

May 17, 2019

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Entergy Nuclear Operations, Inc,)	
Entergy Nuclear Generation Company,)	Docket Nos. 50-293-LT
Holtec International, and)	72-1044-LT
Holtec Decommissioning International, LLC)	
)	
(Pilgrim Nuclear Power Station))	

Applicants’ Answer Opposing Pilgrim Watch’s Motion to Supplement its Motion to Intervene and Request for Hearing

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), Entergy Nuclear Operations, Inc. (“ENOI”), Entergy Nuclear Generation Company (“ENGCO” – to be renamed “Holtec Pilgrim”), Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”), (collectively, “Applicants”) hereby answer and oppose Pilgrim Watch’s late-filed motion to supplement its petition with new information in the Pilgrim Nuclear Power Station (“Pilgrim”) license transfer proceeding.¹ The Commission should deny this motion because Pilgrim Watch has not demonstrated good cause for the submission and because the new information is outside the scope of this proceeding and does not demonstrate any genuine material dispute with the application.

Pilgrim Watch seeks to supplement its original petition with additional information made public on May 6, 2019, namely a summary of an upcoming report to be issued by the United

¹ *Pilgrim Watch Motion to Supplement Its Motion to Intervene and Request for Hearing - Biodiversity* (May 9, 2019) (“Motion”).

Nations' Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ("IPBES Report Summary")² regarding the rapid decline of biodiversity in nature and a related press release issued by the United Nations ("Press Release"), as reported in a New York Times article.³ Pilgrim Watch asserts that the additional information is "relevant to some of Pilgrim Watch's bases for contention 2" and "ties directly to Pilgrim Watch's Contention 1."⁴

Pilgrim Watch styles its filing as a "Motion to Supplement its Motion to Intervene and Request for Hearing" pursuant to 10 C.F.R. § 2.323. Pilgrim Watch has previously stated in this proceeding that the Commission's timeliness and contentions admissibility requirements are "irrelevant" if a motion is filed pursuant to 10 C.F.R. § 2.323.⁵ However, this is incorrect. The Commission has stated, "[n]ew bases for a contention cannot be introduced in a reply brief, or *at any other time* after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2)."⁶ *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 N.R.C. 727, 732 (2006) (emphasis added); *see also FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-3, 81 N.R.C. 15, 34 (2015) ("Intervenors' Motion to Supplement Contention 7 Is Not Based on New and Material

² United Nations' Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *IPBES Global Assessment Summary for Policymakers* (May 6, 2019), https://www.ipbes.net/sites/default/files/downloads/spm_unedited_advance_for_posting_htn.pdf.

³ Press Release, United Nations, *UN Report: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating'* (May 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>; *see also* Brad Plumer, *Humans Are Speeding Extinction and Altering the Natural World at an 'Unprecedented' Pace*, N.Y. TIMES (May 6, 2019), <https://www.nytimes.com/2019/05/06/climate/biodiversity-extinction-united-nations.html?module=inline> ("New York Times Article"). As noted in the Press Release, the full report is expected to be published later this year.

⁴ Motion at 2, 3.

⁵ *Pilgrim Watch's Reply to Applicants' Answer Opposing Pilgrim Watch's Motion to Supplement its Motion to Intervene and Request for Hearing* (May 6, 2019), at 2. Pilgrim Watch's prior suggestion that motions to supplement are routine has no support in the context of proposed contentions (and Pilgrim Watch has pointed to no such support), where there is a specific procedure for seeking to amend a contention or its bases.

⁶ Note that the requirements for demonstrating "good cause" under 10 C.F.R. § 2.309(c)(1)(i)-(iii) are the same as the requirements for filing late contentions previously available under 10 C.F.R. § 2.309(f)(2)(i)-(iii) prior to the Commission's amended regulations, which took effect on September 4, 2012.

Information and Is Therefore Untimely.”). Further, motions to supplement the bases for a contention must also satisfy the usual contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). *See First Energy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 N.R.C. 685, 698–99 (2011) (dismissing a motion to supplement a contention’s basis that did not satisfy contention admissibility requirements).

