INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission (“NRC Staff” or “Staff”) answers the “Joint Opposition to NRC Staff’s Request for Authorization [to] Renew Pilgrim Station’s License” (“Joint Opposition”) filed by Jones River Watershed Association and Pilgrim Watch (collectively “Petitioners”) on April 30, 2012.1 The Joint Opposition “respectfully requests permission to reply to the NRC Staff’s” request to the Commission for authority to issue the renewed operating license for the Pilgrim Nuclear Power Station (“Pilgrim”).2 The Staff sent the request to the Commission in SECY-12-0062, Renewal of Full-Power Operating License for Pilgrim Nuclear Power Station (Apr. 20, 2012) (“SECY-12-0062”).


2. Id. at 1.
The Staff filed SECY-12-0062 on the docket for this proceeding through a notification to the licensing board.\(^3\)

NRC practice requires parties, including the Staff, to notify licensing boards and other parties of “information that may be relevant and material to a pending proceeding.”\(^5\) The NRC’s procedural regulations do not provide for a right of reply to such notifications. Nonetheless, under NRC precedent, filings seeking “certain immediate affirmative relief” constitute motions.\(^6\) Because the Joint Opposition seeks the immediate relief of leave to oppose the Staff’s request in SECY-12-0062, it constitutes a motion under 10 C.F.R. § 2.323.\(^7\) But the Joint Opposition does not provide any support for its request for leave to respond to SECY-12-0062.\(^8\) Consequently, the Commission should deny the Joint Opposition’s request. Moreover, even if the Commission considered the arguments in the Joint Opposition, none of these arguments advance sufficient grounds for denying the Staff’s request in SECY-12-0062.

\(^3\) Supplemental Information Potentially Relevant And Material to Proceeding for the Renewal of Full-Power Operating License for Pilgrim Nuclear Power Station (Apr. 23, 2012) (ADAMS Accession No. ML12114A222) (“Board Notification”).

\(^4\) Board Notification.

\(^5\) E.g., Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-829, 23 NRC 55, 58 (1984).

\(^6\) Duke Power Company (Cherokee Nuclear Station, Units 1, 2, and 3), ALAB-457, 7 NRC 70, 71 (1978).

\(^7\) 10 C.F.R. § 2.323. The Staff notes that the Petitioners did not consult with the other parties before filing the Joint Opposition under 10 C.F.R. § 2.323(b).

\(^8\) 10 C.F.R. § 2.323(b) (a motion must “state with particularity the grounds and the relief sought”).
DISCUSSION

A. NRC Regulations Permit the Staff to Issue a Renewed License with Commission Approval after an Initial Decision Despite Pending Appeals or Motions to Reopen the Record

The Petitioners claim, “Until contested issues are decided by NRC, [SECY-12-0062’s] request for issuance cannot be granted.”\(^9\) To the contrary, 10 C.F.R. § 2.340(a) provides that once the presiding officer issues an initial decision in a contested license renewal proceeding, the Director of the Office of Nuclear Regulation “after making the requisite findings, will issue, deny or appropriately condition the license.”\(^10\) Moreover, 10 C.F.R. § 2.340(i), states that “the Director of Nuclear Reactor Regulation [shall issue] an operating license . . . within 10 days from the date of issuance of the initial decision” provided the agency “has made all findings necessary for issuance of the authorization, permit, or license, not within the scope of the initial decision.”\(^11\) The Statements of Consideration supporting this rule indicates that this provision authorizes the Director to act “notwithstanding the pendency of various petitions or motions for reconsideration, review or stay before the presiding officer or the Commission.”\(^12\) Indeed, the Staff has previously sought Commission approval to issue a renewed license notwithstanding a pending appeal from a licensing board decision.\(^13\) Additionally, under Commission precedent,

\(^9\) Joint Opposition at 6.

\(^10\) See also 42 U.S.C. § 2241(a) (permitting the Commission to delegate to the licensing board authority “with respect to the granting, suspending, revoking, or amending of any license or authorization under the provisions of” the Atomic Energy Act).

