

August 16, 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 the Motion of the Commonwealth of
Massachusetts for an Enlargement of Time to File an Application for Stay**

Pursuant to 10 C.F.R. § 2.1325(b), 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 the Emergency Motion of the Commonwealth of Massachusetts for an Enlargement of Time to File an Application to Stay a Nuclear Regulatory Commission Staff Order Approving the License Transfer Application (“Motion”), dated August 15, 2019, in the license transfer proceeding for the Pilgrim Nuclear Power Station (“Pilgrim”). The Commonwealth of Massachusetts (“Commonwealth”) asks the Commission to allow a party to file an application to stay an NRC Staff order approving the license transfer application within ten days of the date the NRC Staff issues such an order.¹ The Commission should deny this Motion because it is inconsistent with NRC rules and unsupported by good cause.

¹ Pilgrim Watch has filed a Memorandum in support of the Commonwealth’s Motion, including its applicability to Pilgrim Watch. Pilgrim Watch Memorandum in Support of Emergency Motion of the Commonwealth of Massachusetts for an Enlargement of Time to File an Application to Stay an NRC Staff Order Approving the License Transfer Application (Aug. 16, 2019).

As background, Applicants submitted their application on November 16, 2018, requesting that the Commission approve the transfer of ENOI's authority to conduct licensed activities at Pilgrim to HDI, and the indirect transfer of control of the Pilgrim facility and ISFSI licenses to Holtec. The Commonwealth and Pilgrim Watch each requested a hearing,² and their requests are currently pending before the Commission. In the meantime, consistent with NRC practice, the NRC Staff has been diligently reviewing the Application. The NRC Staff's December 19, 2018 acceptance review letter stated that the NRC Staff would endeavor to complete its review in seven months, and therefore the Commonwealth has known for some time when completion of the NRC Staff's review was expected. Further, on August 13, 2019, the NRC Staff notified all participants in this proceeding that it has provided to the Commission a Notification of Significant Licensing Action ("NSLA") stating that the Staff intends to issue an order approving the license transfer application on or about August 21, 2019.³

Reflecting its awareness of the imminent completion of the NRC Staff's review, the Commonwealth filed a motion on August 1, 2019 to stay all activities in this proceeding to complete settlement negotiations.⁴ By Memorandum and Order dated August 14, 2019 (CLI-19-08), the Commission denied that motion. On August 15, the Commonwealth then filed an emergency motion asking the Commission to clarify that a motion to stay the effectiveness of an NRC Staff order approving the license transfer application would be due within five days from

² Commonwealth of Massachusetts' Petition for Leave to Intervene and Hearing Request (Feb. 20, 2019) (ADAMS Accession No. ML19051A114); Pilgrim Watch Petition for Leave to Intervene and Hearing Request (Feb. 20, 2019) (ADAMS Accession No. ML19051A019).

³ Notification (Aug. 13, 2019) (ADAMS Accession No ML19225D006).

⁴ Motion of the Commonwealth of Massachusetts to Stay Proceedings to Complete Settlement Negotiations (Aug. 1, 2019).

the date the NRC Staff actually issues such an order (as opposed to five days from the NSLA).⁵ Now, apparently in a further “abundance of caution” (Motion at 3), the Commonwealth asks the Commission to act the same day in granting the parties a ten-day period running from issuance of the NRC Staff’s order in which to apply for stay of the effectiveness of such order.⁶

At the outset, it appears that the Commonwealth filed the current Motion out of concern that an application to stay the effectiveness of the NRC Staff’s order may be due within five days of the NSLA. The Commission’s August 16, 2019 Order has clarified that the NSLA does not constitute the notice of Staff action triggering the five-day window for an application for stay. Therefore, both the Commonwealth and Pilgrim Watch will have five days from the notice of actual issuance of the Staff’s order in which to apply for a stay of its effectiveness. Applicants see no good cause for any further extension. The Commonwealth and Pilgrim Watch have been aware of the approaching completion of the NRC Staff’s review for some time and therefore have had ample opportunity to prepare for that eventuality and to use the five days after issuance of the order to make any needed revisions to their motions. Further, as a stay motion is due five days after issuance of the NRC Staff’s order (making the stay motion due on or about August 26), the Commonwealth and Pilgrim Watch will have had thirteen days from the August 13 Notification to prepare such a stay motion. This is ample time.