Thus, regardless of how Pilgrim Watch chooses to self-style its Motion, it must be considered as a motion to amend one or both of its contentions, and the Motion falls far short of the Commission’s standards. The Motion contains no reference to 10 C.F.R. § 2.309, nor does it make any genuine demonstration of how it meets the Commission’s admissibility requirements. At best, the Motion contains only general conclusory references without any specific explanation or argument regarding Applicants’ License Transfer Application.⁷ Thus, the Motion should be denied, in addition to rejecting Pilgrim Watch’s original contentions.⁸

II. PILGRIM WATCH HAS FAILED TO SHOW GOOD CAUSE FOR ITS LATE FILING

The NRC does not look with favor on filings made after the initial filing deadline. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 638 (2004). As the Commission has repeatedly stressed, “[t]here simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience during the course of a proceeding based on

⁷ Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and approving Conforming License Amendment, and Request for Exemption from 10 CFR 50.82(a)(8)(i)(A), Pilgrim Nuclear Power Station, Docket Nos. 50-293 & 72-1044, Renewed License No. DPR-35 (Nov. 16, 2018) (ADAMS Accession No. ML18320A031) (“Application” or “LTA”).

⁸ If, as Applicants show below, the Commission finds no good cause for Pilgrim Watch’s late-filed motion, Pilgrim Watch’s contentions as originally submitted should be rejected for the reasons set forth in Applicants’ Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request (Mar. 18, 2019) (“Applicants’ Answer”).

information that could have formed the basis for a timely contention at the outset of the proceeding.” *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 272 (2009) (footnotes and internal quotation marks omitted).

The Commission should reject the Motion because Pilgrim Watch has failed to demonstrate the required good cause for its untimely filing. A motion for leave to file a new or amended contention after the intervention deadline “*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause” for the late filing. 10 C.F.R. § 2.309(c)(1) (emphasis added). The good cause demonstration requires the petitioner to show that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(1).

In this case, the information is neither new or materially different from information that was previously available to Pilgrim Watch and should thus be rejected. § 2.309(c)(1)(i)–(ii).

As a threshold matter, while Pilgrim Watch asserts that its Motion is timely (Motion at 4), it fails to address or even cite the requirements of 10 C.F.R. § 2.309(c)(1)(ii) to show that the information upon which the Motion is based is materially different from information previously available. This failure alone warrants denial of the Motion.⁹

⁹ *Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 N.R.C. 30, 34 (2006) (a petitioner’s “failure to comply with our pleading requirements for late filings constitutes sufficient grounds for rejecting its [petition]”).

As to the information provided in the IPBES Report Summary itself, it is not new or materially different information from information previously available and reported publicly for years regarding the challenges facing the global ecosystem. Indeed, scientists have been warning that human well-being depends on robust biodiversity since 2008¹⁰ and that “by the end of this century, as many as one in six species could be at risk of extinction”¹¹ since at least 2015. There will be no end to this license transfer proceeding if Pilgrim Watch seeks to supplement the record with every environmental report it reads about in the New York Times.¹²

III. PILGRIM WATCH’S MOTION TO SUPPLEMENT ITS BASES IS INADMISSIBLE

Pilgrim Watch’s proposal to amend its contentions with supplemental information also falls short of the Commission’s contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). As 10 C.F.R. § 2.309(c)(4) provides, “[a] new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section.” Pilgrim Watch has failed to do so here, and for this reason too, its Motion should be denied.

¹⁰ SUSTAINING LIFE: HOW HUMAN HEALTH DEPENDS ON BIODIVERSITY (Eric Chivian & Aaron Bernstein eds., 2008).

¹¹ Sarah Zielinski, *Climate Change Will Accelerate Earth’s Sixth Mass Extinction*, SMITHSONIAN (April 30, 2015), <https://www.smithsonianmag.com/science-nature/climate-change-will-accelerate-earths-sixth-mass-extinction-180955138/#yePzmgPzX9gDpG23.99>; see also Mark Urban, *Accelerating Extinction Risk from Climate Change*, SCIENCE (May 1, 2015), <https://science.sciencemag.org/content/348/6234/571.abstract> (reviewing 131 previously published studies on the topic); Seth Finnegan *et. al*, *Paleontological Baselines for Evaluating Extinction Risk in the Modern Oceans*, SCIENCE (May 1, 2015), <https://science.sciencemag.org/content/348/6234/567>; David B. Wake and Vance T. Vredenburg, *Are We in the Midst of the Sixth Mass Extinction? A View from the World of Amphibians*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA (Aug. 11, 2008), <http://www.pnas.org/content/early/2008/08/08/0801921105.abstract>.

