

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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

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**Docket # 50-293 LR**

**CORRECTION AND SUPPLEMENT TO: JONES RIVER WATERSHED ASSOCIATION PETITIONS FOR LEAVE TO INTERVENE AND FILE NEW CONTENTIONS UNDER 10 C.F.R. § 2.309(a), (d) OR IN THE ALTERNATIVE 10 C.F.R. § 2.309(e) and JONES RIVER WATERSHED ASSOCIATION AND PILGRIM WATCH MOTION TO REOPEN UNDER 10 C.F.R. § 2.326 AND REQUEST FOR A HEARING UNDER 10 C.F.R. §2.309(a) and (d), ORIGINALLY FILED ON MARCH 8, 2012 IN ABOVE CAPTIONED LICENSE RENEWAL PROCEEDING**

Filed March 15, 2012

On March 8, 2012, Petitioner Jones River Watershed Association, Inc. (JRWA) filed Petitions for Leave to Intervene and File New Contentions under 10 C.F.R. § 2.309(a), (d), and/or (e), and together with Pilgrim Watch filed a Motion to Reopen under 10 C.F.R. § 2.326 and Request for a Hearing Under 10 C.F.R. § 2.309(a) and (d)(collectively referred to herein as “Petitioners’ motions”).

Petitioners hereby correct a statement on page 12 of Petitioners’ motions, which states that the Nuclear Regulatory Commission (NRC) has not submitted an Essential Fish Habitat (EFH) assessment report to National Marine Fisheries under the Magnuson-Stevens Fishery Conservation and Management Act of 1976, 15 U.S.C §§ 1801 *et seq.* and implementing regulations (MSA). The correct statement is that the NRC apparently *has* submitted the EFH assessment to NMFS. It is dated December 2006 and is contained in the July 2007 NUREG-1437, Supplement 29 (PNPS EIS), at pp. 79-150 (PDF pages 513-584) (NRC EFH assessment).

There is no record, however, that the EFH consultation process under the MSA has been completed, as alleged in Petitioners’ motions. Therefore, Petitioners’ contention that Entergy’s Pilgrim Nuclear Power Station (PNPS) cannot be relicensed until the MSA consultation process is completed is unaffected by this correction. See, Petitioners’ motions, Parts II-VII.

Petitioners supplement their March 8, 2012 filing by providing two brief examples of the gross inadequacies in the NRC EFH assessment. An exhaustive analysis of the extensive flaws in the NRC EFH assessment is beyond the scope of this filing, but for purposes of showing the continued presence of a genuine dispute on this issue, as

required by 10 C.F.R. § 2.309(f)(1)(vi), Petitioners provide the following information. This brief overview, however, clearly demonstrates that the NRC's EFH assessment, like the NRC's biological assessment and indeed the entire PNPS EIS, blatantly flouts federal and state law, and constitutes an agency derogation of duty in connection with the PNPS relicensing process and the impacts on Cape Cod Bay from Entergy's PNPS operations.

First, it is highly significant that the NRC EFH assessment states "If the NRC renews the license, the reactors and support facilities, including the cooling system, would be expected to continue to be operated and maintained until the renewed license expires in 2032." EFH Assessment, § 2.0, p. E-82. There can be no controversy that the continued operation of Entergy's cooling water system at PNPS will continue to adversely affect aquatic habitat in Cape Cod Bay, including areas designated by NMFS as Essential Fish Habitat. As the Massachusetts Supreme Judicial Court has ruled in upholding the state's authority to regulate Entergy's cooling water operations,

...the ecological harms associated with CWISs are well understood. The intake of water a CWIS at a single power plant can kill or injure billions of aquatic organisms in a single year. The environmental impact of these [cooling water intake] systems is staggering...destabilizing wildlife populations in the surrounding ecosystem. *In areas with a designated use as aquatic habitat (such as Cape Cod Bay where Pilgrim's CWIS operates), therefore, CWISs hinder the attainment of water quality standards.* (citations omitted; emphasis supplied)

Entergy Nuclear Generation Company vs. Department of Environmental Protection, 459 Mass. 319, 332, (2011).

Second, the NRC EFH assessment refers repeatedly to Entergy's purported compliance with the federal Clean Water Act and Section 316 requirements relating to thermal and pollutant discharges and cooling water intake. Rather than showing

compliance with the CWA, the record demonstrates that Entergy has, at every turn, challenged any regulatory effort to bring the NPDES permit up to date and to improve the cooling water technology to prevent the massive ecological harm being caused by PNPS.

Entergy Nuclear, supra.

NRC regulations require a “current” NPDES permit to be submitted as part of a relicensing application. NRC regulations at 10 C.F.R. 10 51.53(c)(3)(ii)(B), state,

If the applicant's plant utilizes once-through cooling ...systems, the applicant shall provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant cannot provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.

