

February 23, 2012

**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 MOTION TO STRIKE PILGRIM WATCH'S REPLY

Pursuant to 10 C.F.R. § 2.323(a), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") move to strike Pilgrim Watch's February 13, 2012 Reply.¹ Pilgrim Watch's Reply impermissibly raises new claims for the first time on appeal, and also exceeds the page limit. Pilgrim Watch's disregard for the Commission's procedures should not be countenanced.

I. BACKGROUND

On January 11, 2012, the Licensing Board issued LBP-12-01,² in which a majority of the Board denied Pilgrim Watch's last remaining request for hearing on a new contention related to the Fukushima Daiichi accident in the Pilgrim license renewal proceeding. On January 26, 2012, Pilgrim Watch petitioned for review of the Board majority's decision, "[p]ursuant to 10 C.F.R. § 2.341."³ On February 6, 2012, Entergy and the NRC Staff filed their respective oppositions to Pilgrim Watch's Petition, complying with the 25-page-limitation set forth in Section

¹ Pilgrim Watch's Reply to Entergy's and NRC Staff's Answers to Pilgrim Watch's Petition for Review of LBP-12-01 (Feb. 13, 2012) ("Reply").

² Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-12-01, 74 N.R.C. ___, slip op. (Jan. 11, 2012) ("LBP-12-01"). Administrative Judge Ann Marshall Young dissented in a separate statement ("Dissent").

³ Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Request for Hearing on a New Contention Relating to Fukushima Accident) LBP-12-01 January 11, 2012 (Jan. 26, 2012) ("Petition") at 1.

2.341(b)(3).⁴ On February 13, 2012, Pilgrim Watch filed its 10-page-reply, stating that the Reply was “[i]n accordance with § 2.323(c).” Reply at 1.

II. PILGRIM WATCH IMPERMISSIBLY SEEKS TO RAISE NEW ISSUES FOR THE FIRST TIME ON APPEAL

The Commission has long held that an issue raised for the first time on appeal will not be entertained.⁵ Here, Pilgrim Watch’s Reply asserts for the first time (and with no support) that, even assuming Entergy’s data concerning the atmospheric radiological releases from Fukushima is accurate, it “is months old” and that “[e]ven today nobody . . . knows exactly how much radioactive contamination was, and continues to be released.” Reply at 8 (emphasis omitted). Before the Board, Entergy’s experts attested that (among other things) the Pilgrim severe accident mitigation alternatives (“SAMA”) analysis accounted for atmospheric radiological release far greater than the atmospheric and aqueous radiological releases that occurred at Fukushima for the three damaged reactors combined.⁶ Neither Pilgrim Watch nor its expert challenged this attestation. Indeed, all Pilgrim Watch stated in response was that “[o]ne would have to still believe in Santa Claus to agree” with Entergy’s experts.⁷ Accordingly, Pilgrim Watch’s attempt to challenge the data addressed by Entergy should not be entertained.

⁴ Entergy’s Answer Opposing Pilgrim Watch’s Petition for Review of LBP-12-01 (Feb. 6, 2012); NRC Staff’s Answer to Pilgrim Watch’s Petition for Review of Memorandum and Order (Denying Pilgrim Watch’s Request for Hearing on a New Contention Relating to Fukushima Accident) (Feb. 6, 2012).

⁵ See, e.g., Hydro Resources, Inc. (2929 Coors Road Suite 101, Albuquerque, NM 87120), CLI-00-08, 51 N.R.C. 227, 243 (2000) (intervenor must raise an issue before the licensing board or it will be precluded from supplementing the record before the Commission); Hydro Resources, Inc. (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 N.R.C. 417, 421 (2006).

⁶ See, e.g., Declaration of Mr. Joseph R. Lynch 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 (Dec. 13, 2011) at ¶¶ 40-64.

⁷ Pilgrim Watch Reply to Entergy’s and the NRC Staff’s Answer to Pilgrim Watch Request for Hearing on A New Contention Regarding Inadequacy of Environmental Report, Post Fukushima – Aqueous Discharges (Dec. 20, 2011) at 35.

III. THE REPLY EXCEEDS THE COMMISSION'S PAGE LIMITATION

The Commission should also strike Pilgrim Watch's Reply because it runs afoul of the Commission's requirements governing page limitations for petitions for review of licensing board decisions. The Commission's page limit requirements are intended "to hold all parties to the same number of pages of argument."⁸ Pilgrim Watch, however, has filed a reply that exceeds the prescribed page limit for a reply under Section 2.341(b).

Under Section 2.341, replies are limited to five (5) pages. 10 C.F.R. § 2.341(b)(3). Here, Pilgrim Watch's Reply is ten (10) pages long, five (5) pages over the limit. Pilgrim Watch made no attempt to seek leave to exceed the page limit, or to provide any reason for doing so.

Instead, Pilgrim Watch states that its Reply is filed "in accordance with" 10 C.F.R. § 2.323(c). That provision governs answers to motions, not replies relating to petitions for review. Obviously, 10 C.F.R. § 2.323(c) does not override the 5-page limit on replies in 10 C.F.R. 2.341(b)(3). In fact, Section 2.323(c) does not even permit replies.

IV. CONCLUSION

For the foregoing reasons, the Reply should be struck from the record.

CERTIFICATION

As required by 10 C.F.R. § 2.323(b), Counsel for Entergy certifies that he consulted with the NRC Staff and Pilgrim Watch and made a sincere effort to resolve the issues raised in this motion. The efforts to resolve the issues raised in this Motion have been unsuccessful.

⁸ Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 N.R.C. 370, 393 (2001) (citing Hydro Resources Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 N.R.C. 31, 46 (2001)).

Respectfully Submitted,

/signed electronically by David R. Lewis/

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Dated: February 23, 2012

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CERTIFICATE OF SERVICE

I hereby certify that copies of Entergy's Motion to Strike Pilgrim Watch's Reply, dated February 23, 2012, were provided to the Electronic Information Exchange for service on the individuals below, this 23rd day of February, 2012.

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