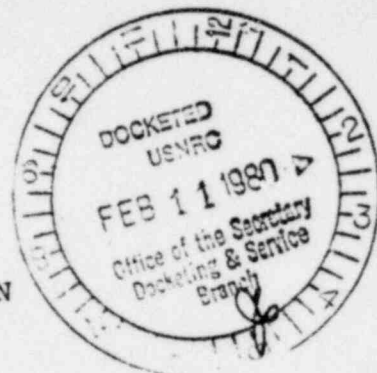


DOCKET NUMBER
PROD. & UTIL. FAC. 50-471

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
BOSTON EDISON COMPANY et al.
(Pilgrim Nuclear Generating Station,
Unit 2)

STATEMENT OF
THE COMMONWEALTH
OF MASSACHUSETTS
IN RESPONSE TO
THE BOARD'S ORDER
OF JANUARY 17, 1980

In its order of January 17, 1980 the Board requested all parties to comment on the following two questions:

1. In light of the NRC's imminent amendments to 10 CFR Part 50 and Appendix E to 10 CFR Part 50, is the Commonwealth's contention with respect to emergency still a proper issue in the above-captioned proceeding?
2. If emergency planning is a proper issue, when can testimony be filed and hearings scheduled thereon?

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As to the Board's first question, the Commonwealth notes that this matter has been addressed once before, during a conference call held on September 10, 1979 between members of the Board and representatives of all parties. At that time the parties were asked to submit memoranda on whether the Commission's proposed changes to its regulations on emergency planning precluded the Board from conducting hearings on the subject. Both the Commonwealth and the Staff argued in subsequent filings that the Board was not precluded from considering the question of emergency planning for Wilgrim II during the Commission's consideration of the broader issue, and rather than repeat those arguments, a copy of the Commonwealth's earlier memorandum is attached hereto, as Exhibit A, for the Board's consideration.

In the time that has passed since the filing of the Commonwealth's memorandum, draft changes to the NRC's emergency planning regulations have been promulgated (See 44 Fed. Reg. 75167, December 19, 1979), and the period during which interested parties can comment on these changes will expire on February 19, 1980. As this Board is aware, the NRC has thus far acted expeditiously in promulgating its draft regulations and conducting regional workshops thereon, and has announced its intention of adopting the regulations in final form shortly after close of the comment period.

Given the fact that the NRC is on the verge of adopting new emergency planning regulations, the position taken by the Commonwealth in the attached memorandum (as well as that taken by the Staff in its own memorandum) becomes all the more persuasive. Under the case law cited in the Commonwealth's memorandum, the issue of the feasibility of taking emergency measures must be addressed during the construction permit stage, while under 10 CFR §50.34(a)(10) and Appendix E thereto the applicant must submit preliminary plans for dealing with radiological accidents as part of its PSAR, a document that must be complete before issuance of a construction permit. Both the applicant's position on feasibility and its preliminary emergency action plans must be tested against the NRC's new standards and regulations governing emergency planning, and can only be done so prior to a decision by the Board on issuance of a construction permit.

Indeed, the only thing that has changed since the parties last addressed this question is that the NRC has moved much closer to promulgation of a final rule that will serve to inform the Board in its deliberations on the related issues of feasibility and adequacy of the applicant's preliminary plans. The NRC's action in moving towards swift promulgation of a final rule can hardly be treated as divesting this Board of jurisdiction over matters that both case law and the regulations require to be resolved prior to issuance of a construction permit.

As to the Board's second question, concerning the scheduling of an evidentiary hearing on the emergency planning issue, the Commonwealth cannot suggest a precise date, but only enumerate those things that must occur before such a hearing can take place.

1. The NRC's new regulations on emergency planning must be adopted in final form, an action which we have been informed can be expected in March of this year.
2. Based on the NRC's new informational requirements, which can be found in the draft regulations as well as the numerous communications that have been going out to construction permit applicants from the NRC's Office of Nuclear Reactor Regulations, the applicant must submit an amendment to its PSAR, setting forth its preliminary plans for dealing with radiological accidents.
3. Based on the NRC's new emergency planning requirements and the Staff's own investigation of the Pilgrim II emergency planning zone (EPZ), an investigation which has been ongoing since September of 1979 (See Staff motion of September 11, 1979, attached hereto as Exhibit B), the Staff must prepare a supplement to its Safety Evaluation Report (SER),

in which the issue of feasibility and the adequacy of the applicant's preliminary plans are discussed.^{1/}

4. The Staff has yet to answer the Commonwealth's interrogatories on emergency planning, filed on August 13, 1979. By agreement, the Staff has deferred answering these interrogatories until it has completed its field investigation and reassessment of the Pilgrim II emergency planning issue.

