

July 9, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before the Atomic Safety and Licensing Board Panel

July 10, 2007 (8:45am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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)	)	

**ENERGY'S MOTION TO STRIKE PORTIONS OF PILGRIM WATCH'S ANSWER  
OPPOSING ENERGY'S MOTION FOR SUMMARY DISPOSITION OF  
PILGRIM WATCH CONTENTION 3**

Pursuant to 10 C.F.R. § 2.323, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (hereinafter and collectively, "Entergy") file the instant motion to strike portions of "Pilgrim Watch's Answer Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3" ("Answer"), which was filed on June 29, 2007. Substantial portions of the Answer (and the supporting declarations and related materials) are clearly beyond the scope of Pilgrim Watch Contention 3 as admitted by the Atomic Safety and Licensing Board ("Licensing Board" or "Board") and, in some cases, concern claims specifically rejected by the Board when admitting Pilgrim Watch Contention 3. In addition, certain portions of the Answer are unsupported by a qualified witness. The portions of the Answer that are beyond the scope of Contention 3 or unsupported by a qualified witness should be stricken from the record.<sup>1</sup>

<sup>1</sup> On July 9 2007, Pilgrim Watch filed its "Answer to NRC Staff Response to Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3" ("Pilgrim Watch Answer to NRC Staff"). Therein, Pilgrim Watch again raises issues that are beyond the scope of Contention 3 or unsupported by a qualified witness. See, e.g.,

## I. BACKGROUND

On October 16, 2006, the Licensing Board admitted into the Pilgrim Nuclear Power Station ("PNPS") license renewal proceeding an amended version of Pilgrim Watch Contention 3, which states:

Applicant's SAMA analysis for the Pilgrim plant is deficient in that the input data concerning (1) evacuation times, (2) economic consequences, and (3) meteorological patterns are incorrect, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, such that further analysis is called for.

Memorandum and Order (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch) LBP-06-23, 64 N.R.C. 257, 341 (2006). Thus, the contention as admitted by the Licensing Board was limited to three issues: (1) the adequacy of the Gaussian plume methodology and related meteorological input data used in the SAMA analysis; (2) the adequacy of the evacuation time estimates used in the SAMA analysis; and (3) the alleged failure of the SAMA analysis to consider economic business losses, such as loss of tourism. On May 17, 2007, Entergy filed a Motion for Summary Disposition of Pilgrim Watch Contention 3. Therein, Entergy considered information that Pilgrim Watch Contention 3 sought to have considered in the SAMA analysis and demonstrated that, even considering this new information, no new SAMAs would be identified as potentially cost beneficial. Thus, Entergy asserted that there are no genuine issues of material fact in dispute and, therefore, Entergy was entitled to a decision as a matter of law in its favor.

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Pilgrim Watch Answer to NRC Staff at 10 (discussing health costs due to cancer, job retraining costs, unemployment payment costs, and litigation costs). Those portions of the Pilgrim Watch Answer to the NRC Staff which raise the same or similar arguments to those identified in this Motion as being (1) beyond the scope of contention as admitted by the Licensing Board or (2) unsupported by a qualified witness should likewise be stricken from the record.

On June 29, 2007, Pilgrim Watch filed its Answer. As discussed below, portions of Pilgrim Watch's Answer seek to argue facts that are not within the scope of Contention 3 as admitted by the Licensing Board. Furthermore, portions of the Answer are unsupported by a qualified witness. The portions of the Answer that fall outside of the scope of Contention 3 or are unsupported by a qualified witness should not be countenanced by the Board and should be stricken from the record. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2) ALAB-819, 22 N.R.C. 681, 724 (1985) (noting the licensing board's unpublished decision striking certain items from a list of welding deficiencies submitted by petitioner because the stricken items were beyond the scope of the quality assurance contention); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-83-57, 18 N.R.C. 445, 507 (1983) (noting the licensing board's prior grant of petitioner's motion to strike testimony submitted by the applicant as being beyond the scope of the contention at issue); Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), LBP-81-34, 14 N.R.C. 637, 676-78 (1981) (granting applicant's motion to strike petitioner's affidavit because, among other things, the affidavit failed to respond to the substantive arguments made by applicant's expert).