\(^11\) Although 10 C.F.R. § 2.340(i) does not address license renewals, § 2.340(a) indicates that the term operating license includes amendments and renewals to an existing operating license.


the NRC can issue an operating license despite pending motions to reopen the record.\textsuperscript{14} The Court of Appeals for the District of Columbia has affirmed this NRC practice.\textsuperscript{15}

Petitioners claim that 10 C.F.R. § 2.340 does not apply because “[h]ere, the plain fact of the matter is that the Board has not issued any such ‘initial decision’ nor has the Commission issued its decision on [a pending] Petition for Review.”\textsuperscript{16} In fact, the licensing board has issued two initial decisions in this proceeding. On October 30, 2008, after an evidentiary hearing, the board issued an order stating, “In this Initial Decision, the Licensing Board rules on the remaining issues outstanding before it . . ..”\textsuperscript{17} Again, on July 19, 2011, the board issued an order on a remanded contention and described that order as a “Partial Initial Decision.”\textsuperscript{18} Consequently, the Petitioners’ suggestion that the Board has not issued an initial decision is without merit. Moreover, as discussed above, pending petitions for review or motions for reconsideration do not prevent the NRC from issuing a license once the Board issues an initial decision.\textsuperscript{19} Accordingly, the Petitioners have not identified any legal impediment to the Staff’s request for Commission authorization to renew the Pilgrim operating license.

B. In SECY-12-0062 the Staff Appropriately Sought Commission Authorization to Issue a Renewed Operating License for Pilgrim

Petitioners argue that the request in SECY-12-0062 violates a long-standing

\textsuperscript{14} \textit{Louisiana Power \\& Light Co.} (Waterford Steam Electric Station, Unit 3), CLI-85-3, 21 NRC 471, 475 (1985).

\textsuperscript{15} \textit{Oystershell Alliance v. NRC}, 800 F.2d 1201, 1205-07 (D.C. Cir. 1986).

\textsuperscript{16} Joint Opposition at 7.

\textsuperscript{17} \textit{Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.} (Pilgrim Nuclear Power Station), LBP-08-2, 68 NRC 590, 593 (2008).

\textsuperscript{18} \textit{Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.} (Pilgrim Nuclear Power Station), LBP-11-18, 74 NRC __ (July 19, 2011) (slip op. at 34).

\textsuperscript{19} 10 C.F.R. § 2.340(a), (i); \textit{Waterford}, CLI-85-3, 21 NRC at 475.
Commission policy that requires the Staff to seek Commission approval before issuing a renewed license in contested proceedings.\textsuperscript{20} The Petitioners correctly noted that in Staff Requirements Memorandum ("SRM")-SECY-02-0088 – Turkey Point Nuclear Plant, Units 3 and 4, Renewal of Full-Power Operating Licenses, the Commission only authorized the Staff to issue license renewals without prior Commission authorization in uncontested proceedings.\textsuperscript{21} Thus, Petitioners claim, “In contested cases, the Commission review and approval is required, and essential.”\textsuperscript{22} But, Petitioners’ argument ignores the stated purpose of SECY-12-0062. The Staff filed SECY-12-0062 to seek Commission authorization to issue the renewed license for Pilgrim.\textsuperscript{23} Consequently, the Staff’s request fully conforms to the Commission’s policy expressed in SRM-SECY-02-0088.

C. No Other Statute Bars the Staff’s Request in SECY-12-0062

In addition, the Petitioners allege that a variety of environmental statutes preclude the NRC from issuing the renewed operating license for Pilgrim.\textsuperscript{24} But, as discussed below, the NRC has fully complied with each statute. Consequently, this claim also fails to provide sufficient grounds to support the Joint Opposition.

\textsuperscript{20} Joint Opposition at 4-6 (citing Staff Requirements Memorandum ("SRM")-SECY-02-0088-Turkey Point Nuclear Plant, Units 3 & 4, Renewal of Full-Power Operating Licenses (June 5, 2002) (ADAMS Accession No. ML021560479) ("SRM-SECY-02-0088").

\textsuperscript{21} Id. at 4.

\textsuperscript{22} Id.

\textsuperscript{23} SECY-12-0062 at 1.

