UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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 ANSWER OPPOSING PILGRIM WATCH'S PETITION FOR REVIEW

David R. Lewis
Paul A. Gaukler
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037
Tel. (202) 663-8000

Counsel for Entergy L.L.C.

Dated: September 6, 2011

Table of Contents

Table of Authorities

Page

Federal Judicial Decisions

Commission Decisions

Atomic Safety and Licensing Appeal Board Decisions

Atomic Safety and Licensing Board Decisions

Regulations

September 6, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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 ANSWER OPPOSING PILGRIM WATCH'S PETITION FOR REVIEW

Pursuant to 10 C.F.R. § 2.341, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") submit this response in opposition to the Petition for Review filed by Pilgrim Watch in the Pilgrim Nuclear Power Station ("PNPS" or "Pilgrim") license renewal proceeding.[1] The Petition seeks review of the Atomic Safety and Licensing Board ("Board") decision in LBP-11-20,[2] which denied several of Pilgrim Watch's requests for hearing on new contentions. As discussed more fully below, the Commission should deny the Petition because Pilgrim Watch does not identify any substantial question warranting review, or any error of fact or law in the Board's rulings, which are clearly correct.

This appeal is one more episode of Pilgrim Watch's persistent refusal to address or comply with the Commission's standards for reopening a closed record to admit new contentions, as required by the late posture of this remanded proceeding. Instead, Pilgrim Watch relied on and continues to press meritless arguments that the reopening standards do not apply to requests to litigate new contentions, notwithstanding clear language in the NRC rules and case law to the

[1] Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on Certain New Contentions) ASLBP No. 06-848-02-LR, August 11, 2011 (Aug. 26, 2011) ("Petition").

[2] Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on Certain New Contentions), LBP-11-20, 74 N.R.C. __, slip op. (Aug. 11, 2011) ("LBP-11-20"). Administrative Judge Ann Marshall Young issued a separate statement ("Dissent") concurring in part and dissenting in part.

contrary. Alternatively, Pilgrim Watch faults the majority of the Board for enforcing the Commission's rules and not having determined that Pilgrim Watch met standards that it never addressed. Pilgrim Watch now argues (improperly for the first time on appeal) that it met the reopening standards, but its flawed analysis (1) incorrectly presupposes that an applicant's enhancements to a program render timely challenges that could have been brought at the outset of the proceeding, ignoring Commission precedent to the contrary; and (2) eviscerates the requirement to demonstrate that a materially different result would be likely, by improperly relieving Pilgrim Watch of this burden and requiring only a finding of "differing opinions."

I. STATEMENT OF THE CASE

This proceeding involves the application ("LRA") submitted by Entergy nearly six years ago seeking renewal of the operating license for Pilgrim.[3] Pilgrim Watch intervened and was granted a hearing on two contentions, one relating to buried piping and the other challenging certain input data used in analysis of severe accident mitigation alternatives ("SAMA").[4] Following summary disposition of the SAMA contention, the Board held an evidentiary hearing on the buried piping contention followed by a decision resolving it in Entergy's favor.[5]

In CLI-10-11, the Commission partially reversed the summary disposition of the SAMA contention and remanded the Contention "as limited by [its] ruling, to the Board for hearing."[6] Following the remand, Pilgrim Watch sought unsuccessfully to expand the scope of the remand to include issues never raised as part of its contention and issues that had already been resolved.

[3] See 71 Fed. Reg. 15,222 (Mar. 27, 2006).

[4] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 288, 295-300, 349 (2006).

[5] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-08-22, 68 N.R.C. 590, 610 (2008).

[6] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. __, slip op. at 14, 18 (Mar. 26, 2010) ("CLI-10-11").

See, e.g., CLI-10-15[7] (denying Pilgrim Watch motion for reconsideration); CLI-10-28[8] (denying Pilgrim Watch motion for clarification). Having been unsuccessful in its efforts to expand the remanded contention, Pilgrim Watch then commenced a campaign of requests for hearings on new contentions, in each case refusing to address the standards for reopening the record.[9] Pilgrim Watch's appeal involves the denial of two of those requests.

In particular, on November 29, 2010, Pilgrim Watch requested a hearing on a contention asserting that unless and until some third party assumes responsibility for cleanup following a severe accident to pre-accident conditions, sets a cleanup standard, and identifies a funding source, Entergy's SAMA analysis for the Pilgrim plant (1) should be based on source terms in NUREG-1465 and a 15 millirem cleanup standard, (2) should use the 95th percentile of the total consequences, and (3) should include no reductions from a discount factor or probabilistic analysis (the "Cleanup Contention").[10] Both Entergy and the NRC Staff opposed this request,[11] pointing out that the contention did not address or meet the reopening standards, was untimely, and did not meet admissibility standards. For example, with respect to untimeliness, Entergy pointed out (1) that the claims regarding source terms, use of 95th percentile values, and discount rates had all been raised in the Indian Point license renewal proceeding three years earlier (and the 95th percentile issue had in fact been already rejected by the Pilgrim Board as untimely); (2) the issue

[7] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-15, 71 N.R.C. __, slip op. (June 17, 2010) ("CLI-10-15").

[8] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-28, 71 N.R.C. __, slip op. (Nov. 5, 2010) ("CLI-10-28").

[9] As discussed in Entergy's Motion for Issuance of Renewed License (Aug. 23, 2011), currently before the Commission, Pilgrim Watch has filed five requests for hearing on new contentions, as well as six post-hearing memoranda attempting to expand the record on the remanded contention or supplement its requests for hearing on new contentions.

[10] Pilgrim Watch Request for Hearing on a New Contention (Nov. 29, 2010) ("Cleanup Contention Request").

