

4/5

Craver, Patti

From: Logan, Dennis *ML*
Sent: Thursday, May 10, 2012 4:36 PM
To: Balsam, Briana
Subject: RE: Pilgrim memo to file
Attachments: Pilgrim memo 1012-05-10 2.docx

Briana: The attached file has additional edits. Have a good weekend. -Dennis

From: Balsam, Briana *ML*
Sent: Thursday, May 10, 2012 2:29 PM
To: Logan, Dennis
Subject: RE: Pilgrim memo to file

Thanks, Dennis. I will look at this.

From: Logan, Dennis
Sent: Thursday, May 10, 2012 2:04 PM
To: Balsam, Briana
Subject: RE: Pilgrim memo to file

I am leaning toward a revised version something like this that sates just what we know and doesn't make claims outside of our area of expertise.
Turn on "track changes" to see edits.

From: Balsam, Briana
Sent: Thursday, May 10, 2012 11:04 AM
To: Logan, Dennis
Subject: Pilgrim memo to file

Dennis,

Do you have time today to look at the Pilgrim memo to file from ADAMS and concur via email today? I just got it back from Sylvia, and ideally, we want it out by the end of the week.

The ADAMS No. is ML12129A248. It's only 2 pages of text, so hopefully it won't take too much time!

Thanks,

Briana

B138

MEMORANDUM TO: Brian E. Holian, Director
Division of License Renewal
Office of Nuclear Reactor Regulation

Melanie A. Galloway, Deputy Director
Division of License Renewal
Office of Nuclear Reactor Regulation

FROM: Jeremy J. Susco, Acting Chief
Environmental Review and
Guidance Update Branch
Division of License Renewal
Office of Nuclear Reactor Regulation

SUBJECT: NRC STAFF'S CONCLUSIONS REGARDING IRREVERSIBLE AND
IRRETRIEVABLE COMMITMENT OF RESOURCES FROM THE
PROPOSED PILGRIM NUCLEAR POWER STATION LICENSE
RENEWAL

In response to inquiries from Bruce Boger, Deputy Director for Reactor Safety Programs, Office of Nuclear Reactor Regulation, and Melanie Galloway, Acting Director, Division of License Renewal, this memorandum provides documentation of the U.S. Nuclear Regulatory Commission (NRC) staff's position on irreversible and irretrievable commitment of resources that would result from the proposed Pilgrim Nuclear Power Station (Pilgrim) license renewal as it pertains to the Endangered Species Act of 1973, as amended (ESA), and species and habitats protected there under.

Section 7(d) of the ESA states:

"After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2)."

Similarly, the ESA regulations at 50 CFR 402.09 state that:

"After initiation or reinitiation of consultation required under section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied."

The NRC staff has reviewed the potential for the proposed license renewal to constitute an irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives (i.e., mitigation measures to avoid impacts to Federally listed species and designated critical habitat), and the staff concludes that the proposed action would not constitute such a commitment of resources and would not prevent the NRC from implementing mitigation measures at some future point in time.

During its National Environmental Policy Act (NEPA) review, the NRC staff considered potential irreversible or irretrievable commitments of resources that would result from the proposed Pilgrim license renewal in Chapter 9 of NUREG-1437, Supplement 29, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Pilgrim Nuclear Power Station" (ML072060320). ~~Because renewing the Pilgrim license would not result in any new construction, major plant modifications, or changes in effluents, the license renewal will not cause any impacts to the environment that would foreclose formulation or implementation of reasonable and prudent alternatives to mitigate adverse impacts to Federally listed species or designated critical habitat. Therefore,~~ The staff did not identify any irreversible or irretrievable commitments of resources that would affect Federally listed species or designated habitat under the NMFS's jurisdiction in this document.

The NRC staff also did not identify any impacts to Federally listed species or designated critical habitats under the NMFS's jurisdiction during its review under the ESA. The NRC staff concluded that the proposed license renewal would have "no effect" on Federally listed species or designated critical habitats, and the staff documented these conclusions in biological assessments dated December 2006 and February 2012 (ML063260173 and ML12047A119, respectively). Under the assumption of "no effect," ~~Thus,~~ issuing a renewed license for Pilgrim would not result in any impacts to Federally listed species or designated critical habitats that would foreclose the implementation of reasonable and prudent alternatives to avoid violating section 7(a)(2) of the ESA.

