

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS

Dale E. Klein, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter B. Lyons

DOCKETED 10/10/06
SERVED 10/10/06

_____)
In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-293-LR
)
(Pilgrim Nuclear Power Station))
_____)

_____)
In the Matter of)
)
ENTERGY NUCLEAR VERMONT)
YANKEE, LLC, and)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-271-LR
)
(Vermont Yankee Nuclear Power Station))
_____)

CLI-06-26

ORDER

In these license renewal proceedings, the Massachusetts Attorney General (Massachusetts AG) has filed a request for hearing and petition for leave to intervene. The hearing requests included a "Petition for Backfit Order." By these petitions, the Massachusetts AG requests the Commission to initiate proceedings to change the current storage configuration in the Pilgrim Nuclear Power Station and Vermont Yankee Nuclear Power Station spent fuel pools. In June 2006, the Secretary of the Commission referred the Massachusetts AG's hearing requests to the Atomic Safety and Licensing Board Panel, without any reference

to or distinction drawn for a “Petition for a Backfit Order.”¹ The Licensing Boards in these proceedings do not appear to contemplate taking action on the backfit petitions, and counsel for the Massachusetts AG seemingly believes that the backfit petitions remain pending before the Commission.²

Our rules governing adjudicatory proceedings, found in 10 C.F.R. Part 2, do not provide for the filing of a “Petition for Backfit Order” with the Commission. The Massachusetts AG’s petitions take issue with the current storage configuration in the Pilgrim and Vermont Yankee spent fuel pools, configurations authorized by earlier license amendments. The petitions request the Commission to require each of the spent fuel pools to return “to its original low-density storage configuration and [to] us[e] dry storage for any excess fuel.”³ The action that the Massachusetts AG effectively seeks in each case – an order modifying the license based upon an alleged potential hazardous condition in the current spent fuel pool – amounts to a request for agency enforcement action, a request not suitable for a license renewal adjudication

¹ See Memorandum (June 6, 2006)(re: Requests for Hearing With Respect to the License Renewal Application for the Pilgrim Nuclear Power Station); Memorandum (June 7, 2006)(re: Requests for Hearing with Respect to the License Renewal Application for the Vermont Yankee Nuclear Power Station).

² See, e.g., Mass AG’s Reply to Entergy’s and NRC Staff’s Responses to Hearing Request and Petition to Intervene with Respect to Pilgrim License Renewal Proceeding (June 29, 2006) at 3. Mass AG’s Reply to Entergy’s and NRC Staff’s Responses to Hearing Request and Petition to Intervene with Respect to Vermont Yankee License Renewal Proceeding (June 30, 2006) at 3.

³ See Massachusetts AG’s Request for a Hearing and Petition for Leave to Intervene with Respect to Entergy Nuclear Operations Inc.’s Application for Renewal of the Pilgrim Nuclear Power Plant Operating License and Petition for Backfit Order Requiring New Design Features to Protect Against Spent Fuel Pool Accidents (May 26, 2006) at 50; Massachusetts AG’s Request for Hearing and Petition for Leave to Intervene with Respect to Entergy Nuclear Operations Inc.’s Application for Renewal of the Vermont Yankee Nuclear Power Plant Operating License and Petition for Backfit Order Requiring New Design Features to Protect Against Spent Fuel Pool Accidents (May 30, 2006) at 49.

but perhaps suitable for consideration under 10 C.F.R. § 2.206.⁴

Accordingly, the Commission *denies* the Massachusetts AG's petitions for backfit order. If the Massachusetts AG wishes to pursue this matter, he may file a request for NRC action under section 2.206, pursuant to the requirements outlined in that section.⁵

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of October 2006.

⁴ Section 2.206 allows "any person" to "file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper." Section 2.206 specifies that such requests must be filed with the NRC's Executive Director of Operations, who will refer the request to the appropriate NRC office director.

⁵ We note that the Massachusetts AG recently filed a petition for rulemaking, raising related spent fuel pool arguments under the National Environmental Policy Act.