensing Pilgrim because these events reasonably suggest - even if they do not conclusively yet establish - that the environmental impacts of the NRC's relicensing decision for the Pilgrim Nuclear Power Plant may "affect the quality of the human environment in a significant manner or

to a significant extent not already considered.” *Marsh* at 374; see also *Marsh* at 372 - 373 (NEPA is subject to a rule of reason; EIS must be supplemented if there “are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”).

For this reason, Entergy’s focus on the analysis performed by the NRC several years ago regarding the information previously submitted by the Commonwealth in the prior SFP rulemaking, as a basis to deny the Commonwealth’s current Response and Petition, Entergy Answer at 5 – 6, is inconsistent with NEPA’s action forcing requirements to supplement an Environmental Impact Statement with new and significant information, and with the Commission’s own actions to consider the lessons of Fukushima and their impact on current regulatory practices in light of these new events. See Commonwealth Response at 7 – 8. NEPA does not permit the NRC to disregard these intervening events and to place “blindness on the adverse environmental effects” of its relicensing decision. *Marsh* at 371 – 372; see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA requires an agency to consider the environmental impacts *before* decisions are made to ensure that “important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”).³

³ Entergy complains that the Commonwealth has not provided new and significant information to support its Response and Petition, while at the same time - inconsistently - opposing the Commonwealth’s request to provide that additional information specific to the Pilgrim plant and the SFP-related issues of concern in an initial expert report on or before June 2. Entergy Answer at 8; *cf.* Commonwealth Response at 13. Moreover, since the NRC reasonably has given itself even more time - until July 19, 2011 - before it will release its initial report on Fukushima, NRC News Release, dated April 1, 2011 (Adams No. ML110910479), the Commonwealth’s request for additional time is eminently reasonable, given the events at Fukushima that continue to unfold.

Finally, although no definitive conclusions have been reached at this time, it is clear that the Commission itself recognizes that the Fukushima accident warrants a detailed review of regulatory policies and practices related to a variety of issues, including station blackout and other matters relevant to spent fuel pool risks, and that regulatory changes may be required.⁴

Conclusion

As required by NEPA, the NRC should consider the new and significant information arising from the Fukushima accident, and give it a hard look, before deciding whether to relicense the Pilgrim Nuclear Power Plant for an additional twenty years and grant the additional relief requested in the Commonwealth's Response. Commonwealth Response at 13-14.⁵

⁴ See Commonwealth Response at 7 – 8; see also April 28, 2011 Transcript of Proceedings (attached), (Briefing on the status of NRC Response to Events in Japan and Briefing on Station Blackout)(Adams No. (e.g. pp. 37-38) (Commissioner Apostolakis: “[T]wo of the assumptions that we have been making regarding station blackout now have to be questioned in light of what has happened in Japan.” [Discussing duration of station blackout and “major infrastructure damage”]. See also p. 45 (Chairman Jaczko: “[O]bviously, a significant consideration that we’ve seen from Japan is the impact on spent fuel pools. And to what extent are the spent fuel pools and the limited power needs that they may have included in the station blackout considerations.”). Attachment 1 hereto. (Note: While the Commonwealth requested the NRC to provide the transcript on or before April 29, apparently due to internal NRC review process of the April 28 hearing transcript, the NRC did not provide the transcript to the Commonwealth until after 4pm, May 2 and after the Commonwealth's Response was filed with the NRC.)

⁵ Since the Commonwealth filed its Response, a Congressional report has been issued that similarly questions the NRC's regulatory practices in light of Fukushima, including practices related to SFPs. Fallout, Regulatory Loopholes at U.S. Nuclear Plants (May 12, 2011) at 10 - 13. Attachment 2 hereto.

Respectfully submitted,

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Certificate of Counsel

On May 17, 2011, the Commonwealth notified all parties of record that the Commonwealth intended to file a Motion to allow Reply and Reply. Counsel for Entergy has advised that he will oppose the Motion and Reply.

/s/Matthew Brock

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Commonwealth of Massachusetts Reply to 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 in the above captioned proceeding have been served upon the following persons by electronic mail this date:

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