\textsuperscript{24} Joint Opposition at 7-10. The NRC Staff has already thoroughly discussed, and rebutted, these claims in its Answer to Jones River Watershed Association and Pilgrim Watch’s Petitions for Leave to Intervene and Motions to Reopen the Record (Mar. 19, 2012) (ADAMS Accession No. ML12079A300) ("Staff Answer").
1. The NRC Staff Fully Complied with the National Environmental Policy Act

Petitioners contend that the Staff’s Environmental Impact Statement ("EIS") for the Pilgrim license renewal is deficient under the National Environmental Policy Act ("NEPA") because it does not consider “new and significant” information contained in Petitioners’ most recent contentions.\(^\text{25}\) In *Marsh v. Oregon Natural Resources Council*,\(^\text{26}\) the Supreme Court held that when new information indicates that a federal action “will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.”\(^\text{27}\) But the Court also stated that “an agency need not supplement an EIS every time new information comes to light after the EIS is finalized.”\(^\text{28}\) Such a requirement “would render agency decision making intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.”\(^\text{29}\) Under NRC precedent, to require supplementation of an EIS, new information “must reveal a seriously different picture of the environmental impact of the proposed project.”\(^\text{30}\)

In responding to the Petitioners’ new contentions, the Staff has already demonstrated that they do not contain information that provides “a seriously different picture” of the impacts of renewing the Pilgrim operating license.\(^\text{31}\) Therefore, the information in the new contentions

\(^\text{25}\) *Id.* at 9 (“NEPA forbids granting a license until all new, significant and material environmental issues have been considered. NRC has not complied with NEPA.”).


\(^\text{27}\) *Id.* at 374.

\(^\text{28}\) *Id.* at 372.

\(^\text{29}\) *Id.* at 373.

\(^\text{30}\) *Hydro Resources, Inc.*, CLI-01-04, 53 N.R.C. 31, 52 (2001)

\(^\text{31}\) See Staff Answer, *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-12-01, 75 NRC ___ (January 11, 2011) (slip op.). Since the (continued. . .)
does not constitute significant information. As a result, the NRC need not document its consideration of the new information in the contentions in a supplemental EIS under \textit{Marsh}.

2. **The NRC Staff Fully Complied with the Endangered Species Act**

In addition, the Joint Opposition declares, “The NRC has failed to complete the § 7 consultation process under the Endangered Species Act [(“esa”)] for ten listed endangered and threatened species.”\textsuperscript{32} The Petitioners contend that the NRC cannot issue the renewed license until that process is complete.\textsuperscript{33} But, the regulations governing the consultation process explicitly state, “Each federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required . . ..”\textsuperscript{34} The NRC explicitly found that issuing a renewed operating license for Pilgrim would have “no effect” on any listed species.\textsuperscript{35}

________________________________________

(continued)

Petitioners filed their contentions after the record in this proceeding closed, NRC regulations require them to meet the reopening standard. 10 C.F.R. § 2.326. To meet this standard, Petitioners must show, among other things, that the contention raises “a significant safety or environmental issue.” 10 C.F.R. 2.326(a)(2). The Commission has explained that for environmental contentions, this standard is equivalent to the \textit{Marsh} standard for supplementing an EIS. \textit{Private Fuel Storage, L.L.C.} (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19, 29 (2006).

\textsuperscript{32} Joint Opposition at 8.

\textsuperscript{33} \textit{Id.} at 9-10.

\textsuperscript{34} 50 C.F.R. § 402.14(a).

\textsuperscript{35} NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station Final Report – Appendices, at E-66 to E-73 (Jul. 2007) (ADAMS Accession Number ML071990027) (“Pilgrim FSEIS”) (finding that continued operation of Pilgrim over the twenty year renewal period “would have no effect on the loggerhead turtle,” “would have no effect on the Kemp’s ridley turtle,” “would have no effect on the leatherback turtle,” “would have no effect on the green sea turtle,” “would have no effect on the North Atlantic right whale,” “would have no effect on the humpback whale,” “would have no effect on the fin whale,” “would have no effect on the sei whale,” “would have no effect on the sperm whale,” and “would have no effect on the shortnose sturgeon.”); Request for Concurrence on Determination of Effects Concerning Atlantic Sturgeon at Pilgrim Nuclear Power Station, Enclosure at 3, (Feb. 29, 2012) (ADAMS Accession No. ML12047A119) (“Pilgrim (continued. . .)
Therefore, the regulations implementing the ESA required no consultation for the Pilgrim license renewal.

