

**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))	

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

Pursuant to 10 C.F.R. § 2.307 and 10 C.F.R. § 2.1325, Petitioner, the Commonwealth of Massachusetts (Commonwealth), respectfully requests that the Nuclear Regulatory Commission (NRC) enlarge from 11:59 p.m. Eastern Time on September 3, 2019, to 12:21 a.m. Eastern Time on September 4, 2019—a brief twenty-two minute period—the time in which the Commonwealth was required to file its Application for a Stay of NRC Staff’s Action Approving the License Transfer Application and Request for an Exemption to Use the Decommissioning Trust Fund for Non-Decommissioning Purposes and the supporting Appendix. As described more fully below, the twenty-two minute late-filing was due to a problem with the NRC’s Adjudicatory Submissions’ E-Filing system that prevented the Commonwealth—despite repeated attempts—from filing its Stay Application and supporting Appendix by 11:59 p.m. on September 3, 2019. Given the briefness of the delay, it cannot have prejudiced Applicants in any manner whatsoever. In further support of this motion, the Commonwealth states as follows:

1. On August 21, 2019, the Commission allowed the Commonwealth's Motion for a five-day enlargement of time to file an application to stay a NRC Staff order approving the license transfer application. Order at 1 (Aug. 21, 2019) (ADAMS Accession No. ML1233A289). NRC Staff issued its order on August 22, 2019 (ADAMS Accession No. ML1234A359). Pursuant to 10 C.F.R. § 2.1327 and § 2.306(a), (c)(2), the Commonwealth's application for a stay was due by 11:59 p.m. Eastern Time on September 3, 2019.

2. At approximately 11:40 p.m. Eastern Time on September 3, 2019, undersigned counsel Schofield accessed the NRC's Adjudicatory Submissions E-Filing system and uploaded the *Application of the Commonwealth of Massachusetts for a Stay of the Effectiveness of the Nuclear Regulatory Commission Staff's Actions Approving the License Transfer Application and Request for an Exemption to Use The Decommissioning Trust Fund for Non-Decommissioning Purposes* and the Appendix in support of that Application. The NRC's Adjudicatory Submissions E-Filing system uploaded the two files after undersigned counsel clicked on the "sign" and "submit" buttons, but after the upload was done the E-Filing system generated the error page attached as Exhibit 1, which undersigned counsel printed as a PDF at 11:56 p.m. Eastern Time on September 3, 2019 (*id.* at 2 (page properties)) after his intervening attempts to file the Commonwealth's Stay Application and supporting Appendix failed.

3. Following the website/E-Filing system error notice, undersigned counsel made repeated unsuccessful attempts to resubmit the Commonwealth's Application for a Stay and supporting Appendix between approximately 11:47 p.m. Eastern Time on September 3, 2019 and 12:20 a.m. Eastern Time on September 4, 2019, using both "Chrome" and "Internet Explorer" web browsers. Between approximately 11:47 p.m. on September 3, 2019 and 12:15 a.m. on September 4, 2019, however, undersigned counsel could not even get beyond the main

Adjudicatory Submissions’ page (<https://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html>) to enter the E-Filing platform and initiate the filing. In each of those cases, the Adjudicatory Submissions’ webpage indicated that it was waiting for “eie.nrc/gov” to respond. At approximately 12:15 a.m. Eastern Time on September 4, 2019, undersigned counsel was able to access the E-Filing system and select the two filings to be filed using his Internet Explorer browser, but the E-Filing system would not upload the files. Instead, the website included text at the bottom of the webpage stating “waiting” for “eie.nrc/gov” or server to respond. Finally, at 12:21 a.m. Eastern Time on September 4, 2019—twenty-two minutes after the filing deadline—undersigned counsel was able to access the Adjudicatory Submissions’ E-Filing system on his Chrome web browser, upload successfully the files, and complete the filing. Exhibit 2. The E-Filing System noticed all parties of this filing by e-mail at 12:22 a.m. on September 4, 2019. *Id.*

