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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the matter of:

Docket No. 50-293-LR

ENTERGY NUCLEAR OPERATIONS, INC.
(Pilgrim Nuclear Power Station)

October 31, 2006

PILGRIM WATCH BRIEF ON APPEAL OF LBP-06-23

Submitted by Pilgrim Watch

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PILGRIM WATCH BRIEF ON APPEAL OF LBP-06-23

I. INTRODUCTION

This brief is submitted on behalf of Pilgrim Watch, pursuant to 10 CFR§ 2.311 on appeal of LBP-06-23, the Memorandum and Order (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch) issued October 16, 2006 (“Ruling”) and served on the parties by U.S. Mail, first class. Pilgrim Watch appeals the Licensing Board’s refusal to hear its Contention 4, that the Environmental Report submitted by Pilgrim Nuclear Power Plant in its application for license renewal fails to address Severe Accident Mitigation Alternatives (SAMAs) which would reduce the potential for spent fuel water loss and fires.

The Board states in its Ruling that the determinative issue is what the term “severe accident” encompasses, and that the NRC regulations are unclear on this issue. It then concludes that the decision in *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6-13 (2001) (“*Turkey Point*”)

removes the spent fuel pool categorically from SAMA analyses. Pilgrim Watch requests that the Commission reverse the Board's application of the *Turkey Point* decision in this case, as the language of the relevant NRC regulation does not preclude spent fuel pools from this NEPA mandated analysis, and in fact supports the need for their inclusion. The *Turkey Point* decision includes interpretations of the regulations that were taken out of context, that were not essential to the facts before that body, and do not comport with the Commission's overall goal of erring in favor of public safety.

In addition to demonstrating that the risk of a spent fuel pool accident must be included in the SAMA analysis, Pilgrim Watch also submitted new and significant information that demonstrates that the risk of spent fuel pool fires is greater than was previously thought, and argued that the license renewal application erred in failing to address this information. Thus, even if the board rejects the inclusion of spent fuel pools in the Category 2 SAMA analysis, it should have required Pilgrim to consider the environmental impacts of a spent fuel fire under NEPA. *The National Environmental Policy Act of 1969*, 42 USC §4321 to 4361. ("NEPA"). This is the case even for Category 1 issues such as spent fuel storage where information has been brought forward showing greater than previously known environmental impacts.

Whether the Commission decides that spent fuel pools are subject to a Category 2, site specific SAMA analysis and mitigation alternatives must be considered, or are a Category 1 issue for which we have presented new and significant information showing an increased risk of fire and negative environmental impacts such that mitigation alternatives must be considered – the result is the same. Pilgrim Nuclear Power Plant's Environmental Report must include a "hard look" at the risk of fire in its spent fuel pool,

and must consider alternatives which would mitigate the environmental impacts of such a fire. This is required by NRC Regulations, by NRC policy and by NEPA, in order to ensure the maximum possible protection of the health and safety of the public and the environment.

II. BACKGROUND

On January 25, 2006, Entergy Nuclear Operations, Inc. submitted an application for renewal, pursuant to 10 C.F.R. Part 54 of Operating License No. DPR-35 for the Pilgrim Nuclear Power Station.¹ On March 27, 2006, the NRC published a notice of acceptance and docketing and opportunity for hearing regarding the License Renewal Application (LRA).² On May 25, 2006, Pilgrim Watch, and on May 26, 2006, the Massachusetts Attorney General (AG) filed separate Requests for a Hearing and Petitions to Intervene.³ On June 7, 2006, an Atomic Safety and Licensing Board (“ASLB” or “Board”) was established to preside over this proceeding. The current members of this Board are Ann Marshall Young, Chair, Richard F. Cole, Administrative Judge, and Paul B. Abramson, Administrative Judge.⁴ The NRC Staff responded to Pilgrim Watch’s Petition on June 19, 2006⁵ and Entergy responded to the Petition on June 26, 2006.⁶

¹ See 71 Fed. Reg. 15, 222 (Mar. 27, 2006); see also Pilgrim Nuclear Power Station License Renewal Application, ADAMS Accession No. ML060300028 (*hereinafter* Application).

