

**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))	

**REPLY OF THE COMMONWEALTH OF MASSACHUSETTS IN
SUPPORT OF ITS MOTION FOR A TWENTY-TWO MINUTE ENLARGEMENT OF
TIME TO FILE ITS STAY APPLICATION AND SUPPORTING APPENDIX**

Petitioner, the Commonwealth of Massachusetts (Commonwealth), submits this short reply to address two points: (i) Applicants’ claim that the Commonwealth should have anticipated that the Nuclear Regulatory Commission’s (NRC) E-Filing system would fail and (ii) Applicants’ concession that the requested twenty-two minute enlargement of time will not prejudice them or conflict with the prompt resolution of this matter.¹ In short, Applicants offer nothing that undermines the Commonwealth’s “good cause” demonstration—one, unlike Applicants’ Answer, that is consistent with NRC precedent and its desire to promote fairness.

First, Applicants claim that the Commonwealth should have anticipated that the NRC’s E-Filing system would fail during the evening of September 3, 2019, *see* Answer 5, but neither experience nor common sense should have caused the Commonwealth to anticipate that the E-

¹ Applicants filed their Answer under 10 C.F.R. § 2.1325, which, unlike other NRC regulations that expressly prohibit replies either completely, *id.* § 2.1327(c), or without leave, *id.* § 2.323(c), is silent on the issue, *id.* § 2.1325; *see also Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) (disparate inclusion or exclusion of term presumed intentional).

Filing system that the NRC's rules require it to use would not work when counsel for the Commonwealth attempted timely to submit its filing. 10 C.F.R. § 2.302(a), (g)(1); 72 Fed. Reg. 49,139, 49,145 (Aug. 28, 2007) ("the presiding officer in each proceeding will issue an order that specifies a backup method for filing if the E-Filing system is unavailable."). Counsel can certainly plan for certain events like every-day traffic delaying their arrival at the courthouse for a filing, but no reasonable person would ever fault that same lawyer (or punish his or her client) for arriving to the courthouse on time only to find the courthouse doors locked. The latter was the case here. Indeed, undersigned counsel for the Commonwealth spoke with the NRC's Electronic Submissions Help Desk, which opened and then closed Ticket No. 12186 after its investigation confirmed that an error with NRC's E-Filing system prevented the timely filing of the Commonwealth's Stay Application and Appendix.

Second, Applicants' tacitly concede that the twenty-two-minute delay between the deadline and the time the Commonwealth filed its Stay Application did not prejudice them in any respect whatsoever. *See* Answer 1-6; *see also Cohen v. Bd. of Trustees of the Univ. of the Dist. of Columbia*, 819 F.3d 476, 479 (D.C. Cir. 2016) (listing "prejudice" to opposing party among the four factors for weighing an after-the-fact extension).² Likewise, while Applicants point to the Commission's statements that "applicants are entitled to prompt resolution" and that the Subpart M procedures "are designed to provide for . . . an efficient process," Answer 4 & n.14, they fail to explain how the twenty-two-minute delay at issue here impeded those goals. *Cohen*, 819 F.3d at 479 (listing "length of delay and the potential impact on judicial proceedings" as a second factor). Given those two facts and the fact that the twenty-two-minute delay was caused,

² Contrary to Applicants' apparent view, *see* Answer 2-4, 5, the amount of time Commonwealth had to prepare its Stay Application is irrelevant. And, in any event, Applicants' claim that the Commonwealth had "over a month" (Answer 5) is false. The Commonwealth had *seven* business days from the date Staff filed its order to prepare and file its Stay Application.

again, by circumstances beyond the Commonwealth's control, Applicants have offered no reason to deny the Commonwealth's request.³

* * *

For the foregoing reasons, and for good cause shown, the Commonwealth requests that the Secretary grant its Motion for an Enlargement of Time.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

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Signed (electronically) by _____

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³ *Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1294 (D.C. Cir. 2004) and *Martinelli v. Farm-Rite, Inc.*, 785 A.2d 33, 35 (N.J. Super. 2001), both cited by Applicants, *see* Answer 5 n.16, are inapposite. In *Fox*, the missed deadline was caused (allegedly) by the e-filing system's failure to notify counsel of the motion to which he failed to oppose and there were other circumstances that should have alerted counsel to the filing. 389 F.3d at 1293-94; *see also id.* at 1293 (noting that counsel referenced the motion in an earlier filed meet and confer statement). In *Martinelli*, the missed deadline was caused by counsel's own computer system's apparent failure to calendar the deadline. 785 A.2d at 35. These cases are also irrelevant because, as the Commonwealth explained in its Motion, NRC precedent indicates that even problems with a filers' own computer system (which, again, was not the case here) can satisfy the NRC's good cause standard. Mass. Mot. for an Enlargement of Time ¶ 4, at 3 & ¶ 6, at 4-5.

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CERTIFICATION OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that the Commonwealth of Massachusetts' Reply in Support of its Motion for an Enlargement of Time has been served on all parties to this proceeding through the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding this 12th day of September 2019.

Signed (electronically) by
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Dated: September 12, 2019