## **II. THE PORTIONS OF PILGRIM WATCH'S ANSWER THAT SEEK TO ARGUE FACTS OUTSIDE THE SCOPE OF PILGRIM WATCH CONTENTION 3 SHOULD BE STRICKEN FROM THE RECORD**

### **A. Health Costs**

In its Answer, Pilgrim Watch claims that Entergy failed to properly quantify "the off-site exposure costs" resulting from raised "health costs." Answer at 6. Pilgrim Watch further argues that Entergy "failed to use updated cancer risk coefficients, failed to consider cancer incidence, radiation-linked diseases, reproductive disorders, and birth defects – all of which will add to economic costs." Answer at 32; see also Id. at 33 (Entergy "failed to use updated cancer risk

coefficients and failed to consider other health effects”); 34 (same); 35 (same); 35-36 (same); 44-45 (discussion of new cancer risks); 46 (Entergy “failed to include health costs other than cancer mortality; failed to base health costs on new cancer coefficients”); 47-48 (discussion of other health effects); 81-85 (allegation and ensuing discussion that “health costs considered but undervalued; others ignored”). In short, Pilgrim Watch claims that Entergy used “outdated health/cancer risks” and that “new studies on health impacts would change the threshold for adoption of SAMAs.” Answer at 46.

None of these health cost arguments are within the scope of Contention 3. Contention 3 as pled alleged that the MACCS2 model analysis of economic costs did not “account for the loss of economic activity in Plymouth County,” such as loss of tourism, and did not account for the “destruction of [the Plymouth] region’s economy as a major tourist, and historical and recreational area.” Request for Hearing and Petition to Intervene by Pilgrim Watch (May 26, 2006) at 43-45 (“Petition”). Moreover, when admitting a limited version of Contention 3 into the proceeding, the Licensing Board described Pilgrim Watch’s allegations concerning economic costs as follows:

PW points out that, although costs of decontamination, condemnation of property that cannot be sufficiently decontaminated, and compensation to persons forced to relocate as a result of an accident are included, not accounted for is any resulting loss of economic activity in Plymouth County or other neighboring counties with significant tourism (including the Cape Cod area), travel to which is through Plymouth County

LBP-06-23, 64 N.R.C. at 326 (emphasis added). Thus, the gravamen of Contention 3, both as advanced by Pilgrim Watch and accepted by the Licensing Board, was the SAMA analysis’ alleged failure to not have accounted for tourism.

None of the bases offered by Pilgrim Watch Contention 3 raised health costs associated cancer-related or other physical conditions. Consequently, the Licensing Board should strike from the record Pilgrim Watch's discussion of the health-related cost issues as outside the scope of Contention 3 as admitted into this proceeding.

**B. Decontamination/Restoration**

Pilgrim Watch in its Answer contends that the "specific characteristics of Pilgrim's coastal communities were not taken into consideration" as they relate to decontamination and the "difficulty of conducting ecological restoration." Answer at 90 -91. However, one will search in vain for any discussion of this decontamination/restoration economic cost argument in Pilgrim Watch Contention 3 as originally pled. Contention 3 as pled alleged that the MACCS2 model analysis of economic costs did not "account for the loss of economic activity in Plymouth County," such as loss of tourism, and did not account for the "destruction of [the Plymouth] region's economy as a major tourist, and historical and recreational area." Petition at 43-45; see also discussion supra Section II.B (discussing the Licensing Board's description of Contention 3 as focusing on loss of tourism). Nowhere in Contention 3 did Pilgrim Watch raise an issue with respect to Entergy's perceived failure to consider the difficulty in decontaminating porous surfaces, the difficulty in removing radioactive material deposited by rain, or the speed at which New Orleans and coastal Louisiana have been cleaned up since hurricane Katrina. Compare Answer at 90-91 with Petition at 43-45. Consequently, the Licensing Board should strike from the record Pilgrim Watch's discussion of the decontamination/restoration related cost issues as outside the scope of Contention 3 as admitted into this proceeding.

### C. Probability Modeling

In its Answer, Pilgrim Watch repeatedly “disputes using probability modeling” because “the basic probability impacts of a severe accident have been drastically minimized by using probabilistic modeling which makes the costs of all severe accidents appear negligible.” Answer at 6; see also Id. at 7-8 (“probabilistic modeling can underestimate the true consequences of a severe accident”); 8 (same); 31 (same); 32 (same); 33 (same); 34 (same); 35 (same); 45 (same); 47-48 (large cesium-137 inventory illustrates how Entergy has “drastically minimize[d] consequences”); 58 (“It is widely recognized that probabilistic modeling can underestimate the deaths, injuries, and economic impact likely from a severe accident. By multiplying consequence values with low probability numbers, the consequence figures appear far less startling.”); and 72 (“the degree of impact is further reduced by minimizing the consequences of a so-called ‘severe accident’”).

