

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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May 21, 2012

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Ms. Kristine L. Svinicki
Commissioner
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Mr. William D. Magwood, IV
Commissioner
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Mr. George Apostolakis
Commissioner
Nuclear Regulatory Commission
11555 Rockville Pike
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Mr. William C. Ostendorff
Commissioner
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko and Commissioners Svinicki, Magwood, Apostolakis, and Ostendorff:

On January 27, 2006, Entergy Corporation filed an application to renew the operating license for the Pilgrim Reactor in Massachusetts. Renewing a license is a process that is expected to take 22-30 months according to the Nuclear Regulatory Commission (NRC) website. Pilgrim's current operating license expires in less than a month, on June 8, 2012. To date, the NRC has not made a decision on the issuance of the renewed license despite a request from NRC staff to do so¹. We seek a better understanding regarding why.

The NRC staff completed both the safety and environmental reviews in July 2007. However, as is increasingly the case in controversial NRC proceedings, the hearing process has been delayed by untimely and successive motions and contentions, and these practices continue

¹ *Renewal of Full-power Operating License for Pilgrim Nuclear Power Station*, SECY-12-0062, April 20, 2012.

to this day. More than 21 contentions and requests to reopen the hearing record have been filed since May 2006. Three motions currently are pending and multiple claims were raised in a contention filed within the last week.

In an effort to bring closure to the matter, Entergy submitted a rarely-filed motion directly with the Commission on August 25, 2011, entitled a "Motion for Issuance of Renewed License." Entergy argues that the NRC's "immediate effectiveness rule" provided in 10 C.F.R. 2.340 requires issuance of the renewed license within 10 days following an initial decision by a licensing board, notwithstanding any petitions or motions pending before the Commission or the licensing board. The first such initial decision occurred on October 30, 2008. The Commission has failed to reach a decision on Entergy's motion after nearly nine months.

On February 22, 2012, and again on March 8, 2012, the Commission voted to deny petitions for review filed by the Pilgrim Watch and the Commonwealth of Massachusetts. The Commission's February 22 decision, CLI-12-03, justified its decision by stating:

"We have considered expressly the question whether our Fukushima lessons-learned review must be completed prior to a decision on any pending license renewal application, and have concluded that any rule or policy changes we may make as a result of our post-Fukushima review may be made irrespective of whether a license renewal application is pending, or has been granted. Particularly with respect to license renewal, we observed that our ongoing regulatory and oversight processes provide reasonable assurance that each plant continues to comply with its "current licensing basis," which can be adjusted by future Commission order or by modification to the facility's operating license outside the renewal proceeding."

Furthermore, in the Commission's March 8 decision (CLI-12-06), it emphasized the following:

"We have in place well-established regulatory processes by which to impose any new requirements or other enhancements that may be needed following completion of regulatory actions associated with the Fukushima events. All affected nuclear plants ultimately will be required to comply with NRC direction resulting from lessons learned from the Fukushima accident, regardless of the timing of issuance of the affected licenses."

However, Chairman Jaczko dissented, in part, on both decisions, advocating for a lower threshold for admitting contentions:

"The higher threshold for contention admissibility imposed for reopening a record places a heavy burden on a litigant seeking the admission of new contentions. In my view, this more stringent contention admissibility standard is not appropriate for contentions arising from the unprecedented and catastrophic accident at Fukushima.... Applying more stringent admissibility standards to Fukushima contentions because a Board has taken the administrative action of closing the record on an unrelated hearing will lead to

inconsistent outcomes and, more importantly, unfairly limit public participation in these important safety matters.”

Chairman Jaczko’s dissent is flawed for at least three chief reasons. First, the NRC’s safety review for license renewal focuses on the applicant’s proposed methods for managing the effects of aging during the period of extended operation.² As noted above, the Commission has made the policy decision that, provided the license renewal requirements are met, the issuance of renewed licenses need not be delayed until all Fukushima lessons-learned have been implemented since licensees will be obligated to comply regardless of when their license is issued. This is further exemplified by the issuance of renewed licenses for ten reactors since the Fukushima accident and the fact that all must comply with the NRC’s post-Fukushima orders issued on March 9, 2012.

Second, a lower threshold for admitting contentions could trigger successive motions to reopen the record. As was stated in the 1978 *Vermont Yankee Nuclear Power Corp. v. NRDC*, U.S. 519, 554-55: “There would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening” if the “litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered.”

Lastly, Chairman Jaczko’s assertions in support of a lower threshold for admitting contentions undermine longstanding Commission policy. Fairness for interveners must be balanced with fairness to the applicant as the Commission recognized in its Statement of Policy on Conduct of Adjudication which states: “By the same token, however, applicants for a license are also entitled to a prompt resolution of disputes concerning their applications.”³ The Statement of Policy also indicates:

“Current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings.”

Seeking to alter hearing procedures in favor of interveners and at the expense of fairness for the applicant would undermine the Commission’s policy to ensure “prompt yet fair” hearings.

With Pilgrim’s license expiration date fast approaching, fairness to the applicant takes on additional importance, human importance. Six hundred and fifty people work at the Pilgrim Nuclear Power Station. Even though NRC procedures will allow the plant to continue operating until the Commission finally reaches a decision, the prolonged uncertainty creates an impression of regulatory intransigence and poses a hardship for employees concerned about supporting their families. This is no way to treat the workers on whom the Commission so frequently states it

² *Florida Power & Light Company (Turkey Point Nuclear Generating Station, Units 3 and 4)*, CLI-01-17, 54 NRC 3, 7-8 (2001).

³ *Statement of Policy on the Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 19 (1998), 63 FRN 41872.

relies upon for safety. It is especially egregious since there remain no safety matters impeding your ability to reach a decision.

The NRC has established Principles of Good Regulation to focus the agency “on ensuring safety and security while appropriately balancing the interests of the NRC's stakeholders, including the public and licensees.” The NRC’s Efficiency Principle of Good Regulation states: “Regulatory decisions should be made without undue delay.” The Reliability Principle states: “Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.” In its failure to act on the Pilgrim license renewal application, the Commission has fallen short of its own principles.

On April 20, 2012, NRC staff submitted SECY-12-0062 to the Commission requesting authorization to issue Pilgrim’s renewed license. Please respond to the following questions regarding the status of the staff’s submittal by May 25, 2012:

1. Have you voted on SECY-12-0062?
 - a. Is so, when?
 - b. If not, when do you anticipate voting on the matter?
2. Have you requested any extensions of voting time? If so, please indicate any extensions you have requested, the dates of those requests, and the duration of each extension.

In its Statement of Policy, the Commission indicated its intent to “...promptly respond to adjudicatory matters place[d] before it, and such matters should ordinarily take priority over other actions before the Commissioners.” We urge the Commission to promptly issue a decision on the renewal of Pilgrim’s license. Please contact Committee staff Annie Caputo at (202) 225-2927 if you have any questions.

Sincerely,



Fred Upton
Chairman



Joe Barton
Chairman Emeritus



John L. Shimkus
Chairman
Subcommittee on the Environment
and the Economy



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable John D. Dingell, Chairman Emeritus

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy