UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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ENTERGY NUCLEAR GENERATION COMPANY AND ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-293-LR
	)	
(Pilgrim Nuclear Generating Station)	)	

NRC STAFF'S ANSWER TO JONES RIVER WATERSHED ASSOCIATION AND PILGRIM WATCH'S REQUESTS TO REOPEN THE RECORD AND FILE A NEW CONTENTION ON WATER QUALITY

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June 7, 2012

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INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(h)(1) and 2.323(c), the staff of the Nuclear Regulatory Commission ("NRC Staff" or "Staff") files its answer in opposition to Jones River Watershed Association and Pilgrim Watch's (collectively "Petitioners") "Request to Reopen, for a Hearing, and to File New Contentions and JRWA Motion to Intervene on Issues of: (1) Violation of State and Federal Clean Water Laws; (2) Lack of Valid State § 401 Water Quality Certification; (3) Violation of State Coastal Zone Management Policy; and (4) Violation of NEPA" ("Petition").[1] The belated Petition brings various challenges to the Staff's environmental review of Entergy Nuclear Generation Company and Entergy Nuclear Operations' ("Entergy" or "Applicant") application for license renewal for the Pilgrim Nuclear Generating Station ("Pilgrim" or "PNPS").[2]

[1] Jones River Watershed Association (JRWA) and Pilgrim Watch (PW) Request to Reopen, for a Hearing, and to File New Contentions and JRWA Motion to Intervene on Issues of: (1) Violation of State and Federal Clean Water Laws; (2) Lack of Valid State § 401 Water Quality Certification; (3) Violation of State Coastal Zone Management Policy; and (4) Violation of NEPA (May 14, 2012) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML12135A617).

[2] Petition at 2.

The Petition contends that Entergy lacks four certifications that are prerequisites to license renewal, namely a valid Clean Water Act ("CWA") section 401 Water Quality Certification,[3] a valid consistency certification under the Coastal Zone Management Act ("CZMA"),[4] a valid CWA section 316(a) variance, and a valid CWA section 316(b) determination.[5]

However, the NRC Staff's 2007 Supplemental Environmental Impact Statement ("SEIS") for Pilgrim discussed the documents Entergy and the NRC Staff relied on to demonstrate compliance with the CZMA and CWA.[6] Therefore, if Petitioners wished to challenge the Staff's reliance on these documents, they should have filed their claims years ago.[7] Moreover, because Petitioners also challenge the validity of these permits, the appropriate forums for litigating such concerns are the state and federal agencies charged by statute with regulating water quality.[8] As a result, the Petitioners' claims are largely immaterial and outside the scope of this proceeding, and they do not rest on adequate supporting facts.[9] Finally, Petitioners have also not demonstrated that they can meet the Commission's high standards for reopening the record in a closed proceeding.[10] Consequently, the Atomic Safety and Licensing Board ("Board") should deny the relief sought by the Petition.

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[3] 33 U.S.C. § 1341(a)(1).

[4] 16 U.S.C. § 1456(c)(3)(A).

[5] 33 U.S.C. § 1326(a), (b).

[6] NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station Final Report – Appendices, at E-3, E-19 (Jul. 2007) (ADAMS Accession Number ML071990027) ("Pilgrim SEIS").

[7] 10 C.F.R. § 2.309(c), (f)(2).

[8] Petition at 3; *e.g.*, *Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712-13 (1978).

[9] 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), (vi).

[10] 10 C.F.R. § 2.326(a), (b).

PROCEDURAL BACKGROUND

The NRC Staff has thoroughly discussed the procedural background of this case elsewhere and will only highlight the elements of this license renewal that are relevant to the instant Petition.[11] Just over six years ago, Pilgrim Watch ("PW") submitted a hearing request on Entergy's application for license renewal for Pilgrim. The Board admitted two contentions – Contention 1, challenging Entergy's aging management program for buried piping, and Contention 3, challenging Entergy's severe accident mitigation alternatives analysis.[12] On October 30, 2007, a Board majority granted a motion for summary disposition of Contention 3.[13] On April 10, 2008, the Board held an evidentiary hearing on Contention 1, and shortly thereafter, on June 4, 2008, the Board formally closed the evidentiary record.[14] The Board issued an initial decision on Contention 1 on October 30, 2008.[15]

On appeal, the Commission reversed the summary disposition of Contention 3 and remanded it to the Board for further proceedings as limited by the Commission's Order.[16] On July 29, 2011, the Board issued a partial initial decision finding in favor of the Applicant on the remanded Contention 3.[17] On appeal, the Commission affirmed the Board's decision on

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[11] *E.g.,* NRC Staff's Answer to Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on New Contentions Relating to Fukushima Accident), at 2-5 (Oct. 3, 2011) (ADAMS Accession No. ML11276A191) ("Staff Answer to Appeal of LBP-11-23").

[12] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 348-49 (2006).

[13] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131 (2007).

[14] Memorandum and Order (Ruling on Pilgrim Watch Motions Regarding Testimony and Proposed Additional Evidence Relating to Pilgrim Watch Contention 1), at 3 (June 4, 2008) ("June 4, 2008, Order").

[15] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-08-22, 68 NRC 590 (2008).

[16] *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 317 (2010).

[17] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-11-18, 74 NRC __ (July 19, 2011) (slip op.).

remanded Contention 3.[18] After the Commission remanded Contention 3, PW and the Commonwealth of Massachusetts filed several new contentions before the Board. The Board declined to admit any of those contentions, and the Commission has affirmed those rulings.[19] On March 8, 2012, the Petitioners filed another new contention that brought several challenges to the NRC Staff's review of the impacts of license renewal on aquatic species under the Endangered Species Act ("ESA"), the National Environmental Policy Act ("NEPA"), and the Magnuson-Stevens Fishery Conservation and Management Act ("MSA").[20] The Board denied that contention on May 24, 2012 and the Petitioners have yet to appeal that decision.[21] On May 2, 2012, the Petitioners filed yet another new contention that claimed the NRC had not adequately analyzed the impacts of renewing the Pilgrim operating license on the roseate tern under the ESA.[22] That contention is currently pending before the Board.

During the adjudicatory portion of this proceeding, the NRC Staff completed its environmental review of the Pilgrim license renewal application. The Staff documented the

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[18] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-01, 75 NRC __ (Feb. 9, 2012) (slip op.).

[19] Staff Answer to Appeal of LBP-11-23 at 3-5; *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-03, 75 NRC __ (Feb. 22, 2012) (slip op.); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-06, 75 NRC __ (Mar. 8, 2012) (slip op.); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC __ (Mar. 30, 2012) (slip op.); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC __ (Jun. 7, 2012) (slip op.)

[20] Jones River Watershed Association Petitions for Leave to Intervene and File New Contentions Under 10 C.F.R. § 2.309(a), (d) or in the alternative 10 C.F.R. § 2.309(e) and Jones River Watershed Association and Pilgrim Watch Motion to Reopen under 10 C.F.R. § 2.326 and Request for a Hearing Under 10 C.F.R. § 2.309(a) and (d) in the above Captioned License Renewal Proceeding (March 8, 2012) (ADAMS Accession Nos. ML12068A282, ML12068A183) ("March 8, 2012 Petition").

[21] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-12-10, 75 NRC __ (May 24, 2012) (slip op.).

[22] Jones River Watershed Association and Pilgrim Watch Motion to Reopen, Request for Hearing and Permission to File New Contention in the Above-Captioned License Renewal Proceeding on Violations of the Endangered Species Act With Regard to the Roseate Tern (May 2, 2012) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML12123A473) ("May 2, 2012 Petition").

results of that review in its July 2007 Pilgrim SEIS.[23] The Pilgrim SEIS is a site-specific environmental review that augments the NRC's Generic Environmental Impact Statement ("GEIS") for license renewal.[24]

The Pilgrim SEIS contains a letter dated July 11, 2006, from the Massachusetts Office of Coastal Zone Management ("MOCZM"), which indicated that MOCZM concurred with Entergy's certification that the renewed operating license would be "consistent with the [MOCZM] enforceable programs and policies."[25] In addition, the Pilgrim SEIS referenced the Environmental Protection Agency's ("EPA") National Pollutant Discharge Elimination System ("NPDES") Permit for Pilgrim.[26] Entergy's Environmental Report contains excerpts from that Permit that indicate, as discussed below, it meets the requirements of CWA section 316.[27] Moreover, as discussed below, the EPA issued the NPDES permit based on a state finding that Pilgrim's operations would not violate applicable water quality standards under CWA section 401.[28]

Nevertheless, on May 14, 2012, the Petitioners filed the instant Petition to reopen the record and admit a new contention challenging the Staff's 2007 review based on an alleged

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[23] Pilgrim SEIS.

[24] NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Final Report (May 1996) (ADAMS Accession No. ML040690705). The GEIS reached generic environmental conclusions applicable to all plants and identified issues that the NRC must consider on a site specific basis, in a supplemental environmental impact statement, for each individual license renewal application. 10 C.F.R. Part 51, Subpt. A, App. B., Table B-1 and n. 1.

[25] Pilgrim SEIS at E-19.

[26] *Id*. at E-12.

[27] Applicant's Environmental Report, Operating License Renewal Stage, Pilgrim Nuclear Power Station, Appx. E, Attachment A (Jan. 25, 2006) (ADAMS Accession No. ML060830611) ("ER").

[28] *See infra* III.B.2.

absence or inadequacy of these certifications and permits ("Water Quality Contention").[29] As discussed below, these claims are wholly untimely and substantively meritless.

DISCUSSION

I. Standing

An organization, such as Jones River Watershed Association ("JRWA"), may establish representational standing to intervene if it identifies a member of the organization by name and address who would qualify for standing, shows that the member has authorized the organization to represent his or her interests, and demonstrates that the interest the organization seeks to protect is germane to its own purposes.[30] In license renewal proceedings, standing "is presumed . . . if the petitioner lives within 50 miles of the nuclear power reactor."[31] At least one named member of JRWA has provided an affidavit that establishes that she lives within 50 miles of Pilgrim, authorizes JRWA to represent her in this proceeding, and raises concerns that are germane to JRWA's purposes.[32] Therefore, JRWA has established standing under 10 C.F.R. § 2.309(d).[33] PW has already established standing to participate.

II. The Petition is Untimely under NRC Regulations

Under NRC regulations, a petitioner may file late contentions under 10 C.F.R. § 2.309(f)(2) only upon a showing that the contention is timely in light of new information that is materially different from previously available information. A contention that does not meet these

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[29] Petition at 4.

[30] *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007).

[31] *Entergy Nuclear Operations, Inc*. (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 60 (2008).

[32] Petition at 25-26.

[33] The Petitioners state that they "alternatively request discretionary intervention under 10 C.F.R. § 2.309(e)" if either "is determined to lack standing as a matter of right under 2.309(d)(1)." Petition at 53. The NRC's regulations provide for discretionary intervention "when at least one admissible contention has been admitted." 10 C.F.R. § 2.309(e). Because there are no admitted contentions pending in this matter, Petitioners have not met the requirements for discretionary intervention. In any event, because the Petitioners meet the normal standing requirements in 10 C.F.R. § 2.309(d), there is no reason to consider discretionary intervention.

standards is nontimely, but may nevertheless be admitted under the standards of 10 C.F.R. § 2.309(c)(1)(i)-(viii). The Commission has stated that the NRC does not look with favor on new contentions filed after the initial hearing request.[34] A commitment to efficiency, pragmatism, fairness, and finality underlies this policy. The Commission has repeatedly emphasized, "There simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience."[35] Petitioners address the requirements of 10 C.F.R. § 2.309(f)(2) and the requirements of 10 C.F.R. § 2.309(c). However, they fail to demonstrate that the Water Quality Contention meets the requirements of either section.

A. The Petitioners' New Contention Does Not Contain Previously Unavailable Information That Was Submitted in a Timely Fashion and Therefore Does Not Meet the Requirements of 10 C.F.R. § 2.309(f)(2)(i), (ii), (iii)

To satisfy 10 C.F.R. § 2.309(f)(2)(i) and (ii), Petitioners must show that their contention is based on previously unavailable information that is materially different than the information previously available. Moreover, under 10 C.F.R. § 2.309(f)(2)(iii), Petitioners must show that they filed the Water Quality Contention in a timely fashion upon discovering that new information. Petitioners are correct that "the regulations do not set a specific number of days whereby we can measure or determine whether a contention is 'timely' as required by 10 C.F.R. § 2.309(f)(2)(iii)."[36] However, "[s]everal boards have established a 30-day rule [after receipt of relevant new information] for new contentions."[37] Moreover, in the Pilgrim license renewal

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[34] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-36, 60 NRC 631, 636 (2004).

[35] *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-11-02, 73 NRC __, __ (Mar. 10, 2011) (slip op. at 6) (*quoting Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 271-72 (2009)).

[36] *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2006). *See* Petition at 30.

[37] *Vermont Yankee*, LBP-06-14, 63 NRC at 574. *See also, e.g.*, *Oyster Creek*, CLI-09-7, 69 NRC at 288 (finding motion to reopen filed within 30 days of new information timely); *AmerGen Energy Co.,*

proceeding, the Board has previously provided a 30-day deadline for filing contentions based on new information.[38] As discussed below, all of the Petitioners' alleged new information has been available much longer than 30-days, with most of the information having been available for over five years. Therefore, the Petition is untimely.

Petitioners' arguments largely break down into two categories: (1) claims that Entergy did not possess valid certifications and permits that are prerequisites to license renewal, and (2) assertions that subsequent events render the validity of those certifications and permits doubtful.[39] With respect to the first category, as noted above, Petitioners assert that Entergy did not possess a valid CWA section 401 certification, a valid CWA section 316(a) variance and section 316(b) determination, and a valid CZMA consistency certification.[40] Petitioners contend, "Any attempt by the NRC to rely upon [40 year old CWA section 401 certifications] and the expired NPDES permit, which Entergy claims are 'current' § 401 water quality certification . . . is unreasonable and an egregious derogation of duty by any measure."[41] In addition, Petitioners allege that Entergy's demonstration of compliance with CWA section 316 is invalid because "the last 316(a) and (b) demonstration reports accepted by the state and/or US EPA for PNPS were done in the 1970s."[42] Finally, Petitioners contend that although "Entergy's 2006 CZM Certification Report purports to show that it is in compliance with" applicable water quality

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LLC (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 485-86 (2008) (finding motion to reopen based on document that had been available for four months untimely); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 72 NRC 481, 495-96 (2010) (finding a contention untimely where information had been available for two months).

