

August 14, 2006

DOCKETED  
USNRCUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

August 14, 2006 (2:33pm)

Before Administrative Judge Nicholas TrikourosOFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of )

Entergy Nuclear Generation Company and )  
Entergy Nuclear Operations, Inc. )

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

(Pilgrim Nuclear Power Station) )

ENTERGY'S RESPONSE TO MOTIONS  
FOR DISQUALIFICATION OF JUDGE NICHOLAS TRIKOUROS

## I. INTRODUCTION

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (hereinafter collectively referred to as "Entergy") hereby respond to the motions for the disqualification of Judge Nicholas Trikouros filed August 4, 2006, by the Massachusetts Attorney General<sup>1</sup> and Pilgrim Watch.<sup>2</sup> Both motions seek to disqualify Judge Trikouros on the basis of some work that was performed for Entergy Northeast by a consulting company, Panlyon Technologies ("Panlyon") in the 2004 and early 2005 timeframe with which Judge Trikouros had modest involvement. The work, which concerned the "time available for recovery actions given a loss of coolant" from the spent fuel pool due to "potential malicious acts,"<sup>3</sup> was performed for a nuclear power plant other than the Pilgrim Nuclear Power Station ("Pilgrim") – indeed, for a pressurized water reactor ("PWR") and not a boiling water reactor ("BWR") like Pilgrim. For

<sup>1</sup> Massachusetts Attorney General's Motion for Disqualification of Judge Nicholas Trikouros (Aug. 4, 2006) ("Mass. AG Motion").

<sup>2</sup> Motion on Behalf of Pilgrim Watch for Disqualification of Judge Nicholas Trikouros in the Pilgrim Nuclear Power Station Re-Licensing Proceeding (Aug. 4, 2006) ("Pilgrim Watch Motion").

<sup>3</sup> Disclosure Statement of Judge Nicholas Trikouros Regarding the Pilgrim License Renewal Application, Mass. AG Motion, Exh. 1; Pilgrim Watch Motion, Exh. A ("Disclosure Statement").

TEMPLATE = SECY-037

SECY-02

the reasons set forth herein, Judge Trikouros' modest involvement in the work that was performed by Panlyon for Entergy Northeast does not mandate his disqualification as a member of the Atomic Safety and Licensing Board ("Licensing Board" or "Board") for the renewal of the Pilgrim operating license.

Because Panlyon's work was for a plant other than Pilgrim, it does not concern the matter before the Licensing Board and thus does not mandate Judge Trikouros' disqualification from the Board. In addition, Judge Trikouros' involvement in the work appears relatively insubstantial. Furthermore, as argued by both Entergy and the Petitioners, the ability to recover from a loss of spent fuel coolant is dependent on a plant's design features.<sup>4</sup> Indeed, the Petitioners themselves claim that the capability of a BWR plant (such as Pilgrim) to recover from a loss of spent fuel coolant differs greatly from the ability of a PWR plant (such as the plant for which Panlyon performed its work) to recover from a similar loss of spent fuel coolant.<sup>5</sup> Accordingly, the issues in dispute here differ from those involved in Panlyon's work for Entergy Northeast. Finally, Panlyon's work concerned the loss of spent fuel coolant resulting from "potential malicious acts"<sup>6</sup> which under Commission precedent is not subject to litigation in license renewal proceedings. Hence, the issue evaluated by Panlyon is not even properly before the Board.

In short, the matter is different, the issues are different, and the issue studied in the work performed by Panlyon is not even properly before the Board. Accordingly, the motions provide no basis to disqualify Judge Trikouros.

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<sup>4</sup> See, e.g., Prehearing Tr. at 249-51 (see note 12 *infra* for full citation); Mass. AG Pet. at 24 n. 9 (see note 10 *infra* for full citation).

<sup>5</sup> Mass. AG Pet. at 24 n. 9 (see note 10 *infra* for full citation).

<sup>6</sup> Disclosure Statement.