² See 71 Fed. Reg. at 15, 222.

³ See Request for Hearing and petition to Intervene by Pilgrim Watch (May 25, 2006) [*hereinafter* Petition]; and Massachusetts Attorney General’s Request for a Hearing and Petition for Leave to Intervene with Respect to Entergy Nuclear Operation’s Inc.’s Application for Renewal of the Pilgrim Nuclear Power Plant Operating License and Petition for Backfit Order Requiring New Design Features to Protect Against Spent Fuel Pool Accidents (May 26, 2006) [*hereinafter* AG Petition].

⁴ See 71 Fed. Reg. 34, 170 (June 13, 2006); and Notice of Reconstitution (Aug. 30, 2006), 71 Fed. Reg. 52, 590 (Sept. 6, 2006).

⁵ See NRC Staff’s Response to Request for Hearing and Petition to Intervene Filed by Pilgrim Watch (June 19, 2006) [*hereinafter* NRC Response].

⁶ See Entergy’s Answer to the Request for Hearing and Petition to Intervene by Pilgrim Watch and Notice of Adoption of Contention (June 26, 2006) [*hereinafter* Entergy Answer].

Pilgrim Watch filed its Replies to the Answers of the NRC Staff and Entergy on June 27 and July 3, 2006, respectively.⁷ On July 6 and 7, 2006, the Board heard oral arguments by the parties to this proceeding in Plymouth, Massachusetts.⁸ On July 27, 2006, a teleconference was held to address further briefing on the definition of “new and significant information” in this proceeding.⁹ On October 16, 2006, the Board issued LBP-06-23, Memorandum and Order (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch) (“LBP-06-23” or “Ruling”).

III. DISCUSSION

A. A SAMA analysis of the risks associated with the spent fuel pool is required by NRC Regulations.

The Board began its discussion of Pilgrim Watch’s SAMA related arguments by stating that the determinative issue “is what the term ‘severe accident’ encompasses, thus defining what accidents are to be examined in the context of a ‘*severe accident* mitigation alternatives’ or ‘SAMA,’ analysis.”¹⁰ It then stated that, although the arguments put forth by Pilgrim Watch and the Massachusetts AG seemed “plausible,” unfortunately the NRC regulations themselves offer no definitive guidance. Although the Board looked in 10CFR§51.53(c)(3)(ii)(L), it found no definition of severe accidents there. From this point the Board relied almost exclusively on the dicta¹¹ offered by the Commission in

⁷ See Pilgrim Watch Reply to NRC Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch (June 27, 2006) [*hereinafter* Pilgrim Watch Reply to NRC]; and Pilgrim Watch Reply to Entergy Answer to Request for Hearing and Petition to Intervene by Pilgrim Watch (July 3, 2006) [*hereinafter* Pilgrim Watch to Entergy].

⁸ See Transcript at 40-456.

⁹ See Transcript at 457-93.

¹⁰ LBP-06-23, p. 33.

¹¹ See sections II. B. of this appeal.

Turkey Point. What the Board neglected to find was that the GEIS¹², which provides the factual background for the SAMA requirement in the regulations *does* offer a definition and helpful guidance on this issue, which the Commission in *Turkey Point* ignored. Section 5.2.1 of NUREG 1437 "General Characteristics of Accidents" begins its discussion of design basis and severe accidents with a definition of these terms. "The term '*accident*' refers to any unintentional event outside the normal plant operational envelope that results in a release or the potential for release of radioactive materials into the environment. . . . '*severe*' . . . [includes] those involving multiple failures of equipment or function and, therefore, whose likelihood is generally lower than design basis accidents but where consequences may be higher . . ." (emphasis added).¹³ This section then goes on to state that the "predominant focus in environmental assessments is on events that can lead to releases substantially in excess of permissible limits for normal operations." The next section (5.2.1.1) discusses the inventory of radioactive materials at nuclear plants, their characteristics and their potential for release into the environment, stating that the spent fuel storage pool contains the second largest inventory, after the

12 See NUREG-1437, *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (May 1996) [hereinafter GEIS]; Final Rule, "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 28, 467 (June 5, 1996), amended by 61 Fed. Reg. 66, 537 (Dec. 18, 1996); 10 CFR Pt. 51, Subpart A, Appendix B n.1).