[38] Order (Establishing Schedule for Proceeding and Addressing Related Matters), at 7 (Dec. 20, 2006) (ADAMS Accession No. ML063540494) ("Scheduling Order").

[39] Petition at 7-16.

[40] *Id*. at 7-8, 15.

[41] *Id*. at 7-8.

[42] *Id*. at 8.

laws, but in fact, "Entergy was in violation of state and federal water pollution control laws in 2006."[43]

The Pilgrim ER, which Entergy submitted to the NRC in 2006, contained these water quality certifications and permits and Entergy's application for a state CZMA certification.[44] Consequently, the water quality certifications and permits, and Entergy's information regarding the CZMA are not new information, because they were part of the original application.[45] While the Petitioners complain that the NPDES permit has been in timely renewal since 1996 and rests on 316 demonstration reports from the 1970s, the ER explicitly recognized that the NPDES permit was in timely renewal and that the 316 demonstration reports dated to the 1970s.[46] Moreover, the NRC referenced and incorporated these certifications and permits into its SEIS for Pilgrim in 2007, which also contained the MOCZM approval of Entergy's CZMA certification.[47] This information made it abundantly clear that MOCZM agreed with Entergy. The 2007 Pilgrim SEIS also clearly identified what documents the NRC intended to rely on to meet the requirements of the CWA. Consequently, even if this discussion in the Pilgrim SEIS had constituted new information, the time to challenge that reliance would have been in 2007, at the latest.[48] Any attempt to do so in 2012 is clearly untimely.

Petitioners also allege that subsequent events and information demonstrate that Pilgrim's CWA certifications and permits and CZMA consistency certification are invalid. But, all

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[43] *Id*. at 15.

[44] ER at 9-1 to 9-2, 9-3, Attachments A and D.

[45] 10 C.F.R. § 2.309(f)(2).

[46] ER. at 4-9, 4-12. The ER also noted that newer studies support the 316 demonstration. *Id*. at 4-12.

[47] Pilgrim SEIS at E-3, E-19.

[48] 10 C.F.R. § 2.309(f)(2).

of this information is significantly older than thirty days. Consequently, none of it establishes that the Petition is timely.

First, Petitioners provide the affidavits of Anne Bingham, Esq., Alex Mansfield, and Dr. Ian Nisbet to establish that the EPA's process for renewing the NPDES process is stalled and that Pilgrim will negatively impact aquatic species and the roseate tern.[49] But, all three affidavits are reproductions of affidavits that supported earlier filings from the Petitioners. Petitioners have not attempted to explain why they could not have filed their Water Quality Contention when they filed their other contentions supported by these affidavits. In any event, all of the Affidavits are untimely now. The Bingham and Mansfield affidavits are dated March 6, 2012.[50] Likewise, the Nisbet Affidavit, while produced less than 30 days ago, on its face discusses information that has been available "since at least the early 1950s."[51] The Commission has held that a document that simply discusses and evaluates previously available information does not suffice to transform that information into new information under NRC regulations.[52] Consequently, the Nisbet Affidavit also does not constitute new information, although it was produced thirty days before the Petitioners filed the Water Quality Contention. Consequently, none of these affidavits render the claims in the Petition timely because they are well over 30 days old or analyze information that has been available for years.[53]

Next, Petitioners cite to a January 2012 Discharge Monitoring Report from Entergy to the EPA, which they claim reveals Pilgrim discharges tolytriazole and radioactive effluent into the

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[49] Petition at 7, 9.

[50] March 8, 2012, Petition; May 2, 2012, Petition.

[51] Nisbet Affidavit at ¶ 8. For a complete discussion of the Nisbet Affidavit's lateness, see the Staff's earlier answer in this proceeding. NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's Motion to Reopen the Record and Request for a Hearing with Regard to the Roseate Tern, at 7-17 (May 16, 2012) (ADAMS Accession No. ML12137A858).

[52] *Prairie Island*, CLI-10-27, 72 NRC at 495-96.

[53] 10 C.F.R. § 2.309(f)(2).

Cape Cod Bay.[54] But, this report is dated February 17, 2012, meaning that it was almost three months old when the Petitioners filed the Water Quality Contention.[55] Consequently, the Discharge Monitoring Report also does not establish the Petition's timeliness.[56]

In addition, the Petitioners claim that Entergy does not have an approved biological monitoring plan in contravention of its NPDES permit.[57] If Entergy's lack of an approved biological plan were a recent development, it might constitute new information under 10 C.F.R. § 2.309(f)(2). But, Petitioners contend that Entergy has lacked this plan "for about 10 years."[58] Consequently, by the Petitioners' own admission, this alleged non-compliance with the NPDES permit could have formed the basis for a contention in 2006, when contentions in this proceeding were initially due. As a result, it does not constitute new information.[59]

Last, Petitioners provide evidence to demonstrate that Pilgrim will adversely affect listed species under the ESA as well as the river herring.[60] But, these claims have already formed the basis for the Petitioners' earlier contentions, which were similarly untimely when the Petitioners initially filed them.[61] The Petitioners noted that the National Marine Fisheries Service listed the river herring as a candidate species in November of 2011, that Massachusetts instituted a moratorium on taking that species in 2006, and that a report from the Atlantic States Marine Fisheries Commission from March of 2012 found that the "population of river herring is depleted

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[54] Petition at 7-8.

[55] *Id*. at Attachment 1.

[56] 10 C.F.R. § 2.309(f)(2)(iii); Scheduling Order at 7.

[57] Petition at 10.

[58] *Id*.

[59] 10 C.F.R. § 2.209(f)(1).

[60] Petition at 15-16.

[61] March 8, 2012 Petition; May 2, 2012 Petition.

to near historic lows."[62] Consequently, the information which supports the Petitioners' concerns regarding the river herring has clearly been available for well over 30 days.[63] Likewise, Petitioners' claims regarding listed species under the ESA primarily rest on the affidavits they have previously filed in this proceeding, which, as discussed above, are untimely.

As a result, the Water Quality Contention raises issues that are evidently untimely under NRC regulations and practice. The gravamen of the contention challenges the validity of Entergy permits and certifications issued under the CZMA and Sections 401 and 316 of the CWA.[64] But these documents have been available since 2006 or 2007, and most of the Petitioners' challenges rest on information that was available at that time. Although the Water Quality Contention does cite some more recent documents, all of those are months, if not years, older than 30 days or simply repackage previously available information. Therefore, they do not suffice to establish the contention's timeliness.[65]

B. Petitioners Do Not Meet the Late-Filing Standards of 10 C.F.R. § 2.309(c)

Because Petitioners do not satisfy the factors for late-filed contentions under 10 C.F.R. § 2.309(f)(2), they must meet the requirements for nontimely contentions under 10 C.F.R. § 2.309(c).[66] Nontimely contentions under 10 C.F.R. § 2.309(c) may only be entertained following a determination by the Presiding Officer that a balancing of eight factors weighs in favor of admission.[67] The requirements for untimely filings and late-filed contentions are "stringent."[68]

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[62] Petition at 15 & n.20.

[63] Petitioners also noted that in March of 2012, Massachusetts issued a reminder of the moratorium. Petition at n. 20. Even if this information were materially different from the moratorium, it is still more than thirty days old.

[64] Petition at 2.

[65] 10 C.F.R. § 2.309(f)(2).

[66] *Pa'ina Hawaii, LLC*, CLI-10-18, 72 NRC 56, 86 n. 171 (2010).

[67] The eight factors listed at § 2.309(c)(1) are as follows:

(i) Good cause, if any, for the failure to file on time;

All eight factors must be addressed by the petitioner.[69] While petitioners must show a "favorable balance among the [eight] factors," good cause is given the most weight.[70] If a petitioner cannot show good cause, the balance of the other factors must be "compelling."[71] Petitioners do not show good cause and do not show a favorable balance among the remaining factors.[72] Therefore, the Petition should be denied as untimely.

> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
>
> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
>
> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
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> (vi) The extent to which the requestor's/ petitioner's interests will be represented by existing parties;
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> (vii) The extent to which the requestor's/ petitioner's participation will broaden the issues or delay the proceeding; and
>
> (viii) The extent to which the requestor's/ petitioner's participation may reasonably be expected to assist in developing a sound record.

[68] *Oyster Creek,* CLI-09-7, 69 NRC at 260.

[69] *Id.*

[70] *Id.* at 261.

[71] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 565 (2005); *Tennessee Valley Authority* (Watts Bar Nuclear Unit 2), CLI-10-12, 71 NRC 319, 323 (2010).

[72] The Staff does not contest the Petitioners' arguments regarding the 10 C.F.R. § 2.309(c)(1)(ii)–(iv) requirements (Petition at 33-34) as Boards have previously found these criteria to be "not particularly 'applicable' given that they focus on the status of the requestor/petitioner seeking admission to a proceeding (e.g., standing, nature of the requestor/petitioner's affected interest)." *Vermont Yankee*, LBP-06-14, 63 NRC at 581.

1. Petitioners Do Not Show Good Cause

The Commission has stated that "[g]ood cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available."[73] Once that information is available, the contention must be filed in a timely fashion.[74] For the reasons discussed above, Petitioners cannot show "good cause."[75] None of the information relied upon in the contention is new, materially different than previously available information, or raised in a timely fashion.

Petitioners make a host of equitable arguments in an attempt to justify their late-filed contention. Petitioners contend that the NRC should be estopped from objecting to the untimeliness of their filing because the Staff's alleged provision of incorrect information serves to excuse the Petitioners' untimely filing.[76] Petitioners have tried this tactic before, and once again, the case they cite, *Armed Forces,* is inapposite. In *Armed Forces*, the NRC staff provided misleading advice regarding the timing for the issuance of a storage facility's renewed license.[77] For this reason, the NRC staff conceded that a late-filed petition was timely.[78] In the current case, the NRC Staff made no representations to the Petitioners related to timing. To the

[73] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-09-05, 69 NRC 115, 125-26 (2009); *Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 164-65 (1993).

[74] *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1764-65 (1982) (finding that petitioners did not establish "good cause" for late filing when information had been "in the public domain" for six months).

[75] *See supra* Section II.A.

[76] Petition at 31-32 (citing *Armed Forces Radiobiology Research Institute* (Cobalt-60 Storage Facility), LBP-82-24, 15 NRC 652, 658 (1982)). Because *Armed Forces* is a licensing board decision, it does not constitute binding precedent on this Board. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-22 62 NRC 542, 544 (2005) (noting that "unreviewed Board decisions do not create binding legal precedent").

[77] *Armed Forces*, LBP-82-24, 15 NRC at 655.

[78] *Id.* at 655-656.

contrary, if Petitioners believed that the NRC's 2007 SEIS or Entergy's 2006 ER were inaccurate, they could have filed a petition right away.

Petitioners appear to read the language in *Armed* Forces more expansively and contend that their filing is timely because they "were furnished erroneous information by the NRC staff and Entergy, who represented that state and federal permits were up-to-date and valid, but they are not."[79] But, as discussed below, the Petitioners' evidence does not show that the NRC and Entergy misled Petitioners, rather it indicates that the Petitioners simply disagree with the NRC Staff and Entergy's conclusions regarding the validity of these permits.[80] The Commission has repeatedly emphasized that petitioners have an "iron-clad obligation to examine the publicly available documentary material . . . with sufficient care to enable [them] to uncover any information that could serve as the foundation of a specific contention."[81] If a simple disagreement with the NRC established good cause, petitioners' "iron-clad obligation" to bring timely contentions would evaporate because the very existence of a disagreement underlying a contention would always justify late filings. To avoid eviscerating the Commission's timeliness rules, *Armed Forces* must be limited to instances in which NRC statements and conclusions explicitly relate to timing. As a result, Petitioners have not shown that *Armed Forces* applies to this case or that the Staff should be estopped from contesting the Petition's obvious deficiencies with respect to timeliness. In any event, even if the Staff's discussion in the Pilgrim SEIS initially confused Petitioners, the Petitioners have not attempted to explain why that confusion lasted for nearly five years before they filed the Water Quality Contention.[82]

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[79] Petition at 32.

[80] Petition at 5-16.

[81] *Prairie Island*, CLI-10-27, 72 NRC at 496 (*quoting Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-03, 37 NRC 135, 147 (1993)) (quotations omitted, first alteration in original).

[82] *See Kavowras v. New York Times Co*., 328 F.3d 50, 56-57 (2d Cir. 2003) (noting that for the doctrine of equitable estoppel to apply, the party asserting equitable estoppel must show that reliance on the representation was reasonable).

Petitioners also suggest that Entergy acted inequitably by representing to MOCZM that it complied with state water quality standards when it also sued Massachusetts regarding those water quality standards.[83] But Petitioners have not claimed that Entergy's actions estop the NRC from raising timeliness objections to the Water Quality Contention, nor could they. More importantly, a review of the case Petitioners cite reveals no bad faith on Entergy's part. Rather, it appears that Entergy filed a law suit regarding the extent of the state regulator's authority to regulate cooling water intake structures.[84] The case does not reveal any deliberate attempts on Entergy's part to avoid complying with established regulatory requirements or hide any violations of those requirements. Consequently, the case on cooling water intake structures does not support the Petitioners' plea for equitable relief. Therefore, Petitioners cannot demonstrate good cause, and they have demonstrated no equitable reason to depart from the Commission's normal rules on timely filings.

2. The Balance of the Other Factors Is Not Compelling

The Commission has recently reaffirmed that "[a]bsent 'good cause,' there must be a 'compelling showing on the remaining factors'; it is a 'rare case where we would excuse a nontimely petition absent good cause.'"[85] Because several of the remaining factors weigh heavily against Petitioners, they cannot make the compelling showing needed to overcome the absence of good cause.

First, the Petitioners cannot meet the fifth factor, because other proceedings will more effectively address the concerns raised in the Water Quality Contention.[86] Specifically, the EPA's NPDES permitting process is the best venue for resolving the Petitioners' concerns.

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[83] Petition at 31-32.

[84] *Entergy Nuclear Generation Company v. Department of Environmental Protection*, 459 Mass. 319, 320, 944 N.E.2d 1027, 1029 (Mass. 2011).

[85] *Pilgrim*, CLI-12-10, 75 NRC __ (slip op. at 17 n.69) (*citing Watts Bar*, CLI-10-12, 71 NRC at 323)).

[86] 10 C.F.R. § 2.309(c)(1)(v).