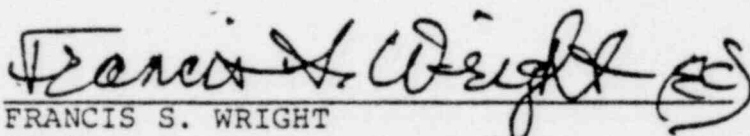
^{1/} The Commonwealth notes that the Staff is still investigating the Pilgrim II emergency planning issue, most recently by seeking evacuation time estimates from the applicant (See letter of December 26, 1979, attached hereto as Exhibit C), estimates which presumably will be used to prepare a feasibility analysis for the 10 mile EPZ. For at least two reasons it would be far more appropriate to submit this analysis of the area surrounding Pilgrim II as a supplement to the SER rather than as pre-filed testimony:

1) Since the Staff began reassessment of the Pilgrim II emergency planning issue in September, the Commonwealth has had little information as to the data being gathered and the conclusions being reached. The Commonwealth, therefore, cannot begin to prepare its own testimony until it has had an opportunity to study the Staff's conclusions, which in such matters are usually contained in the first instance in the SER and not as written testimony filed just before an evidentiary hearing. Written testimony typically is only in support of statements and conclusions contained in previously filed documents such as the EIS or SER.

2) Once the Staff concludes its reassessment of the Pilgrim II emergency planning issue and presents its conclusions, the Commonwealth may be in a position to look again at its own concerns as to this matter, and to determine whether in light of the Staff's additional field studies its contention might be withdrawn or at least narrowed in scope.

Upon submission of the applicant's amendment to its PSAR, the Staff's supplement to the SER and the Staff's answers to the Commonwealth's interrogatories, the Commonwealth will then be able to prepare its own testimony. Because some of the preliminary work has been done on this testimony, the Commonwealth estimates that it can be filed within one month of receipt of the above-mentioned documents. The evidentiary hearing could then be scheduled according to the provisions of 10 CFR §2.743(6), i.e. fifteen days after the filing of all testimony.

Respectfully submitted,

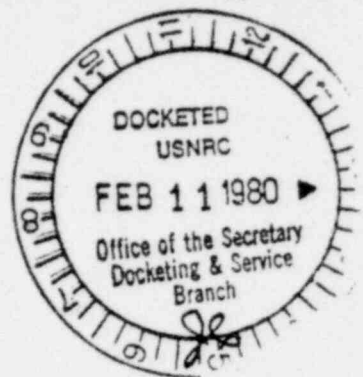
A handwritten signature in dark ink, appearing to read "Francis S. Wright", followed by a circled "S" or similar mark.

FRANCIS S. WRIGHT
Assistant Attorney General
Environmental Protection Division
Department of the Attorney General
One Ashburton Place, 19th Floor
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DATED: February 7, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

BOSTON EDISON COMPANY et al.

(Pilgrim Nuclear Generating Station,
Unit 2)

Docket No. 50-471

CERTIFICATE OF SERVICE

I hereby certify that the within "Statement of the Commonwealth of Massachusetts in Response to the Board's Order of January 17, 1980" has been served on the following by deposit of copies thereof in the United States Mail, first class mail, postage prepaid, this 7th day of February 1980.

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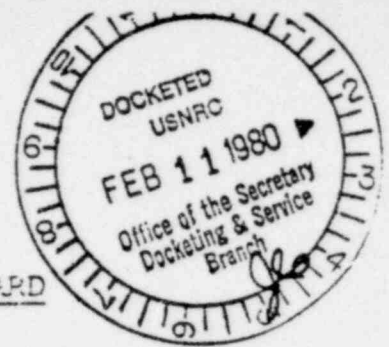
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of
BOSTON EDISON COMPANY, et al.
(Pilgrim Nuclear Generating Station,
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Docket No. 50-471

MEMORANDUM OF THE COMMONWEALTH
OF MASSACHUSETTS IN OPPOSITION
TO DISMISSAL OF ITS CONTENTION ON
EMERGENCY PLANNING

In the course of a conference call on September 10, 1979 the parties were asked to brief the following question: in light of the consideration now being given by the NRC to the issue of emergency planning, should the Licensing Board dismiss the Commonwealth's emergency planning contention as a matter presently the subject of a generic rulemaking proceeding? For the following reasons, the Commonwealth opposes dismissal of the contention, but does renew its request that the evidentiary - hearings on emergency hearings not be reconvened until further guidance on emergency planning has been issued by the NRC, guidance which can reasonably be expected to be forthcoming in the next few months.

