

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY
COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING
BOARD**

In the Matter of

All Operating Boiling Water Licensees
With Mark I and Mark II Containments: Order
Modifying License with regard to Reliable
Hardened Containment Vents (Effective
Immediately)

Docket No. EA-12-050
ASLB No. 12-918-01-EA-BD01

All Power Reactor Licensees
And Holders of Construction Permits In
Active or Deferred Status: Orders Modifying
Licenses with Regard to Reliable Spent Fuel
Pool Instrumentation (Effective Immediately)

Docket No. EA-12-051
ASLB No. 12-918-01-EA-BD01

June 27, 2012

PILGRIM WATCH MOTION TO STRIKE STAFF RESPONSE (JUNE 26, 2012)

Pilgrim Watch ("PW") moves that this Board enter an Order striking the NRC Staff Response To The Board Order Directing Staff To Amend Filing On 10 C.F.R. §2.206 ("Staff June 26, 2012 Response to the Board Order of June 19, 2012") because, among other things, it violates 10 C.F.R. § 2.314(c) by “refus[ing] to comply with [the Board’s] directions;” and taking such other action under 10 C.F.R. § 2.314(c) that the Board deems appropriate

On May 17, 2012, the Board ordered Staff "to provide the Board, in a filing no later than May 31, 2012, with a list of those occasions since January 1975 on which the NRC official to whom a Section 2.206 petition was submitted granted the substantive

relief sought in the petition." The Board Order also said that "[i]n each instance the substance of that relief is to be summarized."

The Staff requested that the time for it to respond be extended, and its response to the Board Order of May 17, 2012 was filed on June 15, 2012.

On June 19, 2012, the Board issued a further order in which it (i) said that "the Staff did not comply with the Board's directive" and (ii) ordered that the Staff, by June 26, 2012, file an amended response that identified "those of the 142 Directors' Decisions listed in the June 15, 2012 response that, in fact provided substantive relief to the petitioner."

On June 26, 2012, Staff filed its Response to the Board Order of June 19, 2012. In that Response Staff, rather than comply with the Board's Order, essentially rejected the Board's directive and asserted that the Board was wrong when it issued the June 19th Order. Staff did not (except for arguing that the Board misunderstood Pacific Gas and Electric) even attempt to identify "those of the 142 Directors' Decisions listed in the June 15, 2012 response that, in fact provided substantive relief to the petitioner." It is irrelevant to Staff's obligation to comply with this Board's directives that, as Staff asserts, "reasonable minds can differ" and there is no basis for Staff's assertion that it will "stand[] by its initial determination."

Although Staff is entitled to disagree with the Board's June 19 conclusion that "the Staff chose simply to ignore the manifest distinction between substantive and procedural relief," it is required to express that disagreement by the use of carefully

defined procedures spelled out in 10 C.F.R. §§ 2.323(e)(motion for reconsideration)¹, 2.323(f)(2)(certification to the Commission) and 2.341(f)(interlocutory review). Staff often cites the prescribed procedures of Part 2 in support of its opposition to public participants in NRC proceedings. Staff is no less obligated to comply with Part 2 requirements which, as it has asserted on numerous occasions, are “strict by design.”

Absent reconsideration, or review by the Commission, Board Orders must be obeyed.

The Staff Response to the Board Order of June 19, 2012 denigrates both the Board and the hearing process. This Board should not countenance a party ignoring a Board Order because it disagrees with it, and should not countenance a party ignoring the procedures in Part 2 that are provided for a party that disagrees with a Board Order.

Striking the pleading as non-responsive to the Board’s May 17th is one remedy and action that the Board should take.

PW believes that additional consequences under 2.314 (c) may be appropriate to underscore to Staff that it is not above the law and, like all other parties, is required to comply with Commission Regulations, but leaves to the Board to decide what actions, e.g., censure, it should take in this regard.

Respectfully submitted,

(Electronically signed)

Mary Lampert
Pilgrim Watch, pro se
148 Washington Street
Duxbury, MA 02332
Tel. 781-934-0389
Email: mary.lampert@comcast.net
June 27, 2012

¹ Even if the pleading filed by Staff on June 26th were deemed to be a motion for reconsideration, it would have to be stricken because Staff failed to comply with the obligation in 10 C.F.R. § 2.323(b) to consult prior to filing a motion.

Certificate of Counsel

On June 26, 2012, Pilgrim Watch notified Counsel for NRC Staff and Entergy that Pilgrim Watch intended to file a Motion to Strike Staff Response of June 26, 2012. Counsel for NRC Staff and Entergy have advised that they oppose the Motion.

(Electronically signed)

Mary Lampert
Pilgrim Watch, pro se
148 Washington Street
Duxbury, MA 02332
Tel. 781-934-0389
Email: mary.lampert@comcast.net
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