Because the EPA has statutory authority to regulate discharges, they are in the best position to vindicate Petitioners' concerns regarding Pilgrim's effluents.[87] The NRC's proceeding cannot resolve many of Petitioners' concerns related to water quality because the NRC lacks the statutory authority to implement these measures. Therefore, "other means" are both the best forum and the only appropriate forum to address most of Petitioners' concerns. Likewise, Petitioners' CZMA claims are best addressed to MOCZM, the office responsible for implementing the CZMA in Massachusetts.[88] Accordingly, this factor weighs against intervention.[89]

With respect to the seventh factor, Petitioners concede that the admission of their contention would broaden the issues or delay the proceeding.[90] However, they contend that this factor should "be given little or no weight at all" because of the seriousness of their allegations

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[87] The Atomic Safety and Licensing Appeal Board, in the "Yellow Creek" case, determined that EPA has sole jurisdiction over the regulation of water quality with respect to the withdrawal and discharge of water for nuclear power stations, and that the NRC is prohibited from placing any restrictions or requirements upon the licensees of these facilities with regards to water quality. *Tennessee Valley Authority* (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 712-13 (1978). NRC regulations at 10 C.F.R. § 51.10(c) also address the limitations on NRC's authority to regulate water issues. 10 C.F.R. § 51.10(c). Specifically, "in accordance with section 511(c)(2) of the [Clean Water Act], the NRC recognizes that responsibility for Federal regulation of nonradiological pollutant discharges into receiving waters rests by statute with the EPA." 10 C.F.R. § 51.10(c).

[88] *See* 16 U.S.C. § 1456(c)(3)(A) (authorizing the appropriate State CZM office to make the CZMA consistency determination).

[89] Petitioners allege that there are no other means by which they can protect their interests and cite precedent in the *Temelin* case to argue that this "is in itself sufficient for the Commission to excuse the untimeliness of the request." Petition at 34 (addressing 2.309(c)(1)(v) and citing *Westinghouse Elec. Corp.* (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 329 (1994)). The Petitioners misquote *Temelin*. In that case, the Commission stated the opposite, holding that "[w]hile we recognize that no one will represent the Petitioners' perspective if the hearing requests are denied, this in itself is *insufficient* for us to excuse their untimeliness." *Temelin*, CLI-94-7, 39 NRC at 329 (emphasis added). The Commission further held that "excusing untimeliness for every petitioner who meets only this factor would effectively negate any standards for untimely intervention in cases such as this where no one else has requested a hearing, since a late-filing petitioner could always maintain that there will be no hearing to protect its interest if intervention is denied." *Id*. In this case, where Petitioners seek to reopen a closed adjudicatory proceeding, there are by definition no other parties that will protect their interests. To admit their contention based on this factor alone "would effectively negate any standards for untimely intervention." *Id*.

[90] *See* 10 C.F.R. § 2.309(c)(1)(vii).

regarding water quality.[91] However, the Petitioners cite no precedent in which the Commission or a Licensing Board ignored this factor.[92] Likewise, the Petitioners are unable to cite any authority supporting their claim that the issue of delay should be minimized because the particular concerns raised relate to the CWA and CZMA.[93] And while Petitioners correctly assert that not every delay is intolerable,[94] they are unable to cite a case in which the Commission or a Licensing Board further delayed a proceeding in which the evidentiary record was closed for nearly four years to admit a contention based on information that has largely been available for years.[95]

Regarding the eighth factor, Petitioners assert that their late-filing will assist in developing a sound record.[96] But, they have not provided an admissible contention[97] or a sound explanation for their half-decade delay in filing. Moreover, the Petitioners have not provided any new testimony to support the Water Quality Contention. Rather, they rely on affidavits that supported previous contentions in this proceeding.[98] This suggests that Petitioners will only make a limited contribution to any hearing on this topic. Consequently, the Petitioners'

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[91] Petition at 38.

[92] *See id.*

[93] *See id.* at 36-38.

[94] *See Public Service Elec. & Gas Co.* (Hope Creek Generating Station, Units 1 and 2), LBP-77-9, 5 NRC 474, 477 (1977).

[95] *See* Petition at 36. Every case cited by Petitioners can be handily distinguished. *See Long Island Lighting Co.* (Jamesport Nuclear Power Station Units 1 & 2), ALAB-292, 2 NRC 631, 650 (1975) (evidentiary hearing would not be delayed because discovery had not yet been instituted); *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), LBP-81-11, 13 NRC 420, 425 (1981) (contentions would not disrupt the timeframe set for a hearing on additional contentions already admitted); *Hope Creek*, LBP-77-9, 5 NRC at 477 (although not every "delay . . . is intolerable, the magnitude of the threatened delay causes us to conclude that this factor should weight against the petitioner's late intervention attempt").

[96] 2.309(c)(1)(viii); Petition at 38.

[97] *See infra* Section III.

[98] Petition at 9.

participation on this issue is unlikely to assist the agency in developing a sound record. Therefore, 10 C.F.R. § 2.309(c)(1)(viii) weighs against the Petitioners.

Since Petitioners do not meet a number of the factors to be considered under 10 C.F.R. § 2.309(c) — most importantly, they fail to show good cause — their contention does not meet the requirements for non-timely contentions and should be dismissed.

III. Petitioners Do Not Raise an Admissible Contention

To be admitted, the claims in the Petition must meet the general contention admissibility requirements at 10 C.F.R. § 2.309(f). That section requires the Petitioners to demonstrate that their contention has a legal and factual basis, is within the proceeding's scope, and raises a material issue.[99] The legal requirements governing the admissibility of contentions are well-established and set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice. The requirements governing the admissibility of contentions are "strict by design."[100] Thus, they have been strictly applied in NRC adjudications, including license renewal proceedings.[101] The Commission has explained, "[m]ere 'notice pleading' is insufficient under these standards."[102] "[B]are assertions and speculation [are] not enough to trigger an adversary hearing . . .."[103] Therefore, "[a] petitioner's issue will be ruled inadmissible if the petitioner 'has offered no

[99] The Staff discussed contention admissibility at length in the NRC Staff's Answer in Opposition to Pilgrim Watch Request for Hearing on New Contention (January 7, 2011) (ADAMS Accession No. ML110070837), and NRC Staff's Answer in Opposition to Pilgrim Watch's January 20, 2011 Amended Contention (February 14, 2011) (ADAMS Accession No. ML110450664), and hereby incorporates those discussions and arguments by reference.

[100] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

[101] *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006).

[102] *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).

[103] *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000).

tangible information, no experts, [or] no substantive affidavits."[104] As discussed below, the Petition does not meet these standards.

A. The Petition Does Not Provide a Specific Statement of the Matters in Controversy

As an initial matter, the Staff notes that, pursuant to 10 C.F.R. § 2.309(f)(1)(i), an admissible contention must provide "a specific statement of the issue of law or fact to be raised or controverted."[105] While the Water Quality Contention purports to meet that requirement, its "specific statement" runs almost 11 pages and discusses a wide range of arguments based on numerous provisions of both federal and state law.[106] Moreover, 10 C.F.R. § 2.309(f)(1)(ii) requires an admissible contention to provide a "brief explanation of the basis" on which it relies. To meet that requirement, Petitioners simply incorporate by reference their previous discussion on the first factor in section 2.309(f)(1). While the reference may be brief, the length of the referenced material defies the common meaning of the word. Therefore, from the outset, the Water Quality Contention fails to meet the focused pleading requirements provided for by the Commission. Moreover as discussed below, Petitioners' claims regarding the CWA, CZMA, and NEPA are unsupported, out of scope, and immaterial. As a result, they also do not meet the other prongs of 10 C.F.R. § 2.309(f)(1).

B. Pilgrim Holds Valid Federal and State Water Quality Permits

1. The 1991 Joint Federal and State NPDES Permit Remains Valid

The 1991 NPDES permit, modified in 1994, is Pilgrim's joint federal and state discharge permit.[107] Petitioners assert that this permit expired in 1996.[108] However, this is merely a

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[104] *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203 (*quoting Oyster Creek*, CLI-00-6, 51 NRC at 207).

[105] 10 C.F.R. § 2.309(f)(1)(i).

[106] Petition at 5-16.

[107] Modification of Authorization to Discharge under the National Pollutant Discharge Elimination System, at ¶ D.1 (Aug. 1994) (ADAMS Accession No. ML061420166) ("NPDES Permit") ("This Discharge Permit is issued jointly by the U.S. Environmental Protection Agency and the Division of Water Pollution Control under Federal and State law, respectively. As such, all the terms and conditions of this Permit

rhetorical tactic, as they admit that the "NPDES has been administratively extended by U.S. EPA."[109] But Petitioners apparently fail to recognize that this "administrative extension" has the force of law. The NPDES Permit for Pilgrim is currently in timely renewal under federal law[110] and state law,[111] which allow an applicant for a permit to continue operations under its existing permit until the agency responsible for issuing the permit "finally determines" the application.[112] Importantly, the D.C. Circuit explicitly approved EPA's implementation of the timely renewal provision for NPDES permits in *Natural Resources Defense Council v. EPA*.[113] The court held that the timely renewal provision continued the expired permits, "not by affirmative agency action but by operation of law"[114] and found that the protections of the timely renewal provision "over-balance" any other statutory requirements.[115] Accordingly, the NPDES permit remains in force under the timely renewal provision of the Administrative Procedure Act and EPA's

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are hereby incorporated into and constitute a discharge permit issued by the Director of the Massachusetts Division of Water Pollution Control pursuant to M.G.L. Chap. 21, S.43.2.").

[108] Petition at 6, 8, 18, 19.

[109] *Id.* at 7.

[110] 5 U.S.C. § 558(c)(2) ("When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."); 40 C.F.R. § 122.6(a) ("When EPA is the permit- issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit . . . if . . . [t]he permittee has submitted a timely application").

[111] 314 C.M.R. § 3.09. Massachusetts state law provides a timely renewal provision similar to the federal timely renewal provision in the Administrative Procedure Act.

[112] 5 U.S.C. § 558(c).

[113] *Natural Resources Defense Council v. EPA*, 859 F.2d 156, 214 (1988).

[114] *Id.* (no "hint that the safeguard afforded by Section 558(c) exists only while the permit remains unchanged;" the more stringent standard required for renewal did not invalidate timely renewal).

[115] *Id*. The court based its holding on its finding that Congress intended Section 558(c) to broadly protect private licensees from the "very severe consequences of the conferring of licensing authority [over private parties] upon administrative agencies," including "the threat of disastrous, arbitrary, and irremediable agency action." *See* 92 Cong. Rec. 5654 (1946) (statement of Rep. Walters).

implementing regulations until the EPA and the Massachusetts Department of Environmental Protection ("DEP") make a final determination on the permit application.[116]

2. The Massachusetts Department of Environmental Protection Provided a Valid Section 401 Certification under the Clean Water Act

Petitioners assert that Pilgrim lacks a valid § 401 water quality certification from the State of Massachusetts.[117] Section 401(a)(1) of the Clean Water Act ("CWA") states,

> Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate . . . that any such discharge will comply with the applicable provisions of [the CWA]."[118]

This statutory provision has two important ramifications. First, the NRC, as a licensing authority under the terms of the statute, cannot issue a license to a facility whose operations may result in discharges into navigable waters unless there is a valid § 401 certification from the state.[119] Second, the EPA cannot issue a NPDES permit under § 402 of the CWA unless a § 401 certification is first granted by the state.[120]

One of the Petitioners' claims concerns the latter issue—that EPA issued a NPDES permit for Pilgrim without a § 401 certification. Petitioners state that "[a] *valid § 401 certificate is required for a valid NPDES permit*, and Entergy's application relies on 40 year old state letters and an expired 1994 permit that . . . are inadequate."[121] However, Petitioners' allegations that

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[116] The Supreme Judicial Court of Massachusetts has also recognized that the NPDES permit is in timely renewal. *Entergy*, 459 Mass at 322 n.7, 944 N.E.2d at 1031 n.7.

[117] *See* Petition at 7-8, 9, 17, 18.

[118] 33 U.S.C. § 1341(a)(1).

[119] *See id.*

[120] 40 C.F.R. § 124.53(a) ("Under CWA section 401(a)(1), EPA may not issue a [NPDES] permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.").

[121] Petition at 18 (emphasis added).

EPA failed to comply with its regulations are outside the scope of this proceeding and should be raised with EPA and the appropriate state authorities.[122] Furthermore, Petitioners are apparently unaware that the EPA obtained a § 401 certificate from the Massachusetts DEP before jointly issuing the modifications to the 1994 NPDES permit.[123] Therefore, the NPDES permit was properly issued according to EPA regulations.[124]

Petitioners also allege that Pilgrim lacks a § 401 certification as required by NRC regulations.[125] However, as explained above, a valid § 401 certification was issued for Pilgrim's current NPDES permit.[126] The NRC routinely relies on current NPDES permits as evidence of valid § 401 certifications in license renewal proceedings.[127]

Petitioners object to § 401 certifications that are "old,"[128] but they cite no language from the statute that § 401 certifications can be disqualified because of age.[129] Finally, Petitioners

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[122] *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 28 (1978) (NRC should not "go behind" EPA's determinations on water quality); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 385-87 (2007) (same). *See also Hydro Resources*, CLI-98-16, 48 NRC 119, 121 (1998) (Congress gave NRC "no roving mandate to determine other agencies' permit authority."); *Yellow Creek*, ALAB-515, 8 NRC at 712-13 (Water quality the "exclusive province" of EPA).

[123] Letter from Andrew Gottlieb, Commonwealth of Massachusetts DEP to Edward McSweeney, Wastewater Management Branch, U.S. EPA Region I (Jul. 1994) (Exhibit A) (certifying under § 401(a) that the NPDES permit conditions will comply with the Federal Act and the Massachusetts Clean Water Act). Although this § 401 certification was issued for the 1994 modifications to the 1991 permit, a careful reading of the certification letter demonstrates that the Massachusetts DEP was certifying that all the conditions in the revised permit, not only the modified provisions, met state water quality standards.

[124] 40 C.F.R. § 124.53(a).

[125] Petition at 17 (Entergy cannot show compliance with requirements at 10 C.F.R. § 51.53 to have a valid state § 401 certification). The provision cited by the Petitioners, 10 C.F.R. § 51.53, contains no requirement for § 401 certification. Perhaps Petitioners mean 10 C.F.R. § 50.54(aa), which states that a license will be subject to the requirements of § 401(a)(2) of the CWA. In any event, CWA § 401(a)(1) states that any licensing authority, which would include the NRC, can issue an operating license to a facility that may discharge into navigable waters only if there is a valid § 401 certification.