13 The term "accident" refers to any unintentional event outside the normal plant operational envelope that results in a release or the potential for release of radioactive materials into the environment. Generally, the U.S. Nuclear Regulatory Commission (NRC) categorizes accidents as "design basis" (i.e., the plant is designed specifically to accommodate these) or "severe" (i.e., those involving multiple failures of equipment or function and, therefore, whose likelihood is generally lower than design-basis accidents but where consequences may be higher), for which plants are analyzed to determine their response. The predominant focus in environmental assessments is on events that can lead to releases substantially in excess of permissible limits for normal operation. Normal release limits are specified in the NRC's regulations (10 CFR Part 20 and 10 CFR Part 50, Appendix I). GEIS, 5.2.1.

reactor core. Note that all of the fission products and plant operations discussed here are Category I in the section entitled “Uranium Fuel Cycle and Solid Waste Management,” Subpart B to Appendix A of Part 51, in terms of their impacts on the environment during normal operations. It is their potential for “releases substantially in excess of permissible limits” that makes it necessary to consider them in SAMAs. This entire SAMA section focuses on potential *consequences* to determine whether a potential accident is severe or not – not whether the source is the reactor core or elsewhere at the plant.

As acknowledged by the Board, nothing in the NRC regulations excludes the spent fuel pool from SAMA analyses.¹⁴ The Board should have gone on to find that, according to the regulatory definitions given and the new information submitted by Pilgrim Watch and the Massachusetts AG, an accident in the spent fuel pool would clearly be severe and must be considered.

B. The Turkey Point decision misinterpreted NRC Regulations in dicta that were not integral to the decision before it.

i. The *Turkey Point* decision does not apply to this proceeding and is not a binding precedent.

Rather than relying on the plain language of the NRC Regulations, the Board relied almost exclusively on the *Turkey Point* decision when it ruled that SAMAs do not apply to spent fuel pools. However, as Pilgrim Watch argued in its replies to Entergy and NRC Staff,¹⁵ the facts before the Board and Commission in *Turkey Point* do not apply here. The contention before the Board in *Turkey Point* did not require it to decide what a SAMA analysis encompasses. *Florida Power and Light Co.* (Turkey Point Generating

¹⁴ LBP-06-23 p. 35.

¹⁵ See Pilgrim Watch Reply to Entergy and Pilgrim Watch Reply to Staff.

Plant, Units 3 and 4), LBP-01-6, 53 NRC 138 (2001) (“*Turkey Point Board*”) As noted by the ASLB, “The Licensing Board in *Turkey Point* indeed distinguished SAMAs in denying contentions concerning ‘severe accidents’ that contained no mention of ‘mitigation alternatives,’ which is the crux of a SAMA.”¹⁶ The *Turkey Point Board* stated, “Mr. Oncavage’s allegation that an accident involving spent fuel is a Category 2 issue does not make the contention admissible. As discussed earlier, only severe accident mitigation alternatives may be considered for license renewal severe accident Category 2 issues, and Mr. Oncavage has not raised any issue involving mitigation alternatives.”¹⁷ However, rather than limit its review to this narrow issue, the Commission in the *Turkey Point* appeal went on to describe an alternative rationale for its ruling, that SAMAs apply only to reactor accidents not to spent fuel pool accidents – a distinction that this Board has mistakenly repeated. Relying on the “length and specificity” of the Commission’s discussion,¹⁸ the Board ignored its own finding that “the rules themselves contain no such reference or limitation” and quoted at length from the *Turkey Point* Commission’s discussion.¹⁹ Unfortunately, that discussion contains several mistaken conclusions that are contradicted by the plain language of the regulations.

ii. The *Turkey Point* Commission relied on the wrong section of the GEIS.

In its conclusion that SAMAs apply to only nuclear reactor accidents not spent fuel storage accidents, the *Turkey Point* Commission contradicted the plain language of the regulations. 10 CFR§51.53(c)(3)(ii)(L) states, “If the staff has not previously

¹⁶ Ruling p. 33, citing *Turkey Point* (fill this in with footnote 143 from Ruling)

¹⁷ *Turkey Point Board* decision p. 160-61.