[11] Entergy Answer Opposing Pilgrim Watch Request for Hearing on a New Contention (Dec. 27, 2010) ("Cleanup Answer"); NRC Staff's Answer in Opposition to Pilgrim Watch's Request for Hearing on New Contention (Dec. 23, 2010).

concerning applicable cleanup standards was discussed in documents that Pilgrim Watch had identified in its original intervention petition in 2006; (3) and the challenge to use of probabilistic modeling had been raised and rejected by the Board at the outset of the proceeding. Entergy Cleanup Answer at 8-11. Further, an Inside EPA article on which Pilgrim Watch solely relied provided no basis for admitting any of these late issues. Id. at 11. In reply, Pilgrim Watch argued that the reopening standards in 10 C.F.R. § 2.236 are inapplicable to a new contention and that the record remains open on all issues until the Board and Commission close it.[12]

On December 13, 2010, Pilgrim Watch submitted a second request for hearing on a new contention, this time claiming that Entergy's aging management program ("AMP") for non-environmentally qualified ("non-EQ") inaccessible cables and cable splices is insufficient.[13] This contention was based on NRC Information Notice 2010-26, Submerged Electrical Cables (Dec. 2, 2010), which summarized information that has long been publicly available.[14] Subsequent to Pilgrim Watch's submittal of this contention, the NRC Staff issued revision 2 to the Generic Aging Lessons Learned (GALL) Report,[15] which included certain enhancements to its recommended program for non-EQ inaccessible cable. Responding to this new guidance, Entergy supplemented its LRA on January 7, 2011, to adopt the recommended program enhancements. Pilgrim Watch then filed a slightly revised version of its contention,[16] arguing that the program enhancements in GALL Rev. 2 and Entergy's LRA Supplement now made its contention timely.

---

[12] Pilgrim Watch Reply to Entergy's and NRC Staff's Answers Opposing Pilgrim Watch Request for Hearing on a New Contention (Jan. 7, 2011) at 5-6.

[13] Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station (Dec. 13, 2010).

[14] See Entergy Nuclear Vermont Yankee, L.L.C., et al (Vermont Yankee Nuclear Power Station), CLI-11-02, 73 N.R.C. ___, slip op. at 13 (Mar. 10, 2011) ("CLI-11-02").

[15] NUREG-1801, Generic Aging Lessons Learned (GALL) Report (Rev. 2, Dec. 2010) (ADAMS Accession No. ML103490041) ("GALL Rev. 2").

[16] Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station (Jan. 20, 2011) ("Cable Contention"), which was accompanied by the Affidavit of Paul M. Blanch (Jan. 19, 2011) ("Blanch Aff.").

Cable Contention at 53-54. Pilgrim Watch once more asserted that the standards for reopening did not apply and refused to address them. Id. at 58-59. Entergy and the NRC Staff opposed this new contention, again pointing out that the reopening standards were neither addressed nor met, that the contention was untimely, and that the admissibility standards were not met.[17] Although Pilgrim Watch had not made any attempt to address the reopening standards, Entergy submitted a declaration of experts demonstrating that Pilgrim Watch had in fact failed to show that a materially different result would be likely as a result of its claims.[18]

In LBP-11-20, the full Board rejected the Cleanup Contention. LBP-11-20 at 16-21; Dissent at 3-5. The Board held that the reopening standards were applicable, that Pilgrim Watch had not provided an affidavit addressing them as the NRC rules require, and had not shown that it met these standards. LBP-11-20 at 20; Dissent at 4. In addition, a majority of the Board found that the contention itself was inadmissible because it sought to raise policy issues that were in the sole discretion of the Commission, challenged Commission rulings regarding what is required in a SAMA analysis, and raised issues that were previously advanced by Pilgrim Watch and rejected in this proceeding. LBP-11-20 at 19.

In addition, a majority of the Board rejected the Cable Contention. LBP-11-20 at 21-31.[19] The Board majority observed that "nowhere in its pleading does Pilgrim Watch argue or otherwise demonstrate that its request satisfies the requirements of 10 C.F.R. § 2.326(a) or (b)" and that Pilgrim Watch's intentional failure to include an affidavit compliant with section

[17] Entergy Answer Opposing Pilgrim Watch Request for Hearing on a New Contention (Feb. 14, 2011) ("Cables Contention Answer"); NRC Staff's Answer in Opposition to Pilgrim Watch's January 20, 2011 Amended Contention (Feb. 14, 2011).

[18] Declaration of Vincent Fallacara and Roger B. Rucker in Support of Entergy's Answer Opposing Pilgrim Watch's Request for Hearing on a New Contention (Feb. 14, 2011) ("Entergy Decl.").

[19] The Board rejected both the December 13, 2010 and the January 20, 2011 versions of this Contention. Pilgrim Watch does not appeal the rejection of the December version, acknowledging that its amended contention superseded the earlier request. Petition at 2. All references to the "Cable Contention" in this Answer are to the January 20, 2011 version.

2.326(b) "depriv[ed] the Board of any foundation for finding, for example, that a materially different result could be likely." LBP-11-20 at 13, 23-24. The majority concluded that "[t]his failure requires that we reject the request. . . ." Id. at 24.

In addition, the Board majority ruled that the Cable Contention was not timely because Pilgrim Watch could have raised its challenges based on the AMP for inaccessible non-EQ cables contained in Entergy's initial license renewal application. LBP-11-20 at 27-29. Based on Commission precedent directly on point, the Board found that Entergy's January 2011 amendment enhancing this AMP did not constitute new information sufficient to support a new contention, because if the enhanced program is inadequate, then the unenhanced program must also have been, thus obligating Pilgrim Watch to have challenged the AMP in its initial intervention petition. Id. at 27-28, citing AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 274 (2009).

Beyond relying on this precedent, the Board majority scrutinized each of the challenges raised by Mr. Blanch and found that none was timely raised and that each in fact could have been raised at the outset of the proceeding. Id. at 29-30, n.124. The Board correctly ruled that

> [e]very single one of these challenges regards elements of the AMPs for inaccessible electrical cables, and, because the subject matter was treated in the original [license renewal application], these could have been raised as objections to the initial AMP, which were surely suffering from these same shortcoming now addressed in part by Entergy's amendment.

Id. (emphasis added).

II. STANDARD OF REVIEW

A petition for review is granted only at the discretion of the Commission, "giving due weight to the existence of a substantial question with respect to the following relevant considerations: (i) a finding of material fact that is "clearly erroneous" or conflicts with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion that is "without governing

precedent" or "contrary to established law;" (iii) the raising of a "substantial and important question of law, policy, or discretion;" (iv) "the conduct of the proceeding involved a prejudicial procedural error;" or (v) the raising of "any other considerations which the Commission may deem to be in the public interest."[20] An appeal that does not point to an error of law or an abuse of discretion by the Board, but simply restates the contention with additional support, will not meet the requirements for a valid appeal.[21]

When considering a petition for review, the Commission is free to affirm a Board decision on any ground finding support in the record, whether previously relied on or not.[22] Further, the Commission "give[s] 'substantial deference' to [its] boards' determinations on threshold issues, such as standing and contention admissibility," and we will affirm "decisions on the admissibility of contentions where the appellant 'points to no error of law or abuse of discretion.'" Oyster Creek, CLI-09-07, 69 N.R.C. at 260 (footnote omitted).