NMFS, ~~h~~However, in its March 26, 2012, letter to the NRC (ML12087A025), NMFS indicated that it is unable to concur with the NRC's "no effect" determination for species under its jurisdiction, but that based on its initial review, the NMFS anticipates concluding that the proposed license renewal "may affect, but is not likely to adversely affect" listed species. In the past, ~~wherever that NMFS recommended any mitigation measures or reasonable and prudent alternatives at a future date as a result of the ongoing section 7 consultation, the NRC has retained the authority to modify some Entergy's renewed operating licenses for Pilgrim to ensure compliance with any mitigation measures or alternatives recommended by NMFS.~~

In the past, ~~s~~Such modifications have resulted ~~could result~~ from a voluntary request for a license amendment from the licensee, Entergy. As an example, Florida Power & Light Co. (FPL) submitted such a request for the St. Lucie Plant, Units 1 and 2, on January 25, 2002 (ML020290224), following NMFS's May 4, 2001, biological opinion (ML011430173) and subsequent clarification to the biological opinion dated October 24, 2001 (ML013020208). The license amendment request included modifications to Appendix B of the facility's operating licenses to incorporate the incidental take statement as a condition of FPL's operating licenses. NRC granted FPL's license amendment request on August 8, 2002 (ML021700271). In this case, the license amendment ensured that the continued operation of St. Lucie did not have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). Other options may be available to

~~NRC. If Entergy did not seek a license amendment, the NRC can also issue an order modifying the conditions of the renewed license (10 CFR 2.202).~~

In conclusion, the NRC staff has determined that ~~(1) the proposed license renewal would have "no effect" on Federally listed species or designated critical habitats and ; (2) the proposed action would not constitute an irreversible or irretrievable commitment of resources that would foreclose the implementation of reasonable and prudent alternatives to mitigate effects to Federally listed species or designated critical habitats (in the case that such effects had been identified). NMFS disagree with the "no effect" finding, however, and we remain in consultation. ; and (3) The NRC has in the past the authority to implement mitigation measures or reasonable and prudent alternatives where at a future date if the NRC and NMFS through section 7 consultation have determined that the project may adversely affect any Federally listed species or designated critical habitat under its jurisdiction.~~

Docket No. 50-293

B. Holian

- 3 -

In conclusion, the NRC staff has determined that (1) the proposed license renewal would have "no effect" on Federally listed species or designated critical habitats; (2) the proposed action would not constitute an irreversible or irretrievable commitment of resources that would foreclose the implementation of reasonable and prudent alternatives to mitigate effects to Federally listed species or designated critical habitats (in the case that such effects had been identified); and (3) the NRC has the authority to implement mitigation measures or reasonable and prudent alternatives at a future date if NMFS determines that the project may adversely affect any Federally listed species or designated critical habitat under its jurisdiction.

Docket No. 50-293

DISTRIBUTION:

NON-PUBLIC

RidsNrrDlr Resource

RidsNrrDlrRerb Resource

RidsOgc Resource

BBalsam

DLogan

DWrona

JSusco

LWoodall

MGalloway

MSmith

NFerrer

SUttal

ADAMS Accession No: ML12129A248

OFFICE	RERB:DLR	RERB:DLR	OGC	BC:RERB:DLR
NAME	BBalsam	DLogan	MSmith	JSusco
DATE				

OFFICIAL RECORD COPY

Craver, Patti

From: Logan, Dennis
Sent: Thursday, May 10, 2012 1:50 PM
To: Balsam, Briana
Subject: RE: Pilgrim memo to file

Also, I am having trouble with the conclusion that

"the NRC has the authority to implement mitigation measures or reasonable and prudent alternatives at a future date if NMFS determines that the project may adversely affect any Federally listed species or designated critical habitat under its jurisdiction."

This is a legal conclusion that, frankly, I do not believe we are qualified to make.

From: Balsam, Briana
Sent: Thursday, May 10, 2012 11:04 AM
To: Logan, Dennis
Subject: Pilgrim memo to file

Dennis,

Do you have time today to look at the Pilgrim memo to file from ADAMS and concur via email today? I just got it back from Sylvia, and ideally, we want it out by the end of the week.

The ADAMS No. is ML12129A248. It's only 2 pages of text, so hopefully it won't take too much time!

Thanks,

Briana