



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 25, 2013

Ms. Mary Lampert
Pilgrim Watch, Director
148 Washington Street
Duxbury, MA 02332

Dear Ms. Lampert:

In a letter dated June 14, 2013, as supplemented on July 26, 2013¹ addressed to Mr. R. William Borchardt, then Executive Director for Operations of the Nuclear Regulatory Commission (NRC), you submitted a petition pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206, "Requests For Action Under This Subpart," asking that the NRC take enforcement action against Entergy Nuclear Operations, Inc. by ordering the immediate shutdown of Pilgrim Nuclear Power Station (Pilgrim). Your petition was referred to a Petition Review Board (PRB) within the Office of Nuclear Reactor Regulation for action. In your petition, you requested the NRC to immediately suspend the operating license of Pilgrim until the provisions of NRC Orders EA-12-050, "Issuance of Order To Modify Licenses With Regard To Reliable Hardened Containment Vents," and EA-13-109, "Issuance of Order To Modify Licenses With Regard To Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions," are fully implemented and the containment venting at Pilgrim is augmented with filters and rupture discs.

The PRB met on June 27, 2013, and denied your request for immediate suspension of the Pilgrim operating license. The PRB determined that there was no immediate safety concern to Pilgrim, other reactors with Mark I and II containments, or to the health and safety of the public to warrant the immediate enforcement action requested in your petition. On June 28, 2013, you were informed of the PRB's decision on the immediate action and you requested to address the PRB prior to its initial meeting to provide supplemental information for the PRB's consideration.

On July 15, 2013, you addressed the PRB during a telephone conference call, in which you provided further explanation and support for your petition. A transcript of that conference call, which supplements your petition, is publicly available at Agencywide Documents Access and Management System (ADAMS) Accession No. ML13203A347.

On August 5, 2013, the PRB held its internal meeting to discuss your petition and made its initial recommendation in accordance with the criteria provided in Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions" (ADAMS Accession No. ML041770328). The PRB's initial recommendation was that your petition does not meet the criteria for consideration under 10 CFR 2.206 because all of the items requested in the petition either did not meet the criteria for review or met the criteria for rejection.

¹ Your petition is available from the NRC's Agencywide Documents Access and Management System (ADAMS) in the public Electronic Reading Room on the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession No. ML13168A473 and. ML13210A452, respectively.

As support for the PRB's initial recommendation, the PRB made the following findings regarding the requests made in your petition:

1. The petition does not meet the criteria for review per MD 8.11, Part III, C.1, "Criteria For Reviewing Petitions Under 10 CFR 2.206":

The PRB considered your bases for the requested enforcement action as (a) that the status quo is not sufficient to protect public health, safety and property and (b) that neither Order (EA-12-050 and EA-13-109) satisfies NRC's statutory obligations because it does not require the licensee to install filtered vents as well as rupture discs (i.e., require vents to be passively actuated).

To the extent that you raise issues with (14) direct quotes from the Orders, and assert, in part, that the NRC's own statements in the Orders "admit that the status quo does not adequately protect public health, safety and property at Pilgrim, and other similarly designed reactors today" (item a above), it does not constitute sufficient bases for taking the particular actions specified in your petition. For example,

- You excerpted only parts of the quotes within the Order; in most cases, excluding the surrounding context, and thereby misrepresenting the Order's intended meaning for the quoted statement. For example, by quoting several instances in the Orders where it states that the reliable hardened vent requirements of EA-12-050 "are necessary" or "are needed" to provide reasonable assurance of adequate protection of public health and safety, you erroneously conclude this to mean that the NRC is acknowledging that status quo is not sufficient to protect public health and safety. In these cases, you did not include the full context of the quote in terms of the backfit rule, 10 CFR 50.109. For these particular statements in the Orders, the NRC staff's intent is to provide the regulatory justification for imposing the requirements of the Order.
- Specifically, 10 CFR 50.109(a)(4)(ii), states in part, that a backfit analysis is not required if the Commission, or staff, as appropriate, finds and declares, that the regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public. In accordance with 10 CFR 50.109(a)(4)(ii), the NRC concluded in EA-13-109 that the requirement to provide a reliable hardened containment vent system (HCVS) is necessary to ensure reasonable assurance of adequate protection of public health. This is the regulatory rationale, determined by the NRC, for requiring licensee actions associated with the reliable HCVS. However, imposing the requirements for the reliable HCVS to remain functional during severe accident conditions was not justified under a determination of adequate protection. Rather, the NRC staff was obligated by the Backfit Rule to perform a regulatory analysis to assess the benefits of regulatory changes against the cost of implementation. In accordance with 10 CFR 50.109(a)(3), the NRC concluded that this requirement is a cost-justified substantial safety improvement.