III. THE COMMISSION SHOULD DENY PILGRIM WATCH'S PETITION FOR REVIEW

Pursuant to 10 C.F.R. § 2.341, the Commission should deny the Petition because, as set forth below, Pilgrim Watch has failed to identify any clear error of fact, error of law, procedural error, or abuse of discretion by the Board. Among other deficiencies, Pilgrim Watch's hearing requests failed to address let alone meet the Commission's standards for reopening the record. This failure alone warrants rejection of the Petition. Pilgrim Watch can hardly contend that the Board committed any procedural or other legal error in rejecting the hearing requests when Pilgrim Watch totally disregarded this procedural requirement.

---

[20] 10 C.F.R. § 2.341(b)(4) (emphasis added); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation) ("PFS"), CLI-03-8, 58 N.R.C. 11, 17 (2003).

[21] Shieldalloy Metallurgical Corp. (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 N.R.C. 499, 503-05 (2007).

[22] PFS, CLI-05-1, 61 N.R.C. 160, 166 (2005) (citing federal precedent).

A. The Commission's Standards for Reopening a Closed Record Clearly Apply

Pilgrim Watch's principal claim on appeal – that new contentions are not required to satisfy the standards for reopening the record (Petition at 2) – is frivolous and must be rejected. The governing regulation, 10 C.F.R. § 2.326, makes explicit that the standards apply "to a contention not previously in controversy among the parties." 10 C.F.R. § 2.326(d).

Further, in the Statement of Considerations accompanying the promulgation of section 2.734, the former version of section 2.326,[23] the Commission directly addressed and rejected the assertion that the reopening standards "should only apply to a motion to offer additional evidence on an issue already considered" and that a "motion to offer additional contentions should not be construed as a motion to reopen . . . ." 51 Fed. Reg. at 19,538.

> A motion to reopen must be filed whenever a proponent seeks to add new information to a closed record, whether the information concerns a new contention or one which has already been heard.

Id. at 19538-39 (emphasis added).

Pilgrim Watch also argues on appeal that "the ASLB Proceeding" has not been closed (Petition at 3-4), but this claim is irrelevant and simply confuses closure of the evidentiary record with termination of the Board's jurisdiction or proceeding. 10 C.F.R. § 2.326 does not refer to a closed "proceeding," but rather to a closed "record." Further, in providing for reopening "to consider additional evidence," this rule is clearly referring to the evidentiary record. Indeed, the Commission's discussion of one of the policy reasons for promulgating this rule – achieving finality – distinguished closing of the evidentiary record from closing of the proceeding:

> The purpose of this rule is not to foreclose the raising of important safety issues, but to ensure that, once a record has been closed and all timely-raised issues have been resolved, finality will attach to the hearing process. Otherwise, it is doubtful whether a proceeding could ever be completed.

[23] Final Rule, Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535 (May 30, 1986).

51 Fed. Reg. at 19,539 (emphasis added). The Commission then immediately quoted longstanding Supreme Court precedent noting the "gap" in between the time when the record closes and the time when the administrative proceeding ends:

> "Administrative consideration of evidence always creates a gap between the time the record is closed and the time the administrative decision is promulgated. This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed; or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening. It has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion."

Id. (quoting ICC v. Jersey City, 322 U.S. 503, 514-515 (1944) and Bowman Transportation v. Arkansas-Best Freight, 419 U.S. 281, 294-295 (1974)). Thus, the Commission intended that the reopening standards would apply as soon as the "gap" commenced between closure of the evidentiary record and the final administrative decision. Indeed, the Commission purposefully included language in the rule "to address the situation where a motion to reopen is filed after the record is closed but before an Initial Decision is issued" by requiring a movant to "demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially." 51 Fed. Reg. at 19,536 (emphasis added). By including "would be," the rule makes clear that the reopening standards apply before an initial decision is reached because "a licensing board should be able to determine whether the information supplied by a movant could affect its decision even before that decision is reached." Id.

Pilgrim Watch's assertion that "the only evidentiary record that had been closed was that directed to Contention 1" (Petition at 3, emphasis omitted) is equally meritless. When the Board closed the evidentiary record after its hearing on Contention 1, there were no other contentions remaining in dispute. Thus, the entire evidentiary record was closed at that point. Further, Pil-

grim Watch's assertion that the evidentiary record only closes with respect to litigated contentions is just another way of arguing that 10 C.F.R. § 2.326 does not apply to new contentions, which would render 10 C.F.R. § 2.326(d) meaningless.

Likewise, Pilgrim Watch's apparent belief that the entire record is open during the pendency of the remand (Petition at 4) ignores the limited nature of the remand, as well as Commission case law. In CLI-10-11, the Commission stated that the remand for further proceedings was "limited by [its] ruling." CLI-10-11 at 3. The Board majority correctly noted that "the remand did nothing more vis-à-vis the record, and had the Commission intended that the record of the Board be reopened, it [was] quite capable of so directing" but did not. LBP-11-20 at 13-14, n.70. Further, the Commission's recent Vermont Yankee decision makes it clear that a remand does not reopen the entire evidentiary record or obviate the need to address the reopening standards to raise issues beyond those remanded.[24] Moreover, the Commission itself put Pilgrim Watch on notice in August 2010, prior to both of the hearing requests at issue here, that the reopening standards would apply. Commission Order (August 5, 2010) (unpublished). The full Board thus acted consistent with governing law and precedent in applying the reopening standards, and Pilgrim Watch identifies no clear error here.[25]

B. Pilgrim Watch's Cable Contention Clearly Failed to Meet the Reopening Standards

Pilgrim Watch's attempt to argue in the alternative that it did address and satisfy the reopening standards is equally lacking in merit and provides no grounds for reversing the majority

[24] As explained in that decision the Commission remanded a limited portion of the case to the Board to allow the intervenor the opportunity to submit a revised version of an earlier contention. Vermont Yankee, CLI-11-02 at 2. The Commission also stated that, if the intervenor wished to raise "'any genuinely new issues,'" it could move to reopen the record. Id. (citation omitted).