¹⁸ Ruling p. 35

¹⁹ Ruling p. 36-37.

considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided.” To interpret this language the Commission quite reasonably looked to the language of the GEIS. However, the paragraphs of the GEIS relied on by the Commission in *Turkey Point* for its conclusion that the GEIS exempts spent fuel pools, are from section 6 of the GEIS²⁰, which deals with “The Uranium Fuel Cycle and Solid Waste Management” under *normal operations*, rather than section 5 of the GEIS, which deals with “Environmental Impacts of Postulated Accidents,” includes definitions of “severe” and “accident” and does not limit these to reactor accidents in any way.²¹ Section 6 contains a “discussion of the environmental impacts of the fuel cycle as related to the operation of an individual nuclear power plant during the license renewal period,”²² and concludes that the off-site radiological and non-radiological environmental impacts of another 20 years of operations during the renewal period are small. Clearly section 6 refers to the *normal* operations of the reactor and its systems, not to *severe* accidents which by definition in section 5.2.1 of the GEIS, would result in “releases substantially in excess of permissible limits for normal operations.”²³

The detailed discussion of the storage of spent fuel in section 6.4.6 of the GEIS is similarly focused on the normal operations of the plant. While it mentions in passing a few examples of dropped spent fuel assemblies, and the possibility of “inadvertent

20 section 6 in NUREG – 1437, whose conclusions are carried over into Appendix B to Subpart A of Part 51.

21 See discussion under III.A.

22 GEIS §6.2.

23 GEIS §5.2.1.

criticality” (6.4.6.1) it does not exempt spent fuel storage from SAMA analysis, because it does not include *severe* accidents (as defined in section 5.2.1) in its discussion.

In its conclusion, section 6.4.6.7 of the GEIS states “Within the context of a license renewal review and determination, the Commission finds that there is ample basis to conclude that continued storage of existing spent fuel and storage of spent fuel generated during the license renewal period can be accomplished safely and without significant environmental impacts. *Radiological impacts will be well within regulatory limits*; thus radiological impacts of on-site storage meet the standard for a conclusion of small impact.” (emphasis added) The highlighted sections of this conclusion make clear that this section refers to the impacts of normal operations only since the radiological impacts of a severe accident in the pool would by definition not be within these limits. This supports the fact that section 6.4.6 does not deal with *severe accidents* in the spent fuel pool at all. The conclusion goes on to say “The need for the consideration of mitigation alternatives within the context of renewal of a power reactor license has been considered, and the Commission concludes that its regulatory requirements already in place provide adequate mitigation incentives for on-site storage of spent fuel.” Again, the mitigation alternatives mentioned refer to those that would reduce environmental impacts, such as reducing off-site radiological exposure during normal operations.

In contrast, as discussed above in section I of this brief, section 5 of the GEIS deals with design basis and severe accidents – with an emphasis on “releases substantially in excess of permissible limits for normal operations.” Nowhere in this section is the spent fuel pool excluded, nor the reactor core cited as the only risk. And yet, throughout its analysis of severe accidents the Commission in *Turkey Point* ignored

the very section of the GEIS that deals with severe accidents. It focused instead on section 6, which concludes that the environmental impacts of both the reactor and the spent fuel are small and therefore Category 1 for normal operations.

iii. The *Turkey Point* Commission drew incorrect conclusions from accident studies.

The second problem with the reasoning in *Turkey Point* is the conclusion that because “The NRC customarily has studied reactor accidents and spent fuel accidents separately,”²⁴ this must mean that spent fuel accidents would not be severe. The Commission stated that “A different set of studies altogether is devoted to spent fuel pool accidents, and has concluded that the risk of accidents is acceptably small.”²⁵ However, as stated in Subpart B the probability weighted consequences of *all* severe accidents, including those involving the reactor, are small. And just because the probability of those accidents is small does not mean that the accidents would not be severe according to the definition in GEIS 5.2.1 if the potential for a consequential release of radioactive materials is great.