Therefore, as discussed above, the selective excerpting of words from the context of the 10 CFR 50.109 (and similarly of 10 CFR 2.202) as "factual basis" or "new and significant information", in a way that distorts the Orders' intended meaning does not constitute a bases for taking the particular actions specified in your petition.

2. The petition meets the criteria for rejection per MD 8.11, Part III, C.2, "Criteria For Rejecting Petitions Under 10 CFR 2.206":

To the extent that you are concerned that the Orders fail to protect public health and safety because it does not require filtered vents and rupture discs (item b above), you raise issues that have already been the subject of NRC staff review and evaluation for which resolution has been achieved. Specifically:

- The issues you provided in your petition related to filtered vents and rupture discs have been previously submitted in a variety of forums and correspondence to the NRC. For example, in public meetings with the NRC staff during its review and development of EA-13-109, you presented the same basic argument that is in your petition (e.g., recommending that hardened vents required in EA-12-050 be equipped with rupture discs and filters to help ensure that operators are not reluctant to follow orders when containment venting is required). These concerns and issues were considered by the NRC staff, and ultimately evaluated as part of the NRC's generic assessments, regulatory analysis, and interactions with numerous external stakeholders to support development of the NRC modified Orders in EA-13-109 (Enclosure 6 of SECY-12-0157, "Stakeholder Interactions, ADAMS Accession No. ML12312A456).
- You also submitted identical information regarding filtered vents and rupture discs to the Commission dated November 19, 2012 (ADAMS Accession No. ML12326A356) which was also referenced in the Commissioner's comments (ADAMS Accession No. ML13078A012). The issues and supporting arguments you present regarding filtered vents and rupture discs were previously considered in the staff's development of SECY-12-0157 and in the Commission's approval of the modified Orders.

Therefore, this specific criterion for rejection is met in that the issues you raise have already been subject of NRC staff review and evaluation. A description of the staff's evaluations, technical bases, and draft proposed Order, including the proposed implementation schedule, is documented in SECY-12-0157, dated November 26, 2012 (ADAMS Accession No. ML12312A456).

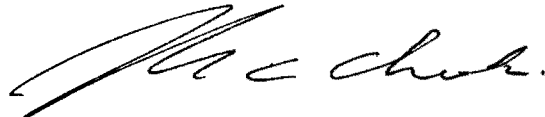
The petition manager informed you of the PRB's initial recommendation on August 22, 2013, and offered you a second opportunity to address the PRB, which you accepted on August 23, 2013. On September 10, 2013, you addressed the PRB by conference call to provide further support for your petition request. During this conference call, the PRB provided additional explanation of the staff's determination of "reasonable assurance" with respect to the time allotted for licensee implementation of EA-12-050 and EA-13-109. A transcript of that conference call, which supplements your petition, is publicly available at ADAMS Accession No. ML13258A002. The PRB considered the supplemental information and made a final recommendation that your petition should not be considered under 10 CFR 2.206 because the items requested in the petition, as supplemented, either did not meet the criteria for review or met the criteria for rejection.

M. Lampert

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In conclusion, in accordance with the criteria in MD 8.11, the PRB's final determination is that all of the items in your petition either do not meet the criteria for review or meet the criteria for rejection, because your interpretation of the facts do not constitute a basis for the requested enforcement actions or the issues you have raised have already been the subject of NRC staff review and evaluation for which resolution has been achieved, thus not meeting the criteria for review under 10 CFR 2.206.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Check". The signature is fluid and cursive, with a large initial "M" and a distinct "C" and "Check" following.

Michael C. Check, Deputy Director
Division of Engineering
Office of Nuclear Reactor Regulation

Docket No. 50-293

cc: Distribution via Listserv

M.Lampert

- 4 -

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Sincerely,

/ra/

Michael C. Cheek, Deputy Director
Division of Engineering
Office of Nuclear Reactor Regulation

Docket No. 50-293

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Package: ML13263A000

Incoming: ML13168A473 (June 14, 2013); ML13210A452 (July 26, 2013)

Transcripts: ML13203A347 (July 15, 2013); ML13258A002 (September 10, 2013)

Response: ML13263A006

***Concurrence via email**

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|--------|-----------|---------------|---------|--------------|
| OFFICE | LPL1-1/PM | LPL1-1/LA* | DPR/PM* | JLD/JPSB/BC* |
| NAME | RGuzman | KGoldstein | TMensah | WReckley |
| DATE | 9/23/13 | 9/20/13 | 9/25/13 | 9/25/13 |
| OFFICE | R1/BC* | LPL1-1/BC(A)* | DE/DD | |
| NAME | RMcKinley | RBeall | MCheck | |
| DATE | 9/24/13 | 9/24/13 | 9/25/13 | |

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