

April 27, 2012

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
All Operating Boiling-Water Reactor Licensees with Mark I and Mark II Containments)	Docket No. EA-12-050
)	
All Power Reactor Licensees and Holders Of Construction Permits in Active or Deferred Status)	Docket No. EA-12-051 ASLBP No. 12-918-01-EA-BD01

**PPL SUSQUEHANNA’S ANSWER OPPOSING
REQUESTS FOR HEARING**

I. INTRODUCTION

PPL Susquehanna, LLC (“PPL”), licensee for the Susquehanna Steam Electric Station, Units 1 and 2 (“Susquehanna”), hereby answers the requests (“Requests”) submitted by Pilgrim Watch (PW)¹ and Beyond Nuclear (BN)² (collectively, “Petitioners”) seeking a hearing on two Fukushima-related orders modifying licenses issued by the Commission on March 12, 2012: (1) the Order to Modify Licenses with Regard to Reliable Hardened Containment Vents (the “HCV Order”), and (2) the Order to Modify Licenses with Regard to Reliable Spent Fuel Pool

¹ Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Apr. 2, 2012) (“PW HCV Request”), as supplemented by the Pilgrim Watch Request for Leave to Supplement Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Apr. 2, 2012); Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent [sic] Reliable Spent Fuel Pool Instrumentation (Apr. 2, 2012) (“PW SFP Request”), as supplemented by the Pilgrim Watch Supplement to Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent [sic] Reliable Spent Fuel Pool Instrumentation (Apr. 12, 2012) (collectively, the “PW Requests”).

² Beyond Nuclear Pleading to Co-Petition in the Matter of Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Apr. 3, 2012) (“BN HCV Request”); Beyond Nuclear Pleading to Co-Petition in the Matter of Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent Fuel Pool Modifications (Apr. 3, 2012) (“BN SFP Request”) (collectively, the “BN Requests”).

Instrumentation (the “SFP Order”) (collectively, the “Orders”).³ The BN Requests purport to adopt without any modification the substantive arguments advanced in the PW Requests. As discussed below, the Requests should be denied because (1) Petitioners are seeking to raise issues outside of the scope of any proceeding related to the Orders, (2) Petitioners do not have standing, and (3) Petitioners have not identified any admissible contention.⁴

II. BACKGROUND

On March 12, 2012, the Commission issued the two Fukushima-related Orders that are the subject of Petitioners’ Requests. The HCV Order immediately modified the licenses of all licensees, including PPL, who operate boiling-water reactors with Mark I and Mark II containment designs, to require additional measures for reliable hardened containment vents. See 77 Fed. Reg. 16,098 (Mar. 19, 2012). The HCV Order mandates new requirements to “provide greater mitigation capability” with respect to “a reliable hardened venting capability for events that can lead to core damage.” Id. at 16,100.⁵ The SFP Order immediately modified the licenses of all licensees, including PPL, who are power reactor licensees or construction permit holders, to require provisions for reliable spent fuel pool indications. See 77 Fed. Reg. 16,082 (Mar. 19,

³ Consistent with 10 C.F.R. § 2.309(h)(1), this Answer to both the PW Requests and the BN Requests is filed within 25 days of their service. Because the BN Requests adopt the PW Requests and accompanying exhibits verbatim, PPL is providing this consolidated response to both parties’ submissions.

⁴ In addition to these deficiencies, the BN Requests were untimely filed on April 3, 2012. The Orders, issued on and dated March 12, 2012, required any hearing request to be filed within 20 days of the date of the Orders. By these terms, the deadline for filing a hearing request was April 2, 2012. Although BN submits that “the Final Order did not become a public document until March 14, 2012” (BN HCV Request at 2), BN does not deny that it in fact received the Orders on March 12, 2012. The Orders were distributed on the Commission’s electronic distribution list (listserv) for multiple dockets on March 12, 2012, including EA-12-051. Mr. Paul Gunter of BN is shown among the EA-12-051 docket distribution list recipients of the SFP Order as it was emailed by Commission staff on March 12, 2012. Thus, BN would have actually received the SFP Order on March 12, 2012. Moreover, Commission staff affirmed that the HCV Order “was publicly available for review on March 12, 2012.” Letter from Eric J. Leeds, Office of Nuclear Reactor Regulation, to Paul Gunter, Beyond Nuclear (Mar. 22, 2012) (ADAMS Accession No. ML12080A020). Further, in denying BN’s March 15, 2012 request for an extension of time to file a hearing request, Commission staff noted that, because the HCV Order “did not substantially change” from the draft made publicly available on February 17, 2012, “the information contained in the Order was publicly available prior to the March 12, 2012 issuance date.” Id.

