

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| In the Matter of                  | ) |                              |
|                                   | ) |                              |
| ENTERGY NUCLEAR OPERATIONS, INC., | ) |                              |
| ENTERGY NUCLEAR GENERATION        | ) |                              |
| COMPANY, AND HOLTEC               | ) | Docket Nos. 50-293 & 72-1044 |
| DECOMMISSIONING INTERNATIONAL,    | ) |                              |
| LLC; CONSIDERATION OF APPROVAL OF | ) |                              |
| TRANSFER OF LICENSE AND           | ) |                              |
| CONFORMING AMENDMENT              | ) |                              |
|                                   | ) |                              |
| (Pilgrim Nuclear Power Station)   | ) |                              |

**EMERGENCY MOTION OF THE COMMONWEALTH OF  
MASSACHUSETTS FOR CLARIFICATION OF THE  
COMMISSION’S AUGUST 14, 2019 MEMORANDUM AND ORDER**

Petitioner, the Commonwealth of Massachusetts (Commonwealth or Massachusetts), seeks, on an emergency basis, clarification of a statement in the Commission’s August 14, 2019 Memorandum and Order, CLI-19-08 (Aug. 14, 2019), which concerns the time in which the Commonwealth must file a motion under 10 C.F.R. § 2.1327 to stay a Nuclear Regulatory Commission (NRC) Staff order approving the direct transfer of control of the Renewed Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power Station from Entergy Nuclear Operations, Inc., to Holtec Decommissioning International, LLC.<sup>1</sup> Because this motion will not stay issuance of that order (assuming the Commission does not object to its issuance), *see* 10 C.F.R. § 2.1325(e), and because the potential time in which the Commonwealth must file a motion to stay that order may fall on Monday, August 19, 2019, the Commonwealth asks that the

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<sup>1</sup> *See* Notification (Aug. 13, 2019) (ADAMS Accession No. ML19198A283).

Commission rule on this motion no later than Friday, August 16, 2019. In further support of this emergency motion, the Commonwealth states as follows:

1. On August 14, 2019, the Commission issued a Memorandum and Order denying the Commonwealth's Motion to Stay the Proceeding to Complete Settlement Negotiations. In its decision, the Commission stated that "[t]he Commonwealth will have the opportunity to [file a motion to stay a Staff order approving the license transfer application] . . . if the Staff issues such an order." Mem. & Order at 3. In its Notification, the NRC Staff notified all participants in this proceeding that it had "provided the Commission with a Notification of Significant Licensing Action" regarding its intention to "issue an order approving the" license transfer application "on or about August 21, 2019." Notification at 1.

2. The NRC's regulations at 10 C.F.R. § 2.1327(a) provide that "[a]ny application for a stay of the effectiveness of the NRC staff's order on [a] license transfer application shall be filed with the Commission within 5 days of the issuance of the *notice of staff action* pursuant to § 2.1316(a)." 10 C.F.R. § 2.1327(a) (emphasis added). Section 2.1316(a) provides, in turn, that "staff is expected to promptly issue approval or denial of license transfer requests" and that "[n]otice of such action shall be promptly transmitted to the Presiding Officer and parties to the proceeding." 10 C.F.R. § 2.1316(a).

3. The regulations are arguably ambiguous on the question of whether a party to this proceeding must file a motion to stay a NRC Staff order approving the license transfer application within five days of the date the NRC Staff *provided notice* to the Commission (acting currently as the Presiding Officer in this proceeding) and the parties to the proceeding, which is Monday, August 19, 2019, *see* 10 C.F.R. § 2.306, or within five days of the date the NRC Staff

*actually issues an order* approving the license transfer application, which would be, at the earliest, Monday, August 26, 2019, *see id.*

4. In an abundance of caution, and in light of the Commonwealth's significant interests in this matter and the time and resources involved in preparing a motion to stay that satisfies the factors set forth in 10 C.F.R. § 2.1327, the Commonwealth seeks clarification that the Commission's statement that "[t]he Commonwealth will have the opportunity to [file a motion to stay a Staff order approving the license transfer application] . . . if the Staff issues such an order," Mem. & Order at 3, means, consistent with a reasonable reading of § 2.1327(a) and the Commission's statement, prior precedent,<sup>2</sup> and common sense, that a motion to stay a NRC Staff order approving the license transfer application in this proceeding would currently be due five days from the date the Staff *actually* issues such an order and *not* five days from the date of its August 13, 2019 notice of its intent to issue such an order. That interpretation would also permit the Commonwealth to review any NRC Staff order in advance of drafting and filing a stay motion, providing the Commonwealth with the opportunity to meaningfully respond any such order.

5. The Commonwealth, through its counsel, attempted to obtain clarity on this issue from NRC Staff on August 14, 2019, but a member of the NRC's Office of General Counsel stated that he could not provide the Commonwealth with the NRC Staff's position on it.

6. As a courtesy, the Commonwealth attempted to confer with each of the parties to this proceeding about this motion prior to filing it. The Commonwealth conferred with Petitioner

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<sup>2</sup> Power Authority of the State of New York & Entergy Nuclear Fitzpatrick, LLC, et al, (James A. Fitzpatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3), CLI-00-22, 52 N.R.C. 266, 286 n.1 (Nov. 27, 2000) (stating that the petitioner could have (but did not) file a motion to stay the NRC Staff's orders approving two license transfer applications after the orders were issued on November 9, 2000).

Pilgrim Watch on August 14, 2019, and a representative for Pilgrim Watch stated that Pilgrim Watch supports and joins in this emergency motion. The Commonwealth conferred with counsel for Entergy and Holtec on August 15, 2019. Counsel for Entergy and Holtec indicated that they take no position on this motion.

\* \* \*

For the foregoing reasons, and for good cause shown, the Commonwealth respectfully requests that the Commission clarify by Friday, August 16, 2019, the statement in its August 14, 2019, Memorandum and Order by stating that a motion under 10 C.F.R. § 2.1327(a) by a party to this proceeding to stay a NRC Staff order to approve the license transfer application would currently be due within five days of the date the NRC Staff actually issues such an order.

Respectfully submitted this 15th of August, 2019,

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

MAURA HEALEY  
ATTORNEY GENERAL

Signed (electronically) by \_\_\_\_\_

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**CERTIFICATION OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that copies of this Emergency Motion have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding this 15th day of August 2019.

Signed (electronically) by \_\_\_\_\_  
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Dated: August 15, 2019