[25] Pilgrim Watch has previously argued that the reopening standards may not be properly applied to new contentions allegedly raising material issues in a licensing proceeding. Pilgrim Watch Reply to Entergy's and the NRC Staff's Oppositions to Pilgrim Watch's Request for Hearing on a New Contention (Feb. 24, 2011) at 3-4 ("PW Cable Contention Reply"). This position was rejected in New Jersey Envtl. Fed'n v. NRC, 645 F.3d 220, 235-36 (3d Cir. 2011), which upheld the application of the reopening standards to new contentions not previously in controversy.

ruling. Pilgrim Watch refers to a statement in its February 14, 2011 reply that "even if it were [a motion to reopen,] Pilgrim Watch's request meets the standards for reopening – it is timely and addresses a significant safety issue." Petition at 7, citing PW Cable Contention Reply at 2 (emphasis omitted). This conclusory statement in a reply did not come close to addressing or satisfying the reopening standards. Oyster Creek, CLI-09-7, 69 N.R.C. at 287 ("Bare assertions and speculation . . . do not supply the requisite support." (footnote omitted)). Further, it did not even mention the requirement to demonstrate that a materially different outcome is likely. Thus, Pilgrim Watch's attempt to argue that it met the reopening standards is improperly raised for the first time on appeal.[26]

As the Board majority correctly ruled, Pilgrim Watch failed "to present affidavits required by Section 2.326(b) setting forth the factual and technical bases for the claim that the criteria of Section 2.326(a) have been met," finding that the Blanch Affidavit offered in support of the Cable Contention did not address the reopening standards in 10 C.F.R. § 2.326(a). LBP-11-20 at 13. That rule specifically requires an affidavit supporting a motion to reopen to "set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied." 10 C.F.R. § 2.326(b). "Each of the criteria must be separately addressed, with a specific explanation of why it has been met." Id. In addition:

> [w]hen multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

10 C.F.R. § 2.326(b). Pilgrim Watch and Mr. Blanch indeed made multiple allegations, but did not make the slightest attempt to provide any basis why each could be considered timely, raised a significant issue, or would likely result in a materially different outcome. Although the Board

[26] Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-00-8, 51 N.R.C. 227, 243 (2000); Hydro Resources, Inc., (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 N.R.C. 417, 421 (2006).

majority did not reject the Cable Contention solely on this ground (later finding it untimely raised), the failure to supply an affidavit compliant with section 2.326(b) alone was sufficient grounds for the Board to reject Pilgrim Watch's hearing request.[27]

Further, Pilgrim Watch's conclusory statement in its reply did not even attempt to assert that it had "demonstrate[d] that a materially different result would be . . . likely," as 10 C.F.R. § 2.326(a)(3) requires. Even if the requirement to submit an affidavit were somehow excused, the failure to address this factor would require denial of its request. As the Board majority explained, Pilgrim Watch's failure to address the reopening standards and provide the requisite affidavit deprived the Board of any foundation for finding that a materially different result could be likely. LBP-11-20 at 13.

Pilgrim Watch's attempt to avoid the implications of its own default, by arguing that the majority "is splitting hairs" and "elevating 'form over substance,'" (Petition at 7) is unsupportable for a host of reasons. First, it would have been inappropriate for the majority to have overlooked these deficiencies, or to have attempted to rewrite and reinterpret Pilgrim Watch's contention. As the Commission has stated, "[t]he burden of satisfying the reopening requirements is a heavy one," and it is "critically important that parties comply with our pleading requirements and that the Board enforce those requirements."[28] The board is not to overlook a deficiency in a contention or assume the existence of missing information.[29] Thus, as the majority correctly observed, "[w]hile a board may view a petitioner's supporting information in a light favorable to the petitioner, it cannot do so by ignoring our contention admissibility rules, which require the

[27] Texas Utilities Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 N.R.C. 62, 76 (1992), citing Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-89-1, 29 N.R.C. 89, 93-94 (1989).

[28] Oyster Creek, CLI-09-7, 69 N.R.C. at 271-72, 287 (emphasis added) (footnotes omitted).

[29] Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991).

petitioner (not the board) to supply all of the required elements for a valid intervention petition." LBP-11-20 at 15-16 (emphasis in original) (citing Oyster Creek, CLI-09-7, 69 N.R.C. at 260).

Moreover, the majority did not base its denial solely on Pilgrim Watch's failure to address the reopening standards and provide the requisite affidavit (although it would have been amply justified in doing so), but rather it also carefully considered whether Pilgrim Watch's request was timely. As the majority found, "even if Pilgrim Watch had addressed the other requirements for reopening the record, Pilgrim Watch fails to demonstrate that [the] Cable Contention . . . is timely under 10 C.F.R. § 2.326(a)(1), which is fatal under both our regulations and under plain and unequivocal Commission precedent on this topic." LBP-11-20 at 24-25.

1. The Board Majority Correctly Found that None of the Allegations in the Cable Contention was Timely Raised

Commission precedent plainly holds that, in order for a contention to be timely raised, the contention's proponent must show that it could not have raised the contention earlier.[30] Intervenors are not free simply "'to add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding.'"[31] In essence, a proponent of a new contention must show that it could not have raised its contention earlier. "[T]he unavailability of [a] document does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner."[32]

---

[30] See, e.g., Comanche Peak, CLI-92-12, 36 N.R.C. at 76.

[31] Vermont Yankee, CLI-11-02, slip op. at 6 (quoting Oyster Creek CLI-09-7, 69 NRC at 260). See also LBP-11-20, slip op. at 25 n. 110 (quoting 51 Fed. Reg. at 19,536, which explains that under NRC case law "timely" is defined as "'whether the issues sought to be presented could have been raised at an earlier time.'").

[32] Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1043 (1983). See also Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 N.R.C. 13, 21 (1986) (An intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was publicly available "for some time" prior to the filing of the contention.).

Here, the Board majority carefully examined every one of Pilgrim Watch's claims and found that all of them could have been raised at the outset of the proceeding. LBP-11-20 at 28-29 & n.124. Not one of these claims was actually based on GALL Rev. 2 or Entergy's LRA Supplement. Indeed, they could not have been, because changes to the aging management program recommended in GALL Rev. 2 and incorporated in Entergy's LRA supplement only enhanced its existing AMP for non-EQ inaccessible cables to include monitoring of low-voltage cable (400V to 2kV) and to increase the minimum frequency of non-EQ inaccessible cable testing and inspections. LBP-11-20 at 27. Such enhancements could not have created any deficiency in the program that did not exist previously. Consequently, the Board majority correctly applied Commission precedent recognizing that such enhancements provide no justification for alleging deficiencies in an aging management program that could have been raised at the outset of the proceeding. Id. at 28-29, citing Oyster Creek, CLI-09-07, 69 N.R.C. at 273-74. Indeed, Pilgrim Watch does not deny that every one of its claims could have been raised earlier.

