

August 18, 2011

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board Panel

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))	

**ENTERGY'S OPPOSITION TO PILGRIM WATCH'S REQUEST TO
SUPPLEMENT REQUEST FOR HEARING ON CONTENTION
CONCERNING THE DIRECT TORUS VENT**

Pursuant to 10 C.F.R. § 2.323(c), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby oppose Pilgrim Watch's Request for Leave to Supplement Pilgrim Watch Request for Hearing on a New Contention Regarding the Inadequacy of the Environmental Report, Post Fukushima filed June 1, 2011 (August 8, 2011) ("Request").¹ The Request seeks to supplement Pilgrim Watch's proposed contention challenging Energy's severe accident mitigation alternatives ("SAMA") analysis based on information contained in the recently issued NRC Fukushima Task Force Report.² The Atomic Safety and Licensing Board Panel ("Board") should reject the Request for multiple reasons.

First, the Request should be rejected because Pilgrim Watch made no attempt to meet the consultation requirements for motions in 10 C.F.R. § 2.323, which provides that

A motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the

¹ Although not styled as such, the Request is essentially a motion, and Entergy is therefore filing this Opposition within the time called for by 10 C.F.R. § 2.323(c).

² Recommendations for Enhancing Reactor Safety in the 21st Century, the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) ("NRC Fukushima Task Force Report").

issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.

10 C.F.R. § 2.323(b) (emphasis added). The Request contains no such certification, nor did Pilgrim Watch consult with Entergy's counsel. Accordingly, the Request "must be rejected."

Second, the Request must also be denied for failing to make any effort to amend its contention to add new bases under 10 C.F.R. § 2.309(f)(2). The Request seeks to supplement Pilgrim Watch's request for a hearing on a contention challenging the Pilgrim SAMA analysis, claiming that the SAMA analysis fails to consider purported new and significant issues raised by Fukushima, namely the alleged failure of Fukushima direct torus vents ("DTV's") to operate.³ The Request seeks to further argue the merits of the pending contention by highlighting portions of the NRC Fukushima Task Force Report that purportedly support the contention. Thus, Pilgrim Watch in effect seeks to amend the contention. Pilgrim Watch, however, does not mention 10 C.F.R. § 2.309(f)(2), let alone address any of its requirements.⁴ Other than amended contentions challenging new data or conclusions in the NRC Staff's environmental impact statement (not applicable here), that provision allows contentions to be amended only with the leave of the presiding officer upon a showing that:

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i)-(iii).

³ See Pilgrim Watch Request for Hearing on a New Contention Regarding the Inadequacy of the Environmental Report, Post Fukushima (June 1, 2011) at 1 (stating the contention).

⁴ Hornbook Commission case law provides that new arguments or support for a contention "cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2)." AmerGen Energy Company, LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 261 (2009) (quoting Nuclear Management Co. (Palisades Nuclear Plant), CLI-06-17, 63 N.R.C. 727, 732 (2006) (emphasis added)).

Importantly, Pilgrim Watch makes no showing that the information appended to the Request is materially different than information previously available. The proposed supplemental information addresses inter alia the difficulty encountered when Fukushima operators attempted to operate the Fukushima DTVs, lessons learned and recommendations from the Task Force related to venting, and other information concerning the potential build up and explosion of hydrogen during an accident. Request at 3-5. Pilgrim Watch nowhere explains how this information contained in the NRC Fukushima Task Force Report is materially different than information previously available. The mere fact that the NRC has issued a report does not necessarily mean that the substance of the report is new or materially different information.⁵ Indeed, a cursory review of this information indicates that it is neither new nor materially different than the information Pilgrim Watch included in its request for hearing on this issue.

Third, in addition, Pilgrim Watch makes no effort to address the late filing factors in 10 C.F.R. § 2.309(c) as to why it should be permitted, at this late hour, to amend or supplement its contention. These failures to address the Commission's procedural requirements alone warrant rejection of the Request.⁶

Fourth, the Request should be rejected because consideration of the supplemental information contained therein is immaterial to the Board's resolution of the contention. 10 C.F.R. § 2.326(a)(iii). For one, the factors that led to Fukushima accident are specific to that site and would not occur at Pilgrim. Indeed, the Task Force Report notes that, in the U.S., the design of the hardened vents varies from plant to plant. NRC Task Force Report at 40. In response to

⁵ Documents that merely collect, summarize, or place into context previously available information do not support the timeliness of a new contention. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. ___, slip op. at 17 (Sept. 30, 2010).