## II. PROCEDURAL BACKGROUND

Entergy submitted its Application, dated January 25, 2006, requesting renewal of Operating License DPR-35 for Pilgrim (the "Application"). On March 27, 2006, the Nuclear Regulatory Commission ("NRC" or "Commission") published a Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing ("Notice") regarding Entergy's application. 71 Fed. Reg. 15,222 (Mar. 27, 2006). The Notice permitted any person whose interest may be affected to file a request for hearing and petition for leave to intervene within 60 days of the notice. Id.

On May 25, 2006, Pilgrim Watch filed its petition to intervene<sup>7</sup> seeking the admission of five contentions, including Pilgrim Watch Contention 4 alleging the need for the Environmental Report ("ER") to address the environmental impacts of severe spent fuel pool accidents. The NRC Staff and Entergy filed their Answers to Pilgrim Watch's Petition on June 19 and June 26, 2006 respectively.<sup>8</sup> Both the Staff and Entergy acknowledged Pilgrim Watch's standing but determined that Pilgrim Watch had not submitted an admissible contention. Pilgrim Watch filed its replies to the NRC Staff and Entergy Answers on June 27, 2006 and July 3, 2006 respectively.<sup>9</sup>

The Massachusetts Attorney General filed its petition to intervene on May 26, 2006, seeking admission of a single contention concerning the alleged need for the ER to address the

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<sup>7</sup> Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) ("Pilgrim Watch Pet.").

<sup>8</sup> NRC Staff's Response to Request for Hearing and Petition to Intervene Filed by Pilgrim Watch (June 19, 2006) ("Staff Pilgrim Watch Answer"); Entergy's Answer to the Request for Hearing and Petition to Intervene by Pilgrim Watch and Notice of Adoption of Contention (June 26, 2006) ("Entergy Pilgrim Watch Answer").

<sup>9</sup> Pilgrim Watch Reply to NRC Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch (June 27, 2006) ("Pilgrim Watch Staff Reply"); Pilgrim Watch Reply to Entergy Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch, and Pilgrim Watch Reply to NRC's and Entergy's Answers to Notice of Adoption of Contention by Pilgrim Watch (July 3, 2006) ("Pilgrim Watch Entergy Reply").

environmental impacts of severe spent fuel pool accidents.<sup>10</sup> On June 22, 2006, Entergy and the NRC Staff filed their answers to the Massachusetts Attorney General's petition, acknowledging the standing of the Massachusetts Attorney General but arguing that the Attorney General's sole contention concerning spent fuel pool fires was inadmissible. On June 29, the Massachusetts Attorney General's filed his reply to the Entergy and NRC Staff Answers.<sup>11</sup>

A prehearing conference was held July 6 and 7, 2006, during which the Licensing Board heard oral argument on the admissibility of the Petitioners' contentions.<sup>12</sup> On July 14, 2006, the Board issued an Order requesting additional briefing on NRC Staff guidance in Regulatory Guide 4.2S1 as it pertained to the issue of whether the Petitioners had presented new and significant information that might trigger the need to consider the environmental impacts of severe spent fuel accidents.<sup>13</sup> The parties filed their briefs on July 21, 2006<sup>14</sup> as called for by the Board's Order, and the Massachusetts Attorney General filed a reply brief on July 26, 2006.<sup>15</sup>

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<sup>10</sup> Massachusetts Attorney General'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) ("Mass. AG Pet.").

<sup>11</sup> Massachusetts Attorney General'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) ("Mass. AG Reply").

<sup>12</sup> In the Matter of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR, ASLBP No. 06-848-02-LR, Oral Arguments on Contentions (July 6 and 7, 2006) ("Prehearing Tr.").

<sup>13</sup> Order (Regarding Need for Further Briefing on Definition of "New and Significant Information" As addressed in Participants' Petitions, Answers and Replies Relating to Massachusetts Attorney General Contention and Pilgrim Watch Contention 4; Setting Deadlines for Briefs and Responses; and Scheduling Telephone Conference) (July 14, 2006) ("Order").

