

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of
Entergy Corporation
Pilgrim Nuclear Power Station
License Renewal Application

Docket # 50-293

August 22, 2011

**PILGRIM WATCH REPLY TO ENTERGY'S ANSWER OPPOSING
PILGRIM WATCH'S REQUEST FOR REVIEW**

Respectfully Submitted,

(Electronically filed)

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There are a few points to which a reply to what Entergy said is necessary.

1. Entergy's six page argument that "Pilgrim Watch Failed to Satisfy its Burden of Going Forward" (Answer, 8-14) rests on Entergy's equally incorrect argument that "The Board Appropriately Bifurcated the Issues on Remand" (Answer, 14-17).

First, PW did present evidence at the remand hearing; and the Board accepted all of PW's exhibits. Board Order of February 23, 2001. PW's evidence showed that the SAMA analysis did not consider important meteorological factors and that if there were a significant accident those meteorological factors could make a difference in both the population dose and affected area. Entergy intimates that PW did not "establish a *prima facie* evidentiary case" (Answer, 8), but neither the Decision nor Judge Young's Separate Statement says anything of the sort.

Second, and more important, Entergy sidesteps the most important fact. The Board majority wrongly refused to hear anything on the "averaging" issue, and the Board's Bifurcation Order improperly limited the first phase of the rehearing to whether differences in meteorology, on their own, could alter the PNPS's SAMA analysis.

PW recognized - and told the Board - that the September 23, 2010 bifurcation order, together with the majority's November 23, 2010 order rejecting "averaging," reduced the remand to meaninglessness. Barred from presenting both economic evidence and evidence that "Entergy and the NRC have used the MACCS2 code to insure that no source term will ever have any significant effect" (PW Reply to Entergy's and the NRC's Staff Initial Statement of Position, 3), PW quite correctly said that "it is apparent that for Pilgrim Watch to prepare additional materials for the remand hearing would be a 'fool's errand' and a waste of limited resources." (PW

Memorandum Regarding SAMA Remand Hearing, 3) "It is not possible for either Pilgrim Watch, or anyone else to show that meteorology, *in and if itself*, would result in a significantly different SAMA analysis." (PW Position Statement 2)

The reason this is so is simple and clear. A SAMA analysis is a cost benefit analysis, and economics and the way in which Entergy "averaged" consequences, are critical parts of the analysis. Yet the Board Orders barred any consideration of either. As said in Entergy's Answer, quoting Judge Young, "Pilgrim Watch could not 'get into the economic costs, the evacuation inputs on that first issue.'" (Answer, 16)

2. Entergy's assertion that the "Commission remanded for hearing the precise issue of whether the meteorological issues of concern to Pilgrim could, by themselves, potentially alter the Pilgrim SAMA cost-benefit analysis" (Answer, 16, underlining added) is simply wrong. "By themselves" was the Board's idea. The Commission's Remand Order (CLI-10-11, 27) quite explicitly recognized that meteorology and economic cost calculations were inexorably tied together, and that what Entergy calls the "ultimate issue" could not be decided without considering more than simply meteorology.

We do not believe that the Commission would have bothered to remand if it intended the Board to limit and bifurcate the remand in a way that Pilgrim Watch could not possibly prevail. Contrary to Entergy's closing assertion (Answer, 17), the Board's "on their own" bifurcation Order did depart from the scope of the remand set by the Commission, to PW's clear prejudice.

3. In arguing that "Pilgrim Watch Failed to Timely Raise the Mean Consequence Issue" (Answer, 17-20), Entergy makes the same basic error as did the Board. Neither Entergy, nor the Board Decision mentions that the "test" of whether PW's originally filed Contention raised the "averaging issue" is whether "other parties are sufficiently put on notice so that they

will know at least generally what they have to defend against or oppose” (See Staff Practice and Procedure Digest, 2.10.5.2.1 Bases for Contentions, Pre-Hearing Matters 103. See Id., Pre-Hearing Matters 12: "The requirement of detailed pleadings gives all parties in the proceedings notice regarding a petitioner’s grievances, giving each party a good sense of the claims they will either support or oppose," citing Pilgrim Nuclear Power Station, LBP-06-23 (2006).,6 NRC 257, 273 (2006), Pre-hearing Matters, 12 that "[i]t should not be necessary to speculate about what a pleading is supposed to mean," (Answer, 20).

Entergy and the Board majority fail also to mention that the truly uncontroverted evidence here, nowhere even mentioned in the Decision, shows that Entergy was "sufficiently put on notice," and did not have "to speculate." See PW Request, pp. 11-13.

Applying common sense to a pro se contention written several years before, Judge Young correctly said that the "averaging" issue was timely raised. (PW request, 12-13)

4. PW's Request said (pg., 14): "the majority Decision is based time and time again on what it called 'uncontroverted expert testimony ... that more accurate modeling of the meteorology would not result in differences of more than a factor of two.'¹" In other words, the Board made its Decision by going beyond the ordered scope of phase one of the remand hearing, and relied on economic evidence that Entergy had presented while denying PW the right to present economic consequence/cost evidence showing that large “differences” in consequences could result from more accurate modeling. Entergy's Answer nowhere disagrees.