Nonetheless, the Petitioners assert that the NRC must enter formal consultation because the National Marine Fisheries Service (“NMFS”) disagreed with the Staff’s finding of “no effect.”\(^{36}\) But this argument ignores the clear language of the regulation, which indicates that formal consultation is only required when a federal agency determines that its own actions “may affect” a listed species or critical habitat.\(^{37}\) Under 50 C.F.R. § 402.14(a), NMFS’s agreement or disagreement with that determination is not relevant to the question of whether that agency must enter formal consultation.\(^{38}\) Moreover, there is no evidence that NMFS has requested that the NRC enter formal consultation for the Pilgrim license renewal. Consequently, no provision of the ESA or its implementing regulations currently prevents the NRC from issuing a renewed operating license for Pilgrim.

3. **The NRC Staff Fully Complied with the Magnuson-Stevens Act**

Last, the Petitioners assert, “The NRC staff has failed to comply with the Magnuson-Stevens Fishery Conservation and Management Act” (“MSA”) with regard to issuing a renewed operating license for Pilgrim. Under the MSA, federal agencies must consult with NMFS

Supplemental BA”) (finding that “the proposed license renewal of Pilgrim will have no effect on the Atlantic Sturgeon”).

\(^{36}\) Joint Opposition at 10.

\(^{37}\) 50 C.F.R. § 402.14(a).

\(^{38}\) *Id.* Petitioners also claim that the NRC must consult on the river herring, a candidate species under the ESA. Joint Opposition at 8-9. But, the ESA’s implementing regulations explicitly note that “candidate species have no legal status and are afforded no protection under the” ESA. 50 C.F.R. § 402.12(d). Therefore, the ESA places no obligation on the NRC to consult on the river herring before issuing the renewed license for Pilgrim.
regarding impacts agency actions may have on essential fish habitat.\textsuperscript{39} The NRC completed this consultation process in 2007.\textsuperscript{40} Therefore, like NEPA and the ESA, the MSA also does not prohibit the NRC from issuing the renewed license for Pilgrim at this juncture.\textsuperscript{41} As a result, the Joint Opposition does not contain sufficient grounds for the relief it seeks.\textsuperscript{42}

D. The NRC Will Still Provide the Petitioners with Full Hearing Rights and If Necessary Can Modify the Renewed Operating License to Reflect the Results of the Hearing

Petitioners also note that the NRC must provide the same opportunity for a hearing on environmental matters that it would on safety matters.\textsuperscript{43} Thus, they assert that “there is no reason to truncate the proper and legally required procedures to facilitate continued operation of Pilgrim.”\textsuperscript{44} But SECY-12-0062 does not propose any diminution of the hearing process. No provision of the NEPA, the ESA, or the MSA independently provides for a hearing process. In any event, under Commission precedent the hearing process in this proceeding will continue, and if necessary, the “license renewal may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review.”\textsuperscript{45}

\textsuperscript{39} 16 U.S.C. § 1885(b)(3).
\textsuperscript{40} Pilgrim FSEIS at E-45.
\textsuperscript{41} Petitioners also claim that the agency can only issue an EIS after it finishes ESA and MSA consultation but cite no law for this proposition. Joint Opposition at 9. In fact, the agency completed the MSA process before it issued the EIS for Pilgrim, Pilgrim FSEIS at E-45, E-66 to E-73, and although the agency may coordinate its ESA and NEPA reviews, it is under no obligation to do so. 16 U.S.C. § 1536(c)(2).
\textsuperscript{42} 10 C.F.R. § 2.323(b).
\textsuperscript{43} Joint Opposition at 11 (citing Calvert Cliffs Coordinating Committee v. AEC, 449 F.2d 1109, 1118 (D.C. Cir. 1971).
\textsuperscript{44} Id at 12.
\textsuperscript{45} Amergen Energy Company, LLC (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008).
E. Policy Consideration Support the Staff's Request in SECY-12-0062