[126] Exhibit A.

[127] *See* GEIS at § 4.2.1.1.

[128] Petition at 7 and 18.

[129] Petitioners also provide no statutory evidence that the original § 401 certifications that Entergy obtained from Massachusetts in 1970 and 1971 are obsolete. *See* Letter from Thomas C. McMahon,

claim that NRC regulations at 10 C.F.R. § 51.53(c)(3)(ii)(B) demand "current" § 401 certifications, and that this requirement cannot be satisfied by "40 year old letters."[130] But the regulation cited by the Petitioners does not require "current" § 401 certifications—in fact, it makes no mention of § 401 certifications at all.[131] In addition, CWA § 401(a), the relevant statutory provision requiring state certification, does not state that such certifications must be "current."[132]

Furthermore, the MOCZM recently acknowledged that its federal consistency concurrence determination, based on the 1994 NPDES permit and § 401 certification, remains in effect during the pendency of the NPDES permit's renewal proceedings.[133] Since MOCZM's determination rests on findings that "point-source discharges in or affecting the coastal zone are consistent with federally-approved state effluent limitations and water quality standards,"[134] it is clear that MOCZM still views both the 1994 NPDES permit and § 401 certification as a valid basis for water quality findings. For all of these reasons, this claim lacks an adequate factual basis.[135]

Director of the Division of Water Pollution Control, Commonwealth of Massachusetts Water Resources Division to Claude Pursel, Assistant Vice-President, Boston Edison Company (Jul. 1970) (Exhibit B) ("This is to certify that the Division has received reasonable assurance that operation of the proposed Pilgrim Station will not violate applicable water quality standards."); Letter from Thomas C. McMahon, Director of the Division of Water Pollution Control, Commonwealth of Massachusetts Water Resources Division to Claude Pursel, Assistant Vice-President, Boston Edison Company (Apr. 1971) (Exhibit C) (similar language). Notably, these certifications contain no expiration date.

[130] Petition at 8-9.

[131] 10 C.F.R. § 51.53(c)(3)(ii)(B) requires licensees who use once-through cooling systems to provide in their license applications a copy of a current CWA § 316(b) determination, and if necessary, a CWA § 316(a) variance.

[132] 33 U.S.C. § 1341(a)(1) merely states that an applicant for a license shall provide the licensing authority a state certification.

[133] Letter from Bruce Carlisle, Director, Commonwealth of Massachusetts Office of Coastal Zone Management to Jones River Watershed Association/Pilgrim Watch, at 1-2 (May 21, 2012) (ADAMS Accession No. ML12144A191) ("MOCZM May 21st Letter").

[134] 301 C.M.R. § 21.98(3).

[135] 10 C.F.R. § 2.309(f)(1)(v), (vi).

3. Entergy Complied with NRC Regulations Requiring Them to Submit a Copy of a Current CWA § 316(b) Determination and a CWA § 316(a) Variance

Petitioners contend that Pilgrim lacks a current thermal discharge variance from the EPA under CWA § 316(a) and a current CWA § 316(b) determination from the EPA that its Cooling Water Intake Structure ("CWIS") uses the "best available technology."[136] Section 316(a) states that if an operator of a point source can demonstrate to the satisfaction of the EPA that current effluent limitations are "more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made," the EPA can instead impose a less stringent effluent limitation as long as it will still ensure protection of the species found in that body of water.[137] Section 316(b) provides, "Any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact."[138] NRC regulations require applicants who use once-through cooling systems, to

> provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125 or equivalent State permits and supporting documentation. If the applicant cannot provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.[139]

Pilgrim uses a once-through cooling system,[140] but contrary to Petitioners' assertions, Entergy complied with its regulatory obligations. In its ER, Entergy provided the relevant pages from the

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[136] Petition at 7.

[137] 33 U.S.C. § 1326(a).

[138] 33 U.S.C. § 1326(b).

[139] 10 C.F.R. § 51.53(c)(3)(ii)(B).

[140] NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear

current NPDES permit demonstrating that Pilgrim has both a current § 316(b) determination and a current § 316(a) variance.[141]

The 1994 NPDES permit provided by Entergy explicitly states, "It has been determined, that the circulating water intake structures presently employs the best technology available for minimizing adverse environmental impact."[142] As explained above, the 1994 NPDES permit is still valid.[143] Therefore, the EPA's statement that Pilgrim's CWIS employs the "best technology available" is a current § 316(b) determination that satisfies NRC regulations.

The current 1994 NPDES permit cited by Entergy also contains Pilgrim's § 316(a) variance. The NPDES permit provides that Pilgrim's discharges must not jeopardize the class SA use of Cape Cod Bay, which establishes it as an excellent habitat for aquatic life.[144] Massachusetts regulations for class SA waters specify that the "rise in temperature due to a discharge shall not exceed 1.5°0F."[145] The regulations also specify that "alternative effluent limitations established in connection with a variance for a thermal discharge issued under" CWA § 316(a) are valid.[146] The NPDES permit states that "The rate of change of Discharge 001 Delta-T shall not exceed: (1) a 3 °F rise or fall in temperature for any 60-minute period during normal steady state plant operation and (2) a 10 °F rise or fall in temperature for any 60-minute

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Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station Final Report, Main Report at 1-8 (Jul. 2007) (ADAMS Accession No. ML071990020).

[141] ER at 4-8 (there is a best available technology determination under § 316(b)); 4-12 (there is a thermal discharge variance under § 316(a)); Attachment A (relevant pages of the 1994 NPDES permit demonstrating the above).

[142] NPDES Permit at ¶ A.1.i; Pilgrim ER at Attachment A.

[143] *Supra* Section III.B.1.

[144] *See* NPDES permit at ¶ A.1.b.

[145] 314 C.M.R. § 4.05(4)(a)(2)(b).

[146] 314 C.M.R. § 4.05(4)(a)(2)(c).

period during normal load cycling."[147] CWA § 402(a)(1) states that the EPA shall only issue a discharge permit upon condition that such discharge will satisfy § 316.[148] Since the discharge limits in the EPA-issued NPDES permit exceed those allowed by the relevant water quality regulations, EPA necessarily granted Pilgrim a § 316(a) variance when it set those higher limits in the permit.

The Commission has stated that even if a NPDES permit does not specifically grant a § 316(a) variance, the permit can itself constitute a § 316(a) variance if it clearly intends to do so: "Congress has severely limited our scope of inquiry into section 316(a) determinations. All we may do is examine whether the EPA or the state agency considered its permit to be a section 316(a) determination. If the answer is 'yes,' our inquiry ends."[149] The Commission further held that "the Clean Water Act does not give us the option of looking behind the agency's permit to make an independent determination as to whether it qualifies as a *bona fide* section 316(a) determination."[150] In this case, it is clear that EPA considered the NPDES permit to be a 316(a) variance. If EPA was not implicitly granting a § 316(a) variance, they would have not allowed thermal discharges that exceeded the limits specified in Massachusetts' regulations for class SA waters.

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[147] NPDES permit at ¶ A.1.g; Pilgrim ER at Attachment A.

[148] 33 U.S.C. § 1342(a)(1) ("Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.").

[149] *Vermont Yankee*, CLI-07-16, 65 NRC at 385-86.

[150] *Id.* at 387 (emphasis in original). *See also Seabrook*, CLI-78-1, 7 NRC at 26 and 28 ("The FWPCA [CWA] reflects a Congressional judgment that the primary repository of expertise on water pollution questions generally, and on the environmental impacts of heat specifically, should be the EPA. . . . In these circumstances, we should not go behind EPA's determinations unless compelled to do so."); 10 C.F.R. § 51.10(c) ("in accordance with section 511(c)(2) of the [CWA], the NRC recognizes that responsibility for Federal regulation of nonradiological pollutant discharges into receiving waters rests by statute with the EPA.").

Therefore, the NPDES permit submitted by Entergy in its application contains both a § 316(b) determination, a § 316(a) variance, and the permit remains current and valid during the pendency of the renewal proceedings for the NPDES permit.

Petitioners appear bothered by the fact that the § 316(b) determination and § 316(a) variance in the NPDES permit rely on demonstration reports prepared in the 1970s.[151] However, they provide no evidence that current determinations based on older reports are invalid. In any event, Entergy prepared a new demonstration report in 2000 and submitted it to EPA,[152] which the EPA will consider as part of the NPDES renewal process. For all of the reasons above, this portion of the Petitioners' claim lacks an adequate legal or factual basis.[153]

4. Entergy has a Valid EPA Permit for the Discharge of Tolytriazole

Petitioners assert that "[s]ince about 1995, PNPS has been regularly discharging a corrosion inhibitor called tolytriazole into Cape Cod Bay without a state or federal water pollution permit."[154] Although the current NPDES permit does not discuss the discharge of tolytriazole, Petitioners overlook the fact that EPA explicitly granted Pilgrim's request to discharge tolytriazole in a separate letter.[155] Therefore, this claim lacks an adequate factual basis and is immaterial to findings the NRC must make to support license renewal.[156]

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[151] Petition at 19, 22.

[152] ENSR Corp., "Redacted Version 316 Demonstration Report - Pilgrim Nuclear Power Station, Prepared for Entergy Nuclear Generation Company" (March 2000) (ADAMS Accession No.ML061390357).

[153] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[154] Petition at 8.

[155] Letter from Edward McSweeney, Wastewater Management Branch, U.S. EPA Region I to E.T. Boulette, Senior Vice President, Boston Edison, Pilgrim Nuclear Power Station (Jun. 1995) (Exhibit D) ("the use of Tolytriazole is approved at the requested dosage rate").

[156] 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

5. Petitioners' Allegations that Entergy Violated State Regulations are Meritless

Petitioners assert that Entergy is in violation of state law on four grounds: (1) Entergy lacks a state permit for discharging radioactive substances;[157] (2) Entergy lacks a state permit for its CWIS as required by 314 C.M.R. § 4.05(4)(a)(2)(d);[158] (3) Entergy discharges radioactive effluents into Cape Cod Bay without having *shown* that its discharges meet the standards of 314 C.M.R. § 4.05(5)(d)[159], and; (4) "Entergy has not *shown* that its CWIS operations are consistent with and protective of the water quality standards for Cape Cod Bay" in 314 § CMR 4.05(4)(a).[160]

The first claim is meritless because, as explained above, the NPDES permit is a joint federal and state permit which constitutes a discharge permit under Massachusetts state law.[161] And the NPDES permit specifically acknowledges that Pilgrim's CWIS shall discharge radioactive materials in compliance with NRC regulations.[162]

The second claim is similarly meritless because 314 C.M.R. § 4.05(4)(a)(2)(d) merely states that Massachusetts has the authority to regulate the CWIS.[163] It does not require Entergy

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[157] Petition at 8.

[158] *Id.* at 9.

[159] *Id.* at 8 (emphasis added).

[160] *Id.* at 9 (emphasis added).

[161] *See supra* Section III.B.1; NPDES Permit at ¶ D.1. Such joint permitting is expressly authorized by a 1973 Agreement between EPA and Massachusetts. Agreement between EPA and Massachusetts Department of Water Pollution Control, at 5 (1973) (Exhibit E). Likewise, it has been recognized by Massachusetts regulations and case law. *See* 314 C.M.R. § 2.08(2) (referencing a "surface water discharge permit jointly issued with EPA"); *Entergy*, 944 N.E.2d at 1033 n.12.

[162] NPDES Permit at ¶ A.1.l ("The discharge of radioactive materials shall be in accordance with the Nuclear Regulatory Commission operational requirements (10 CFR 20 and NRC Technical Specifications set forth in facility operating license DPR-35).").

[163] 314 C.M.R. § 4.05(4)(a)(2)(d) ("in the case of a cooling water intake structure (CWIS) . . . the Department has the authority under 33 U.S.C. § 1251 (FWPCA § 401), M.G.L. c. 21, §§ 26 through 53 and 314 CMR 3.00 to condition the CWIS to assure compliance of the withdrawal activity with 314 CMR 4.00, including, but not limited to, compliance with narrative and numerical criteria and protection of existing and designated uses."). *See generally Entergy*, 944 N.E.2d 1027.

to obtain a separate state permit for the CWIS. Some aspects of CWIS operations are already addressed in the joint federal and state NPDES permit.[164]

Petitioners' other two claims misunderstand the regulatory scheme intended in 314 C.M.R. § 3.00 and § 4.00. Petitioners assert that under 314 C.M.R. § 4.00, the permittee must affirmatively show that its discharges meet water quality standards.[165] But the regulations do not require permittees to "show" anything. Pursuant to statute,[166] 314 C.M.R. § 4.00 sets surface water quality standards,[167] and 314 C.M.R. § 3.00 establishes a permitting program[168] in which a permittee must meet the water quality standards of 314 § C.M.R. 4.00.[169] If the permittee does not meet those standards, DEP can deny a permit application or revoke or suspend an existing permit.[170] The provisions cited by the Petitioners, 314 C.M.R. 4.05(5)(d) and 314 CMR 4.05(4)(a), are among those that set water quality standards.[171] They do not place an affirmative duty on the permittee to show that they meet those standards.[172]

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[164] NPDES Permit at ¶ A.1.i ("It has been determined, that the circulating water intake structures presently employs the best technology available for minimizing adverse environmental impact.").

[165] Petition at 8-9.

[166] 21 M.G.L. § 27(5)-(6).

[167] 314 C.M.R. § 4.01(4).

[168] 314 C.M.R. § 3.03(1) (requiring a state permit for discharge of pollutants).

[169] 314 C.M.R. § 3.11(3) ("As a minimum, all permits shall contain limitations which are adequate to assure the attainment and maintenance of the water quality standards of the receiving waters as assigned in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00.").

[170] 314 C.M.R. § 3.07 (denial); 314 C.M.R. § 3.13 (suspension or revocation).

[171] 314 C.M.R. § 4.05(4)(a) states only that class SA waters "are designated as an excellent habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation" and that DEP can ensure the compliance of a water intake structure with the requirements of 314 C.M.R. § 4.00. 314 C.M.R. § 4.05(d) states that "[a]ll surface waters shall be free from radioactive substances in concentrations or combinations that would be harmful to human, animal or aquatic life or the most sensitive designated use."

[172] Nor do Petitioners suggest how Entergy would make such a showing.

