

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY
COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING
BOARD**

In the Matter of

All Operating Boiling Water Licensees
With Mark I and Mark II Containments: Order
Modifying License with regard to Reliable
Hardened Containment Vents (Effective
Immediately)

Docket No. EA-12-050
ASLB No. 12-918-01-EA-BD01

All Power Reactor Licensees
And Holders of Construction Permits In
Active or Deferred Status: Orders Modifying
Licenses with Regard to Reliable Spent Fuel
Pool Instrumentation (Effective Immediately)

Docket No. EA-12-051
ASLB No. 12-918-01-EA-BD01

July 10, 2012

**PILGRIM WATCH MOTION FOR LEAVE TO REPLY TO ENTERGY'S
COMMENTS ON NRC STAFF RESPONSE TO THE BOARD ORDER REGARDING
PETITIONS UNDER 10 C.F.R § 2.206 (July 3, 2012)**

Pilgrim Watch ("PW") respectfully requests that it be allowed to submit the attached three-page reply to *Entergy's Comments on NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R § 2.206*. Entergy's Comments selected what Entergy presumably believes are the best four of the one hundred forty-two 2.206 petitions which the Staff says were "partially granted."¹

PW could not reasonably have anticipated that Entergy would mischaracterize all four. The Board's May 17, 2012 Order directed the Staff to list occasions since 1975 "on which the

¹ By the Staff's count, 245 of the 387 petitions the Staff examined were simply denied.

NRC official to whom a Section 2.206 petition was submitted granted the substantive relief sought in the petition.” (Order, 1-2)

The relief sought by a petitioner often is in several steps. The initial step(s) are procedural; they walk the NRC through the bases for the Petition (the safety problem), and may ask the NRC to investigate. The latter steps are substantive, and ask the NRC to do what needs to be done to fix the problem. Even if granted, the initial “procedural steps,” do not provide the substantive relief sought in the Petition. What Entergy's Comments call substantive relief consists of NRC sending a letter or some similar paper action, granting an initial procedural step but not the substantive request requested by the Petitioner. The purpose of the Board's request was to see where, if at all, Staff provided substantive relief. The four examples cited by Entergy did not do so.

Respectfully submitted,

(Electronically signed)

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July 10, 2012

Certificate of Counsel

On July 9, 2012, Pilgrim Watch notified Counsel for Entergy and NRC Staff that Pilgrim Watch intended to file a *Motion For Leave To Reply To Entergy's Comments On NRC Staff Response To The Board Order Regarding Petitions Under 10 C.F.R § 2.206 To Strike Staff Response of July 3, 2012*. Counsel for Entergy advised that they do not oppose the Motion but depending on the substantive arguments raised in the Motion and accompanying response, they may decide to seek leave to file a response providing its position on the substance of any issues raised in the Motion. NRC Staff believes it does not have sufficient information to take a position on the motion but, like Entergy, may decide to seek leave to file a response providing its position on the substance of any issues raised.

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ALL OPERATING BOILING WATER)
REACTOR LICENSEES WITH MARK I)
AND MARK II CONTAINMENTS)
)

AND

Docket Nos. EA-12-050 and EA-12-051

ALL POWER REACTOR LICENSEES)
AND HOLDERS OF CONSTRUCTION)
PERMITS IN ACTIVE OR DEFERRED)
STATUS)
)
(Fukushima-Related Orders Modifying)
Licenses))

July 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that copies of *Pilgrim Watch Motion For Leave To Reply To Entergy's Comments On NRC Staff Response To The Board Order Regarding Petitions Under 10 C.F.R § 2.206 (July 3, 2012)* were served upon the following persons by Electronic Information Exchange (EIE) which to the best of my knowledge resulted in transmittal of the foregoing to the following persons.

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ATTACHMENT

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§ 2.206 (July 3, 2012)**

Entergy's Comments on *NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R § 2.206* (Entergy's Comments") said that Entergy "has reviewed the Staff submission." (Entergy's Comments, 1) Presumably as a result of that review, Entergy discussed four "instances" in which, according to Entergy, "The Commission granted substantive relief." (Id., 2)

Although these are likely the best "instances" that Entergy could find to support its position, Entergy mischaracterized all four. In reality none granted substantive relief.

In DD-06-01 ("Fire Protection"), the Petitioners asked the NRC to collect specific information at Shearon Harris (SHPP) regarding *combustible* fire barriers that NRC tests over many years showed did not meet its fire requirements; to require justification for operation in noncompliance with fire regulations; and, after taking these preliminary procedural steps that would substantiate Petitioner's contention, to provide substantive relief by ordering a suspension of license until SHPP demonstrated that it was in compliance with fire protection regulations. The Director's decision simply said that the NRC Staff planned to issue a Generic Letter; deferred to the licensee to self-evaluate its fire safety, implement compensatory (interim) measures and resolve non-compliance within a "reasonable timeframe." No end date was stipulated, and the substantive relief the Petitioners requested was denied. Subsequent reports show that SHPP is not yet in compliance with fire safety regulations.

Entergy's second example is DD-11-05, "Possession of Depleted Uranium." The petition there said that the U.S. Army violated the law by, e.g., possessing and using

depleted uranium without a license, and asked the Commission to impose a civil penalty, earmarked for site remediation from use of said materials. The Commission found that the Army had done what the petitioner alleged, and simply issued a “Notice of Violation.” The NRC specifically refused to impose any penalty or substantive relief; and, so far as can be told, NRC did nothing more.

The third “instance” is DD-11-05 (Steam Safety Relief Valves). There the NRC inspection showed that the issues raised by the Petitioner existed, so the NRC wrote an “NRC Integrated Inspection Report..., documented an LER closeout review and two Licensee Identified Violations” and said that “no further action is needed.” The petitioner’s requests for a confirmatory order bringing the reactor to cold shut down, a civil penalty, and removal of the responsible Entergy employees from NRC licensed activities were denied. Once again, NRC’s response was paper-pushing while denying the requested substantive relief.

Entergy’s last example, DD-00-05, “Operation Beyond Design Parameters,” likewise similarly did not provide substantive relief. The Petitioner alleged that Hatch was being operated outside its design bases (GDC 60) because the material condition of the piping, tanks, and other components of the liquid and gaseous radwaste system were not being properly maintained and inspected. The Director’s decision pushed paper. The NRC requested information from the licensee, took the initial procedural steps; and failed to take substantive action, instead said that nothing was amiss. At the time of the decision, Braidwood NPP in Illinois was leaking from the same lines identified by Mr. Lochbaum at Hatch. Had the Director Decision at Hatch taken substantive action to correct the deficiencies the petitioner identified, that might have stopped the release of 6

million gallons of tritiated-laden water released offsite at Braidwood NPP. As for Hatch, months after the Director's 2.206 decision, on-going contaminated leaks from components identified in Mr. Lochbaum's 2.206 petition continued.

At the beginning of its Comments, Entergy correctly admitted that "if the NRC regularly found the need to take such actions [actions requested in 2.206 petitions], it would be evidence of a significant breakdown in the Commission's regulatory process." (Entergy Comments, 2) PW agrees. The problem, that Entergy and the NRC Staff continue to ignore, is that the NRC's regular failure to take substantive action in response to a 2.206 petition, particularly when coupled with the fact that any such denial leaves the public without any recourse, is also "evidence of a significant breakdown in the Commission's regulatory process."

Respectfully submitted,

(Electronically signed)

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