

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION**

In the Matter of	)	
Entergy Nuclear Generation Co.	)	Docket No. 50-293-LR
And Entergy Nuclear Operations, Inc.	)	
(Pilgrim Nuclear Power Station)	)	September 28, 2011

**COMMONWEALTH OF MASSACHUSETTS ANSWER TO PILGRIM  
WATCH PETITION FOR REVIEW, REQUEST TO STAY COMMISSION  
DECISION OR IN THE ALTERNATIVE TO STRIKE REFERENCE TO  
MASSACHUSETTS' EXPERT**

The Commonwealth of Massachusetts (Commonwealth), pursuant to 10 C.F.R. § 2.341(a)(3), hereby submits this limited Answer to Pilgrim Watch's Petition for Review,<sup>1</sup> for the purpose of requesting that, because of the potential overlap in issues raised by the pro se Pilgrim Watch Petition for Review with those issues raised by the Commonwealth in its contention and related filings currently pending before the Pilgrim ASLB, the Commission should stay issuance of a final decision on the Pilgrim Watch Petition until the ASLB has ruled on the Commonwealth's filings.<sup>2</sup> To avoid piecemeal and duplicative litigation, and to promote efficient agency decision making, the Commission should defer issuing a final decision on the Pilgrim Watch Petition which, like the Commonwealth, has raised issues under the National Environmental Policy Act regarding

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<sup>1</sup> Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on New Contentions Relating to Fukushima Accident)(September 23, 2011)(Pilgrim Watch Petition).

<sup>2</sup> As an Interested State, the Commonwealth is entitled to protect its party-related interests in this proceeding. *Commonwealth of Massachusetts v. NRC*, 522 F. 3d 115, 118 (1st Cir. 2008).

new and significant information arising from the accident at Fukushima.<sup>3</sup> However, in the current posture, the Commonwealth and the pro se Petitioner are now in front of different NRC adjudicatory decision makers, with the potential for fragmented agency and judicial review. Once the ASLB has ruled on the Commonwealth's contention, the Commission will be better informed as to how best to expedite a final agency decision on these potentially related claims.

In the alternative, the Commonwealth requests that the references of opinion, fact and law in the Pilgrim Watch Petition regarding the Commonwealth's expert, Dr. Gordon Thompson, be stricken and disregarded by the Commission in its deliberations on the Petition. The Commonwealth makes this request because, as discussed below, the Commonwealth's proposed contention on the lessons learned from the accident at Fukushima, including the declarations by the Commonwealth's expert Dr. Thompson, currently are pending for decision before the Pilgrim Atomic Safety and Licensing Board (ASLB). Therefore it would be premature and potentially prejudicial to the Commonwealth for the Commission to consider a portion of the Commonwealth's filings and expert declarations at this time as part of its deliberations on the merits of a Petition for Review filed by another party.

The Commonwealth's counsel has been authorized by the pro se representative for Pilgrim Watch to state that she has no objection to this Answer and Request for Relief.

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<sup>3</sup> See, e.g., Commonwealth of Massachusetts Contention Regarding New and Significant Information Revealed by the Fukushima Radiological Accident (June 2, 2011); *cf.* Pilgrim Watch Petition at 11 – 15.

## Background

On June 2, 2011, the Commonwealth filed a new contention on the lessons learned from the accident at Fukushima, a declaration by the Commonwealth's expert Dr. Gordon Thompson supporting the contention, and related procedural filings.<sup>4</sup> Since that time, the Commonwealth has made further filings in support of its contention, including additional declarations prepared by Dr. Thompson.<sup>5</sup> These filings remain pending for decision before the ASLB, as well as voluminous filings by the NRC Staff and Entergy responding to the Commonwealth's filings.<sup>6</sup>

On September 23, 2011, Pilgrim Watch filed a Petition for Review with the Commission on the ASLB's denial of the Pilgrim Watch Fukushima-related contentions. See FN1. In that filing, Pilgrim Watch cited various sources in support of its appeal, including, as relevant here, the Commonwealth's expert Dr. Thompson.<sup>7</sup> However, because the Pilgrim ASLB currently has jurisdiction over the Commonwealth's contention, including its expert declarations and other filings, it would be inconsistent with the NRC's regulatory process, and potentially prejudicial to the Commonwealth, for the Commission to consider a portion of the Commonwealth's case in isolation as part of the appeal by another party. Also, as the sponsor of Dr. Thompson, fundamental fairness

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<sup>4</sup> Declaration of Dr. Gordon R. Thompson in Support of Commonwealth of Massachusetts Contention and Related Petitions and Motions (June 1, 2011).

<sup>5</sup> See, e.g., Declaration of Gordon R. Thompson Addressing New and Significant Information Provided by the NRC's Near-Term Task Force Report on the Fukushima Accident (August 11, 2011).

<sup>6</sup> See Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Memorandum and Order Denying Pilgrim Watch's Requests for Hearing on Certain New Contentions, LBP-11-20 (August 11, 2011) at 3 ("In addition, that separate ruling [by the ASLB] will address filings by the Commonwealth of Massachusetts that also concern information from the Fukushima events.").

<sup>7</sup> See, e.g., Pilgrim Watch Petition at FN 3; at 20 – 21 and FN15.

requires that the Commonwealth be permitted to present its complete evidence, including its expert-supported contention, for decision before the NRC.

