

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
Entergy Nuclear Generation Company)
Entergy Nuclear Operations Inc.)
Pilgrim Nuclear Power Station)
License Renewal Application)

Docket # 50-293 LR

1. My name is Anne Bingham and I am providing this affidavit to detail my knowledge of the records maintained by the United States Environmental Protection Agency (USEPA) in the industrial wastewater division of its Region I offices regarding the permitting of surface water discharges to Cape Cod Bay from the Pilgrim Nuclear Power Station (PNPS) in Plymouth, Massachusetts.

2. I live and work at 78A Cedar St. in Sharon, Ma 02067. I was admitted to the Massachusetts bar on January 21, 1985. I was employed by the Massachusetts Department of Environmental Protection (MassDEP) from 1985 until June of 2007. Between 1990 and 1995, I was the senior attorney for the Department's Division of Water Pollution Control, responsible to assist staff in permitting and enforcement for ground and surface water discharges to the waters of the Commonwealth.

3. I have been in private practice for five years since leaving DEP. I currently represent the Jones River Watershed Association and Pilgrim Watch in matters relating to the impact of surface water intake and discharge from PNPS upon water quality and aquatic life in Cape Cod Bay.

4. Between January 3, 2012 and February 28, 2012, I spent approximately 200 hours reviewing documents maintained by the USEPA – Region I in the National Pollutant Discharge Elimination System (NPDES) permitting program under the federal Clean Water Act relating to PNPS. I examined six boxes of documents maintained by Region 1 relating to PNPS's surface water intake and discharge. These documents were represented to constitute all public records on PNPS's surface water intake and discharge to Cape Cod Bay that were in Region 1's possession.

5. The files that I examined contained the jointly issued State Permit No. 359 and Federal Permit No. MA 0003537, hereinafter, the NPDES permit. The current NPDES permit for PNPS was issued in 1991 to Boston Edison Company, amended in 1994 and transferred to Entergy Nuclear Generating in 1999. The NPDES permit expired in 1996 but was administratively extended.

6. The last piece of correspondence in the EPA files between Entergy and EPA relating to the PNPS's NPDES permit was dated April 27, 2005. It is a letter from Entergy's attorney to EPA Attorney Stein addressing the scope of Clean Water Act Section 316(b) review necessary for PNPS's NPDES permit renewal. There was no document in the file after that date from either the agencies or the permittee which evidenced resolution of the issues raised in the permittee's letter or progress towards completing procedural requirements necessary for reissuance of a NPDES permit to PNPS.

7. Through informal inquiries, my colleague and I were informed by both MassDEP and EPA personnel that no one from either agency was currently working on renewal of the NPDES permit for PNPS.

8. Based upon my experience as an attorney for MassDEP, I believe that it is impossible for a new NPDES permit for the Entergy PNPS to be issued by June of 2012. The EPA retains primary jurisdiction for implementing the NPDES program in Massachusetts, but no permit can be issued unless Massachusetts issues a “water quality certification” stating that EPA’s permit does not violate the state water quality standards. 314 CMR 9.09.

9. During my years as an attorney for MassDEP, no permit in any program was ever issued in less than four months after legally required public notice and comment processes were commenced. Based upon my review of the PNPS files at EPA, the notice and public comment processes have not been initiated for reissuance of the PNPS NPDES permit. This process would include certification by Massachusetts that the EPA NPDES permit does not violate state water quality standards.

10. In my experience, the time necessary to complete public notice and comment was always significantly longer than four months when a joint federal state permit, such as a NPDES permit, was being reviewed. This is largely because of the substantial time which is invested in coordination between state and federal agencies.

11. Significant questions were raised in the April 27, 2005 letter regarding the PNPS NPDES permit and remain unresolved. No staff member from either agency is currently assigned to review the PNPS NPDES permit, and anyone assigned now would be required to review, in much greater detail, the records that I have reviewed. State and federal regulations and requirements relating to Cooling Water Intake Structures (CWISs) for NPDES permit have changed substantially in the intervening seven years. Therefore, in my opinion, a new NPDES permit could not be issued to PNPS in less than one year from the date of this affidavit. The requirement for a water quality certification from Massachusetts also makes it virtually impossible that the NPDES permit for PNPS will be issued by June 2012.

electronically signed

Executed in Accord with 10 C.F.R. 2.304(d) on March 6, 2012

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March 6, 2012