4. A party may obtain an after-the-fact enlargement of time when it can demonstrate that “good cause” exists for the requested enlargement. 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2019). In this context, good cause exists when “unanticipated events” preclude timely execution of the party’s filing, *id.* at 46,571-72, and those “unanticipated events” include computer problems, *see DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), CLI-14-10, 2014 WL 7226670, at *2 n.16 (2014)* (noting that “good cause” for a “modest” extension of time existed where party’s counsel stated that he had “experienced problems with his computer hard drive.”). In this case, as described above, undersigned counsel for the Commonwealth made repeated efforts to timely file the Commonwealth’s Stay Application and supporting Appendix before the September 3, 2019, 11:59 p.m. Eastern Time deadline. Due to “unanticipated events” and circumstances beyond his control, i.e., an apparent problem with the NRC’s Adjudicatory Submissions’ E-Filing system, however, undersigned counsel’s repeated efforts to timely submit those two filings

were unsuccessful. The late filing was based on an inadvertent and unanticipated event beyond undersigned counsel's control and thus excusable.

5. The Commonwealth's late filing will not prejudice any party to this proceeding, because the filing was accepted by the Adjudicatory Submissions' E-Filing system and notice of that filing was served by the E-Filing system on the parties by e-mail a mere *twenty-two* minutes after the filing deadline at 12:21 a.m. Eastern Time on September 4, 2019. Whether the Stay Application and Appendix were filed at 11:59 p.m. on September 3 or at 12:21 a.m. on September 4, 2019 could not have made any difference to Applicants or their counsel since in both cases the filing was available to them when they began work today, September 4, 2019. In the unlikely event that counsel for the Applicants were waiting for the filing at 11:59 p.m. on September 3, 2019, then having to wait a brief additional twenty-two minutes to review a ten-page Stay Application also could not reasonably be viewed as prejudicial. In contrast, a decision to deny this request for a *twenty-two-minute* enlargement of time would be highly prejudicial and unfair to the Commonwealth because the delay in filing its Stay Application and the supporting Appendix was caused by a problem with the NRC's Adjudicatory Submissions E-Filing system, not any action or inaction of undersigned counsel for the Commonwealth. Moreover, the Commonwealth filed its Stay Application because it is and will continue to be harmed by the actions it seeks to stay making the denial of this motion all the more prejudicial to the Commonwealth.

6. The Commission's rules adopt the "last act" standard, under which filings are considered complete "when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically." 10 C.F.R. § 2.302(d)(1). "For electronic transmissions, the 'last act' would occur when the participant hits the 'submit/transmission' or

‘send’ button.” 72 Fed. Reg. 49,139, 49,143 (Aug. 28, 2007). In adopting that standard, the Commission’s intent was to ensure that parties encountering electronic filing system problems outside of their control, as the Commonwealth encountered here, not be penalized, because, in the Commission’s view, that would be unfair. *See id.*; *see also id.* (“the ‘last act’ standard, which penalizes a party only for events within its control, is fair. . . . Making completeness of filing dependent upon receipt of transmission would subject parties to the vagaries of electronic transmission . . .”).¹ Here, counsel for the Commonwealth selected “send” at approximately 11:40 p.m. Eastern Time on September 3, 2019 or nineteen minutes before the filing deadline of 11:59 p.m. Eastern Time on September 3, 2019, and, upon receiving the error message, *see* Exhibit 1, counsel made continuing good faith efforts to submit the filing electronically until the E-Filing system accepted the Commonwealth’s filing at 12:21 a.m. Eastern Time on September 4, 2019. *Cf.* 10 C.F.R. § 2.302(e). The filing should therefore be considered timely, and in any event, the facts described above are more than ample evidence of good cause for granting a twenty-two-minute enlargement of time for the Commonwealth’s filing. On these facts, a contrary finding would not be “fair.” *See* 72 Fed. Reg. at 49,143.

7. The Commonwealth conferred with each of the parties to this proceeding about this motion prior to filing it. Counsel for Applicants have indicated that they oppose this motion. A representative for Petitioner Pilgrim Watch indicated that Pilgrim Watch supports this motion.