<sup>14</sup> NRC Staff's Response to July 14, 2006 Licensing Board Order (July 21, 2006); Entergy's Brief on New and Significant Information in Response to Licensing Board Order of July 14, 2006 (July 21, 2006); Massachusetts Attorney General's Brief Regarding Relevance to This Proceeding of Regulatory Guide's Definition of "New and Significant Information" (July 21, 2006). Pilgrim Watch did not file a brief with the Board but did advise the Board and the parties by electronic mail that it supported the brief of the Massachusetts Attorney General. See E-mail from Molly Bartlett, counsel for Pilgrim Watch, to the Licensing Board and parties, "Order in Pilgrim Proceeding" (July 23, 2006).

<sup>15</sup> Massachusetts Attorney General's Reply Brief Regarding Relevance to This Proceeding of Regulatory Guide's Definition of "New and Significant Information" (July 26, 2006).

On July 27, 2006, a telephone conference was held with the Board and parties during which argument was heard on the briefs.<sup>16</sup>

At the end of the telephone conference, Judge Trikouros read the Disclosure Statement concerning his previous work for Entergy Northeast into the record.<sup>17</sup> The Statement indicated that during the 2004 and 2005 timeframe,<sup>18</sup> while Judge Trikouros was a principal at Panlyon, the company had been commissioned by Entergy Northeast to evaluate “the time available for recovery actions given a loss of coolant from potential malicious acts” for the spent fuel pool at a PWR plant; that the scenarios “considered included various degrees of partial uncovering of spent fuel as well as complete drainage of the pool;” that Judge Trikouros “was not the principal investigator” but did “provide a management overview of the project and was consulted regarding modeling assumptions and the viability of the results as they progressed;” that the “work was not associated with the Pilgrim Nuclear Plant nor with any other boiling water reactor;” that the “study was performed in an independent manner using a commonly accepted methodology” with Panlyon having “complete freedom to choose the methodology, the modeling inputs and the analysis assumptions;” that this work for Entergy Northeast was “just one of many technical tasks regarding spent fuel pool cooling” with which Judge Trikouros had been associated throughout his career that provided “background understanding” that enabled him to be “in a better position to fulfill one of the responsibilities as a Licensing Board Judge, i.e., to review and to question the material presented from a knowledgeable technical perspective;” and

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<sup>16</sup> In the Matter of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR, ASLBP No. 06-848-02-LR, Oral Arguments on Contentions, Telephone Conference (July 27, 2006) (“Telephone Conf. Tr.”).

<sup>17</sup> Telephone Conf. Tr. at 490-92. At the request of counsel for the Massachusetts Attorney General, the Disclosure Statement was also subsequently served on the parties. See id. at 492.

<sup>18</sup> Entergy Northeast’s records shows that the final report on the study was received from Panlyon in February 2005.

that the work performed for Entergy Northeast “will not affect [Judge Trikouros] impartiality or independence of judgment in this case.”<sup>19</sup>

On August 4, 2006, the Massachusetts Attorney General and Pilgrim Watch filed their motions seeking disqualification of Judge Trikouros based solely on the information contained in his Disclosure Statement. No additional information was provided in support of the motions.

### III. THE MOTIONS PROVIDE NO BASIS FOR DISQUALIFYING JUDGE TRIKOUROS

#### A. 28 U.S.C. § 455(a) Provides No Basis For Disqualifying Judge Trikouros

Both the Massachusetts Attorney General and Pilgrim Watch argue that the provisions of 28 U.S.C. § 455(a),<sup>20</sup> as applied in Public Service Electric and Gas Co. (Hope Creek Generating Station), ALAB-759, 19 N.R.C. 13 (1984) (“Hope Creek”), mandate disqualification of Judge Trikouros because his actions would cause reasonable persons to question his partiality. Mass. AG Motion at 6; Pilgrim Watch Motion at 2, 4. Hope Creek, however, provides no support for the Petitioners’ arguments, and their arguments are meritless.