⁵ The specific requirements, as applicable to licensees identified in Attachment 1 to the HCV Order, are set forth in Attachment 2 to the HCV Order. 77 Fed. Reg. at 16,100.

2012). The SFP Order imposes a series of requirements to “provide a greater capability” with respect to “a reliable means of remotely monitoring wide-range spent fuel pool levels to support effective prioritization of event mitigation and recovery actions in the event of a beyond-design-basis external event.” Id. at 16,084.⁶

The Orders state that “[i]n accordance with 10 CFR 2.202, the [licensee] must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order.” Id. at 16,085, 16,100-01. “If a person other than the [licensee] requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).” Id. at 16,086, 16,102. If a hearing on the Orders is held, “the issue to be considered at such hearing shall be whether this Order should be sustained.” Id. at 16,085, 16,101 (emphasis added).

III. DISCUSSION

A. The Requests Should Be Denied Because They Seek a Hearing on Issues Outside the Scope of the Proceeding

The Requests should be denied because the issues they seek to raise are outside the scope of the proceeding. The Requests assert that the HCV Order “is insufficient to protect public health, safety and property because it lacks a requirement for licensees to install filters in the direct torus vents (DTV’s)” and because “it does not require the hardened DTV to be passively actuated by means of a rupture disc.” PW HCV Request at 3. The Requests allege that the SFP Order “is insufficient to protect public health and safety and must be supplemented with a requirement for licensees to re-equip their spent fuel pools to low-density, open-frame design

⁶ The specific requirements, as applicable to licensees and construction permit holders identified in Attachment 1 to the SFP Order, are set forth in Attachments 2 and 3 to the SFP Order. 77 Fed. Reg. at 16,084.

and storage of assemblies >5 years removed from the reactor core to the pool placed in dry casks.” PW SFP Request at 5. Moreover, the Requests contend that “[t]he [SFP] Order’s focus simply on spent fuel pool instrumentation fails to address the real problem.” Id. at 3. As discussed above, the NRC has explicitly limited the scope of this proceeding to the question of whether the Orders should be sustained, and Petitioners’ Requests go far beyond this narrow question.

It has long been recognized that the Commission has authority under the Atomic Energy Act to limit the scope of a hearing on an enforcement order to the issue of whether the order should be sustained. See Bellotti v. NRC, 725 F.2d 1380, 1381-82 (D.C. Cir. 1983); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-04-05, 59 N.R.C. 52, 56 (2004). Clearly, Petitioners’ attempt to turn this proceeding into a hearing on whether the “NRC’s assumptions about U.S. operator’s capability to mitigate an accident at Pilgrim NPP, or similar reactors, are unrealistically optimistic” (PW SFP Request at 11), as well as an “operator’s ability to carry out mitigative measures . . . in an accident environment” (id.), is precisely the type of “interminable, free-ranging” expansion that would deluge the Commission and hamper its ability to impose focused compensatory measures. Bellotti, 725 F.2d at 1381. If successful, Petitioners would turn this focused regulatory proceeding into exactly the type of “amorphous public extravaganzas” that Bellotti eschews. Id. at 1382-83. Thus, the issues which Petitioners seek to litigate are not appropriate matters for this proceeding.