Furthermore, Petitioners do not provide any evidence demonstrating that Entergy has violated Massachusetts' water quality standards. With regard to radioactive discharges, Petitioners merely cite 314 C.M.R. 4.05(d) which states that "surface waters shall be free from radioactive substances in concentrations or combinations that would be harmful to . . . life" but they provide no evidence that Pilgrim discharges quantities of radioactive substances that would be harmful to life.[173] Similarly, Petitioners offer evidence from various (mostly untimely) affidavits that CWIS operations either kill fish, or have the potential to adversely affect various endangered species.[174] But none of these affidavits claim that the alleged effects of the CWIS violate the state water quality standards for Cape Cod Bay set out in 314 C.M.R. § 4.05(4)(a) or provide sufficient evidence to demonstrate that they violate those standards.

For these reasons, these claims lack an adequate factual basis and are immaterial to findings the NRC must make to support license renewal.[175]

6. Petitioners' Assertions that Entergy Failed to Submit Marine Biological Reports Required by the NPDES Permit are Meritless

Petitioners claim that Entergy is violating the requirement in the 1994 NPDES permit to submit annual marine biological reports.[176] However, Petitioners misread the requirements of the NPDES permit, particularly ¶ 8.c. Petitioners state that Entergy does not have an approved monitoring plan under ¶ 8.c, and has not had one for 10 years.[177] But ¶ 8.c states that the terms set out in Attachment A of the NPDES permit constitute the monitoring plan approved by EPA: "The 1990 Environmental Monitoring Programs and plans, previously approved, become an

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[173] Petition at 8.

[174] *Id.* at 9.

[175] 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

[176] *Id.* at 9-10.

[177] Petition at 10.

integral element of this permit (Attachment A)."[178] Paragraph 8.d states, "No later than December 31st of each year, the permittee shall submit to EPA and the State for approval any *revisions* of the *existing* biological monitoring program (Par. c above) which may be warr[a]nted by the availability of new information."[179] Only revisions to the existing approved monitoring plan set out in the permit need to be approved annually, but the plan itself, set out in Attachment A, has no expiration date. Therefore, contrary to the Petitioners' assertions, Entergy does have an approved monitoring plan.[180] Accordingly, this portion of Petitioners' claim also lacks an adequate factual basis and is immaterial to the findings the NRC must make to support license renewal.[181]

C. Contrary to Petitioners' Claims, the Massachusetts Office of Coastal Zone Management Recently Reaffirmed that Entergy Possesses a Valid and Current Coastal Zone Management Consistency Certification for the Pilgrim License Renewal

Under the CZMA's "federal consistency" requirement, license renewal applicants must submit a certification to the NRC that the proposed activity is consistent with the enforceable policies of the state's federally approved coastal zone management program.[182] On July 11, 2006, MOCZM issued a CZMA consistency certification stating that the renewed operating license would be "consistent with the [MOCZM] enforceable programs and policies."[183] Petitioners assert, however, that this consistency certification "was, at the time it was issued,

[178] NPDES Permit at ¶ A.8.c.

[179] *Id.* at ¶ A.8.d.

[180] Perhaps Petitioners meant to argue that Entergy has failed to fulfill ¶ 8.e of the permit requiring Entergy to submit "biological reports on semi-annual basis including an annual summary report." *Id.* at ¶ A.8.e. However, Petitioners offer no evidence that Entergy has failed to submit such reports. Moreover, in a recent filing before this Board, Entergy asserted that they have complied with this requirement. Entergy's Supplemental Response to Pilgrim Watch and Jones River Watershed Association's Opposition to SECY-12-0062, at A-2 (May 23, 2012) (ADAMS Accession No. ML12144A191).

[181] 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

[182] 16 U.S.C. § 1456(c)(3)(A).

[183] Pilgrim SEIS at E-19.

lacking all necessary information and data, and based on inaccurate data, and new information shows additional reasons why the certificate is invalid."[184] Further, Petitioners contend that contrary to the consistency certification, license renewal will violate at least three state MOCZM enforceable policies including Water Quality Policy #1 as well as Habitat Polices #1 and #2.[185] However, Petitioners' claims are without merit because Petitioners do not provide sufficient evidence to show that the CZMA consistency certification is invalid. Moreover, MOCZM, the agency responsible for issuing the certification, has indicated on multiple occasions that its 2006 CZMA consistency certification remains valid. Accordingly, Petitioners' claims with respect to this portion of the contention are inadmissible because they lack sufficient basis, fall outside the scope of this proceeding, and are immaterial.[186]

On February 29, 2012, MOCZM sent a letter to Entergy confirming that the 2006 consistency certification is still valid and stated that "[u]ntil such time as [MOCZM] is notified that a change has occurred to the license reviewed for the July 11, 2006 concurrence, or until a new license application is submitted, the concurrence determination remains valid."[187] Nevertheless, on April 4, 2012, Petitioners sent a letter to MOCZM questioning the validity of the 2006 CZMA consistency certification and raising essentially the same claims that Petitioners raise in the instant Petition.[188] Specifically, Petitioners' letter asserts that the 2006 consistency certification is invalid because "the continued operation of [Pilgrim] as proposed by Entergy will be

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[184] Petition at 10.

[185] *Id.* at 12-15.

[186] 10 C.F.R. § 2.309(f)(1)(ii)-(iv).

[187] Letter from Robert L. Boeri, Project Review Coordinator, MOCZM, to Al Dodds, Entergy Nuclear Generation Company, Pilgrim Nuclear Power Station (February 29, 2012) (ADAMS Accession No. ML12081A015).

[188] *Compare* Letter from Jones River Watershed Association/Pilgrim Watch, to Bruce K. Carlisle, Director, MOCZM at 2-3 (April 4, 2012) (ADAMS Accession No. ML12144A191) ("Petitioners' April 4th Letter"), *and* Petition at 10-16.

inconsistent with enforceable state coastal zone management policies."[189] The letter also lists ten points which purportedly demonstrate that continued operation of Pilgrim during the relicensing period will violate MOCZM's Water Quality Policy #1 and Habitat Policies #1-2.[190] Petitioners' letter further requests that MOCZM: 1) immediately suspend their July 11, 2006 CZMA consistency certification; and 2) notify Entergy that supplemental coordination is required for the Pilgrim relicensing application.[191] On April 11, 2012, Entergy sent a letter to MOCZM asserting that the Petitioners' challenges in the April 4th letter regarding the CZMA consistency certification should be rejected.[192]

On May 21, 2012, MOCZM submitted a response letter, rejecting Petitioners' assertions and reaffirming the validity of the CZMA consistency certification.[193] In its response, MOCZM stated that it does not believe that supplemental coordination for the consistency certification is warranted at this time because "there have been no substantial changes in the proposed license activity, and the proposed license activity will not affect coastal uses or resources in a manner substantially different than originally described."[194] Further, MOCZM stated that it did "not find that there are significant new circumstances or information regarding the proposed federal license activity or its consistency with Water Quality Policy #1 and Habitat Policies #1-2 and their underlying state authorities as they were in effect for [MOCZM's] concurrence of the 2006 consistency certification."[195] Accordingly, Petitioners' claims with respect to the validity of the

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[189] Petitioners' April 4th Letter at 1.

[190] *Id.* at 2-3.

[191] *Id.* at 1.

[192] Letter from Elise N. Zoli, Goodwin Procter on behalf of Entergy, to Bruce K. Carlisle, Director, MOCZM (April 11, 2012) (ADAMS Accession No. ML12144A191).

[193] MOCZM May 21st Letter.

[194] *Id.* at 2-3.

[195] *Id.* at 3.

CZMA consistency certification and alleged violation of the three MOCZM policies (Water Quality Policy #1 and Habitat Policies #1-2) are without merit.

Petitioners also suggest that Entergy is in violation of the MOCZM enforceable polices because Entergy is "killing river herring in violation of the state ban," and Entergy's 2006 CZM report, the CZMA consistency certification, and the § 401 certificate do not "address new scientific data evidencing the threat to the existence of river herring.[196] In support of their assertion, Petitioners cite to a March 2012 Atlantic States Marine Fisheries Commission report which concluded that the coast-wide population of river herring is depleted to near historic lows.[197] Petitioners also state that the river herring was designated as a candidate species under ESA § 7 on November 2, 2011, and that a listing decision will be made by August 2, 2012.[198] Petitioners raised similar issues regarding the river herring in their April 4th letter to MOCZM.[199] However, MOCZM did not find that this information regarding the river herring indicated that the Pilgrim license renewal would be inconsistent with Water Quality Policy #1 and Habitat Policies #1-2.[200]

In addition, Petitioners appear to assert that the CZMA consistency certification is somehow invalid because the NRC has not adequately assessed the impacts on river herring under ESA. However, the NRC's statutory obligations under ESA and CZMA are separate. Nevertheless, as this Board has noted, neither ESA nor its implementing regulations impose

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[196] Petition at 15, 19.

[197] *Id.* at 15.

[198] *Id.*

[199] Petitioners' April 4th Letter at 2 ("Since 2006, Entergy has annually violated the state's moratorium on the taking of river herring . . . and river herring is now a candidate species under the federal Endangered Species Act. River herring are the third most impinged species at [Pilgrim].") (internal citations omitted).

[200] MOCZM May 21st Letter at 2-3.

legal obligations on the NRC with respect to candidate species such as the river herring.[201] Moreover, to the extent Petitioners' are suggesting that the NRC Staff should consider the river herring because a listing decision will be made by August 2, 2012, this Board disagreed with that proposition, finding that the NRC Staff need only assess the river herring under its current classification as a candidate species.[202]

Additionally, Petitioners note that CZM habitat policies rely on the Massachusetts Endangered Species regulations, which prohibit the taking of listed species.[203] But, the Petitioners have not claimed that Pilgrim's operations represent a "take" of river herring under State law.[204] Likewise, Petitioners assert that "the state has a ban on killing" river herring.[205] But, Petitioners have not alleged that the moratorium on harvesting river herring underscores any of the enforceable policies in the Massachusetts CZM plan. In any event, Petitioners quote the moratorium to read that it "shall be unlawful for any person to harvest, possess or sell river herring."[206] But, Petitioners have not alleged that Pilgrim's operations constitute a "harvest" under state law. As a result, the Petitioners have not established a material dispute regarding the river herring under the CZMA.[207] Moreover, MOCZM's determination that its consistency

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[201] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 33).

[202] *Id.* at 33-34 ("As the Commission succinctly noted, 'an application-specific NEPA review represents a 'snapshot' in time, and while NEPA requires that we conduct our environmental review with the best information available today, it does not require that we wait until inchoate information matures into something that later might affect our review.' The NRC Staff need only assess the river herring as it is currently classified; a speculative reclassification is simply not a matter that comes within the scope of this proceeding.") (*citing* S. Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-07, 75 NRC __, __ (slip op. at 12) (Apr. 16, 2012)..

[203] Petition at 14.

[204] *Id*. at 14 (*citing* 321 CMR 10.00).

[205] Petition at 15.

[206] Petition at 15 & n.20 (*citing* 322 CMR 6.17(3)).

[207] 10 C.F.R. § 2.309(f)(1)(iv), (vi).

certification remains valid, despite Petitioners' claims regarding the river herring, suggests that Petitioners' assertions regarding Habitat Policies # 1 and 2 are indeed meritless.[208]

Petitioners also claim that Entergy has not properly assessed impacts to endangered species and cannot show compliance with the MOCZM policies on endangered species.[209] Specifically, Petitioners assert that Entergy's CZM report claiming there are "no effects" on endangered species is "wholly inadequate."[210] Petitioners also claim that the Entergy's CZM report relies on a flawed U.S. Fish and Wildlife Service ("FWS") assessment for terrestrial species such as the roseate tern.[211] In addition, Petitioners assert that NMFS informed the NRC Staff that "it cannot concur with the Entergy and NRC 'no effects' finding."[212] Petitioners' assertions regarding endangered species are flawed and without merit.

With respect to the roseate tern, Petitioners do not provide sufficient facts to demonstrate that the CZMA certification is based on a flawed U.S. FWS assessment of roseate tern.[213] In fact, as previously discussed by the Staff, Petitioners' evidence regarding the impact of Pilgrim on the roseate tern does not contradict the Staff and FWS's previous findings on that species.[214] If anything, it confirms the Staff's finding that past operation of Pilgrim has not likely hurt the roseate tern in the immediate area around the facility.[215]

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[208] MOCZM May 21st Letter at 2-3.

[209] Petition at 16, 19-20.

[210] *Id.* at 16.

[211] *Id.*

[212] *Id.*

[213] *See* NRC Staff's Answer to Jones River Watershed Associate and Pilgrim Watch's Motion to Reopen the Record and Request for a Hearing with Regard to the Roseate Tern, at 23-26 (May 23, 2012) (ADAMS Accession No. ML12144A214).

[214] *Id*.

[215] *Id*.

Regarding the "no effect" determination, NMFS did not agree with the NRC's "no effect" determination. However, after reviewing information from the NRC, Entergy, and other sources, NMFS determined that all effects to listed species from the proposed license renewal action will be insignificant or discountable.[216] Thus, NMFS concurred with the NRC that "the continued operation of Pilgrim under the terms of a renewed operating license is not likely to adversely affect any listed species under NMFS jurisdiction."[217] Additionally, as this Board noted, "the NRC has fulfilled its obligations under the ESA."[218] Moreover, Petitioners made similar assertions regarding endangered species in their April 4th letter to MOCZM,[219] but MOCZM did not find significant new circumstances or information regarding consistency with MOCZM's Water Quality Policy #1 and Habitat Policies #1-2.[220] Therefore, Petitioners' assertions with respect to endangered species are without merit.

In addition, Petitioners claim that "MSA consultation has been improperly postponed to the EPA NPDES permitting process" and that this critical finding relevant to the Massachusetts CZMA policy is missing.[221] However, as this Board previously noted, given that the NRC and NMFS agree that the MSA consultation is complete, the requirements of the MSA have been

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[216] Letter from Daniel S. Morris, NMFS Acting Regional Administrator, to Andrew S. Imboden,Chief, Environmental Review and Guidance Update Branch, Office of Nuclear Reactor Regulation, at 30 (May 17, 2012) (ADAMS Accession No. ML12145A072).

[217] *Id.*

[218] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 34).