¹ The Commission further explained that the “vagaries of electronic transmission . . . include such problems as the filer’s Internet connection being slower on the day of filing, the filer’s Internet service disconnecting during transmission, or the filer’s connection to the E-Filing system server failing to connect because the allotted time for connection expired.” 72 Fed. Reg. at 49,143.

* * *

For the foregoing reasons, and for good cause shown, the Commonwealth requests that the Secretary grant this Motion and enlarge the time for the Commonwealth to have filed its Application for a Stay and supporting Appendix from 11:59 p.m. Eastern Time on September 3, 2019 to 12:21 a.m. Eastern Time on September 4, 2019.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

MAURA HEALEY
ATTORNEY GENERAL

Signed (electronically) by _____

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Dated: September 4, 2019

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NUCLEAR REGULATORY COMMISSION

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(Pilgrim Nuclear Power Station))

CERTIFICATION OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that the *Motion of the Commonwealth of Massachusetts for a Twenty-Two Minute Enlargement of Time to File Its Stay Application and Supporting Appendix* 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 4th day of September 2019.

Signed (electronically) by
SETH SCHOFIELD
Senior Appellate Counsel
Energy and Environment Bureau
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
617-963-2000
seth.schofield@mass.gov

Dated: September 4, 2019

Exhibit 1

Server Error in '/' Application.

Runtime Error

Description: An application error occurred on the server. The current custom error settings for this application prevent the details of the application error from being viewed remotely (for security reasons). It could, however, be viewed by browsers running on the local server machine.

Details: To enable the details of this specific error message to be viewable on remote machines, please create a <customErrors> tag within a "web.config" configuration file located in the root directory of the current web application. This <customErrors> tag should then have its "mode" attribute set to "Off".

```
<!-- Web.Config Configuration File -->
```

```
<configuration>
  <system.web>
    <customErrors mode="Off"/>
  </system.web>
</configuration>
```

Notes: The current error page you are seeing can be replaced by a custom error page by modifying the "defaultRedirect" attribute of the application's <customErrors> configuration tag to point to a custom error page URL.

```
<!-- Web.Config Configuration File -->
```

```
<configuration>
  <system.web>
    <customErrors mode="RemoteOnly" defaultRedirect="mycustompage.htm"/>
  </system.web>
</configuration>
```


Exhibit 2

Schofield, Seth (AGO)

From: Hearingdocket@nrc.gov
Sent: Wednesday, September 4, 2019 12:22 AM
To: Emily.Krause@nrc.gov; alovett@balch.com; anita.ghoshnaber@nrc.gov; anne.leidich@pillsburylaw.com; Brian.Newell@nrc.gov; clara.sola@nrc.gov; david.lewis@pillsburylaw.com; David.Roth@nrc.gov; hearing.docket@nrc.gov; herald.speiser@nrc.gov; Jennifer.Scro@nrc.gov; Jeremy.Wachutka@nrc.gov; Dorfler, Joseph (AGO); Krupskaya.Castellon@nrc.gov; mary.lampert@comcast.net; megan.hammond@pillsburylaw.com; nicolas.mertz@nrc.gov; ocaamail@nrc.gov; plejeune@balch.com; rebecca.susko@nrc.gov; Schofield, Seth (AGO); sraimo@entergy.com; Tison.Campbell@nrc.gov; Schofield, Seth (AGO)
Subject: Re: NRC Proceeding "Pilgrim 50-293 & 72-1044 LT"

****EIE Update**** Due to certain NRC computer security enhancements the process to open submissions having more than one attachment has had to be changed. Now, after opening the link in the e-mail and validating their certificate, users will see a page with a button saying "Download Attachments". Selecting that button will cause the attached .zip file to be downloaded to the users' computer. Thereafter, the files can be opened using the normal protocol. ****EIE Update****

MESSAGE FROM THE OFFICE OF THE SECRETARY, NUCLEAR REGULATORY COMMISSION

Re: NRC Proceeding "Pilgrim 50-293 & 72-1044 LT"

The Office of the Secretary has received a Submission entitled

"Application of Massachusetts for a Stay of the Effectiveness of the NRC Staff Actions Approving the License Transfer Application and Request for an Exemption to Use The Decommissioning Trust Fund for Non-Decommissioning Purposes"

submitted by Seth Schofield who is affiliated with Massachusetts Attorney General's Office. It contains 2 attachment(s).