Rather than addressing the question of whether the Orders should be sustained, Petitioners attack the factual assumptions on which the Orders are based and seek to supplement the Orders with additional requirements. PW HCV Request at 3; PW SFP Request at 11. However, as the Commission has affirmed, “Bellotti . . . holds that NRC hearing petitioners may

not seek additional measures going beyond the terms of the enforcement order triggering the hearing request.” Maine Yankee, CLI-04-05, 59 N.R.C. at 58 (footnote omitted); see also Sequoyah Fuels Corp. (UF₆ Production Facility), CLI-86-19, 24 N.R.C. 508, 513-14 (1986). Similarly, a request to litigate the factual predicate of an order “is exactly the type of attempt to expand the scope of an enforcement proceeding that the narrowly drawn order in this instance is intended to and properly does preclude.” Sequoyah, CLI-86-19, 24 N.R.C. at 513. Since Petitioners nowhere challenge whether the Orders should be sustained, which is the only question within the scope of this proceeding, their request for a hearing must be denied.

B. The Requests Should Be Denied Because Petitioners Lack Standing

The Requests must also be denied because Petitioners have not demonstrated their standing to challenge the Orders. A petitioner such as PW or BN is not affected when its only injury stems from the absence of additional measures in an enforcement order.

In order to be a party to an enforcement proceeding,⁷ a petitioner must demonstrate that it “has an interest that may be affected by the proceeding, i.e., it has standing to participate.” Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 71 (1994). To demonstrate standing, “a petitioner must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision.” Id. at 71-72.

Orders modifying a license require an “added dimension” to the standing analysis, as articulated in Bellotti, supra. Detroit Edison Co. (Fermi Power Plant Independent Spent Fuel Storage Installation), LBP-09-20, 70 N.R.C. 565, 575 (2009), aff’d, CLI-10-03, 71 N.R.C. 49 (2010). Bellotti holds that, where the NRC has limited the scope of the proceeding to the

⁷ Although the Orders did not arise out of any violation, the NRC characterizes orders to modify licenses as enforcement orders under 10 C.F.R. § 2.202. See 77 Fed. Reg. at 16,084 (citing 10 C.F.R. § 2.202).

question of whether an order should be sustained (see 725 F.2d at 1382 & n.2), it has “preclud[ed] from intervention persons . . . who do not object to the Order but might seek further corrective measures.” Bellotti, 725 F.2d at 1382 n.2. Thus, in such a context, “a petitioner cannot obtain a hearing by simply suggesting that the order should be strengthened in some way. Rather, a petitioner must show that he would be better off in the absence of any order at all.” Fermi, LBP-09-20, 70 N.R.C. at 575.

Here, Petitioners have made no such showing. The injuries alleged by PW and BN are not fairly traceable to the Orders or redressable in this proceeding. Petitioners’ concerns with the sufficiency of the Orders modifying facility licenses lie outside the scope of the opportunity for hearing on the Orders where, as here, the issue specified for hearing is only “whether th[ese] Order[s] should be sustained.” 77 Fed. Reg. at 16,085. In essence, by asserting that they may be harmed by the failure of the content of the Orders, i.e., the insufficiency of the requirements, Petitioners are asserting a claim that is not redressable in this proceeding. In the same vein, Petitioners are suffering no injury that is fairly traceable to the Orders. Petitioners certainly are not injured by the added safety measures imposed by the Orders. Rather, whatever purported injury that Petitioners believe they are suffering can only relate to the alleged need for measures outside the scope of this limited proceeding. If Petitioners wish to seek more stringent measures or contest the implementation of the Orders, then the proper vehicle is a petition under 10 C.F.R. §2.206. See Bellotti, 725 F.2d at 1382.

Finally, Petitioners have made no showing of individualized interest with respect to Susquehanna. PW submits that many of its members live in the vicinity of the Pilgrim Nuclear Power Station, but makes no attempt to address standing to challenge the Orders as they apply to any other plant. PW HCV Request at 1; PW SFP Request at 2. BN alleges that it has members

who “live, work and recreate within the 50-mile Emergency Planning Zone” for nuclear power plants subject to the Orders “who feel that their health and safety is adversely impacted by [the Orders] as currently written” BN HCV Request at 1-2; BN SFP Request at 1-2. BN fails to identify any specific members as required by 10 C.F.R. § 2.309(d). Further, these vague references to the distance of unspecified individuals to unspecified plants are inadequate to support standing, as the “proximity presumption” is inapplicable in cases involving enforcement orders. See Nuclear Fuel Services, Inc. (Special Nuclear Facility), LBP-07-16, 66 N.R.C. 277, 293-94 (2007). Accordingly, Petitioners have failed to demonstrate their standing to challenge the Orders, and certainly have made no showing whatsoever of any cognizable interest in their application to Susquehanna.