The Appeal Board’s disqualification of Judge Carpenter in Hope Creek was based on the fact that Judge Carpenter’s work for Public Service Electric and Gas (“PSEG”) had concerned and supported the licensing of the same plant – Hope Creek – that was the subject of the operating licensing proceeding before the board on which Judge Carpenter sat. This critical fact underlying the decision is clearly set out in Hope Creek:

Had [Judge Carpenter’s] associations not involved the Hope Creek facility, and more particularly, the construction permit application for that facility, it might well be that no such doubt could legitimately arise.

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<sup>19</sup> Disclosure Statement.

<sup>20</sup> As set forth by the Commission in Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), CLI-82-9, 15 N.R.C. 1363, 1365-67 (1982), licensing board members are governed by the same disqualification standards that apply to federal judges set forth in 28 U.S.C. § 455.

Hope Creek, ALAB-759, 19 N.R.C. at 22 (emphasis added). Moreover, the Appeal Board emphasized that because Judge Carpenter's work had been the basis for a favorable decision on the granting of a construction permit for Hope Creek, a "reasonable person" could conclude that "Judge Carpenter might be partial to the current endeavor to acquire an operating license" for the Hope Creek plant. *Id.* at 23. Hence, the appearance of impropriety found in Hope Creek stemmed from a judge who had been instrumental in obtaining a construction permit for a plant adjudicating whether that same plant should also receive an operating license.

Here, Panlyon's work for Entergy Northeast and Judge Trikouros' modest involvement with that work did not concern Pilgrim nor was the work related in any way to the Pilgrim license renewal application. Hence, the concern underlying Hope Creek of a judge ruling on the viability of a project with which he had previously been intimately involved is not present here. Furthermore, the fact that the work concerned a PWR plant, whereas Pilgrim is a BWR plant, reaffirms the lack of connection of the work to Pilgrim because of the differences between PWR and BWR plants. The Petitioners place great weight on these differences, claiming that the capability of a BWR plant (such as Pilgrim) to recover from a loss of spent fuel coolant differs greatly from the ability of a PWR plant (such as the plant on which Panlyon had worked) to recover from a similar loss of spent fuel coolant.<sup>21</sup>

Neither the Massachusetts Attorney General nor Pilgrim Watch provide any basis apart from their reliance on Hope Creek to disqualify Judge Trikouros under 28 U.S.C. § 455(a). The Massachusetts Attorney General claims that "[l]ike the judge disqualified in *Hope Creek*, Judge Trikouros previously was employed by the same corporate entity whose license renewal he is asked to judge in this proceeding." Mass. AG Motion at 6. Judge Trikouros, however, was

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<sup>21</sup> *See, e.g.*, Mass. AG Pet. at 24 n. 9.

never an employee of Entergy Northeast, but rather in the past he was a principal in a company providing some consulting services to Entergy Northeast and had some management overview and other modest involvement in providing those consulting services. It is well established that the previous provision of professional services to a party by itself does not mandate disqualification under 28 U.S.C. § 455.<sup>22</sup>

Furthermore, the primary rationale provided by the Massachusetts Attorney General for disqualifying Judge Trikouros is that, “[h]aving conducted, at least in part, the same type of spent fuel pool accident risk analysis sought by the Attorney General in his contention, Judge Trikouros could reasonably be thought to have formed an opinion on the merits of conducting such an analysis.” Mass. AG Motion at 7. However, as Judge Trikouros states in his Disclosure Statement, his association with Panlyon’s work for Entergy Northeast “was just one of many technical tasks regarding spent fuel cooling” that he has been “associated with throughout [his] career.” Neither the disqualification rules nor Commission precedent requires recusal where a judge has relevant technical experience and expertise concerning an issue in dispute. Indeed, technical judges are appointed to licensing boards so that the boards will have members who have technical training and experience concerning the many technical issues that come before NRC licensing boards. Commission precedent makes clear that “experience which comes from private involvement in the nuclear field has, with good reason, not been considered a disabling circumstance. To the contrary, since the inception of the use of atomic safety and licensing boards . . . , the Commission has turned for qualified board members” to persons “with nuclear experience” from both the academic community and private industry. Long Island Lighting Co.

