

May 31, 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))	
)	

**ENTERGY’S ANSWER OPPOSING COMMONWEALTH OF
MASSACHUSETTS MOTION TO PERMIT UNAUTHORIZED REPLY**

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively “Entergy”) hereby oppose the Commonwealth of Massachusetts Motion to 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 (May 19, 2011) (“Motion”). The Motion should be denied because the Commission’s rules do not allow replies and the Motion does not make the requisite showing of compelling circumstances to overcome the general prohibition against replies.

The Commission’s Rules of Practice do not authorize a reply. In particular, 10 C.F.R. § 2.323(c) provides:

The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

10 C.F.R. § 2.323(c). The Commonwealth makes no show of compelling circumstances.

First, there is no merit to the Commonwealth’s claim that it could not have reasonably anticipated Entergy’s Answer¹ because it was not authorized by the Commission’s April 19, 2011 Order.² The Commonwealth did not just file a response to the Emergency Petition,³ as authorized by the April 19, 2011 Order, but it also requested additional relief based on claims of new and significant information arising from Fukushima.⁴ Accordingly, the Commonwealth’s Request constituted a separate, new motion to which Entergy had the right to file an answer under 10 C.F.R. § 2.323. Clearly, nothing in the Commission’s Order indicates that either license renewal applicants or other applicants would be precluded from responding to new motions, and any such interpretation would be irreconcilable with fundamental notions of fairness. Consequently, the Commonwealth’s assertion that it could not have anticipated that Entergy would respond to a request for additional relief is unreasonable and should be disregarded.

Similarly, there is no merit to the Commonwealth’s claim that it could not have reasonably anticipated Entergy’s discussion of applicable law under the National Environmental Policy Act, 42 U.S.C. § 4321 (NEPA). Motion at 1.⁵ The raising of legal arguments in

¹ 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 (May 12, 2011) (Entergy’s May 12 Answer”).

² Scheduling Order of the Secretary Regarding Petitions to Suspend Adjudicatory, Licensing, and Rulemaking Activities (April 19, 2011) (“Order”).

³ 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”).

⁴ 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”) at 3, 13-14.

⁵ See also, 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 (May 19, 2011) (“Tendered Reply”) at 1.

refutation of the arguments presented in a motion is the expected focus of a response to a motion and cannot possibly be claimed to be “unanticipated.” Entergy’s May 12 Answer responded to the Commonwealth’s NEPA claim repeatedly made in its Request that Fukushima constituted new and significant information that must be considered under NEPA prior to relicensing of Pilgrim. See Request at 3, 10-13; Entergy May 12 Answer at 4-8.⁶ Entergy’s discussion of the legal standards for considering new and significant information upon which to judge the validity of the Commonwealth’s NEPA claims was based on well-established, cited case law and Commission precedent set forth in Entergy’s May 2 Answer to the Emergency Petition.⁷ Such legal argument does not become “unanticipated” simply because the Commonwealth characterizes it as such. The Commonwealth had the opportunity to raise every relevant legal argument in support of its Request in the first instance. It was therefore incumbent on the Commonwealth to identify all applicable precedents and distinguish them in its Request and not in a reply.⁸

Moreover, the Commonwealth’s Tendered Reply attributes to Entergy claims never advanced by Entergy in its response. Entergy’s argument that Fukushima does not constitute new and significant information that requires a supplemental environmental impact statement

⁶ The Commonwealth inappropriately uses its Tendered Reply to essentially recast its arguments. Its Request was largely premised on claims that “new and significant information arising from the Fukushima accident” showed that “(1) ... NRC’s Rulemaking denial of the Commonwealth’s Rulemaking petition was flawed, and the NRC’s findings with respect to SFP risks which should be revisited; [and] 2) the NRC’s stated basis to deny the Commonwealth’s Rulemaking Petition on SFP Risks apparently relied upon incorrect assumptions and studies that did not fully account for the events at Fukushima.” Request at 3, 10-11. Furthermore, the Commonwealth repeatedly made references in its Request (e.g., id. at 2-3, 6, 8, 12) to the Commission’s allegedly erroneous denial of its Rulemaking Petition. Now the Commonwealth asserts that Entergy’s defense of the NRC’s denial of its Rulemaking Petition taking into account the events at Fukushima is misplaced. Tendered Reply at 3.

⁷ Entergy’s Answer Opposing Petition to Suspend Pending Licensing Proceedings (May 2, 2011) (“Entergy’s Answer to Emergency Petition”) at 19-21, 27-28.

⁸ See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 N.R.C. 461, 469 (1991); U.S. Department of Energy (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), Memorandum and Order (Denying Petition to Certify Issue to the Commission and Motion for Leave to File Replies) (Dec. 22, 2008), slip op. at 4-5 (ADAMS Accession No. ML083570498).

does not mean that the NRC would ignore or fail to take a “hard look” at Fukushima in its relicensing decision-making process, as suggested by the Commonwealth throughout its Tendered Reply. Rather, as made clear by the case law cited in Entergy’s May 2 Answer to the Emergency Petition, including the Marsh decision⁹ relied upon by the Commonwealth, there are many different avenues by which an agency can document its conclusion that new information is not significant in that it does not paint a seriously different picture of the environmental landscape.¹⁰ Public participation through the formal NEPA process and issuance of an environmental assessment is not required to document an agency’s determination that new information is not significant. Here, the Commission in its denial of the Emergency Petition and the Commonwealth’s Request may document its conclusion that Dr. Makhijani’s Declaration does not demonstrate the existence of any significant new information that would “reveal a seriously different picture of the proposed project,”¹¹ i.e., would lead to an impact finding for the license renewal of Pilgrim different from that codified in 10 C.F.R. Part 51. Such consideration would fully satisfy the requirements of NEPA with respect to the license renewal of the Pilgrim plant.

⁹ Marsh v. Oregon Natural Res. Council, 490 U.S. 360, 383-85 (1989).

¹⁰ Entergy’s Answer to Emergency Petition at 27-28.

¹¹ Hydro Resources, Inc., CLI-01-04, 53 N.R.C. 31, 52 (2001) (“The new circumstance must reveal a seriously different picture of the environmental impact of the proposed project.”) (internal quotes and citations omitted).

For the above stated reasons, the Commission should deny the Motion and disregard the
Tendered Reply attached to it.

Respectfully submitted,

/Signed Electronically By/

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Dated: May 31, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of Entergy’s Answer Opposing Commonwealth of Massachusetts Motion to Permit Unauthorized Reply, dated May 31, 2011, was provided to the Electronic Information Exchange for service on the individuals below, this 31st day of May, 2011.

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