However, Pilgrim Watch’s concern regarding probabilistic modeling is precisely the same argument that Pilgrim Watch raised in its original Contention 3,<sup>2</sup> which this Licensing Board rejected in admitting a limited version of the Contention:

to the extent that any part of the contention or basis may be construed as challenging on a generic basis the use of probabilistic techniques that evaluate risk, we find any such portion(s) to be inadmissible. The use of probabilistic risk assessment and modeling is obviously accepted and standard practice in SAMA analyses.

LBP-06-23, 64 N.R.C. at 340 (emphases added) (footnote omitted). Consequently, Pilgrim Watch cannot raise this argument in responding to Entergy’s Motion for Summary Disposition of

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<sup>2</sup> See Section 3.3.1 (“Probabilistic modeling can underestimate the true consequences of a severe accident”), Petition at 29-31.

this contention. Accordingly, the Licensing Board should strike from the record any discussion by Pilgrim Watch of its dispute with probability modeling.

**D. Emergency Planning**

Pilgrim Watch's Answer impermissibly challenges emergency planning for PNPS rather than challenging the data used in the SAMA analysis and the additional analyses Entergy performed for its Motion for Summary Disposition. This impermissible emergency planning argument should be stricken from the record.

Pilgrim Watch asserts that Entergy fails to appreciate "the need to obtain and properly use sufficient meteorological data in emergency response planning." Answer at 18. This assertion is based on the affidavit submitted by Dr. Bruce Egan. Egan Affidavit at Section 13, Item 20. Dr. Egan goes on to argue that "highly competent, atmospheric dispersion simulation methodologies" are required to make "important decisions about when population groups should be evacuated from any given area and for what population groups shelter-in-place options should be recommended." Egan Affidavit at Section 14. Further, Dr. Egan argues that "models used for emergency planning or evacuation purposes must be based upon good science. . . and that models used for developing evacuation plans or in implementing evacuation plans need to provide realistic projections of expected ambient air concentrations and dosages that the public might be subjected to." Id. Dr. Egan further argues that a state of the art monitoring system could be employed to track a plume in real time to assist the evacuation process. Id. at Section 15. These assertions go to the adequacy of the emergency plan and not the data used in the SAMA analysis and should be stricken.

Similarly, the materials authored by Mr. Richard Rothstein fail to address the appropriateness of the data used in the SAMA analysis, but rather impermissibly challenge existing measures for emergency planning. For example, in his written report, Mr. Rothstein discusses the alleged need for improved meteorological equipment and claims that “[s]uch improvements would help our involved nuclear emergency management officials have access to the best meteorological, air quality modeling, and dose assessment information to help them perform their emergency preparedness and evacuation planning functions as effectively as possible.” Issue No. 1: Evacuation/Sheltering-In-Place at 1-2. In another document submitted with his declaration, Mr. Rothstein writes “Realistic modeling assumptions and predictions are the key to the forecasting and implementation of appropriate and effective emergency response/evacuation plans.” April 24, 2006 letter to Mr. Jeffrey Berger at 3 (emphasis in original).

It is clear from the above discussion that Pilgrim Watch is impermissibly seeking to litigate emergency planning issues in this license renewal proceeding, rather than contesting the input data used in the SAMA analysis, which is precisely what the Licensing Board ruled was out of scope when admitting a limited form of Contention 3 into the proceeding:

what is challenged here is whether particular bits of information taken from such [an emergency] plan are sufficiently accurate for use in computing the health and safety consequences of an accident, as an environmental issue. Such a challenge is not a challenge for to existing emergency planning for this plant or to the plan itself. . . .

LBP-06-23, 64 N.R.C. at 340 (emphasis in original).

Pilgrim Watch repeatedly uses its Answer as an opportunity to call for the deployment of enhanced meteorological equipment to obtain allegedly better data to assist emergency planning

at PNPS. However, the crux of Contention 3 as admitted by the Licensing Board is not about emergency response planning in general, or the tracking of a specific plume, or the implementation of a specific emergency plan. Rather, Contention 3 is about the cost-benefit analysis that is a part of the SAMA analysis and the input data used in that analysis. Pilgrim Watch's attacks on the PNPS emergency plan do not address the appropriateness of the emergency plan data used in the SAMA analysis or the sufficiency of the bounding sensitivity analysis performed as part of Entergy's motion for summary disposition. Consequently, the Licensing Board should strike from the record Pilgrim Watch's impermissible emergency planning argument. Specifically, the discussion in the Answer at page 18, and in the Egan Declaration at Sections 13 (partial), 14 (entirety), and 15 (entirety), and the Rothstein Declaration and supporting materials in their entirety should be stricken from the record.