Also, in its look at studies of reactor accidents, the Commission highlighted a definition of accidents which is clearly not applicable to the present discussion: “For instance, our ‘Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing plants’ discusses only reactor accidents and *defines [s]evere nuclear accidents [as] those in which substantial damage is done to the reactor core whether or not there are serious offsite consequences.*”²⁶ (emphasis added by Commission) This definition, while it makes sense in the context of a policy statement on reactor accidents,

²⁴ *Turkey Point* Commission at 22.

²⁵ *Id.*

²⁶ *Turkey Point* Commission at 22, citing 50 Fed.Reg.32,138 (Aug. 1985).

clearly does not agree with that given in the GEIS 5.2.1 (which emphasizes the severe off-site consequences) and demonstrates how the Commission may have gone off track relying on these studies in its determination of what constitutes a severe accident in the SAMA context.

The Commission's conclusion that "accidents involving spent fuel pools or dry casks are more amenable to generic consideration" is based on faulty reasoning, is not supported by the facts and simply does not satisfy the requirements of §51.53(c)(3)(ii)(L). In any event, as discussed above, the NRC has not dealt with *severe* accidents involving spent fuel pools or dry casks generically in its GEIS.

C. The Board should have considered the new and significant information presented by Pilgrim Watch even if it rejected inclusion of the spent fuel pool in the SAMA analysis.

i. The decision in *Turkey Point* is inconsistent with NRC regulations.

In addition to contending that the ER should have performed a SAMA analysis for the spent fuel pool at Pilgrim, Pilgrim Watch also brought forward new and significant information that would warrant a review of spent fuel pool impacts under 51.53(c)(3)(iv). On the issue of new and significant information, the Board once again found that the regulations themselves do not dictate a rejection of the contention. In fact, the Board stated that "Indeed, §51.53(c)(3)(iv) may be read as in effect creating an exception to §51.53(c)(3)(i)'s allowance that an applicant's ER 'is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in Appendix B.' Commission precedent supports this reading that the

requirement of §51.53(c)(3)(iv) applies not only to Category 2 issues but also to Category 1 issues . . .”²⁷

The Board also said that this reading appears to apply “also in an adjudication context, particularly in light of the Commission’s statement in *Turkey Point* that ‘[a]djudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review.’”²⁸ Unfortunately, the Board then rejected this more obvious interpretation of the rule because of “other statements of the Commission in *Turkey Point* that lead to a contrary conclusion.”²⁹ As it did with respect to the SAMA analysis, the Board rejected the plain reading of the regulations in favor of the far more limited scope put forth in *Turkey Point*.

As stated by the Mass AG in its appeal of LB-06-20, In the Matter of Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), “Neither 10 CFR §2.309(f)(2) or 10 CFR §51.53(c)(3)(iv) contains any language exempting Category 1 impacts from the scope of issues that must be addressed in NEPA contentions under 10 CFR §2.309(f)(2). To the contrary, the NRC’s regulation for the admissibility of NEPA contentions ‘makes clear’ that ‘to the extent an environmental issue is raised in the applicant’s ER, an intervenor must file contentions on that document’ in order to obtain a hearing on NEPA issues. Nor can any exception to that clear and unequivocal requirement be found in the language of §51.53(c)(3)(iv), the preamble to the 1989 Final

²⁷ LBP-06-23 p. 38.

²⁸ LBP-06-23 p. 39.

²⁹ LBP-06-23 p. 39.

Rule or in the preamble to the 1996 rule containing 10 CFR §51.53(c)(3)(iv), 61 Fed. Reg. 28,467 (June, 1996).”³⁰

Despite this, the Commission in *Turkey Point* found that the only way Category 1 issues in Part 51 can be brought forward in the adjudication context it for Petitioners to file a waiver under 10 CFR§2.335(b). The other means available to Petitioners, it said, include raising the new and significant information in the SEIS notice and comment process, and petitioning for a rulemaking under 2.206 – neither method of which allows the public any right of appeal.

ii. A waiver request under 10 CFR§2.335(b) is not necessary for the Board to hear this contention.

