

September 9, 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 a Twenty-Two Minute Enlargement of Time to File Its Stay Application**

Pursuant to 10 C.F.R. § 2.1325(b), Entergy Nuclear Operations, Inc., Entergy Nuclear Generation Company (now Holtec Pilgrim, LLC), Holtec International, and Holtec Decommissioning International, LLC (collectively, “Applicants”) oppose the Motion of the Commonwealth of Massachusetts for a Twenty-Two Minute Enlargement of Time to File Its Stay Application (“Retroactive Extension Motion”). The Commission should deny the Retroactive Extension Motion because it is unsupported by good cause and accordingly should reject the Application 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 (“Stay Motion”) as untimely filed.

The Commonwealth of Massachusetts (the “Commonwealth”) had plenty of time to file its ten-page Stay Motion. Taking into account the previously-granted extension and time afforded by 10 C.F.R. § 2.306, the Commonwealth had twenty-one days from NRC Staff’s

notice of the order the Commonwealth now seeks to stay. A second, retroactive extension excusing the Commonwealth's decision to wait to the last minute to attempt to electronically file the Stay Motion is unjustified.

- Reflecting the Commonwealth's awareness that the NRC Staff was nearing completion of its review of the license transfer application, on August 1, 2019, the Commonwealth filed its first motion to stay in this proceeding,<sup>1</sup> which the Commission denied.<sup>2</sup>
- On August 13, 2019, the NRC Staff notified all participants in this proceeding that it provided to the Commission a Notification of Significant Licensing Action ("NSLA") stating that the Staff intended to issue an order approving the license transfer application on or about August 21, 2019.<sup>3</sup>
- On August 15, 2019, the Commonwealth filed two emergency motions. The first requested clarification regarding the deadline to file a stay from the NRC Staff's order under 10 C.F.R. § 2.1327, which the Commonwealth believed could fall as early as August 19, 2019 (five days from the NSLA).<sup>4</sup> The second motion requested that the Commonwealth be given ten days, rather than the five days allowed by 10 C.F.R. § 2.1327, from the date NRC Staff issued the order authorizing the license transfer to file its stay motion ("First Extension Motion").<sup>5</sup> Applicants opposed the First Extension Motion.

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<sup>1</sup> Motion of the Commonwealth of Massachusetts to Stay Proceeding to Complete Settlement Negotiations (Aug. 1, 2019) (ADAMS Accession No. ML19213A313).

<sup>2</sup> *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-08 (Aug. 14, 2019) (ADAMS Accession No. ML19226A107).

<sup>3</sup> Notification of Significant Licensing Action (Aug. 13, 2019) (ADAMS Accession No. ML19225D006).

<sup>4</sup> Emergency Motion of the Commonwealth of Massachusetts for Clarification of the Commission's August 14, 2019 Memorandum Order (Aug. 15, 2019) (ADAMS Accession No. ML19227A068).

<sup>5</sup> 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 (Aug. 15, 2019) (ADAMS Accession No. ML19227A398).

- The Commission Secretary clarified the 10 C.F.R. § 2.1327 deadline the afternoon of Friday, August 16, 2019, explaining that the five-day deadline does not run from the NSLA (*i.e.*, that the Commonwealth’s motion was not due August 19, 2019).<sup>6</sup> Given the expectation, prior to receiving the Secretary’s August 16th order, that a stay motion could be due the following Monday, August 19, the Commonwealth should have been ready to file a stay motion the next business day.
- On August 21, 2019, the Commission Secretary approved the First Extension Motion,<sup>7</sup> and on August 22, 2019, NRC Staff issued the order approving the license transfer (“License Transfer Order”)<sup>8</sup> a day later than the expected issuance date from the NSLA. This series of events gave the Commonwealth *fifteen days* past the August 19, 2019 deadline that it presumably was already working toward.

As a result of all the Commonwealth’s filings, the final deadline for the Stay Motion was 11:59 pm Eastern on September 3, 2019, which the Commonwealth missed. There is no good cause for further extension. As evidenced by the first stay motion the Commonwealth filed on August 1, the Commonwealth was aware of the approaching completion of the NRC Staff’s review more than a month prior to the September 3 deadline. On August 13—twenty-one days before the deadline—the Commonwealth had notice from the NRC Staff of the expected date the NRC Staff would issue the License Transfer Order, and the Commonwealth effectively received a fifteen-day extension from the deadline it presumably was working toward. Between August 13 and August 21, the Commonwealth was able to prepare and submit extensive comments on

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<sup>6</sup> Order Clarifying NRC Staff Filing of a Notification of Significant Licensing Action (Aug. 16, 2019) (ADAMS Accession No. ML19228A132).