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<sup>22</sup> See, e.g., Sphere Drake Ins. Ltd. v. All Am. Life Ins. Co., 307 F.3d 617, 621 (7<sup>th</sup> Cir. 2002) (“Nothing in the Code of Conduct for federal judges makes prior representation of a litigant a disqualifying event.”), reh’g en banc denied (2002), cert. denied, 538 U.S. 961 (2003).



(Shoreham Nuclear Power Station, Unit No. 1), ALAB-12, 4 A.E.C. 413, 414 (1970); see also Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-76, 5 A.E.C. 312, 313 (1972). Adoption of the Massachusetts Attorney General's rationale could essentially disqualify anyone with relevant technical experience, which would run counter to the reason for having technical judges on licensing boards.<sup>23</sup>

Thus, the fact that Judge Trikouros may have a general technical understanding of spent fuel cooling and the potential to recover a loss of spent fuel coolant does not mandate his disqualification as a judge on plants on which he has done no work or investigation concerning this issue. The experience he brings to bear in such circumstances is no different than, for example, the experience of a bankruptcy lawyer upon ascendancy to the position of bankruptcy judge.

The other points raised by the Attorney General likewise do not mandate disqualification. The Attorney General suggests that reference of the Entergy Northeast work in the National Academy Studies report<sup>24</sup> relied upon by the Attorney General's contention somehow mandates disqualification (Mass. AG Motion at 6-7), but fails to explain why or how.<sup>25</sup> Furthermore, contrary to the Attorney General's pleadings and his expert (which emphasize the asserted

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<sup>23</sup> Similarly, the Attorney General's claim that "[g]iven his education and professional background, it is not unlikely that Judge Trikouros would again seek employment as a consultant to Entergy" and therefore "a reasonable person would conclude that Judge Trikouros' impartiality is subject to question" (Mass. AG Motion at 7) is overbroad in its sweep and could be said of any technical licensing board judge with relevant nuclear experience. Accordingly, adoption of this rationale supplied by the Massachusetts Attorney General could again essentially disqualify anyone with relevant technical experience, which would run counter to the reason for having technical judges on licensing boards.

<sup>24</sup> National Academy of Sciences Committee on the Safety and Security of Commercial Spent Nuclear Fuel Storage, "Safety and Security of Commercial Spent Nuclear Fuel Storage" (The National Academies Press: 2006) ("NAS Rept.").

<sup>25</sup> The Attorney General does make the bald claim that "Judge Trikouros' personal knowledge about the Entergy study may become the subject of an actual evidentiary dispute," which the Attorney General asserts would require disqualification under 28 U.S.C. § 455(b). Mass. AG Motion at 7 n. 6. The Attorney General fails to provide any hint of circumstances that allegedly could give rise to such an evidentiary dispute and Entergy is aware of none.

differences between BWRs and PWRs in evaluating the potential for a spent fuel fire),<sup>26</sup> the Attorney General now claims that this distinction is not important because of statements in the NAS Report that “the Entergy results were ‘similar’ to a Sandia study that had examined a reference BWR” and that the studies performed by Entergy Northeast and other organizations “provided a ‘general understanding’ of spent fuel behavior in a loss-of-pool coolant event.” Mass. AG Motion at 7. This argument – contrary to the Attorney General’s own pleadings and supporting expert – ignores Finding 3D of the NAS Report that “specific vulnerabilities can be understood only by examining the characteristics of spent fuel storage at each plant” and which noted significant differences in this respect between PWRs and BWRs. NAS Rept. at 58. Moreover, a “‘general understanding’ of spent fuel behavior in a loss-of-pool coolant event” merely connotes general technical understanding and experience which does not mandate disqualification for reasons discussed above.<sup>27</sup>

In short, neither the Massachusetts Attorney General nor Pilgrim Watch have provided any basis to disqualify Judge Trikouros under 28 U.S.C. § 455(a).