As a final matter, Petitioners suggest that policy considerations support their Joint Opposition to SECY-12-0062.\textsuperscript{46} In fact, the Staff’s request for authorization to renew the Pilgrim operating license best furthers Commission policy. The NRC’s safety review for license renewal focuses on the applicant’s proposed methods for managing the effects of aging during the period of extended operation.\textsuperscript{47} The renewed license will incorporate those methods into the plant’s licensing basis.\textsuperscript{48} Consequently, policy reasons support the Staff’s request in SECY-12-0062 because incorporating the new aging management plans should improve safety performance and in turn reduce the environmental impact of the plant’s operation.

CONCLUSION

For the reasons set forth above, the Commission should deny the Petitioners’ Joint Opposition to SECY-12-0062. Petitioners have not provided any justification to support their request to file such an opposition. Moreover, even if they had, none of the grounds advanced by the Petitioners to support the Joint Opposition are compelling.

\textit{/Signed (electronically) by/}
Maxwell C. Smith
Counsel for NRC Staff

\textsuperscript{46} Joint Opposition at 12.

\textsuperscript{47} \textit{Florida Power & Light Company} (Turkey Point Nuclear Generating Station, Units 3 and 4), CLI-01-17, 54 NRC 3, 7-8 (2001).

\textsuperscript{48} 10 C.F.R. § 54.33(b).
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )
) Docket No. 50-293-LR
ENTERGY NUCLEAR GENERATION )
COMPANY AND ENTERGY NUCLEAR )
OPERATIONS, INC. )
(Pilgrim Nuclear Generating Station)

CERTIFICATE OF SERVICE

I hereby certify that copies of the “NRC STAFF’S ANSWER TO JOINT OPPOSITION TO NRC STAFF’S REQUEST FOR COMMISSION AUTHORIZATION TO RENEW PILGRIM STATION’S LICENSE” have been served upon the following by the Electronic Information Exchange this 8th day of May, 2012:

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Richard.Cole@nrc.gov

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Paul.Abramson@nrc.gov

Administrative Judge
Ann Marshall Young, Chair
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Ann.Young@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail:

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Hearing.Docket@nrc.gov

Sheila Slocum Hollis
Duane Morris LLP
505 9th St., NW, Suite 1000
Washington, DC 20004
E-mail: sshollis@duanemorris.com

Terence A. Burke, Esq.
Entergy Nuclear
1340 Echelon Parkway
Jackson, MS 39213
E-mail: tburke@entergy.com
Mary Lampert  
148 Washington Street  
Duxbury, MA 02332  
E-mail: mary.lampert@comcast.net

David R. Lewis, Esq.  
Paul A. Gaukler, Esq.  
Pillsbury, Winthrop, Shaw, Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037-1137  
E-mail: david.lewis@pillsburylaw.com  
paul.gaukler@pillsburylaw.com

Chief Kevin M. Nord  
Fire Chief & Director Duxbury Emergency Management Agency  
668 Tremont Street  
Duxbury, MA 02332  
E-mail: nord@town.duxbury.ma.us

Town Manager  
Town of Plymouth  
11 Lincoln St.  
Plymouth, MA 02360  
E-mail: marrighi@townhall.plymouth.ma.us

Richard R. MacDonald  
Town Manager  
878 Tremont Street  
Duxbury, MA 02332  
E-mail: macdonald@town.duxbury.ma.us

Matthew Brock  
Assistant Attorney General  
Commonwealth of Massachusetts  
One Ashburton Place  
Boston, MA 02108  
Martha.Coakley@state.ma.us  
Matthew.Brock@state.ma.us

Margaret Sheehan  
61 Grozier Road  
Cambridge, MA 02138  
E-mail: meg@ecolaw.biz

Anne Bingham  
78A Cedar St.  
Sharon, MA 02067  
Email:annebinghamlaw@comcast.net

/signed (electronically) by/  
Maxwell C. Smith  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 8th Day of May 2012