### **Conclusion**

For these reasons, and because the pro se representative for Pilgrim Watch does not object to this request for relief, the Commonwealth respectfully requests the Commission to stay issuance of a final decision on the Pilgrim Watch Petition until the ASLB has ruled on the Commonwealth's contention and the parties have an opportunity to advise the Commission as to the most efficient process to reach a final resolution on these matters. In the alternative, the Commonwealth requests the Commission to disregard and strike all reference of opinion, fact, and law regarding the Commonwealth's expert, Dr. Thompson, for purposes of the Commission's deliberations on the Pilgrim Watch Petition for Review.<sup>8</sup>

Respectfully submitted,

*Signed (electronically) by*  
Matthew Brock  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, Massachusetts 02108  
Tel: (617) 727-2200  
Fax: (617) 727-9665  
[matthew.brock@state.ma.us](mailto:matthew.brock@state.ma.us)

September 28, 2011

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<sup>8</sup> In requesting this relief, the Commonwealth does not otherwise intend to challenge the merits of Pilgrim Watch's appeal of the ASLB decision.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMONWEALTH OF MASSACHUSETTS ANSWER TO PILGRIM WATCH PETITION FOR REVIEW, REQUEST TO STAY COMMISSION DECISION OR IN THE ALTERNATIVE TO STRIKE REFERENCE TO MASSACHUSETTS' EXPERT**, dated September 28, 2011, were provided to the Electronic Information Exchange (EIE) for service on the individuals below and by electronic mail as indicated by an asterisk\*:

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop: O-15 D21  
Washington, DC 20555-0001

Administrative Judge  
Ann Marshall Young, Chair  
E-mail: [Ann.Young@nrc.gov](mailto:Ann.Young@nrc.gov)

Richard S. Harper, Esq.  
Susan L. Uttal, Esq.  
Andrea Z. Jones, Esq.  
Beth N. Mizuno, Esq.  
Brian G. Harris, Esq.  
Maxwell C. Smith, Esq.  
Edward Williams, Esq.  
Brian Newell, Paralegal

Administrative Judge  
Richard F. Cole  
E-mail: [Richard.Cole@nrc.gov](mailto:Richard.Cole@nrc.gov)

Administrative Judge  
E-mail: [Paul.Abramson@nrc.gov](mailto:Paul.Abramson@nrc.gov)

Hillary Cain, Law Clerk  
[Hillary.cain@nrc.gov](mailto:Hillary.cain@nrc.gov)

[OGCMailCenter.Resource@nrc.gov](mailto:OGCMailCenter.Resource@nrc.gov),  
[richard.harper@nrc.gov](mailto:richard.harper@nrc.gov),  
[susan.uttal@nrc.gov](mailto:susan.uttal@nrc.gov), [axj4@nrc.gov](mailto:axj4@nrc.gov),  
[beth.mizuno@nrc.gov](mailto:beth.mizuno@nrc.gov),  
[brian.harris@nrc.gov](mailto:brian.harris@nrc.gov),  
[maxwell.smith@nrc.gov](mailto:maxwell.smith@nrc.gov)  
[edward.williams@nrc.gov](mailto:edward.williams@nrc.gov)

U.S. Nuclear Regulatory Commission

U.S. Nuclear Regulatory Commission

Office of Commission Appellate  
Adjudication  
Mail Stop: O-16C1  
Washington, DC 20555-0001  
[OCAAMail.Resource@nrc.gov](mailto:OCAAMail.Resource@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of Nuclear Reactor Regulation  
Mail Stop: O11-F1  
Washington, D.C. 20555 -0001

Lisa Regner\*  
Senior Project Manager  
Division of License Renewal  
E-mail: [Lisa.Regner@nrc.gov](mailto:Lisa.Regner@nrc.gov)

Entergy Nuclear  
1340 Echelon Parkway  
Mail Stop M-ECH-62  
Jackson, MS 39213

Terence A. Burke, Esq.  
[tburke@entergy.com](mailto:tburke@entergy.com)

Duxbury Emergency Management Agency  
686 Tremont Street  
Duxbury, MA 02332

Kevin M. Nord, Fire Chief & Director\*  
E-mail: [nord@town.duxbury.ma.us](mailto:nord@town.duxbury.ma.us)

Pilgrim Watch  
148 Washington Street  
Duxbury, MA 02332

Mary Lampert, Director  
[Mary.Lampert@comcast.net](mailto:Mary.Lampert@comcast.net)

Office of the Secretary  
Mail Stop: O-16C1  
Washington, DC 20555-0001  
[HearingDocket@nrc.gov](mailto:HearingDocket@nrc.gov)

Pillsbury, Winthrop, Shaw, Pittman LLP  
2300 N Street, N.W.  
Washington DC, 20037-1128

David R. Lewis, Esq.  
[David.lewis@pillsburylaw.com](mailto:David.lewis@pillsburylaw.com)  
Paul A. Gaukler, Esq.  
[Paul.gaulker@pillsburylaw.com](mailto:Paul.gaulker@pillsburylaw.com)  
Jason B. Parker, Esq.  
[Jason.parker@pillsburylaw.com](mailto:Jason.parker@pillsburylaw.com)

\*[Maria.webb@pillsburylaw.com](mailto:Maria.webb@pillsburylaw.com)

Town of Plymouth  
Town Manager's Office  
11 Lincoln Street  
Plymouth, MA 02360

Melissa Arrighi, Acting Town Manager\*  
[marrighi@townhall.plymouth.ma.us](mailto:marrighi@townhall.plymouth.ma.us)

Town of Plymouth, MA  
Duane Morris L.L.P.  
505 9th Street, NW, Suite 1000  
Washington, D.C. 20004-2166

Sheila Slocum Hollis, Esq.\*  
[SSHollis@duanemorris.com](mailto:SSHollis@duanemorris.com)

Town of Duxbury Nuclear Advisory  
Committee  
31 Deerpath Trl.  
North Duxbury, MA 02332

Rebecca Chin, Vice Chair\*  
[rebeccajchin@hotmail.com](mailto:rebeccajchin@hotmail.com)

/s Matthew Brock

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Matthew Brock