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<sup>26</sup> See, e.g., Mass. AG Pet. at 24 n. 9; Gordon R. Thompson, “Risks and Risk-Reducing Options Associated with Pool Storage of Spent Nuclear Fuel at the Pilgrim and Vermont Yankee Nuclear Power Plants” (May 25, 2006) (“Thompson Rept.”) at 20-21.

<sup>27</sup> In responding to the statement in Judge Trikouros’ Disclosure Statement that the Entergy Northeast “study was ‘performed in an independent manner using a commonly accepted methodology,’” the Attorney General, refers to the NAS Report that “the Entergy study had ‘important limitations.’” Mass. AG Motion at 8. However, any technical study will have its limitations, and the limitations of the Entergy Northeast study are irrelevant because its results are irrelevant to both the disqualification motions and the Pilgrim plant. Moreover, while noting the limitations of the studies (some of which produced “overconservative” results), the NAS Report affirmed that the studies were carried out “using well-known analytical methods and engineering codes to model system behaviors.” NAS Rept. at 56. Furthermore, contrary to the Attorney General’s claim (Mass. AG Motion at 8), the NAS Report comments on the failure of the aircraft impact analyses to consider heavier aircraft refers only to the EPRI and Sandia studies because, as reflected in the NAS Report, only EPRI and Sandia performed such impact analyses. NAS Rept. at 48-49.

**B. 28 U.S.C. § 455(b) Provides No Basis For Disqualifying Judge Trikouros**

Pilgrim Watch also argues that the disqualification of Judge Trikouros is mandated under 28 U.S.C. §§ 455(b)(1) and (b)(2).<sup>28</sup> Pilgrim Watch Motion at 5. Pilgrim Watch's claim that Judge Trikouros should be disqualified under 28 U.S.C. § 455(b)(2) because he has "served as a consultant" to the Applicant "in the 'matter in controversy'" (Pilgrim Watch Motion at 5) is clearly meritless for the reasons already stated. Panlyon's work for Entergy Northeast with which Judge Trikouros was associated neither concerned Pilgrim, nor was it related to the Application to renew Pilgrim's operating license. Hope Creek provides no support for Pilgrim Watch's claim for disqualification under 28 U.S.C. § 455(b)(2). The disqualification of Judge Carpenter under 28 U.S.C. § 455(b)(2) in Hope Creek was premised on the fact (1) that the construction permit proceeding on which Judge Carpenter had worked as a technical consultant was for the same plant for which Judge Carpenter sat as one of the judges for considering the operating license, and (2) the construction permit proceeding was integrally related to the operating license proceeding – i.e., both concerned the licensing of the Hope Creek plant and the "ultimate purpose of each [was] identical: the eventual operation of the facility under NRC license." Hope Creek, ALAB-759, 19 N.R.C. at 24-25.

The facts here do not match the critical facts as found by the Appeal Board in Hope Creek. Unlike the situation in Hope Creek, the Panlyon work with which Judge Trikouros had only modest involvement was performed for a totally different plant and does not concern the

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<sup>28</sup> Subsection 455(b)(1) requires a judge to disqualify himself "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." Subsection 455(b)(2) requires disqualification "[w]here in private practice [the judge] served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it." The Appeal Board held in Hope Creek that, although 28 U.S.C. § 455(b)(2) refers only to a judge having previously served as legal counsel for a party, technical members of licensing boards would similarly be disqualified under 28 U.S.C. § 455(b)(2) where they had served as a party's technical expert "in the matter in controversy." Hope Creek, ALAB-759, 19 N.R.C. at 23.

license renewal of Pilgrim. Nor was the ultimate purpose or objective of the Panlyon work the continued operation of Pilgrim under an extended NRC license. Judge Trikouros has never served as a technical expert for Entergy concerning Pilgrim nor the relicensing of Pilgrim. Hence, Pilgrim Watch's attempt to disqualify Judge Trikouros under 28 U.S.C. § 455(b)(2) for having assertedly served as a technical consultant with respect to "the matter in controversy" before the Board is baseless and must be rejected.