¹² Indeed, Pilgrim Watch’s motion is reminiscent of its practice in the previous license renewal proceedings of filing repetitive, meritless motions to supplement a petition for review. See, e.g., Letter from D. Lewis, Counsel for Entergy, to Office of Commission Appellate Adjudication (March 9, 2012) (registering standing objection to Pilgrim Watch motions to supplement) (ADAMS Accession No. ML12069A336). In that same proceeding, Pilgrim Watch filed eight untimely and meritless motions to reopen/requests for hearings on late-filed issues.

First, Pilgrim Watch does not demonstrate that the IPBES Report Summary or the Press Release is within the scope of this proceeding. To the extent Pilgrim Watch challenges what nations are doing to “step up their efforts to protect what natural habitats are left,” (Motion at 2 (quoting the New York Times Article)) that is far outside the scope of this proceeding.

Second, Pilgrim Watch’s concern that the alleged new information is “likely to lead to the conclusion that assurance that fewer pollutants are left on the site likely would will result in the expenditure of more funds and that these additional needed funds should be part of the cost estimate” (Motion at 3), amounts to just multiple layers of vague speculation. Vague speculation is not sufficient to establish a material challenge to an application. *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 N.R.C. 321, 330 (2015). “[W]e cannot admit an issue for adjudication based on mere conjecture.” *Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 N.R.C. 109, 140 (2001).¹³

To establish an admissible contention, a petitioner must demonstrate that the issue raised is material to the findings the NRC must make and provide sufficient information to show a genuine dispute with the applicants on a material issue of law or fact, including references to the specific portions of the application that the petitioner disputes and the supporting reasons for such dispute. 10 C.F.R. § 2.309(f)(1)(iv), (vi). Pilgrim Watch has not done that here. The relation of the IPBES Report Summary to this proceeding is chimerical at best. The IPBES Report Summary outlines that a rapid change in biodiversity and ecosystems is due to “(1) changes in land and sea use; (2) direct exploitation of organisms; (3) climate change; (4) pollution and (5) invasive alien

¹³ The NRC rules bar contentions where petitioners have what amounts to only generalized suspicions. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003). “‘Bald or conclusory allegation[s]’ of a dispute with the applicant” are not enough. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001).

species.” *See* Press Release. Nowhere does the IPBES Report Summary mention the Pilgrim facility, the Commonwealth of Massachusetts, nuclear power, or decommissioning. This is a glaring omission considering the IPBES Report Summary specifically discusses other forms of energy production such as coal, petroleum, and natural gas. IPBES Report Summary at 19.

Pilgrim Watch claims the IPBES Report Summary and Press Release are relevant to its allegations in Contention 2 that the potential environmental impacts of decommissioning are not bounded by previous environmental impact statements. Motion at 2. However, Pilgrim Watch makes absolutely no effort to link the IPBES Report Summary and Press Release to the LTA, apart from making sweeping observations. First, Pilgrim Watch asserts IPBES Report Summary and Press Release “provide evidence” that Applicants’ statements regarding environmental impact are “incorrect.” Motion at 3. To support this, Pilgrim Watch cites the “By the numbers-Statistics and Facts from the Report” section of the Press Release, but makes no attempt to tie any particular statistic to the LTA, which is not surprising because the referenced section contains no discussion of nuclear decommissioning. Second, Pilgrim Watch claims that “[t]he UN reports are new and provides significant information showing that neither the GEIS, SEIS nor the Fact Sheet included in the 2016 draft NPDES permit for PNPS bounded the environmental impacts that Holtec and Entergy relied upon in its LTA and PSDARs.” Again, Pilgrim Watch provides absolutely no legal or factual connection between any of these documents and the IPBES Report Summary and Press Release.

In sum, the supplemental information in the Motion fails to satisfy the admissibility standards in 10 C.F.R. § 2.309(f)(1), and Petitioner’s contentions remain inadmissible for all of the other reasons discussed previously in Applicants’ Answer.

IV. CONCLUSION

For the reasons described above, the Commission should deny Pilgrim Watch’s motion.

Respectfully submitted,

/signed electronically by /

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(Pilgrim Nuclear Power Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing Pilgrim Watch's Motion to Supplement its Motion to Intervene and Request for Hearing - Biodiversity has been served through the E-Filing system on the participants in the above-captioned proceeding this 17th day of May 2019.

/signed electronically by /
Meghan Claire Hammond