[219] JRWA April 4th Letter at 2 ("Entergy's CZM Report stated there would be 'no effects' on endangered and threatened species. On March 26, 2012, the [NMFS] informed the NRC Staff it does not agree that there will be 'no effects' on Cape Cod Bay endangered and threatened species from PNPS operations."); *id.* ("Impacts to species listed under the Massachusetts Endangered Species act were ignored or inadequately assessed, including impacts to hawksbill turtle, humpback whale, roseate tern, and arctic tern.").

[220] MOCZM May 21st Letter at 2-3.

[221] Petition at 16.

fulfilled, and the NRC has no further obligation under MSA.[222] Additionally, Petitioners included a similar claim regarding the postponement of MSA consultation in their April 4th letter to MOCZM.[223] MOCZM, however, did not find significant new circumstances or information regarding consistency with Water Quality Policy #1 and Habitat Policies #1-2.[224] Thus, Petitioners' assertions regarding MSA consultation are without merit.

Petitioners also contend that Entergy cannot show compliance with the MOCZM policies because "Entergy was in violation of state and federal water pollution control laws in 2006" even though "Entergy's 2006 CZM Certification Report purports to show that it is in compliance with" applicable water quality laws.[225] However, as discussed above, Petitioners have not provided sufficient evidence to show that Entergy is in violation of any state or federal water quality law.[226] Thus, Petitioners' claims that the CZMA consistency certification is invalid because "it purports to show compliance with" those water quality laws is without merit.

Finally, this NRC license renewal proceeding is not the proper forum for Petitioners to pursue their CZMA claims because the NRC lacks statutory authority to resolve claims regarding the validity of the CZMA certification.[227] As discussed above, MOCZM, the agency responsible for enforcing the CZMA in Massachusetts, has indicated as recently as May 21,

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[222] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 34).

[223] Petitioners' April 4th Letter at 3 ("An Essential Fish Habitat [MSA] consultation with NMFS as required by Magnuson-Stevens Fishery Conservation and Management Act has not been completed and will not be done prior to June 8, 2012, the relicensing deadline. Instead, the NRC has postponed the EFH consultation indefinitely to the NPDES permit renewal process. Therefore the [MOCZM's] consistency review was done without the benefit of the results of this consultation.").

[224] MOCZM May 21st Letter at 2-3.

[225] Petition at 15.

[226] *See supra* at III.B.

[227] *See* 16 U.S.C. § 1456(c)(3)(A) (authorizing the appropriate State CZM office to make the CZMA consistency determination).

2012, that its 2006 CZMA consistency certification remains valid and is consistent with MOCZM enforceable policies.

Accordingly, this portion of the contention regarding Petitioners' CZMA consistency certification claims is inadmissible because it lacks sufficient basis, falls outside the scope of this proceeding, and is immaterial.[228]

D. Petitioners Have Not Identified Any New and Significant Information Regarding Water Quality that Would Require the NRC Staff to Supplement the Pilgrim SEIS

Last, Petitioners contend that under NEPA, "Due to the environmental impacts of the failure to comply with state and federal environmental permitting and approval requirements, as set forth above," the Pilgrim SEIS "must be supplemented."[229] In *Marsh v. Oregon Natural Resources Council*,[230] the Supreme Court held that when new information indicates that a federal action "will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared."[231] But the Court also stated that "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized."[232] Such a requirement "would render agency decision-making intractable, always awaiting updated information only to find the new information

[228] 10 C.F.R. § 2.309(f)(1)(ii)-(iv).

[229] Petition at 3. Petitioners also contend that "while the NRC may rely on its generic environmental impact statement regulations for operating license renewal, these regulations truncate any meaningful analysis for purposes of assessing the environmental impacts for purposes of state permits, the Endangered Species Act, and CZM certification, and therefore the PNPS EIS is wholly inadequate." Petition at 3. As a practical matter, NRC regulations require the Staff to consider the impacts on listed species for every license renewal application and require such applicants to list applicable certifications, including those issued under the CZMA and State water quality certifications. 10 C.F.R. §§ 51.53(c)(3)(ii)(E), 51.45(d). In any event, a challenge to the NRC's regulations is outside the scope of this proceeding absent a waiver petition, and none has been submitted here. 10 C.F.R. § 2.335.

[230] *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 370-71 (1989).

[231] *Id*. at 374.

[232] *Id*. at 372.

outdated by the time a decision is made."[233] Under NRC precedent, to require supplementation of an EIS, new information "must reveal a seriously different picture of the environmental impact of the proposed project."[234] The Petition does not contain sufficient information to meet this high standard, and therefore the NEPA claims do not support an admissible contention.[235]

Rather, the Petitioners have only asserted that the NRC must supplement the Pilgrim SEIS.[236] For example, they have alleged, "Failure to comply with state laws and federal water laws, reliance on a 40-year old 316 (a) variance and (b) demonstration report, a 40+ year old § 401 certification, unpermitted pollutant discharges to Class SA waters in Cape Cod Bay and operation of PNPS without a CWIS permit, individually and collectively . . . raise a 'significant environmental issue.' "[237] But the Commission has clearly indicated that an admissible contention must rest on more than speculation and assertion.[238] Likewise, the Board in this proceeding has found that "bare assertions" alone are not enough to show new and significant information.[239] Petitioners have not expanded their NEPA claim beyond assertion and speculation to demonstrate how their concerns provide a seriously different picture of the environmental consequences of relicensing.

The Petitioner's NEPA claim mostly builds on their earlier CWA and CZMA claims.[240] As discussed above, the Petitioners CWA and CZMA claims do not contain a sufficient basis to

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[233] *Id*. at 373.

[234] *Hydro Resources, Inc.*, CLI-01-04, 53 NRC 31, 52 (2001).

[235] 10 C.F.R. § 2.309(f)(1)(v),(vi).

[236] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[237] Petition at 22.

[238] *Oyster Creek*, CLI-00-6, 51 NRC at 208.

[239] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 29).

[240] Petition at 2-3, 22.

establish their merit under NRC procedures.[241] Even if these claims did rest on a sufficient basis, they do not provide, or even allege, adequate facts to demonstrate a "seriously different picture" of the environmental impacts of renewing the Pilgrim operating license.[242] Clearly, the recent letters from MOCZM do not support such a finding.

A large portion of the Petitioners' complaints contend that Entergy lacks necessary certifications or permits for Pilgrim or that existing certifications or permits are invalid in light of errors on the part of other Federal agencies or Massachusetts permitting agencies.[243] But the appropriate inquiry under *Marsh* relates to the *impacts* of the federal action on the environment; new and significant information must "affect the quality of the human environment in a significant manner or to a significant extent not already considered."[244] While the NRC recognizes the importance of other agencies' permitting processes, valid licenses or permits only establish the legal framework under which a plant operates. The lack of a valid permit or license alone does not establish any actual impact on the environment and therefore cannot constitute new and significant information that would require the agency to supplement an EIS under *Marsh*.

Petitioners also allege that Pilgrim's current operations violate many existing state and federal permits and laws. Petitioners contend that Pilgrim discharges tolytriazole, in violation of its NPDES permit, and radioactive effluent, contrary to state law.[245] In addition, Petitioners also allege that Entergy has not updated its biological monitoring plans for Pilgrim as required by the NPDES permit.[246] Moreover, Petitioners also assert that Pilgrim operations have harmed

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[241] *See supra* Sections III B & C.

[242] *Hydro Resources, Inc.*, CLI-01-04, 53 NRC at 52.

[243] Petition at 6-8, 10-12.

[244] *Marsh*, 490 U.S. at 374.

[245] Petition at 8.

[246] Petition at 9-10.

aquatic and terrestrial species, some of which are threatened or endangered, in violation of state and federal law.[247] But the Petitioners have not shown, let alone claimed, that these discharges are large enough to have a significant impact on the environment, that Pilgrim's impacts on aquatic and terrestrial species will destabilize any species population near the facility, or that Entergy's alleged failure to update its marine biological monitoring plan has substantially impacted the human environment.[248] Consequently, none of the Petitioner's claims suffice to demonstrate new and significant information that would require the Staff to supplement the Pilgrim SEIS. As a result, the NEPA claim is not supported by an adequate factual basis and does not support an admissible contention.[249]

IV. The Petition Does Not Meet the Reopening Standards

The evidentiary record in this proceeding has been closed since 2008 and only opened for a limited purpose since 2010.[250] Therefore, in addition to meeting the normal contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) and the timeliness requirements, this motion to reopen the record to admit a new contention must meet all of the requirements in 10 C.F.R. § 2.326.[251] The motion to reopen must be timely, must address a significant safety or environmental issue, and it must demonstrate that a materially different result would have been likely had the newly proffered evidence been considered in the first instance.[252] One or more affidavits showing that the motion to reopen meets the above criteria must accompany the motion under 10 C.F.R. § 2.326(b). Each affidavit must contain statements from "competent

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[247] Petition at 9, 15-16.

[248] *See Marsh*, 490 U.S. at 374.

[249] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[250] June 4, 2008, Order; *Pilgrim*, CLI-10-11, 71 NRC at 307-08.

[251] *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668-69 (2008).

[252] 10 C.F.R. § 2.326(a)(1)-(3); *Oyster Creek*, CLI-08-28, 68 NRC at 668.

individuals with knowledge of the facts alleged" or experts in disciplines appropriate to the issues raised.[253] Moreover, "the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition."[254] The Commission has previously held that "[t]he burden of satisfying the reopening requirements is a heavy one, and proponents of a reopening motion bear the burden of meeting all of [these] requirements."[255] Thus, "[b]are assertions and speculation . . . do not supply the requisite support[, and a] mere showing of a possible violation is not enough."[256] The Petition does not demonstrate that it meets any of the requirements in 10 C.F.R. § 2.326. Therefore, the Board should deny the Petition under that section.

A. Timeliness

Under 10 C.F.R. § 2.326(a)(1), a motion to reopen a closed record "must be timely." As discussed above, the issues raised in the Petition are not timely.[257] Nonetheless, the regulation provides an exception to this rule when the motion to reopen raises "an exceptionally grave issue."[258] The Commission "anticipates that this exception will be granted rarely and only in truly extraordinary circumstances."[259] Moreover, the Commission has found that an exceptionally grave issue is one that calls "into question the safety of the licensed activity."[260]

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[253] 10 C.F.R. § 2.326(b). *See also Oyster Creek*, CLI-09-7, 69 NRC at 291-93.

[254] *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005).

[255] *Oyster Creek*, CLI-09-7, 69 NRC at 287 (citations omitted, alteration in original).

[256] *Id*. (citations omitted, first alteration in original).

[257] *See supra* at Section II.

[258] 10 C.F.R. § 2.326(a)(1).

[259] Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,536 (May 30, 1986).

[260] *Hydro Resources, Inc*., CLI-00-12, 52 NRC 1, 5 (2000).

To reopen a closed record, there must be a "sufficiently grave threat to public safety."[261] The Board has previously found this definition "binding."[262] Petitioners' Water Quality Contention alleges no concerns directly relevant to public safety. Consequently, it does not raise an exceptionally grave issue under Commission precedent.

Moreover, the Commission has held that conclusory language is insufficient to demonstrate an exceptionally grave issue.[263] Without explanation, Petitioners assert that the evidence supporting their contention raises "an exceptionally grave issue."[264] Therefore, the Petition also does not provide sufficient supporting evidence to establish an "exceptionally grave issue."

B. Significance

In addition, a motion to reopen must also address a "significant safety or environmental issue."[265] "[W]hen a motion to reopen is untimely, the § 2.326(a)(1) 'exceptionally grave' test supplants the § 2.326(a)(2) 'significant safety or environmental issue' test."[266] As discussed above, the claims in the Petition are untimely and do not raise an "exceptionally grave" issue.[267] Therefore, these portions of the Petition do not meet the requirements of 10 C.F.R. § 2.326(a)(2).

Moreover, even if the Petitioners had raised their issues in a timely fashion, they still do not allege a significant issue under section 3.236(a)(2). For environmental issues, the

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[261] 51 Fed. Reg. at 19,536 (citing *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 365 n.10 (1973)).

[262] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 29).

[263] *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-08, 74 NRC __, __ (Sep. 27, 2011) (slip op. at 14 n.44).

[264] Petition at 22.

[265] 10 C.F.R. § 2.326(a)(2).

[266] *Vogtle*, CLI-11-08, 74 NRC at __ (slip op. at 14 n.44).

[267] *See supra* at Sections II, IV.A.

Commission has found that the standard for showing significance to reopen a closed record is the same as the standard for supplementing an EIS.[268] In both instances, the proffered information "must paint a *seriously* different picture of the environmental landscape."[269] Because the Petitioners have not shown that any of the information supporting their new contention presents a seriously different view of the environmental impacts of renewing the Pilgrim license, none of the claims in the Petition meet the normal significance test under 10 C.F.R. § 2.326(a)(2).[270] On the contrary, the recent MOCZM and NMFS letters indicate that new information regarding Pilgrim does not provide a seriously different picture of the environmental impact of renewing the Pilgrim operating license.

C. Materially Different Result

Under 10 C.F.R. § 2.326(a)(3), a motion to reopen a closed record "must *demonstrate* that a materially different result would be or would have been *likely* had the newly proffered evidence been considered initially."[271] One board has explained that under this standard "[t]he movant must show that it is *likely* that the result would have been materially different, *i.e.*, that it is more probable than not that [the movant] would have prevailed on the merits of the proposed new contention."[272] The Commission has found an argument that simply states that new information "contradicts some of the Board's factual findings, and then states that this prong of the reopening test is met . . . falls far short of meeting" § 2.326(a)(3)'s requirements.[273] While "the quality of evidence presented for reopening must be at least of a level sufficient to

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[268] *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19, 29 (2006).

[269] *Id.* (emphasis in original).

[270] *See supra* at Section III.D.

[271] 10 C.F.R. § 2.326(a)(3) (emphasis added).

[272] *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 549 (2010).

[273] *Oyster Creek*, CLI-09-07, 69 NRC at 290-91 (internal quotations omitted).

withstand a motion for summary disposition, [the Commission has also] made clear that the reopening standard requires more."[274] Under that standard, "The evidence must be sufficiently compelling to suggest a likelihood of materially affecting the ultimate results in the proceeding."[275]

Petitioners allege that they meet this prong of the reopening standard because, "If Petitioners' information had been considered initially, there would be a different CZM certificate and § 401 certificate, compliance with state and federal water pollution control laws would be required, and the PNPS EIS would have given a vastly different view of the environmental impact of relicensing."[276] As discussed, above, the Applicant has provided valid CZMA and CWA certificates and permits, Petitioners have not identified any violations of water quality laws, and the EIS adequately describes the impacts of renewing the operating license for Pilgrim.[277] Consequently, the Petitioners have not shown that their claims could lead to any materially different result.