¹ At page 22 of the Decision, where the quoted statement was made, the majority Decision cites no support for it. The only potential support in the decision is at page 13 where the Decision refers to economics testimony by O’Kula and Ramsdell that the average offsite damages would have to increase by at least a factor of two for the next most costly SAMA be cost effective. As a matter of fact, this "factor of two" testimony was controverted (PWA00023, pg., 6; and by David Chanin PWA 00004, PWA00003) and it would have been controverted even more if PW had been permitted to introduce economic evidence.

The fact that that the majority Decision relied on economic evidence to reach its decision shows not only that the majority disregarded its order limiting phase one to meteorology alone, but also that PW was right - "it is not possible for either Pilgrim Watch, or anyone else to show that meteorology, *in and if itself*, would result in a significantly different SAMA analysis."

The bifurcation order and majority decision excluding "averaging" were wrong, and the Majority compounded the error by basing its decision on "factor of two" economics while denying PW the right to present economic and "averaging" evidence.

5. Entergy's contention that PW should not be heard to complain about the conduct of the remand hearing because it "agreed that it would not make any difference whether a witness was asked a question at the hearing or in writing following the hearing" (Answer, 13) is misleading. Entergy fails to tell the Commission that PW's statement was made in a different context, and on February 18, 2011, before the Board granted the parties' Joint Motion that the Board "resolve [Contention 3] with no oral evidentiary hearing, based solely on the parties' submitted pretrial testimony and exhibits" (Order of February 23). The Order also said that,

there will not be an evidentiary hearing on this issue, but the Board will, on March 9, 2001, conduct oral argument relating to new contentions by Pilgrim Watch and closing argument on the threshold issue of Contention 3 ... [O]nly counsel and representatives of the parties will be permitted to speak."

Entergy also fails to tell that Board that PW objected to the testimony of Entergy's witnesses (Tr., pg., 18); and that early in the hearing Judge Abramson said he did "not support the concept of asking for expert or asking the lawyers to comment on expert issues, at this process." (Tr., pg., 18)

6. Entergy's answer essentially ignores that the majority Decision does not "clearly state the basis for its decision and, in particular state reasons for rejecting certain evidence in reaching the decision" (Public Service Company of New Hampshire, 6 NRC 33 (1977), Practice Digest, Hearing 115). See also Public Service Company of New Hampshire, 7 NRC 477, 492 (1978).

Id.) Without discussing any of them, the Board adopted all of the Staff's and Entergy's Proposed Findings of Fact and summarily rejected all of PW's Proposed Findings. (Decision, p. 33, fn 14) The Decision's failure to "state reasons for rejecting certain evidence in reaching the decision" is also shown by numerous incorrect statements that evidence was "uncontroverted" (e.g., Decision, pp. 13, 16, 20, 23, 26), when in fact it indeed was controverted.²

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² Examples: (i) Decision at 13 said, "Uncontroverted evidence establishes that the lowest cost not implemented SAMA...has a cost approximately twice the benefit derived from its implementation." PW controverted statement. (Egan, PWA00023, pgs., 5-8; Chanin PW 00004 & 00003)
(ii) Decision, pg., 16 said, "Entergy presented uncontroverted evidence demonstrating that a single year's worth meteorological data...is temporally and spatially representative of other years' data." PW controverted statement. (Egan PWA00023, pg., 8 and PWA 00021, DOE Doc.; PWA 00012; Findings Fact Conclusions Law ¶ 90-96, March 4, 2011)
(iii) Decision 20-22 said, "Sea Breezes generally decrease doses in the region." PW controverted the statement. (Egan PWA00001, ¶13 replying to O' Kula's declaration, ¶10; Bixler PWA00017, ¶10; PWA00019, NRC, LaVie, slide 2, 44; PW March Findings, ¶ 54-57)
(iv) Decision at 23 said, "Entergy and Staff presented uncontroverted evidence in model-to-model comparison between MACCS2 and more complex atmospheric transport and dispersion models showed that results calculated by various models are generally within a factor of two and that MACCS2 is within plus or minus 10% of a state-of-the-art three dimensional model averaged over a series of radial arcs to fifty miles" PW controverted statement. (Egan PWA00023, pgs., 5-6; PW March Findings of Fact, Section C, ¶ 34-44 and ¶ 100-104) Also important, Egan's statement that, "An example of a systematic bias in the ATMOS application at the PNPS that is especially important at large distances from the PNPS is the use of only the seasonally averaged afternoon mixing depths. Because the afternoon mixing depths are generally much larger than morning mixing depths, and because at large distances from a source, ground level concentrations will be lower with increased mixing depth, this is not a conservative assumption." (PWA00023, pg., 6)
(v) Decision at 26 says, "[T]he evidence presented by Entergy and NRC Staff demonstrates that the Pilgrim SAMA analysis adequately accounts for sea breezes. Pilgrim Watch evidence does not dispute any of that evidence." PW controverted the statement. (PWA00001, Egan, §13; PW Findings Fact Conclusions Law ¶ 87, March 4, 2011)