The Commission’s rules require “good cause” for an extension request. 10 C.F.R. § 2.307(a). As the Commission has explained, the Commission expects adherence to its hearing procedures and recognizes that applicants are entitled to prompt resolution of disputes

⁵ Emergency Motion of the Commonwealth of Massachusetts for Clarification of the Commission’s August 14, 2019 Memorandum Order (Aug. 15, 2019).

⁶ Subsequent to its Motion, the Commission has clarified that because the NRC Staff has not issued an order on the license transfer application, no “notice of staff action” as referenced in 10 C.F.R. § 2.1327(a) has been provided. Order (Aug. 16, 2019).

concerning their applications. *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 19 (1998). Accordingly, the Commission has stated that extensions should only be granted when warranted by unavoidable and extreme circumstances. *Id.* at 21. *See also Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 N.R.C. 325, 342 (1998), *petition for review denied sub nom., Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000); *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 & 2), CLI-10-26, 72 N.R.C. 474, 476 (2010).

The Commonwealth seeks to justify its extension request by asserting that two of its attorneys have prior commitments and “very busy schedules” (Motion at 3) and an application for stay requires review by agency management (*id.* at 4), but such excuses provide no good cause for an extension. As the Commission has held, the need to balance other obligations presents no special circumstances amounting to good cause for an extension. *Detroit Edison Co.* (Fermi Unit 3), CLI-09-04, 69 N.R.C. 80, 82 (2009). “Petitioners argument that their counsel was busy working on other legal matters disregards our longstanding policy that ‘the fact that a party may have . . . other obligations . . . does not relieve that party of its hearing obligations.’” *Bellefonte*, CLI-10-26, 72 N.R.C. at 476. This is especially true where, as here, the extension is requested by a State’s office of the Attorney General that employs several hundred attorneys and is both used to and capable of balancing competing obligations. Pilgrim Watch offers no good cause of its own.

Moreover, the Commonwealth’s extension request is inconsistent with the intent of the Commission’s Subpart M procedures to streamline the hearing process in license transfer proceedings. As the Commission explained when it promulgated these rules,

Because of the need for expeditious decisionmaking from all agencies, including the Commission, timely and effective resolution of requests for transfers on the part of the Commission is essential.

Streamlined Hearing Process for NRC Approval of License Transfers, Final Rule, 63 Fed. Reg. 66,721 (Dec. 3, 1998).

The [Subpart M] procedures are designed to provide for public participation in the event of requests for hearing under these provisions, while at the same time providing an efficient process *that recognizes the time-sensitivity normally present in transfer cases*.

Id. at 66,722 (emphasis added). Therefore, the deadlines provided in the Subpart M rules, including the 5-day deadline for a stay application under Section 2.1327, should be strictly enforced. Granting extensions just because a participant's attorneys have busy schedules and management review of a filing is required would render the deadlines meaningless, because such excuses can be offered in virtually every proceeding.

In addition, as Applicants previously explained in opposing the Commonwealth's previous request to stay all activities in this proceeding, Applicants are concerned with the impact that any delay in the license transfer have on the nearly 270 individuals who work at Pilgrim.⁷ Any prolonged uncertainty regarding whether and when Pilgrim workers will become CDI or HDI employees can have a significant impact on their personal and professional lives, leaving the Pilgrim workers in limbo and potentially disposed to seeking more secure positions elsewhere. Therefore, if any participant intends to apply for a stay of the effectiveness of the NRC Staff's order, it should do so as promptly as possible, rather than asking the Commission to double the amount of time it has to do so.

⁷ Applicants' Answer Opposing the Motion of the Commonwealth of Massachusetts to Stay Proceedings to Complete Settlement Negotiations (Aug. 5, 2019) at 5.

For the reasons described above, the Commission should deny the Commonwealth's Motion.

Respectfully submitted,

/signed electronically by David R. Lewis/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing the Emergency Motion of the Commonwealth of Massachusetts for an Enlargement of Time to File an Application for Stay has been served through the E-Filing system on the participants in the above-captioned proceeding this 16th day of August 2019.

/signed electronically by /
David R. Lewis