Moreover, Petitioners' statement only claims that if Petitioners prevailed, the proceedings' result would have been different. It does nothing to establish the likelihood of that result. Consequently, it rests on simple allegations that a materially different result would be likely in this proceeding should the Board grant their motion to reopen. But, the Commission has already held that this conclusory approach to addressing the reopening standards "falls far short" of meeting that section's requirements.[278] In addition, this Board has found that mere assertions of a materially different result, unsupported by additional reasoning or discussion, do

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[274] *Pilgrim*, CLI-12-10, 75 NRC __ (slip op. at 25).

[275] *Id*.

[276] Petition at 23.

[277] *See supra* at Section III.

[278] *Oyster Creek*, CLI-09-7, 69 NRC at 290-91 (internal quotations omitted).

not meet this prong of the reopening standard.[279] Rather, this approach "deprives [the Board of] the opportunity to evaluate either the foundation for their assertions or the 'likelihood of any such different result.' "[280] As a result, because the Petition only asserts that a different result would be likely if the Board granted the motion to reopen, the Petitioners have also not met the third prong of the reopening criteria.[281]

D. Affidavit

Finally, under 10 C.F.R. § 2.326(b), a petitioner seeking to reopen a closed record must support the request with an affidavit from an expert.[282] In that affidavit, "Each of the criteria [of 10 C.F.R. § 2.326(a)] must be separately addressed, with a specific explanation of why it has been met."[283] In an attempt to meet this high standard, the Petitioners provide a table referencing all of the affidavits they have previously filed in this proceeding to support reopening the record.[284] But this approach is inadequate for two reasons. First, these affidavits related to previously filed motions to reopen, therefore, they do nothing to establish the significance, timeliness, and materiality of the Water Quality Contention. Additionally, the Board has rejected a similar attempt by the Petitioners to use such a table to meet the requirements of § 2.326(b).[285] Practically, Petitioners' reliance on a table referencing where these important criteria were addressed underscores the fact that these affidavits do not "separately" and "specifically" address the reopening criteria at all, let alone with respect to the Water Quality Contention. As a result, they do not meet the requirements of 10 C.F.R. § 2.326(b).

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[279] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 24-25, 37).

[280] *Id*.

[281] Petition at 23.

[282] 10 C.F.R. § 2.326(b).

[283] *Id*.

[284] Petition at 23.

[285] *Pilgrim*, LBP-12-10, 75 NRC __, __ (slip op. at 24-25).

CONCLUSION

The Board should deny Petitioners' request to reopen the record and submit a new contention on lack of water quality certificates and violations of water quality standards. As discussed above, the claims are untimely, inadmissible, and do not meet the high Commission standards for reopening the record.

/Signed (electronically) by/
Maxwell C. Smith
Counsel for NRC Staff

Executed in Accord with 10 CFR 2.304(d)
Joseph A. Lindell
Counsel for NRC Staff

Executed in Accord with 10 CFR 2.304(d)
Anita Ghosh
Counsel for NRC Staff

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.
(Pilgrim Nuclear Generating Station)
License Renewal (Docket No. 50-293-LR)

NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's
Requests to Reopen the Record and File a New Contention on Water Quality

NRC Staff Exhibit A

"Letter from Andrew Gottlieb, Commonwealth of Massachusetts DEP to
Edward McSweeney, Wastewater Management Branch, U.S. EPA Region I (Jul. 1994)"

Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Protection

William F. Weld
Governor
Trudy Coxe
Secretary, EOEA
Thomas B. Powers
Acting Commissioner

July 8, 1994

Edward K. McSweeney, Chief
Wastewater Management Branch-WMB 368
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, MA 02203

Re: Water Quality Certification
NPDES Permit # MA0003557
Boston Edison Company: Pilgrim Nuclear Power Station
Permit Modification

Dear Mr. McSweeney:

Your office has requested the Department of Environmental Protection to issue a water quality certification pursuant to Section 401(a) of the Federal Clean Water Act ("the Federal Act") and 40 CFR 124.53 for the above referenced draft NPDES permit modification. The Department has reviewed the draft permit modification and has determined that the permit conditions will achieve compliance with sections 208(e), 301, 302, 303, 306, and 307 of the Federal Act, and with the provisions of the Massachusetts Clean Water Act, M.G.L. c.21, ss 26-53 and regulations promulgated thereunder. The Department hereby certifies the referenced permit modification.

Very truly yours,

Andrew Gottlieb
Director
MADEP-BRP
Office of Watershed Management

\pilgrmod

T. E. LANDRY
JUL 22 1994

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.
(Pilgrim Nuclear Generating Station)
License Renewal (Docket No. 50-293-LR)

NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's
Requests to Reopen the Record and File a New Contention on Water Quality

NRC Staff Exhibit B

"Letter from Thomas C. McMahon, Director of the Division of Water Pollution Control,
Commonwealth of Massachusetts Water Resources Division to
Claude Pursel, Assistant Vice-President, Boston Edison Company (Jul. 1970)"

The Commonwealth of Massachusetts
Water Resources Commission
State Office Building, Government Center
100 Cambridge Street, Boston 02202

OFFICE OF THE DIRECTOR
DIVISION OF WATER POLLUTION CONTROL

CAP
1.9.9
Copies to:
RWD
EFR
A. Schuetzen
Stolen Acres

July 31, 1970

Mr. Claude Pursel
Assistant Vice-President - Nuclear
Boston Edison Company
800 Boylston Street
Boston, Massachusetts 02199

RE: Pilgrim Nuclear Station
Plymouth, Massachusetts

Dear Mr. Pursel:

This is to certify that the Division has received reasonable assurance that operation of the proposed Pilgrim Station will not violate applicable water quality standards. These assurances have been provided in a preliminary engineering report submitted by the Boston Edison Company, and during subsequent meetings with the company and with the Administrative-Technical Advisory Committee pertaining to ecological and radiological studies before and after operation.

The Division has issued an interim permit for a new waste discharge outlet for this facility. This permit is valid for a period of three years from date of start-up. Should the before and after study indicate a need for further controls and/or treatment of the plant effluents such controls will be provided by Boston Edison.

The foregoing certification is to comply with Section 21 (B) (1) of the Federal Water Quality Improvement Act of 1970 (Public Law 91-224).

Very truly yours,

Thomas C. McMahon
Director

TCM:JRE:mlw

0215205330

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.
(Pilgrim Nuclear Generating Station)
License Renewal (Docket No. 50-293-LR)

NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's
Requests to Reopen the Record and File a New Contention on Water Quality

NRC Staff Exhibit C

"Letter from Thomas C. McMahon, Director of the Division of Water Pollution Control,
Commonwealth of Massachusetts Water Resources Division to
Claude Pursel, Assistant Vice-President, Boston Edison Company (Apr. 1971)"

Exh B to Entergy's
Supp. Response
(May 23, 2012)

The Commonwealth of Massachusetts

Water Resources Commission

Leverett Saltonstall Building, Government Center

100 Cambridge Street, Boston 02202

OFFICE OF THE DIRECTOR

DIVISION OF WATER
POLLUTION CONTROL

April 23, 1971

Boston Edison Company
800 Boylston Street
Boston, Massachusetts 02199

Re: Certification
Boston Edison Company
Plymouth Nuclear Power Plant
Plymouth, Massachusetts

Attention: Mr. C.A. Pursel
Assistant Vice President - Nuclear

Gentlemen:

In response to your request in a letter dated February 17, 1971, this Division has reviewed your application for certification of the Plymouth Nuclear Power Plant and the discharges associated therewith.

Following receipt of the application, the Division of Water Pollution Control caused publication of a notice in the Boston Globe and the Plymouth Old Colony Memorial Newspapers which invited interested persons to submit comments prior to April 2, 1971. On March 9 the notice was published in the morning and evening editions of the Boston Globe and on March 11 the notice was published in the Old Colony Memorial of Plymouth. Comments were received by the Division from two organizations and three individuals.

After careful review of these comments, other investigations and in light of the permit, together with the conditions incorporated therein, previously issued to Boston Edison Company on January 8, 1969 under the provisions of General Laws, Chapter 21, the Director deems it unnecessary to hold a public hearing on said application.

In accordance with the provisions of Section 21 (b) (1) of the Federal Water Quality Improvement Act of 1970 (Public Law 91-224), this Division hereby certifies that, based on information and investigations, there is reasonable assurance that the proposed activity will be conducted in a manner which will not violate applicable water quality standards adopted by this Division under authority of Section 27 (4) of Chapter 21 of the Massachusetts General Laws, said water quality standards as filed with the Secretary of State of the Commonwealth on March 6, 1967.

This certification is hereby issued subject to the conditions itemized in the water use permit issued by this Division for the Plymouth Nuclear Power Plant. (A copy of said permit is hereto attached, marked "A" and made a part hereof).

Should any pollution arise through or because of the operation of the proposed facility or through failure to comply with this Division's Rules and Regulations pertaining to waste disposal, the Division will direct that the condition be corrected. Non-compliance on the part of the applicant will be cause for this Division to recommend the revocation of the license issued therefor and/or to take such other action as authorized by the General Laws of the Commonwealth.

Very truly yours,

Arthur W. Brownell, Chairman
Water Resources Commission

Thomas C. McMahon
Director

TCM:WAS:sk

cc: Chief, Permits Branch, Operations Division, Corps of Engineers
424 Trapelo Road, Waltham, Mass. 02154
Associate Commissioner, Waterways Division, Department of Public Works,
100 Nashua Street, Boston, Mass. 02114

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.
(Pilgrim Nuclear Generating Station)
License Renewal (Docket No. 50-293-LR)

NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's Requests to Reopen the Record and File a New Contention on Water Quality

NRC Staff Exhibit D

"Letter from Edward McSweeney, Wastewater Management Branch, U.S. EPA Region I to E.T. Boulette, Senior Vice President, Boston Edison, Pilgrim Nuclear Power Station (Jun. 1995)"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

June 30, 1995

E.T. Boulette, PhD
Senior Vice President - Nuclear
Boston Edison
Pilgrim Nuclear Power Station
Rocky Point Road
Plymouth, Massachusetts 02360

Re: Pilgrim Nuclear Power Station (PNPS),
NPDES Permit No. MA0003557
Use of Tolytriazole as a Corrosion Inhibitor

Dear Dr. Boulette:

In your letter of May 22, 1995, you have requested approval to add Tolytriazole, a corrosion inhibitor, to the reactor building and turbine building closed cooling-water systems; station-heating and the emergency diesel generator cooling-water systems. This material has been recommended for use by the Institute of Nuclear Power Operations (INPO) for corrosion control of copper alloys.

Initial conditioning of the cooling systems would require a Tolytriazole maximum concentration 20 mg/l, after which concentrations would be maintained at 2 mg/l. The maximum concentration would be in the neutralizer sump.

At the facility, Tolytriazole would be discharged from PNPS' Outfall 011 only during scheduled plant outages, and during any unplanned system maintenance evolutions. In a "worst-case scenario", 200 GPM (maximum flow) of the Tolytriazole effluent would be diluted with 1500 GPM (minimum flow) of service water, prior to discharge to Cape Cod Bay. The Tolytriazole concentration of the effluent would be approximately 2.35 mg/l. If one of the circulating water pumps is operational during an outage, the Tolytriazole discharge would further be diluted with 155,000 GPM of Bay water, yielding an effective Tolytriazole discharge concentration of 0.03 mg/l.

Acute and chronic toxicity testing results in the vendor's Material Safety Data Sheets (MSDS) on Tolytriazole [or COBRATEC, TT-50-S], indicate that the Tolytriazole concentration in a "worst-case scenario" discharge is below both the acute and chronic toxicity levels.

Based on actual acute and chronic toxicity testing results, the "worst-case scenario" discharge concentrations, additional dilution from the circulating water pump, the use of Tolytriazole is approved at the requested dosage rate. Any change in the dosage rate or active ingredient concentration must be approved by EPA and the State prior to usage.

Should you have any questions, please contact Nick Prodany of my staff at 617-565-3587.

Sincerely,

Edward K. McSweeney

Edward K. McSweeney, Chief
Wastewater Management Branch

cc: R. Anderson, PNPS
Paul Hogan, MA DEP
S. Silva, EPA
Region I, NRC
Document Control Desk, NRC

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.
(Pilgrim Nuclear Generating Station)
License Renewal (Docket No. 50-293-LR)

NRC Staff's Answer to Jones River Watershed Association and Pilgrim Watch's Requests to Reopen the Record and File a New Contention on Water Quality

NRC Staff Exhibit E

"Agreement between EPA and Massachusetts Department of Water Pollution Control (1973)"

JOINT PERMITS

AGREEMENT

This Agreement is made this 18th day of March, 1973 between the Division of Water Pollution Control of the Commonwealth of Massachusetts (the "Commonwealth") and the New England Regional Office of the United States Environmental Protection Agency ("EPA"). Until March 18, 1973 the Commonwealth has been granted interim authority to issue permits by EPA pursuant to §402(a)(5) of the Federal Water Pollution Control Act of 1972 (the "Act"). As of March 19, 1973 such interim authority terminates by operation of law and EPA will have authority to issue permits pursuant to §402(a)(1) of the Act. The Commonwealth intends to apply for final approval of a permit issuing program pursuant to §402(b) of the Act as soon as possible. In order to minimize confusion concerning the operation of the permit program authorized by the Act (the "NPDES Program"), to further Commonwealth and EPA co-ordination of water pollution control efforts, and to attack water pollution problems in a systematic and efficient way, the Commonwealth and EPA hereby agree as follows with respect to operation of the NPDES Program between March 19, 1973 and the date of final approval of the Commonwealth's permit program by EPA, if such approval is granted.

I. Priorities

(a) The Commonwealth and the EPA shall forthwith form a Technical Committee from their respective staffs. It will be the responsibility of the Technical Committee to:

1) recommend the priorities of joint permit issuance, and select the permits to be issued, consistent with

availability and applicability of necessary effluent limitations, water quality standards and Commonwealth and EPA policies in this regard;

2) determine the form, terms and conditions of the draft joint permit, public notice and fact sheet (if any);

3) determine the final form, terms and conditions of the joint permit, taking into consideration any applicable information and testimony received following the expiration of the period during which public comment may be received on a proposed joint permit.