It is intended for inclusion in the referenced proceeding. It was submitted through the NRC Electronic Information Exchange (EIE) system and arrived on 09/04/2019 at 12.21 AM.

As a hearing participant, you are entitled to view and/or retrieve this Submission by visiting the following web link.

Application of Massachusetts for a Stay of the Effectiveness of the NRC Staff Actions Approving the License Transfer Application and Request for an Exemption to Use The Decommissioning Trust Fund for Non-Decommissioning Purposes - [https://urldefense.proofpoint.com/v2/url?u=https-3A__eie.nrc.gov_eie_adj_downloadAttachmentPackage.eie-3FsubmissionId-3D55238&d=DwIFAA&c=IDF7oMaPKXpkYvev9V-fVahWLOQWnGCCAfCDz1Bns_w&r=SmEQmX9bB_FM-ZPDpiE43e5jvacZSiX8aEBm4ACALFc&m=h-Bh85O8B8b0Fy4pV8XEmJM93FxYg2-CxDwJvqDNs6Y&s=_D7Lfg8UWg1q_OIWLtRJK1kSG9zPkaFwph4fA8ApCk&e=\(104067 KB\)](https://urldefense.proofpoint.com/v2/url?u=https-3A__eie.nrc.gov_eie_adj_downloadAttachmentPackage.eie-3FsubmissionId-3D55238&d=DwIFAA&c=IDF7oMaPKXpkYvev9V-fVahWLOQWnGCCAfCDz1Bns_w&r=SmEQmX9bB_FM-ZPDpiE43e5jvacZSiX8aEBm4ACALFc&m=h-Bh85O8B8b0Fy4pV8XEmJM93FxYg2-CxDwJvqDNs6Y&s=_D7Lfg8UWg1q_OIWLtRJK1kSG9zPkaFwph4fA8ApCk&e=(104067 KB))

If the submission contains 2 or more attachments, they will be delivered to you as a single compressed zip file from which you may open the attachments. The delivery model works best with the free download product named "SecureZip". This is the product used in the screen shots in the Adjudicatory User's Guide. Other compression products will work but the access steps may vary.

The link will remain active for 30 day(s) after which its contents will be removed from the EIE system. Not later than 3 days from the date of this message the attachment(s) will also be available through NRC Electronic Hearing Docket (EHD)

web site. The web link for this site is: https://urldefense.proofpoint.com/v2/url?u=http-3A__adams.nrc.gov_ehd&d=DwIFAA&c=IDF7oMaPKXpkYvev9V-fVahWLOQWnGCCAfCDz1Bns_w&r=SmEQmX9bB_FM-ZPDpiE43e5jvacZSiX8aEBm4ACALFc&m=h-Bh85O8B8b0Fy4pV8XEmJM93Fxyg2-CxDwJvqDNs6Y&s=HKENgROTi-ysO6CzcSPkqSolQAXjYWtaoDA9Mx1UgGM&e= and the documents can be located by browsing in the appropriate hearing folder.

Receipt of this message constitutes completion of service of this filing.

PARTIES SERVED WITH THIS SUBMISSION: Krause, Emily I.; Lovett, Alan D; Naber, Anita G.; Leidich, Anne; Newell, Brian P.; Sola, Clara I; Lewis, David R; Roth, David E.; Docket, Hearing; Speiser, Herald M; Scro, Jennifer E.; Wachutka, Jeremy L.; Dorfler, Joseph; Castellon, Krupskaya T.; lampert, mary E; Hammond, Meghan Claire; Mertz, Nicolas P.; OCAAmail, OCAAmail; LeJeune, Peter; Susko, Rebecca A.; Schofield, Seth; Raimo, Susan; Campbell, Tison A.; Schofield, Seth