⁶ See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 N.R.C. 62, 76 (1992) (failure to address the Commission's procedural requirements for reopening a hearing record alone warrants rejection of the request to reopen).

Pilgrim Watch's June 1, 2011 request for hearing on this issue,⁷ Entergy demonstrated that it already has a hardened DTV, and that the design and operation of the Pilgrim DTV differ from the Fukushima DTVs, Entergy Decl. at ¶¶ 26-33, including among other things that Entergy's procedures delegate the authority to operate the DTV to the reactor shift manager and require the venting of containment significantly before the Fukushima operators sought offsite permission and attempted that operation. Id. at ¶ 31. Thus, the conditions encountered at Fukushima were time sensitive and would not occur at Pilgrim.

Further, Entergy demonstrated inter alia that Pilgrim Watch had failed to address, let alone meet the standards for reopening the record, in particular to demonstrate that a materially different result would be likely under 10 C.F.R. § 2.326(a)(iii). Entergy's Answer at 9-26. Entergy's experts showed that (1) the SAMA analysis expressly considers pressure buildup in the containment as well as hydrogen explosions, Entergy Decl. ¶¶ 52, 59-60; (2) both postulated operator error in failure to vent and physical failure of the DTV are incorporated into the Pilgrim SAMA analysis, Entergy Decl. ¶ 54; (3) the buildup of containment pressure due to failure of venting is considered in the SAMA analysis, Entergy Decl. ¶ 53, and (4) the Pilgrim SAMA analysis includes consideration of very large radioactive releases that far exceed the radioactive releases from Fukushima, Entergy Decl. ¶¶ 47-48, 63-69. Not only has Pilgrim Watch failed to meet its burden to demonstrate that a materially different result in the SAMA analysis conclusions would be likely, 10 C.F.R. § 2.326(a)(iii), but Entergy demonstrated that the Pilgrim SAMA analysis fully takes into account the purported new information Pilgrim Watch claims

⁷ Entergy's Answer Opposing Pilgrim Watch Request for Hearing on a New Contention Regarding Inadequacy of Environmental Report, Post Fukushima (June 27, 2011) ("Entergy's Answer"). Entergy's Answer was supported by the Declaration of Joseph R. Lynch, Lori Ann Potts and Dr. Kevin R. O'Kula in Support of Entergy's Answer Opposing Pilgrim Watch Request For Hearing on A New Contention Regarding Inadequacy of Environmental Report, Post-Fukushima (June 27, 2011) ("Entergy Decl.").

that Entergy has not considered (i.e., potential accidents involving failure to vent the torus, hydrogen explosions, and primary containment overpressure and breach).

Moreover, consideration of the portions of the NRC Fukushima Task Force Report not emphasized by Pilgrim Watch demonstrates that the Report raises no material dispute with the Pilgrim SAMA analysis. The purpose of the Pilgrim SAMA analysis is essentially to evaluate the cost-versus-benefit of implementing measures to mitigate accident consequences. The NRC Fukushima Task Force Report states that the Fukushima accident – which involved partial if not full core melts at three reactor units – resulted in “no fatalities and the expectation of no significant radiological health effects.” NRC Fukushima Task Force Report at iii (emphasis added); see also id. at vii (the accident was “without significant health consequences” (emphasis added)). Absent actual or expected significant health consequences resulting from the Fukushima accident being greater than predicted, Pilgrim Watch cannot credibly contend that further consideration of the Fukushima accident scenario would materially alter the results of the Pilgrim SAMA analysis. At bottom, the Request provides no new information which disputes the adequacy of the Pilgrim SAMA analysis.

For the foregoing reasons, the Board should reject the Request.

Respectfully Submitted,

/Signed electronically by Paul A. Gaukler/

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Dated: August 18, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of Entergy's Opposition to Pilgrim Watch's Request to Supplement Request for Hearing on Contention Concerning the Direct Torus Vent, dated August 18, 2011, were provided to the Electronic Information Exchange for service on the individuals below, this 18th day of August, 2011.

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