The waiver requirement by the Board and the *Turkey Point* Commission for Petitioners seeking to bring forward new and significant information should not apply here. In its ruling the Board stated that except for the conclusions in *Turkey Point* (which as described in III.C.i. are of debatable validity) it would have agreed that Category 1 issues are *not* exempt from 51.53(c)(3)(iv). In this instance, where there is debate about whether the rules apply or not, it is unreasonable to expect the Petitioner to submit a request for a waiver of those rules. According to the waiver rule 2.335, to successfully bring a waiver request requires a *prima facie* showing in an affidavit to justify why that rule should be waived in the particular instance.³¹ This is a vastly different standard than

30 AG Appeal p. 13, citing Final Rule, Rules of Practice for Domestic Licensing Proceeding – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33, 168,33,172 (August 11, 1989).

31 10 CFR §2.335(c) “. . . a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted . . .”

that required for a contention to be admissible in 2.309(f) which only requires “alleged facts or expert opinions,” and does not require a Petitioner to prove its case at the outset, nor to show facts that are unique to that nuclear plant. In the present case, Pilgrim Watch and the Massachusetts AG did submit far more than required to substantiate their claims of new and significant information. The Board should not have required a request for a waiver of the rules where, as in this case, there is a question of whether or not the rule to be waived even applies. As the Board stated “We should note that with regard to both of these issues [SAMA related and new and significant information] that the analysis that brings us to our conclusions regarding them does not follow an entirely straight path, primarily because relevant rules in neither instance directly resolve the issues in question.”³² Since the rules do not directly resolve the issue a waiver of a particular rule should not be required.

iii. The ability to petition for Rulemaking under 10 CFR §2.802 does not replace the right to a NEPA review that is linked to the Federal action.

The “twin aims” of NEPA are to require each federal agency “‘to consider every significant aspect of the environmental impact of a proposed action’ and to ‘inform the public that it has indeed considered environmental concerns in its decision making process.’” *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97 (1983), quoting *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Agencies must take a “hard look” at environmental consequences *before* taking a major action. *Baltimore Gas*, supra. (emphasis added).

For the NRC to replace this ‘hard look’ with a burdensome option of filing for a rulemaking to address environmental concerns that relate to a particular action does not satisfy the aims of NEPA. NEPA requires Federal Agencies to prepare an environmental impact statement *before* the federal action. The resulting ‘hard look’ is meant to be *linked* to that agency action – not part of the agency’s legislative process. A petition for rulemaking in this case would not be linked to the agency action in question – this re-licensing permit. It also could not be appealed by the public and so no public oversight of the agency’s performance of its NEPA responsibilities is truly available. The record of success of petitions for rulemaking brought by public interest groups is startlingly low, and there is no telling how long a rulemaking would take even if it were successful.³³

As the this Licensing Board quoted from *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989), “[the EIS] . . . ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision.”³⁴ Granting Petitioners the option of filing for a rulemaking under §2.802 offers no guarantee that the relevant information will play any role at all in the decision making regarding the re-licensing of Pilgrim Nuclear Power Station.

³³ NRC review of rulemaking generally takes two and a half years, but could take much longer, and in at least one case, nine years, according to an NRC spokesman. *Nucleonics Week*, July 14, 2005.

³⁴ LBP-06-23, quoting *Robertson* at 349.

IV. CONCLUSION

In LBP-06-23, the Licensing Board ignored the plain reading of the regulations to hold that spent fuel pools are categorically excluded from SAMA analyses. In doing so, the Board applied the decision in *Turkey Point* – a decision that should not apply to the present case and that is inconsistent with NRC regulations. In addition, the Board refused to consider new and significant information presented by Pilgrim Watch that showed that the risk of spent fuel fires is greater than was previously thought. The Board erred in holding that Pilgrim Watch must apply for a rule waiver or petition for a rulemaking to bring forward this information in a license renewal proceeding consistent with NEPA. For the foregoing reasons, the Commission should reverse LBP-06-23 and order the admission of Pilgrim Watch's contention 4.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket # 50-293

October 31, 2006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Pilgrim Watch Brief of Appeal of LBP-06-23 has been served this 31st day of October, 2006 by U.S. Mail, first class to each of the following:

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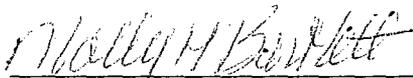
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