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In the Matter of

BOSTON EDISON COMPANY, et al.

(Pilgrim Nuclear Generating Station,
Unit 2)

Docket No. 50-471

The issue of emergency planning is scheduled to be heard beginning October 1, 1979. During the past several weeks, a number of developments, more fully described below, have occurred in the area of emergency planning. Among these is a planned site visit by the Staff to determine if ten miles is a sufficient distance for emergency planning for Pilgrim Unit 1. The cumulative impact of these developments have caused the Staff to reassess its prior position that it can go forward with the issue of emergency planning. For this reason, the Staff moves that this issue be deferred until the Staff has completed its review of emergency planning considerations at the Pilgrim site.

The developments referred to above are: 1) the Commission issued a "Notice of Proposed Expedited Rulemaking on the Adequacy and Acceptance of Emergency Planning Around Nuclear Facilities" (Notice), 44 Fed. Reg. 41483 (July 17, 1979); 2) the Joint EPA-NRC Task Force Planning Basis for Development of State and Local Government Radiological Emergency Water Nuclear Power Plants (NUREG-0396) (

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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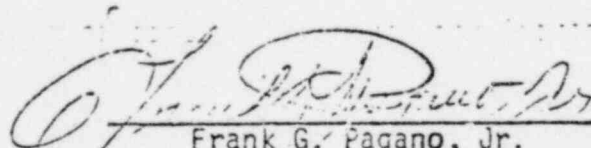
1. I am Director, NRC Emergency Preparedness Task Force for Operating Power Reactor.
2. A review team consisting of three members will visit the Pilgrim Unit 1 site to determine, among other things, whether 10 miles is a sufficient area for emergency planning, and whether rapid notification can be given to the residents within ten miles or any other distance established for emergency planning.
3. Pilgrim Unit 1 will be among the first sites visited by the Staff. This review is tentatively scheduled to take place on approximately September 17-18, 1979.
4. The information necessary to make the determination described above will be analyzed within seven weeks after the site visit.
5. The determination of the appropriate distance for emergency planning and the evaluation of notification time would be applicable to the proposed

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Unit No. 2. This information is essential in evaluating the proposed emergency planning in accordance with 10 CFR Part 50, Appendix E, Section II, and the proposed amendment thereto.

6. When the review of Pilgrim Unit 1 is complete, the criteria necessary to make decisions concerning emergency planning will be more firmly established.

For the above reason, the Staff desires to defer preparation of testimony on this issue in order that the most accurate and current information can be presented to the Board.


Frank G. Pagano, Jr.

Subscribed and sworn to before me
this 11 day of September, 1979.


Notary Public in and for the State
of Maryland, Montgomery County

My Commission expires: July 1, 1982.



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

December 26, 1979

APPLICANTS FOR CONSTRUCTION PERMITS AND
LICENSEES OF PLANTS UNDER CONSTRUCTION

Gentlemen:

SUBJECT: REQUEST FOR INFORMATION REGARDING EVACUATION TIMES

This letter is being sent to all applicants for construction permits, and licensees of plants under construction. The purpose of the letter is a request for information regarding estimates for evacuation of various areas around future nuclear power plants. The requested information is in addition to that requested by the November 21, 1979, letter to all applicants for an operating license and licensees of plants under construction from Domenic B. Vassallo, Acting Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Although evacuation time estimates are expected to be prepared in the course of the upgrading of the state of emergency preparedness as previously specified submission of these estimates to the NRC is being requested on an accelerated time scale so that the NRC can identify those instances in which unusual evacuation constraints exist and special planning measures should be considered. In some cases of extreme difficulty where a large population is at risk, special facility modifications may also be appropriate. The information requested in the enclosure should be submitted no later than March 31, 1980.

Previous correspondence indicated that efforts to develop a model plan were continuing. It now appears that the model plan will not be completed on a schedule which will be of use in developing upgraded plans in the near term. The upgraded plan development should therefore proceed on a site-specific basis.

Sincerely,

Brian K. Grimes, Director
Emergency Preparedness Task Group

Enclosure:
Request for Evacuation Time
Estimates

cc w/enclosure:
Service Lists

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