(b) The Commonwealth and EPA agree to proceed forthwith with the drafting and issuance of joint permits to the applicants listed in Exhibits A (industrial cooling water), B (power plants), C (remaining oil terminals) and D (paper mills) attached hereto; drafting of these permits will be the first responsibility of the Technical Committee.

2. Procedure for Issuance of Permits

Permits shall be processed in the following manner:

(a) After selection of a permit for issuance and drafting of the proposed permit by the Technical Committee, the proposed joint permit shall be sent by EPA to the Commonwealth with a request for certification under §401 of the Act. The Commonwealth shall provide, deny, or waive such certification by the later of (i) 20 days after the date of any public hearing held with respect to such permits; or (ii) in the event a hearing is not held with respect to such permit, 20 days after

the close of the 30 day notice period of proposed issuance of the permit. Permits which have already been sent to the Commonwealth by EPA with a request for certification shall be treated as provided in this paragraph. Failure by the Commonwealth to take action with respect to certification shall be deemed a waiver.

(b) Permits will be selected for joint notice of proposed issuance or joint notice of public hearing by agreement of the Technical Committee and all parties agree to use their best efforts to reach agreement whenever possible. In the event the Technical Committee cannot agree as to permit selection or permit terms and conditions, either the Commonwealth may proceed with such action as it deems appropriate under Massachusetts law, or EPA may proceed with issuance or denial of the permit under the Act. In the latter event, EPA shall send the proposed draft permit to the Commonwealth with a request for certification, and the Commonwealth shall provide, deny or waive such certification within 30 days of the request.

(c) After joint selection and drafting of permits for notice of proposed issuance, such notice shall be prepared by the Technical Committee and circulated by EPA as a joint notice of proposed issuance or public hearing by EPA and the Commonwealth. The form of such notice, and the joint conduct of any public hearing held pursuant thereto, shall be agreed on by the Technical Committee but shall conform to applicable federal and state laws and regulations. It is the intention of the parties that a joint Commonwealth-EPA permit will be issued.

(d) The form for the joint permits to be issued by EPA and the Commonwealth shall be basically that set forth as Exhibit E hereto, with such modifications thereto as the Technical Committee may from time to time agree upon. Permits issued in such form shall constitute NPDES permits issued under the Act, and shall also constitute permits issued under Massachusetts law. By participating in the issuance of such joint permits, however, EPA does not acknowledge that the Commonwealth currently has the legal authority necessary for final approval of its permit program under §402 of the Act. Following joint public notice and hearing, a joint permit shall be issued or denied provided there is mutual agreement of the parties. Such issuance or denial shall conform in every respect with applicable requirements of Federal and Commonwealth law. In the event the parties cannot agree, the Commonwealth and EPA may each take such action as is authorized under applicable law, including the separate issuance or denial of permits; provided, however, that the Commonwealth shall in any event provide, deny, or waive certification within the time period set forth in paragraphs 2(a) and 2(b) hereof.

3. General Authority Not Affected

Nothing in this Agreement shall affect the powers, rights, or duties of either the Commonwealth or EPA under applicable laws and regulations, and both parties shall retain full discretion to issue or deny permits, enforce outstanding orders, and take other action as they may find necessary or desirable to carry out their regulatory

or other responsibilities. The Commonwealth intends to apply for final approval of its permit program at the earliest possible date, and EPA agrees to work with the Commonwealth to assist in the development of an approvable program, but this Agreement itself shall not in any way constitute final approval of any part of such a program under the Act.

4. Termination

This Agreement shall terminate upon (i) final approval by the Administrator of EPA of the Commonwealth's permit program pursuant to §402(b) of the Act; or (ii) ten days written notice by either party to the other of termination. Termination shall not affect, however, the requirements with respect to state certification under §401 of the Act set forth herein.

Thomas C. McMahon, Director
Division of Water Pollution Control
Commonwealth of Massachusetts

John A. S. McGlennon
Regional Administrator
Environmental Protection Agency

Applicant's Na	EPA No.	Location (City)
Adams Plastics	11339	Holyoke
American Standard	10044	Monson
Clinton Silk Mill	11558	Holyoke
Gem Industries	11336	Gardner
Greenfield Tap & Die	10534	Greenfield
J. Rubin Sons, Inc.	11553	Chicopee
John S. Lane & Son #1	11383	Westfield
S. Bent & Brothers	11389	Gardner
Springfield Moulders, Inc.	11294	Monson
Vistron Corp.-Pro Brush	10545	Florence
Hyde Manufacturing Company	10729	Southbridge
Boyden Plastics	11388	Taunton
Brockton Taunton Gas Co.	10727	Taunton
Cincinnati Milacron	10195	Worcester
Fall River Tool & Dye Co.	11557	Fall River
Federal-Mogul Corp.	10099	Taunton
Hammond Plastics	11384	Worcester
Mass. Electric Co.	10938	Worcester
Nabisco, Inc.	10750	Mansfield
Prest-Wheel, Duralite Div.	11467	South Grafton
Stedfast Rubber Co.	11404	North Easton
Synthetic Yarns - DW Rich	10600	East Taunton
T. J. Holmes Co., Inc.	10568	Norton
United States Steel	10657	Worcester

Applicant's Name	EPA No.	Location (City)
Abrasive Products	11145	Braintree
American Can Company	10022	Needham
Archer Rubber	11581	Milford
Avco Everett Research	10042	Everett
Avco Systems Div.	10018	Wilmington
Barnstead Company	10028	Boston
Barry Div.-Barry Wright	11266	Watertown
Berkshire Hathaway	10047	New Bedford
Bird & Son Paper Mill	10076	East Walpole
Canal Marine	11456	Sandwich
Carling Brewing Co.	10198	Natick
Chase and Sons, Inc.	10217	Randolph
Columbia Electron. Cable	11552	New Bedford
Cornell-Dubilier Electric	10251	New Bedford
Dennison Manufacturing	11425	Framingham
Dewey & Almy Chem.-W.R.	10126	Cambridge
Factory Mutual Engr. Corp.	10082	Norwood
General Electric - Ashland	10214	Ashland
General Electric - USAF Plant	10259	Everett
General Tire and Rubber	10384	Reading
Great A&P Tea Co.	10679	Boston
Hume Pipe Corp.	10827	Swampscott
Issoksons Cleaners, Inc.	10119	Tisbury
J. H. Winn-McCord Corp.	10524	Winchester

Applicant's Name	EPA No.	Location (City)
L. B. Evans' Son Company	11451	Wakefield
Lepages - Gloucester	11580	Gloucester
M.B.T.A. - Charlestown	11446	Charlestown
Mass. Institute of Technology	10585	Cambridge
Monsanto Co.	10383	Everett
Nantucket Gas & Electric	10751	Nantucket
Natick Lab USA	10903	Natick
Naval Hospital Boston	11034	Chelsea
New Bedford Gas & Edison	10737	New Bedford
Polaroid Corp.	11141	Waltham
Proctor-Silex, Inc.	11546	Salem
Quincy Market Cold Storage	10510	Watertown
R.E.C. Manufacturing Corp.	11515	Holliston
Raytheon Co.	10685	Norwood
Raytheon Co.	10615	Waltham
Raytheon Co., Spencer Lab	10696	Burlington
Salt Water Trust Cordage	10725	Plymouth
Samuel Cabot	10001	Chelsea
Shetland Properties	11293	Salem
Spir-It, Inc.	11123	Malden
St. Regis Paper	11283	Newton
SW Industries, Inc.	10546	Newton
Teledyne-Rodney Metals	11689	New Bedford
USM Corp. - Machinery Div.	11026	Beverly

Applicant's Na	EPA No.	Location (City)
Western Electric NE Service	10536	Watertown
Westinghouse Electric Co.	10522	Boston
Ace Plastics	11598	Haverhill
Aero Plastics	10048	Leominster
Amoco Chemicals	10026	Shrewsbury
Andover Industrial Center	11391	Andover
Avco Systems Div.	10329	Lowell
Colonial Press, Inc. - Adams	11341	Clinton
Colonial Press, Inc. - Green	11342	Clinton
Converse Rubber Co.	19881	Andover
Davis & Furber Machine Co.	11235	North Andover
Doreen Brush Company	11607	Leominster
Educator Biscuit Co.	11534	Lowell
General Electric - Lowell	10250	Lowell
General Latex & Chemical	10574	Billerica
General Tire & Rubber Co.	10641	Lawrence
General Tire & Rubber Co.	10185	Lawrence
Great American Chemical	10662	Fitchburg
Injectronics	11679	Clinton
Island Plastics - Servco	11605	Lawrence
Leonard I. Shankman Mgt.	10138	Lawrence
Murray Printing Company	11133	Forge Village
New England Milk Produce	11267	Andover
North American Chemical	10519	Lawrence

Applicant's Na	EPA No.	Location (City)
Pandel, Inc.	10841	Lowell
Standard Pyroxoloid Corp.	10147	Leominster
Star Mfg. Co.	11545	Leominster
Steam Associates	10050	Lowell
Tucker Manufacturing Co.	11114	Leominster
Van Brode Mfg.	11597	Clinton
Vernon Plastics Corp.	11516	Haverhill
Vulcan Corp.	10535	Amesbury
Wamesit Power Company	11517	Lowell
Western Electric - New England	11177	Southborough
General Photo Products	11658	Williamstown
W. R. Grace & Co.	11618	Adams

EXHIBIT B

POWER PLANTS

Applicant's Name	EPA #	Location (City)
Holyoke Gas & Electric	10709	Holyoke
Holyoke Water Power - Mt. T	10838	Holyoke
Holyoke Water - Riverside	10934	Holyoke
Western Mass. Electric	10673	West Springfield
Fall River Electric Light	10888	Fall River
Montaup Electric - Somerset	10700	Somerset
New England Power Co.- Uxbridge	10708	Uxbridge
New England Power - Brayton	10120	Somerset
Taunton Light - Cleary Sta.	11180	Taunton
Taunton Light - W. Water Sta.	11182	Taunton
Boston Edison - Edgar Sta.	10981	North Weymouth
Boston Edison - L St.	10989	South Boston
Boston Edison - Mystic Sta.	10996	Everett
Boston Naval Shipyard	10508	Boston
Braintree Electric - Allen St.	11184	Braintree
Braintree Electric - Potte	11161	Braintree
Cambridge Electric - Black	10735	Cambridge
Cambridge Electric - Kenda	10734	Cambridge
Canal Electric - Canal Plt.	10731	Sandwich
M.B.T.A. - Lincoln Power Sta.	11445	Boston
M.B.T.A. - South Boston	11444	South Boston
New England Power - Salem	10703	Salem
Yankee Atomic Electric - Rowe	10590	Rowe
Boston Edison - Pilgrim N.	10133	Plymouth
Fitchburg Gas & Electric	10611	Fitchburg
Mass. Electric	10647	Lynn

EXHIBIT C

South Weymouth NAS	
Otis AFB	
Westover AFB	
Hanscom Field (USAF/Massport)	Bedford
Logan Airport (Massport)	East Boston
Penn Central Trans. Co. - Beacon Park	Boston
Boston & Maine Corp. - North Station	Charlestown
Boston & Maine Corp.	Greenfield
[redacted]	[redacted]
Union Petroleum Corp.	Revere
American Oil Co./Northeast Pet. Corp.	Chelsea (111 Eastern Ave.)
White Fuel Corp.	South Boston
Quincy Oil Corp.	Quincy
Mobil Oil Corp.	Quincy
Cities Service Oil Co.	Braintree
Shell Oil Co.	Fall River
Glenn Petroleum Corp.	New Bedford
Campbell Oi. Co. - Mobil	Tisbury
R.M. Packer Co. - Texaco	Tisbury
Exxon Corp. (Humble Oil Co.)	Everett
Exxon Corp. (Humble Oil Co.)	Dracut
[redacted]	[redacted]
Jet Lines Inc.	Ludlow
Mobil Oil Corp.	Springfield
Mobil Oil Corp.	Marlboro
[redacted]	[redacted]
Shell Oil Co.	West Boylston

EXHIBIT D

Paper Mills

10445	West Dudley Paper - R.I. Cardboard West Dudley
10691	Stevens Paper Mills, Lower Mill Westfield
10146	Seaman Paper Co. Baldwinville
10483	Stevens Paper Mills, Upper Mill Westfield
10870	Texon, Inc. South Hadley
10852	Parsons Paper Co., NVF Corp. Holyoke
10884	Texon, Inc., Russell Plant Russell
10837	Merrimac Paper Co. Lawrence
10205	Brown Co., Eagle A Div. Holyoke
10628	Hollingsworth & Vose Co. West Groton
10440	Fitchburg Paper Co., Litton Industries Fitchburg
10157	Sonoco Products Co., Plant #60 Holyoke
10012	Hazen Paper Co. Holyoke
10828	IBM Corp. Concord
	Romar Tissue Hardwick
	Marcal Paper South Hadley
	Continental Can Haverhill

10215	Diamond National Corp. Palmer
10885	Texon, Inc. Holyoke
10798	Lawrence Packaging Corp. Lawrence
10297	Crane & Co. Dalton
10405	Rising Paper Co. Housatonic
	Pepperell Paper Pepperell
10755	Mead Corp. - Hurlbut Paper Laurel South Lee
10902	Mead Corp. - Hurlbut Paper Willow South Lee
	Pleasant Valley Paper Lawrence
	Schweitzer Division Kimberly -Clark Lee
	Valley Paper Holyoke
	Esleeck Mfg. Montague
	Strathmore Paper Montague
	Deerfield Glassine Monroe
	Westfield River Paper Lee
	Westfield River Paper Russell
	Mead Corp. Lawrence

Millers Falls Paper
Erving

Erving Paper
Erving

Weyerhauser
Fitchburg

Groton Leatherboard
West Groton

Baldwinville Products
Baldwinville

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR GENERATION	)	
COMPANY AND ENTERGY NUCLEAR	)	Docket No. 50-293-LR
OPERATIONS, INC.	)	
	)	
(Pilgrim Nuclear Generating Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S ANSWER TO JONES RIVER WATERSHED ASSOCIATION AND PILGRIM WATCH'S REQUESTS TO REOPEN THE RECORD AND FILE A NEW CONTENTION ON WATER QUALITY" have been served upon the following by the Electronic Information Exchange this 7th day of June, 2012:

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(VIA INTERNAL MAIL ONLY)

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/Signed (electronically) by/
Maxwell C. Smith
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th Day of June 2012