

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Gregory B. Jaczko, Chairman
Kristine L. Svinicki
George Apostolakis
William D. Magwood, IV
William C. Ostendorff

In the Matter of)
)
)
ENTERGY NUCLEAR GENERATION)
COMPANY and ENTERGY NUCLEAR) Docket No. 50-293-LR
OPERATIONS, INC.)
)
(Pilgrim Nuclear Power Station))

CLI-10-28

MEMORANDUM AND ORDER

Intervenor Pilgrim Watch has filed a motion requesting that we either (1) order the Atomic Safety and Licensing Board to respond to a “motion for clarification” that Pilgrim Watch filed before the Board on September 9, 2010, or (2) ourselves respond to questions Pilgrim Watch raised in its motion before the Board.¹ Both the NRC Staff and the Applicant, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc., oppose Pilgrim Watch’s motion.² Our review of the record shows that Pilgrim Watch’s questions either have been answered by the Board, or prematurely raise evidentiary matters that will be resolved by the

¹ *Pilgrim Watch Motion Regarding ASLB Refusal to Respond to Pilgrim Watch’s Motion for Clarification ASLB Order (Sept. 2, 2010) (Sept. 22, 2010) (referencing Pilgrim Watch’s Motion for Clarification of the ASLB Order (Scheduling Conference Call) (Sept. 9, 2010)).*

² *See Entergy’s Opposition to Pilgrim Watch’s Interlocutory Motion Seeking Further Clarification (Oct. 4, 2010); NRC Staff’s Answer to Pilgrim Watch’s Motion Regarding ASLB Refusal to Respond to Pilgrim Watch’s Motion for Clarification (Oct. 4, 2010).* A ‘motion’ filed under 10 C.F.R. § 2.323 is not a legitimate means to bring challenges to Board decisions to the Commission. Such challenges must be made in appeals or petitions for review. To the extent that Pilgrim Watch’s motion could be considered a petition for interlocutory review, it neither addresses nor meets the interlocutory review standards. See 10 C.F.R. § 2.341(f)(2).

Board at the appropriate point in the proceeding. The Board therefore found it unnecessary to respond formally to the questions Pilgrim Watch raised in its motion.³ The Board has the authority to regulate the course of the proceeding, and we generally defer to the Board on case management decisions.⁴ Pilgrim Watch's motion presents no justification for us to depart from our usual practice. We *deny* Pilgrim Watch's new motion before us.

We remanded contention 3 to the Board in March 2010. We expect the Board to make full use of its broad authority under our rules to establish and maintain a fair and disciplined hearing process, avoiding extensions of time absent good cause, unnecessary multiple rounds of briefs, or other unnecessary delay. We urge the Board and parties to work together to bring the proceeding to timely closure.⁵

³ See, e.g., Transcript (Sept. 15, 2010) at 708, 718. In particular, pursuant to our direction in CLI-10-11, the Board has explained that it will first determine whether the asserted deficiencies in meteorological modeling credibly could have had a material impact on the Pilgrim Severe Accident Mitigation Alternatives (SAMA) analysis conclusions (see, e.g., 71 NRC __ (Mar. 26, 2010) (slip op. at 22) (regarding the significance of the "sea breeze" effect)). See Tr. at 707-08. If the Board finds in favor of Pilgrim Watch, it would then assess – to the extent reasonable – the degree to which any modeling deficiency may have materially affected the current economic cost and evacuation timing conclusions. We see no ground for upsetting the Board's decision to postpone making detailed evidentiary rulings going to the potential, second stage of the proceeding.

⁴ See, e.g., *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC ____ (July 8, 2010) (slip op.); *Entergy Nuclear Operations* (Indian Point, Units 2 and 3), CLI-08-7, 67 NRC 187,192 (2008). See generally 10 C.F.R. § 2.319.

⁵ We additionally caution Pilgrim Watch against using future filings as a means to re-argue matters previously resolved.

IT IS SO ORDERED.⁶

For the Commission

[SEAL]

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of November, 2010

⁶ Commissioner Apostolakis did not participate in this matter.