<sup>7</sup> Order Granting Motion for Extension of Time (Aug. 21, 2019) (ADAMS Accession No. ML19233A289).

<sup>8</sup> Order Approving Direct and Indirect Transfer of Renewed Facility Operating License to Holtec Pilgrim, LLC, Owner and Holtec Decommissioning International, LLC, Operator (Aug. 22, 2019) (ADAMS Accession No. ML19235A298).

the conforming amendment accompanying the license transfer, raising many of the same arguments in its Stay Motion,<sup>9</sup> rather than preparing to file the ten-page motion. The Commonwealth thus chose to expend its resources on other matters, apparently resulting in a last-minute rush to file its stay motion.

The Commission's rules require "good cause" for an extension request.<sup>10</sup> As the Commission has explained, the Commission expects adherence to its hearing procedures and recognizes that applicants are entitled to prompt resolution of disputes concerning their applications.<sup>11</sup> Accordingly, the Commission has stated that extensions should only be granted when warranted by *unavoidable* and *extreme* circumstances.<sup>12</sup> This is especially true when, as in this case, the motion for extension of time is filed after the pertinent deadline<sup>13</sup> and the parties are proceeding under the Commission's Subpart M procedures.<sup>14</sup> Without good cause, failure to comply with the NRC's deadlines is inexcusable.

The Commonwealth's sole justification for missing the extended deadline is problems encountered with NRC's e-filing system in the final minutes before the deadline. As noted in the Retroactive Extension Motion, the Commonwealth's first attempt to file its Stay Motion and accompanying Appendix (which included over 1,800 pages of documents and over 100MB of

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<sup>9</sup> Objection of the Commonwealth of Massachusetts to Proposed Staff Action on License Transfer Application and Exemption Request (Aug. 21, 2019) (ADAMS Accession No. ML19233A278).

<sup>10</sup> 10 C.F.R. § 2.307(a).

<sup>11</sup> *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 19 (1998).

<sup>12</sup> *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).

<sup>13</sup> See *TVA (Bellefonte Nuclear Plant, Units 1 and 2)*, CLI-10-26, 72 N.R.C. at 477 ("[W]e disfavor motions for extensions of time that are themselves filed out-of-time . . .").

<sup>14</sup> *Streamlined Hearing Process for NRC Approval of License Transfers, Final Rule*, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) ("The procedures are designed to provide for public participation . . . while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases.").

data) was not made until approximately 11:40 pm Eastern.<sup>15</sup> It should come as no surprise to experienced litigants that online filing can encounter technical difficulties, takes time, and occasionally requires multiple attempts to upload very large files. The need to leave adequate time to accommodate online filing is not unanticipated and was certainly not beyond the Commonwealth's control, particularly here. Failure to adequately plan for foreseeable issues that are routinely encountered in any litigation practice does not constitute "good cause."<sup>16</sup> The Commonwealth had sufficient time to file its second stay motion in this proceeding. Filing deadlines, particularly under Subpart M, exist for a reason. The Commission should not excuse the Commonwealth's failure to meet them without compelling justification, particularly when the Commonwealth had already been granted one extension and had over a month to compile and properly file a ten-page motion. The Stay Motion was late without good cause; accordingly, the Retroactive Extension Motion should be denied and the Stay Motion rejected.

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<sup>15</sup> Retroactive Extension Motion at 5.

<sup>16</sup> For this reason, courts have not generally found this to be a compelling excuse for late filings. See generally *Martinelli v. Farm-Rite, Inc.*, 785 A.2d 33, 35 (N.J. Super. 2001) ("[A] computer malfunction is not sufficient justification for late submission of documents to the court. . . . Such an occurrence is neither exceptional, unusual, nor without precedent."); *Fox v. Am. Airlines*, 389 F.3d 1291, 1294 (D.C. Cir. 2004) (rejecting excuse that documents were late due to malfunction of court's e-filing system).

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

Respectfully submitted,

*/signed electronically by Alan D. Lovett/*

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Applicants' Answer Opposing the Motion of the Commonwealth of Massachusetts for a Twenty-Two Minute Enlargement of Time to File Its Stay Application has been served through the E-Filing system on the participants in the above-captioned proceeding this 9th day of September 2019.

/signed electronically by /  
Alan D. Lovett