Instead, Pilgrim Watch attempts to diminish the Commission's holding in Oyster Creek as merely upholding the licensing board's reasoning in that proceeding as "reasonable" and containing no perceived "error in [its] reasoning." Petition at 8, citing Dissent at 11. This argument is irrelevant. If the Commission found the reasoning in Oyster Creek reasonable and containing "no error," then the Board majority's identical reasoning in this proceeding is obviously also reasonable and without error.

Similarly, Pilgrim Watch's reliance on the dissent's discussion of Vermont Yankee, CLI-11-02 (see Petition at 8-9, citing Dissent at 11) provides no basis to overturn the majority decision. In essence, Pilgrim Watch and the dissent appear to suggest Vermont Yankee may somehow have overruled Oyster Creek, because the Commission in Vermont Yankee did not respond

to an objection to a similar AMP amendment in that proceeding as merely involving enhancements. The motion to reopen in Vermont Yankee, however, did not involve any challenge to the amended AMP, but instead challenged the original AMP in the application based on Information Notice NRC Information Notice 2010-26. Vermont Yankee, CLI-11-02 at 7. Thus, the issue of whether program enhancements could form the basis for a motion to reopen was never presented in that case. Instead, the Commission merely responded to the intervenor's complaint on appeal concerning the licensing board's recognition in dictum that one of the challenges to the original AMP had been mooted by the subsequent amendment. Vermont Yankee, CLI-11-02 at 13-14. The Commission observed that the intervenor had not shown that it had been harmed or prejudiced by the agency's consideration of the amendment, had had ample time to review it, and adequate means by which to address it, either by filing a second motion to reopen the proceeding or amending its existing motion. Id. at 14. These statements in no way presuppose that the amendment to the AMP would have formed a valid basis for a new contention. They simply indicate that if the amendment actually had harmed the intervenor (presumably from some change that was not an enhancement), the intervenor had the means to raise it. In sum, the suggestion that Oyster Creek is no longer good law is baseless.

2. The Cable Contention Raises Neither a Grave nor a Significant Safety Issue

The Commission's standards for reopening a closed record require that the issue sought to be raised be significant if timely raised, or exceptionally grave if untimely raised. 10 C.F.R. § 2.326(a)(1)-(2). "[B]inding case law establishes that a movant who seeks to reopen the record does not show the existence of a significant safety issue merely by showing that a plant component 'perform[s] safety functions and thus ha[s] safety significance.'"[33] Also, Commission

[33] Oyster Creek, CLI-08-28, 68 N.R.C. 658, 672 (2008) (emphasis in original) (footnote omitted).

precedent explicitly holds that "bare assertions and speculation . . . do not supply the requisite support" to satisfy the section 2.326 standards.[34] Consistent with this precedent, the Board majority ruled that the untimely issues were not grave because Mr. Blanch provided only a conclusory statement that he had raised a grave issue and mere speculation that the asserted shortcomings in Entergy's AMP might result in or cause safety issues. LBP-11-20 at 30-31 n.125.

Pilgrim Watch offers no grounds warranting the Commission to review the Board majority's ruling. Contrary to established precedent, Pilgrim Watch simply asserts that it met the section 2.326(a)(2) standard of demonstrating a significant safety issue because its hearing request "explained that almost every active safety and non safety system at [Pilgrim] is dependent upon electrical power to perform is function." Petition at 10. Similarly, the dissent found "it reasonable to presume that [the cables] have some safety and environmental significance" for otherwise "there would presumably have been no need for either the amended AMP or the revised evaluation that prompted it." Dissent at 15-16. These arguments directly contradict the "binding Commission precedent," summarized above, that merely showing that a plant component performs a safety function is insufficient. Thus, even if the Commission were to consider Pilgrim Watch's hearing request as timely (which it is not), Pilgrim Watch failed to demonstrate any significant issue. Thus there is no basis to disturb the Board majority's ruling.[35]

[34] Oyster Creek, CLI-09-7, 69 N.R.C. at 287 (citing CLI-08-28, 68 N.R.C. at 674).

[35] Another basis to uphold the Board majority's ruling is the fact that the AMP is based on, and consistent with, recommendations in the GALL Report, which the Commission has held constitutes reasonable assurance that the targeted aging effect will be adequately managed during the renewal period. Oyster Creek, CLI-08-23, 68 N.R.C. 461, 468 (2008); Vermont Yankee, CLI-10-17, 72 N.R.C. __ (July 8, 2010) slip op. at 44. If the Commission has found that compliance with the GALL report constitutes such reasonable assurance, then Entergy's amendment of the AMP to be consistent with the revised GALL report cannot raise a significant safety issue.

3. Pilgrim Watch Failed to Demonstrate that a Materially Different Result Would Be or Would Have Been Likely

Pilgrim Watch was also required to demonstrate that a "materially different result would be or would have been likely" had any newly proffered evidence been considered initially. 10 C.F.R. § 2.326(a)(3) (emphasis added). The Commission has repeatedly emphasized that "[t]he burden of satisfying the reopening requirements is a heavy one."[36] It is "self evident" that "a motion to reopen is an 'extraordinary action,' and that a heavy burden is put on proponents" who must, among other things, present material, probative evidence.[37] "Bare assertions and speculation . . . do not supply the requisite support," and "substantive information and argument" is required to constitute a successful demonstration of "likelihood" under section 2.326(a)(3).[38] "Expert opinion is admissible only if . . . the factual basis for that opinion is adequately stated and explained in the affidavit."[39] In the end, a "motion to reopen requires more than a possibility. It requires a demonstration that the petitioner is likely to succeed."[40]

To demonstrate that none of allegations made by Pilgrim Watch or Mr. Blanch would likely produce a materially different result in the outcome of the proceeding, Entergy provided a declaration from experts explaining how each of these claims failed to demonstrate any genuine material dispute with the adequacy of the aging management program. Pilgrim Watch now claims for that it demonstrated that a materially different result would be likely (an argument that it never advanced before), seizing once more on the dissent. Petition at 14-18, citing Dissent at 31. The dissent's analysis, however, is seriously flawed, reversing the burden of persuasion and failing to make any determination that a different result is likely. Specifically, instead of looking

[36] Oyster Creek, CLI-09-7, 69 N.R.C. at 287 (citation omitted).