C. The Requests Should Be Denied Because Petitioners Identify No Admissible Contention

Finally, the Requests should be denied because Petitioners identify no contention meeting the admissibility standards in 10 C.F.R. § 2.309(f)(1). Because the sufficiency of the Orders is beyond the scope of this proceeding, the contentions raised by Petitioners fail to satisfy 10 C.F.R. § 2.309(f)(1)(iii) or (iv). Further, even if the sufficiency of the Orders was within the scope of the proceeding, which it is not, the contentions would still be inadmissible under 10 C.F.R. § 2.309(f)(1)(v)-(vi), because of a lack of requisite support demonstrating the existence of a genuine dispute. Indeed, the documents on which PW appears to rely are in large measure pleadings in or information relating to the Pilgrim license renewal proceeding. PW HCV Request at 19-23; PW SFP Request at 4-5.

Further, those documents have already been considered by the Commission, and none of them warranted any relief. In the case of spent fuel pool accident risk, The Commonwealth of

Massachusetts' 2005 hearing request/rulemaking petition (see PW SFP Request at 4) and the 2005 National Academy of Sciences Report (see PW SFP Request at 12-15) were carefully considered by the Commission in its decision denying the Commonwealth's request for rulemaking to require analysis of measures to further mitigate spent fuel pool accident risk in license renewal proceedings. 73 Fed. Reg. 46,204 (Aug. 8, 2008), aff'd, New York v. NRC, 589 F.3d 551 (2d Cir. 2009) (per curiam). The June 1, 2011 Report by Gordon Thompson (see PW SFP Request at 4, 8-10) was considered by the Licensing Board in the Pilgrim license renewal proceeding, which found inter alia that the Thompson Report did not raise any significant new information and was too speculative to demonstrate a genuine dispute in that proceeding. Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-11-35, 74 N.R.C. ___, slip op. at 65-66 (Nov. 28, 2011), aff'd, CLI-12-06, 75 N.R.C. ___, slip op. at 19-26 (Mar. 8, 2012).

With regard to hardened containment vents, PW submitted a very similar hearing request in the Pilgrim license renewal proceeding that was considered and rejected by the Licensing Board. See Pilgrim Watch Request for Hearing on a New Contention Regarding Inadequacy of Environmental Report, Post Fukushima at 5-6, 12-17, 20-21 (June 1, 2011) (ADAMS Accession No. ML111530448); Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-11-23, 74 NRC ___, slip op. at 25-38 (Sept. 8, 2011), review denied, CLI-12-03, 75 N.R.C. ___, slip op. (Feb. 22, 2012). In that case, the Licensing Board concluded that PW's proposed contention, the basis for which was nearly identical to that advanced in support of the proposed second contention in the PW HCV Request (see PW HCV Request at 3-4, 17-24), "lacks adequate basis, instead relying upon speculation and non-expert information." LBP-11-23 at 37. Since none of the documents or arguments which PW now seeks to recycle previously raised a significant or

material concern, it is hard to fathom how they can now demonstrate any insufficiency in the Orders.

More importantly, none of the Requests makes any effort to relate any of this information to Susquehanna. The Requests make no showing that Susquehanna presents any unacceptable risk. Accordingly, even if the sufficiency of the Orders were within the scope of the proceeding (which it is not), the Requests provide no basis for challenging the sufficiency of the Orders as applied to Susquehanna (or indeed to any other reactor).

IV. CONCLUSION

For all of the above stated reasons, the Requests should be denied.

Respectfully submitted,

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Of Construction Permits in Active or)	
Deferred Status)	ASLBP No. 12-918-01-EA-BD01

CERTIFICATE OF SERVICE

I hereby certify that a copy of “PPL Susquehanna’s Answer Opposing Requests for Hearing,” dated April 27, 2012, was provided to the Electronic Information Exchange for service on the individuals listed below, this 27th day of April, 2012.

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