Entergy’s “current” 316(b) determination and 316(a) variance, contained in its Clean Water Act (CWA) NPDES permit, expired 16 years ago, although it has been administratively extended. Affidavit of Anne Bingham, ¶ 5, submitted with Petitioners’ motions. The last piece of correspondence in U.S. EPA files between Entergy and EPA relating to the PNPS NPDES permit was a letter dated April 27, 2005. Bingham Aff. ¶ 6. Significant questions were raised in this letter regarding the PNPS NPDES permit and remain unresolved. No staff member from either the state or EPA is currently assigned to review the PNPS NPDES permit. Id., ¶ 11.

In attempt to meet the requirements of 10 C.F.R. 10 51.53(c)(3)(ii)(B) that it “provide a copy of *current Clean Water Act 316(b) determinations....and 316(a) variance*”, Entergy submitted to the NRC a total of four pages of documentation. See, Applicant’s Environmental Report. “Attachment A: NPDES Permit and Water Quality

Certification”<sup>1</sup> The first is page 1 of the 1991 “Modification No. 1” of its 1991 NPDES permit. The second is page 3 of 15 pages from the NPDES permit.<sup>2</sup> Third and fourth are one-page letters from 1970 and 1971 from state officials saying that PNPS operations meet state water quality standards.<sup>3</sup> *These two letters were issued before PNPS even began operating in December 1972.* Hence, in its permit application, Entergy tries to rely upon 40 year old state certifications and two pages from a 1991 permit to show compliance with 10 C.F.R. 10 51.53(c)(3)(ii)(B) and the federal Clean Water Act. It has provided no “current” 316(b) or (a) determinations. For the NRC EFH assessment to rely on these outdated documents shows its complete lack of credibility.

The “staggering” environmental impact of Entergy’s operations, Entergy Nuclear, *supra*, is highlighted in comments submitted to US EPA by the Massachusetts Coastal Zone Management (MCZM) agency in 2000 in connection with Entergy’s attempt to demonstrate that its once through cooling system met federal Clean Water Act standards. The letter is attached to the duBois Affidavit submitted with Petitioners motions. One statistic in the MCZM letter shows the extensive destruction of marine life in Cape Cod Bay by Entergy. MCZM states that in 1997 and 1998, Entergy killed almost “40% of the annual total recreational and commercial catch” of winter flounder. Winter flounder is an EFH Species; see PNPS EIS, Vol. 29, p. E-102. Under the MSA, where adverse impacts

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<sup>1</sup> <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/pilgrim/environ-report.pdf>.

<sup>2</sup> Page 13 from the 1991 NPDES permit states in pertinent part that the “circulating intake structures presently employs the best technology available for minimizing adverse environmental impact....”

<sup>3</sup> The 1971 document is a letter from the state Water Resources Commission certifying that “based on information and investigations, there is reasonable assurance that the proposed activity will be conducted in a manner which will not violate applicable water quality standards....” Similarly, the 1970 letter certifies that based on certain information that PNPS operation will not violate applicable water quality standards.

are found the NMFS must provide conservation recommendations. 50 C.F.R. § 600.925. Entergy and the NRC have managed to side step the MSA process.

The NRC EFH assessment concludes that “[c]ontinued operation of the PNPS cooling water system was determined to have a minimal adverse effect for EFH for 17 species, a less than substantial adverse effect on EFH for 8 species, and a substantial adverse effect on EFH for 7 species. However, within the overall Cape Cod Bay ecosystem, the staff has determined that continued operation of the PNPS cooling water system would have a minimal adverse effect on EFH.” PNPS EIS, Appendix E, p. E-135. Further, without supporting documentation, and relying on an NPDES permit that expired 16 years ago, the NRC EFH assessment claims that appropriate “mitigation measures” to avoid adverse impacts to EFH species are in place at PNPS. The record is devoid of any proof of this sweeping, inaccurate statement. See, e.g. PNPS EIS, p. E-131. Instead, Entergy, in its 2006 license renewal application, put forth 41-year old state water quality certifications, and an NPDES permit that expired in 1996. Then, it sued to try to stop Massachusetts from implementing new water quality standards that would attempt to ensure that fisheries habitats were protected from Entergy’s cooling water operations at PNPS. See, Entergy Nuclear, *supra*.

The record shows that Entergy has successfully stalled the EPA’s NPDES permit renewal *almost* long enough -- until Petitioners’ intervention -- so that it could obtain a new operating license without too much scrutiny of its once-through cooling operations. Through a series of obfuscations, to which the NRC is a party by virtue of attempting to shift the EFH assessment process to EPA, Entergy has *almost* gotten away with it.

As shown here, there is a material dispute between what Petitioners charge in their March 8, 2012 motions and the positions of Entergy and the NRC as to whether there has been an adequate EFH assessment. A hearing should be granted on Petitioners' contentions.

Respectfully submitted,

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On the morning of March 14, 2012, the Petitioners notified all parties of record of their intent to make this filing. As of the filing of this document, none of the parties of record have responded.

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