[37] 51 Fed. Reg. at 19,538.

[38] Vermont Yankee, CLI-11-02 at 15 (citations omitted).

[39] Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 N.R.C. 71, 81 (2005).

[40] Vermont Yankee, LBP-10-19, 72 N.R.C. __, slip op. at 27 (Oct. 28, 2010) (emphasis added), aff'd CLI-11-02.

at how Entergy's declaration had addressed each of Pilgrim Watch's allegations, the dissent treated Mr. Blanch's allegations as if they were responding to and disputing Entergy's claims, made no attempt to determine if there was any basis for any of Mr. Blanch's allegations – in essence declining to consider such matters as "go[ing] to the merits" (Dissent at 14) or weighing the evidence (id. at 31) – and simply concluded that "there are obviously differing opinions." Id. This analysis appears no more stringent than that which would be applied in determining whether initial contentions at the outset of a proceeding meet the "genuine dispute" standard for admissibility, and falls far short of considering whether Pilgrim Watch met the heavy burden of "demonstrat[ing] that a materially different result would be . . . likely. . . ."[41]

In Oyster Creek, the Commission explicitly rejected applying the summary disposition standard in the manner employed by the dissent, because it improperly reverses the burdens of the parties.[42] As emphasized by the Commission in Oyster Creek, the reopening regulation clearly places the burden on the reopening proponent to show a different result would be likely.[43] The Commission emphasized that the reopening standard in 10 C.F.R. § 2.326 trumped the summary disposition standard in 10 C.F.R. § 2.710, and that under the reopening standard in 2.326(a)(3) the burden rests with the reopening proponent.[44]

---

[41] See Oyster Creek, CLI-08-28, 68 N.R.C. at 673-74. Indeed, the proposed rule required that the movant demonstrate that a different result "might be or might have been reached," but the Commission strengthened this language in the final rule to "would be or would have been likely" to emphasize the burden. 51 Fed. Reg. at 19,536.

[42] Id.

[43] Id.

[44] Id. Although Commission precedent does relate the summary disposition standard to the amount and quality of evidence the reopening proponent must provide, see PFS, CLI-05-12, 61 N.R.C. 345, 348 (2005) ("[A] party seeking to reopen a closed record to introduce a new issue . . . must back its claim with enough evidence to withstand summary disposition when measured against its opponents contravening evidence") (citation omitted), the Commission decision in Oyster Creek makes clear that this precedent does not supplant the requirement made explicit in section 2.326(a)(3) that the proponent's evidence demonstrate that a materially different result would be likely (and not merely whether any genuine dispute is raised). Oyster Creek, CLI-08-28, 68 N.R.C. at 673-74 (holding that the summary disposition standards in section 2.710 do not replace the record reopening standards in section 2.326). Consistent with the reopening standard, in PFS, the Commission evaluated the allegations raised by the reopening proponent and concluded, in light of the documentary evidence submitted by the applicant in response, that the "new

A review of the record shows that Pilgrim Watch failed to meet its burden. Pertinent here is case law establishing that neither the Commission nor the Board may "accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention."[45] Rather, the Board must "carefully examine[]" documents provided in support of a contention to determine whether they "supply an adequate basis for the contention."[46] Further, a document put forth by a petitioner as the basis for a contention is subject to Board scrutiny, both as to the portions that support the petitioners' assertions and those that do not.[47]

Before the Board and on appeal, Pilgrim Watch claims that certain documents evidenced a genuine dispute with Entergy's AMP, but the reality is that those documents explicitly contradicted Pilgrim Watch's claims. For example, Pilgrim Watch alleged that no proven method existed to detect cable deterioration, Petition at 14, relying in part on Mr. Blanch's claim that NUREG/CR-7000[48] states that in-service testing of cables does not provide specific information on the status of cable aging degradation. Blanch Affidavit at ¶¶ 29-33. Entergy's response demonstrated that NUREG/CR-7000 in fact explicitly endorsed certain cable insulation degradation tests, which were also discussed and relied upon in Entergy's inaccessible cable AMP. Entergy Decl. at ¶¶ 11-21, Exhibit D (attaching the relevant pages from NUREG/CR-7000). For example, NUREG/CR-7000 identifies "currently available cable condition monitoring techniques" including dielectric loss, insulation resistance, AC voltage withstand, and partial discharge. Id. at ¶

---

contention is much too thinly supported to conclude that taking it to hearing would 'likely' cause a different result within the meaning of our reopening rule." PFS, CLI-05-12, 61 N.R.C. at 355. Thus, the Commission in PFS did not apply the summary disposition standard in the manner as applied by Pilgrim Watch and the dissent here.

[45] Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 181 (1998), aff'd on other grounds, CLI-98-13, 48 N.R.C. 26 (1998).

[46] See, e.g., Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 N.R.C. 253, 265 (2004).

[47] See, e.g., Virginia Elec. & Power Co. (North Anna Power Station, Unit 3), LBP-08-15, 68 N.R.C. 294, 334 n.207 (2008); Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-96-2, 43 N.R.C. 61, 90 & n.30 (1996).

[48] NUREG/CR-7000, Essential Elements of an Electric Cable Condition Monitoring Program (Jan. 2010).

11 (citing NUREG/CR-7000). Entergy further demonstrated that the "in-service testing" with which Mr. Blanch found fault is not the cable insulation degradation testing relied on in the AMP and elsewhere endorsed by NUREG/CR-7000. Id. at ¶ 15. Neither Pilgrim Watch nor Mr. Blanch offered any evidence disputing the effectiveness of these cable insulation degradation testing methods identified in NUREG/CR-7000.[49]

As another example, Pilgrim Watch and Mr. Blanch argued that standards contained in the National Electric Code ("NEC") recommend that cables be replaced after any type of submergence. Petition at 16, Blanch Aff. at ¶¶ 19-20, 22, 44. Entergy's response demonstrated that the cited standards are for switchboard wire, not underground low- and medium-voltage cable used at Pilgrim; and the NEC itself explicitly excludes cable "installations under the exclusive control of an electric utility" related to electric energy. Entergy Decl. at ¶¶ 44-50. Neither Pilgrim Watch nor Mr. Blanch disputed this information. Nor does Pilgrim Watch explain on appeal why these standards ought to apply to Pilgrim's inaccessible cable when that possibility is foreclosed by the standards themselves.

