

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Entergy Nuclear Operations, Inc.)	Docket No. 50-293-LR
)	
(Pilgrim Nuclear Power Station))	
)	

**UNOPPOSED MOTION FOR EXTENSION OF TIME
TO REPLY TO NRC STAFF RESPONSE TO HEARING REQUEST**

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Order of June 14, 2006, and 10 C.F.R. § 2.323(b), the Massachusetts Attorney General hereby moves for a two-day extension of time to reply to the U.S. Nuclear Regulatory Commission ("NRC") Staff's response to the Attorney General's hearing request and contention.¹ The NRC Staff has agreed to this motion on the condition that the Staff should be allowed a corresponding extension of two days, or until June 22, 2006, to file its response. The Attorney General does not oppose the Staff's request.

DISCUSSION

On May 26, 2006, the Attorney General served its Hearing Request and Contention on the NRC Staff by hand, and on Entergy Nuclear Operations, Inc. ("Entergy") by overnight mail. Under the NRC's procedural rules, the Staff's response is due on June 20, and Entergy's response is due on June 22. Therefore the Attorney General's reply to the Staff is due on June 27, while his reply to Entergy's response is due on June 29.

¹ Massachusetts Attorney General's Request for a Hearing and Petition to Intervene With Respect to Entergy Nuclear Operations Inc.'s Application for Renewal of

In anticipation that some of the arguments by Entergy and the Staff may overlap, the Attorney General wishes to be able to address them in a single reply pleading.


Therefore, the Attorney General seeks to adjust the briefing schedule slightly so that the due date for its reply to the Staff and Entergy will fall on the same date, June 29.

Undersigned counsel Diane Curran consulted Susan Uttal, counsel for the Staff, and David Lewis, counsel for Entergy, who had no objection to this motion. As discussed above, however, the Staff seeks an extension of time until June 22 for its response. The Attorney General has no objection to giving the NRC Staff an additional two days for its response.

Respectfully submitted,



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June 16, 2006

the Pilgrim Nuclear Plant Operating License, etc. (May 26, 2006) ("Hearing Request and Contention").

CERTIFICATE OF SERVICE

I certify that on June 16, 2006, copies of the foregoing letter from Diane Curran to Administrative Judges and Massachusetts Attorney General's Motion for Extension of Time to File Reply were served on the following by first-class mail and/or electronic mail, as indicated below:

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June 16, 2006

DOCKETED
USNRC

June 16, 2006 (3:41pm)

Ann Marshall Young, Chair
Richard F. Cole, Administrative Judge
Nicholas G. Trikouros, Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SUBJECT: Pilgrim License Renewal Proceeding, Docket No. 50-293 LR

Dear Administrative Judges,

On May 26, 2006, Massachusetts Attorney General Thomas F. Reilly submitted a hearing request and petition to intervene in this proceeding.¹ The Hearing Request included a contention asserting that Entergy Nuclear Operations Inc.'s environmental report for the Pilgrim nuclear power plant license renewal application fails to satisfy U.S. Nuclear Regulatory Commission ("NRC") regulations or the National Environmental Policy Act ("NEPA") because it does not address the environmental impacts of spent fuel pool accidents, including accidents caused by intentional and malicious acts. We are writing to notify you of a recent decision by the U.S. Court of Appeals for the Ninth Circuit which has a direct bearing on the contention, *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, No. 03-74628 (June 2, 2006) ("*Mothers for Peace*"). A copy of the decision is enclosed.

In *Mothers for Peace*, the Court reversed a 2003 decision by the NRC Commissioners that had denied the intervenors a hearing on the question of whether NEPA required preparation of an environmental impact statement to evaluate the impacts of an intentional attack on a proposed independent spent fuel storage facility at the Diablo Canyon nuclear power plant. *Pacific Gas & Electric Company* (Diablo Canyon ISFSI), CLI-03-1, 57 NRC 1 (2003) ("*Diablo Canyon*"). The Court ruled that the Commission's rationale for refusing to consider the environmental impacts of intentional malicious attacks against nuclear facilities, as set forth in *Diablo Canyon* and *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340 (2002) ("*PFS*"), fails to meet NEPA's reasonableness standard. *Id.*, slip op. at 6096. The Court also determined that the question of whether intentional attacks on nuclear facilities are reasonably foreseeable is a question of law rather than a question of fact. *Id.*, slip op. at

¹ Massachusetts Attorney General's Request for a Hearing and Petition to Intervene With Respect to Entergy Nuclear Operations Inc.'s Application for Renewal of the Pilgrim Nuclear Plant Operating License, etc. (May 26, 2006) ("Hearing Request").

Ann Marshall Young, et al.

June 16, 2006

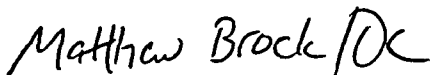
Page 2

6081-83. Finally, the Court held that as a matter of law, "the possibility of terrorist attack is not so 'remote and highly speculative' as to be beyond NEPA's requirements." *Id.*, slip op. at 6089, quoting *PFS*, 56 NRC at 349. The Court remanded the case to the NRC for further proceedings. *Id.*, slip op. at 6096.

Accordingly, the Attorney General requests that the Atomic Safety and Licensing Board apply the *Mothers for Peace* decision by ruling that the environmental impacts of an intentional attack on the Pilgrim fuel storage pool must be addressed in an EIS, or seek appropriate guidance from the Commission.

Sincerely,


Diane Curran


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Cc w/enclosure: Service list