Pilgrim Watch's claim that Judge Trikouros should be disqualified under 28 U.S.C. § 455(b)(1) because he allegedly "has personal knowledge of disputed evidentiary facts concerning the proceeding" as a result of "investigating the very facts that are in issue in this proceeding" (Pilgrim Watch Motion at 4, 5) likewise lacks merit. Obviously, because the Panlyon work was not for Pilgrim, Judge Trikouros was not investigating the ability of Pilgrim to recover from a loss of spent fuel coolant which would depend on specific design features of Pilgrim.<sup>29</sup> Nor would Judge Trikouros have personal knowledge of any disputed facts concerning Pilgrim's ability to recover from a loss of spent fuel coolant since the Panlyon work did not concern Pilgrim or even a BWR. The information that Judge Trikouros has concerning Pilgrim's ability to recover from a loss of spent fuel coolant is no different than that of any consultant who has done some work on another plant design concerning this issue. As discussed above, neither the disqualification rules nor Commission precedent require recusal where a judge merely has relevant experience concerning an issue in dispute. To the contrary, technical judges are appointed to licensing boards so that boards will have knowledgeable members versed in the many technical issues that come before NRC licensing boards.

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<sup>29</sup> See, e.g., Prehearing Tr. at 249-51; NAS Rept. at 58.

In short, the Panlyon work provided Judge Trikouros with no factual information concerning Pilgrim. Accordingly, Pilgrim Watch's attempt to seek disqualification of Judge Trikouros under 28 U.S.C. § 455(b)(1) is also clearly baseless.

**C. Disqualification is Unwarranted because the Issue of Malicious Attacks is not Subject to Litigation before the Licensing Board**

As set forth above, both the matter and issues concerning Panlyon's work for Entergy Northeast with which Judge Trikouros was associated differ from those before the Licensing Board. Furthermore, as set forth in Judge Trikouros' Disclosure Statement, the work for Entergy Northeast concerned the loss of spent fuel coolant resulting from "potential malicious acts."<sup>30</sup> The Commission has, however, ruled that terrorism is not cognizable under NEPA and that NEPA "imposes no legal duty on the NRC to consider intentional malevolent acts, such as [the September 11, 2001 attacks] on a case-by-case basis in conjunction with commercial power reactor license renewal applications." Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 365 (2002) (footnote omitted); see also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 357 (2002). Thus, the subject of Panlyon's work for Entergy Northeast does not concern an issue that is subject to litigation in license renewal proceedings, absent further action which only the Commission may take. Accordingly, the work for Entergy Northeast can provide no basis for Judge Trikouros' disqualification from the Licensing Board.


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<sup>30</sup> Disclosure Statement.

IV. CONCLUSION

For the foregoing reasons stated above, the motions to disqualify Judge Nicholas Trikouros should be denied.

Respectfully Submitted,



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Dated: August 14, 2006

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
Before the Atomic Safety and Licensing Board

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| In the Matter of                       | ) |                        |
|  | ) |                        |
| Entergy Nuclear Generation Company and | ) | Docket No. 50-293-LR   |
| Entergy Nuclear Operations, Inc.       | ) | ASLBP No. 06-848-02-LR |
|  | ) |                        |
| (Pilgrim Nuclear Power Station)        | ) |                        |

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response to Motions for Disqualification of Judge Nicholas Trikouros" dated August 14, 2006, were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 14th day of August, 2006.

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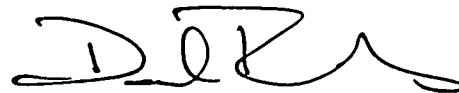
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