In light of these clear-cut examples where Pilgrim Watch relied on documents that contradict its claims, Pilgrim Watch cannot show that any materially different result would be likely. Furthermore, no point would be served by reopening the hearing record only to determine that, for example, NUREG/CR-7000 states what even a cursory review of that document shows it plainly states, that "cable condition monitoring techniques" are "currently available." While the dissent concludes that it is not appropriate to "weigh" evidence presented in competing affida-

[49] Pilgrim Watch repeats its accusation that subsequent to the hearing, an Entergy official confirmed that that there were no proven tests for detecting cable insulation. Petition at 15 n.12, 20. To the contrary, and as Entergy explained in its filing with the Board, Entergy never stated that there were no proven tests for detecting cable insulation degradation, and in fact that official was discussing only one type of test called a megger test, stating that it "tests insulation capability" and "tells you what's its condition right now." Entergy's Objection to Pilgrim Watch's Post-Hearing Memoranda and Other Unauthorized Filings at 2 (Apr. 22, 2011). As set forth in NUREG/CR-7000, there are many tests that "can provide the means for evaluating the level of aging degradation of electrical cables." Entergy Decl. at ¶¶ 11, 15.

vits, Dissent at 31, no "weighing" of claims is necessary to see that the documents on which Pilgrim Watch relied simply do not support its claim. In any event, the Commission's Oyster Creek decision makes clear that, in the record reopening context, the Board is supposed to weigh the submissions of the parties' experts. Oyster Creek, CLI-08-28, 68 N.R.C. at 675 (the Commission is "generally disinclined to upset fact-driven Licensing Board determinations, particularly 'where the affidavits or submissions of experts must be weighed'"). And the PFS decision makes clear that it is entirely appropriate for the Board to evaluate "thinly supported" allegations against a "rather overwhelming written record" and conclude that such allegations are insufficient to demonstrate that a materially different result would be likely. PFS, CLI-05-12, 61 N.R.C. at 353-355.

Similarly, in response to Pilgrim Watch's allegation that Entergy had arbitrarily redefined the scope of its inaccessible cable AMP and ignored cables of less than 400 V (see Petition at 14, citing Blanch Aff.), Entergy showed that cables less than 400 V were not included in GALL Rev. 2 and Entergy's amended AMP because, as described in NUREG/CR-7000, degradation of cable insulation is a function of both the voltage and the presence of water (i.e., the voltage level contributes to the degradation), and operating experience across all units had not indicated any significant frequency of water-induced failure for such cable. Entergy Decl. at ¶ 26. Mr. Blanch's affidavit contained no evidence on the susceptibility of cables less than 400 V to water-related degradation, identified no operating experience showing the failure of such cables, nor discussed any information that otherwise disputed Entergy.

In response to the assertion that Entergy's AMP should require a baseline inspection (see Petition at 15), Entergy stated that its AMP requires that all in-scope medium voltage cables be tested before entering the period of extended operation, and that Entergy had already tested all

4kV inaccessible cables. Entergy Decl. at ¶ 28. Further, in light of the very recent expansion of the AMP to include low voltage (400 V – 2 kV) cables, and the fact that insulation degradation is a slow process whose potential increases with voltage, Entergy committed to complete testing of low-voltage cables within the first six years of extended operation. Neither Pilgrim Watch nor Mr. Blanch provided any evidence indicating that these tests would be inadequate.

Pilgrim Watch and Mr. Blanch claimed that Entergy's AMP failed to include a requirement for an initial hydrological survey followed up by subsequent surveys, alleging that such surveys were needed to account for changes groundwater flow and tides expected from onsite construction and global warming. Petition at 15, Blanch Affidavit at ¶ 18. Mr. Blanch cited no report, study, analysis, or any portion of any document providing any evidentiary basis showing that the groundwater and tides at Pilgrim could be impacted by onsite construction activities or global warming. Entergy responded that it performed a hydrological survey in 2007, which confirmed all of its inaccessible cables were above the groundwater table. Entergy Decl. at ¶¶ 35-36. Neither Pilgrim Watch nor Mr. Blanch dispute this.

Pilgrim Watch and Mr. Blanch alleged that Pilgrim's inaccessible cables were not located in a mild environment (as defined in 10 C.F.R. § 50.49) because the ground water had high corrosive salt concentrations that would likely accelerate degradation of cables. Petition at 15-16, Blanch Affidavit at ¶¶ 23, 28. Entergy's response demonstrated that (1) Mr. Blanch misinterpreted the definition of "mild environment" in § 50.49; (2) corrosion is not an aging effect applicable to cable insulation because cable insulation is non-metallic and therefore not subject to corrosion; (3) Pilgrim has not been subject to flooding; (4) groundwater flows into Cape Cod Bay and sea water does not flow in the reverse direction; (5) the groundwater at Pilgrim has been tested and does not have high corrosive salt concentrations; (6) rainwater has been tested and

does not have high corrosive salt concentrations; and (7) the average pH results from tests on water collected from storm drains and manholes is essentially neutral and does not indicate the presence of any contaminants that might adversely impact cable insulation. Entergy Decl. at ¶¶ 31, 39-41, 50. Neither Pilgrim Watch nor Mr. Blanch cited any test results, evidence, or any other information that disputes Entergy's evidence.[50]

Pilgrim Watch claimed that cable degradation increases the probability that more than one cable will fail resulting in a common-mode failure of accident mitigating systems. Petition at 16-17; Blanch Aff. at ¶ 45. Entergy responded that the likelihood of simultaneous common-mode cable insulation failure is extremely low in light of the long time period required to make a cable susceptible to voltage surges that can lead to cable failure, and the fact that voltage surges are random. Entergy Decl. at ¶¶ 59-60. Neither Pilgrim Watch nor Mr. Blanch provided any facts that dispute this information.

In summary, Entergy demonstrated that Pilgrim Watch had in fact failed to demonstrate that a materially different result would be likely as a result of these claims. For all of the reasons discussed herein, Pilgrim Watch offers no basis to disturb the Board majority's ruling rejecting the Cable Contention.[51]

---

[50] The dissent's claim that the lack of clarity about which electrical cables might be subject to a salt water environment appears to be contradicted by findings made earlier in this proceeding concerning the same underground conditions related to buried pipes. In a separate concurrence resolving Contention 1 in favor of Entergy, Judge Young found that, based on testimony and soil data, Entergy had demonstrated that the underground conditions at Pilgrim were non-aggressive. LBP-08-22, 68 N.R.C. 590, 619-20 (2008) (Judge Young's Separate Concurrence).

