

July 23, 2012

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of May 24, 2012, in which you request that the Commission deny staff's request to relicense the Pilgrim Nuclear Power Station (PNPS), and express concern over the disparate authorities of the NRC and the U.S. Environmental Protection Agency (EPA) regarding the evaluation of environmental effects of nuclear power plants, particularly effects on wildlife. You also requested information regarding the steps the NRC has taken in response to an August 30, 2007, letter from the EPA providing comments on the final Supplemental Environmental Impact Statement (SEIS) prepared during the license renewal process for Pilgrim Nuclear Power Station.

Regarding your appeal that the Commission deny staff's request to relicense the PNPS, the U.S. Nuclear Regulatory Commission's rules provide that a renewed power reactor operating license may be issued while some adjudicatory filings remain pending, so long as the NRC staff has made all necessary safety and environmental findings. Therefore, after several years of evidentiary hearings, decisions by the Atomic Safety and Licensing Board (ASLB), and Commission appellate decisions addressing the Board's ruling, the Commission on May 24, 2012, approved the NRC staff's recommendation to authorize the Director of the Office of Nuclear Reactor Regulation to renew Pilgrim's operating license once he makes the appropriate safety and environmental findings. The Director made those findings and issued the license on May 29, 2012.

Regarding your concern about the evaluation of the environmental effects of nuclear power plants, the NRC and EPA have distinct and separate authorities and responsibilities for examining the effects of nuclear power plant cooling systems on the environment. In 1972, Congress amended the Federal Water Pollution Control Act (and renamed it the Clean Water Act, hereafter CWA) to assign statutory authority over water quality matters to the EPA. Portions of the CWA specifically removed water quality oversight authority from other Federal agencies, such as the NRC, and sought to prevent duplicative Federal oversight of CWA issues by specifically vesting sole authority with EPA. During its National Pollutant Discharge Elimination System (NPDES) permitting process, the EPA has the responsibility under CWA §316(b) to ensure that the "location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." Pursuant to its authority, the EPA can include specific conditions in a facility's NPDES permit that are protective of the aquatic environment, such as limits on the volume of water withdrawn and the temperature of discharged water. Therefore, the NRC defers to EPA and its delegated states for water permitting in its license renewal activities.

Although the NRC does not have the authority to regulate water quality, when reviewing an application to renew a facility's operating license, the NRC considers the effects of nuclear power plant cooling systems on the aquatic environment as part of the agency's compliance with several Federal acts. These include the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Magnuson–Stevens Fishery Conservation and Management Act (MSA).

NEPA requires Federal agencies to consider the environmental impacts of a proposed action and disclose those impacts in a NEPA document. In the case of Pilgrim, the NRC considered the impacts of the facility's continued operation of Pilgrim on the aquatic environment in its July 2007 final SEIS. NEPA, however, does not give the NRC statutory authority to impose changes in a facility's design or cooling system.

The ESA requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services), to ensure that actions Federal agencies authorize, fund, or carry out do not jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Pursuant to the ESA, the NRC considered the effects of renewing Pilgrim's license on federally listed marine species and designated critical habitats in a December 2006 biological assessment and in a February 2012 biological assessment supplement. In a letter dated May 17, 2012, the NMFS concluded that the Pilgrim license renewal is not likely to adversely affect any listed species under NMFS jurisdiction and would have no effect on designated critical habitat. Thus, formal consultation between NRC and NMFS was not necessary. The EPA also will have to consult with NMFS under the ESA during its NPDES permit renewal process.

The MSA requires Federal agencies to consult with NMFS regarding any actions authorized, funded, or undertaken that may adversely affect essential fish habitat (EFH). Pursuant to the MSA, the NRC considered the effects of Pilgrim's continued operation on EFH in an EFH Assessment, which was included in Appendix E of NRC's SEIS for Pilgrim license renewal. The EPA also will be required to consult with NMFS under the MSA during its NPDES permit renewal process.

You also requested information regarding the steps the NRC has taken in response to an August 30, 2007, letter from EPA which provided comments on the Pilgrim license renewal final SEIS. As part of the NEPA process for license renewal application reviews, and per NRC's regulations implementing NEPA, the NRC provides an opportunity for the public, Federal and state agencies, and other stakeholders to comment on the proposed Federal action during two specific periods in the NEPA review: as part of scoping and after the issuance of the draft SEIS. The NRC includes responses to scoping comments in an appendix to the draft SEIS and responses to draft SEIS comments in an appendix to the final SEIS.

During the Pilgrim NEPA review, EPA submitted comments on the scoping process, on the draft SEIS, and on the final SEIS. The NRC responded to EPA's scoping comments in a scoping summary report, which was included as Appendix A of the Pilgrim draft SEIS. The NRC responded to EPA's draft SEIS comments in Part II of Appendix A to the final SEIS. The NRC also made revisions to the final SEIS in response to the EPA's draft SEIS comments as NRC technical staff determined appropriate.

The Notice of Availability of the final SEIS to which EPA's August 30, 2007, letter responded, did not solicit comments, but rather provided information on the availability of the

final SEIS and marked the beginning of the mandatory 30-day waiting before the NRC could take action or publish a Record of Decision. This period allows EPA the opportunity to object to the final SEIS. Per EPA guidance on review of final environmental impact statements (EISs), if EPA has objections, it can raise its objections to the Council on Environmental Quality (CEQ) or send a letter to the Federal agency requesting the agency to supplement the final EIS. However, EPA's August 30, 2007, letter neither raised objections warranting referral to the CEQ nor requested that the NRC to supplement the Pilgrim final SEIS. Nevertheless, the NRC staff reviewed EPA's final SEIS comments submitted in response to the Notice of Availability. The NRC has used these and other comments received during subsequent NEPA reviews to improve our staff's approach to aquatic ecology analyses in its NEPA documents including license renewal SEIS. The NRC continues to engage EPA and other stakeholders in the NEPA process to identify additional areas in which its NEPA documents might be enhanced.

Please be assured that the NRC has clear, established authority and procedures for working effectively with our Federal partners to ensure wildlife and other environmental issues are addressed fully and appropriately during nuclear power plant relicensing activities. If you need any additional information, please contact me or Rebecca Schmidt, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/

Allison M. Macfarlane