[51] Pilgrim Watch faults the Board majority for ignoring its (unauthorized) post-hearing memorandum concerning the NRC's Fukushima Task Force Report. Petition at 20-21. The Commission should uphold the Majority's ruling that Pilgrim Watch failed to provide any explanation of its relevance. LBP-11-20 at 23. In its filing, Pilgrim Watch claimed only that certain excerpts from the report were new and significant information related to its Cable Contention. Pilgrim Watch's Request for Leave to Supplement Pilgrim Watch Request for Hearing on the Inadequacy of Entergy's Aging Management Program of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station, filed on December 10, 2010 and January 20, 2011 (August 8, 2011) at 1. Pilgrim Watch made no effort to relate the excerpts to its Cable Contention. Only now on appeal does Pilgrim Watch attempt to relate the information from the report to its Cable Contention. Petition at 21. Having never presented this argument to the Board, Pilgrim Watch cannot now demonstrate that the majority made any clear error in failing to consider it.

C. The Full Board Correctly Rejected the Cleanup Contention

On appeal of its Cleanup Contention, Pilgrim Watch again argues that it was not required to satisfy the Commission's reopening standards. Petition at 23. As previously discussed, this position is wrong. Further, Pilgrim Watch does not make any alternative argument on appeal that this contention met the reopening standards. Thus, it provides no basis to overturn the full Board's decision rejecting the Cleanup Contention.

Further, the Contention clearly failed to demonstrate that a materially different result would be likely, or to raise a genuine dispute on any material issue. 10 C.F.R. §§ 2.326(a)(3), 2.309(f)(1)(vi). Commission precedent explicitly holds that

> whether a SAMA alternative is worthy of more detailed analysis in an Environmental Report or SEIS hinges upon whether it may be cost-beneficial to implement . . . [I]t would be unreasonable to trigger full adjudicatory proceedings based merely upon a suggested SAMA under circumstances in which the Petitioners have done nothing to indicate the approximate relative cost and benefit of the SAMA.[52]

Pilgrim Watch, however, never identified any SAMA that might potentially become cost beneficial, nor indicated the cost versus the benefit of implementing any SAMA, had the Pilgrim SAMA analysis accounted for its concerns in the Cleanup Contention. Pilgrim Watch's bare, unsupported assertions that the SAMA analysis should be redone and might show different results were patently insufficient.

In addition, the Cleanup Contention was clearly untimely under 10 C.F.R. §§ 2.326(a)(1), 2.309(f)(2)(i). As proffered, Pilgrim Watch based the Cleanup Contention on a November 10, 2010 *Inside EPA* Article and certain underlying e-mail messages obtained pursuant to a Freedom of Information Act ("FOIA") request. However, each of the challenges in the Cleanup Contention to the Pilgrim SAMA analysis – challenges to the source terms, cleanup standard, use of

[52] Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-02-17, 56 N.R.C. 1, 11-12 (2002) (emphasis added).

mean rather than 95th percentile consequence values, use of discount factors, and use of probabilistic analysis – could have been raised at the outset of this proceeding. Putting aside the fact that the Inside EPA article does not support the modeling changes that the Cleanup Contention seeks, Commission precedent is clear that documents that merely collect, summarize, or place into context previously available information do not support the timeliness of a new contention.[53]

Finally, the Contention does not raise any significant issue under 10 C.F.R. § 2.326(a)(2). The Inside EPA article relied on by Pilgrim Watch did not support any of the modeling changes asserted in the Contention. See Entergy Cleanup Answer at 17. Moreover, that Article was in turn based on a white paper marked "Draft: Do Not Cite or Quote" that contained clear errors, such as the assertion that Price Anderson would be unavailable to pay for environmental cleanup costs. See id. at 17-18; see also March 9, 2011 Transcript at 869-71 and Exhibit 1 thereto. Nor was there any other basis for Pilgrim Watch's claims. See Entergy Cleanup Answer at 21-23.

For these reasons, Commission should affirm the Board's ruling rejecting the Contention.

IV. CONCLUSION

For the reasons set forth above, the Commission should reject Pilgrim Watch's Petition.

Respectfully Submitted,

/signed electronically by Paul A. Gaukler/

David R. Lewis
Paul A. Gaukler
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Tel. (202) 663-8000
E-mail: paul.gaukler@pillsburylaw.com
Counsel for Entergy

Dated: September 6, 2011

[53] 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).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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 Answer Opposing Pilgrim Watch's Petition for Review" dated September 6, 2011, was provided to the Electronic Information Exchange for service on the individuals below, this 6th day of September, 2011.

Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
OCAAmail@nrc.gov

Administrative Judge
Ann Marshall Young, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Ann.Young@nrc.gov

Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Richard.Cole@nrc.gov

Administrative Judge
Dr. Paul B. Abramson
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Paul.Abramson@nrc.gov

Susan L. Uttal, Esq.
Andrea Z. Jones, Esq.
Brian Harris, Esq.
Beth Mizuno, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Susan.Uttal@nrc.gov ; andrea.jones@nrc.gov ;
brian.harris@nrc.gov ; beth.mizuno@nrc.gov

Matthew Brock, Assistant Attorney General
Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Martha.Coakley@state.ma.us
Matthew.Brock@state.ma.us

Ms. Mary Lampert
148 Washington Street
Duxbury, MA 02332
mary.lampert@comcast.net

Sheila Slocum Hollis, Esq.
Duane Morris LLP
505 9th Street, NW
Suite 1000
Washington, DC 20006
sshollis@duanemorris.com

Mr. Mark D. Sylvia
Town Manager
Town of Plymouth
11 Lincoln St.
Plymouth, MA 02360
msylvia@townhall.plymouth.ma.us

Richard R. MacDonald
Town Manager
878 Tremont Street
Duxbury, MA 02332
macdonald@town.duxbury.ma.us

Chief Kevin M. Nord
Fire Chief and Director, Duxbury Emergency Management Agency
688 Tremont Street
P.O. Box 2824
Duxbury, MA 02331
nord@town.duxbury.ma.us

Katherine Tucker, Esq.
Law Clerk,
Atomic Safety and Licensing Board Panel
Mail Stop T3-E2a
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Katie.Tucker@nrc.gov

/signed electronically by Paul A. Gaukler/

Paul A. Gaukler