**E. Beyea Declaration and Report**

Pilgrim Watch submits a May 24, 2007 Declaration of Dr. Jan Beyea, which serves as only a cover page to Dr. Beyea's May 25, 2006 "Report to The Massachusetts Attorney General on The Potential Consequences of a Spent-Fuel-Pool Fire at the Pilgrim or Vermont Yankee Nuclear Plant" ("Beyea Report"). This Report was filed in support of the Massachusetts Attorney General's contention concerning spent fuel fires.<sup>3</sup> The Licensing Board dismissed Massachusetts Attorney General's contention in its Memorandum and Order of October 16, 2006 (LBP-06-023, 64 N.R.C. at 288-300), and the Commission has affirmed the Board's dismissal of

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<sup>3</sup> Massachusetts Attorney General's Request for a Hearing and Petition for Leave to Intervene with Respect to Entergy Nuclear Operations 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).

the contention.<sup>4</sup> The cover declaration of Dr. Beyea merely confirms the “quantitative contents” of the May 25, 2006 Report, and neither discusses Pilgrim Watch Contention 3 nor provides any explanation of any asserted relevance of the Report to the claims in Pilgrim Watch Contention 3. As such, the Beyea declaration and Report should be stricken from the record.<sup>5</sup>

**F. Claims of job retraining, unemployment insurance, and litigation costs not previously raised**

Pilgrim Watch claims in its Answer that the MACCS2 code impermissibly fails to include economic costs associated with “required job retraining; unemployment payments; and inevitable litigation.” Answer at 37; see also Id. at 46 (“failed to include other incurred costs such as liability, job re-training, and unemployment insurance”). However, Pilgrim Watch failed to raise these alleged economic consequences of a severe accident in the PNPS area as a basis for Contention 3 as originally pled. Rather, Contention 3 as pled alleged that the MACCS2 model analysis of economic costs did not “account for the loss of economic activity in Plymouth County,” such as loss of tourism, and did not account for the “destruction of [the Plymouth] region’s economy as a major tourist, and historical and recreational area.” Petition at 43-45; see also discussion supra Section II.B (discussing the Licensing Board’s description of Contention 3 as focusing on loss of tourism). Consequently, the Licensing Board should strike from the record Pilgrim Watch’s discussion of costs related to job retraining, unemployment insurance, and litigation as outside the scope of Contention 3 as admitted into the proceeding.

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<sup>4</sup> Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) and Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-07-03, \_\_ N.R.C. \_\_ (Jan. 22, 2007), reconsideration denied, CLI-07-13, \_\_ N.R.C. \_\_ (Mar. 15, 2007).

<sup>5</sup> Likewise, those portions of Pilgrim Watch’s Answer based on the Beyea Report should be stricken from the record. See, e.g., Answer at 19-20, 55-56.

**G. Recommendations to the Board of Selectmen, Town of Plymouth**

Pilgrim Watch cites to the January 2006 “Recommendations to the Board of Selectmen, Town of Plymouth” (“Recommendations”) for support in its discussion of the PNPS siren alert system. Answer at 62 (citing to Recommendations at 9). No other citation to the Recommendations is made. Indeed, the remainder of the content in the Recommendations is outside the scope of Contention 3 and, thus, except for its discussion of the sirens, should be stricken from the record as beyond the scope of the contention.<sup>6</sup>

**H. Untimely challenge to Entergy’s use of a discount rate of 7%**

For the first time in its Answer, Pilgrim Watch challenges Entergy’s use of a discount rate of 7% to convert population dose risk and economic cost risks to present day dollars. Answer at 81. However, Entergy’s use of a discount rate of 7.0% to convert risk during the license renewal term to present worth dollars was clearly set forth in the Application. See PNPS License renewal Application, Appendix E at 4-32, 4-37, & 4-48.<sup>7</sup> Pilgrim Watch did not challenge Entergy’s use of a 7.0% discount rate in its initial submission of Contention 3. Consequently, Pilgrim Watch has raised this issue out of time, and the Licensing Board should strike from the record Pilgrim Watch’s challenge to the 7.0% discount rate.

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<sup>6</sup> As discussed in Section III, infra, the Recommendations are unsupported by any expert declaration and, as a result, the document in its entirety, including the portion discussing the sirens, should be stricken from the record.

<sup>7</sup> A sensitivity analysis using a 3% discount rate was also run. Id. at 4-48. Entergy’s use of a 7% discount analysis follows NRC guidance in NUREG/BR-0058, Rev. 4, Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission (Sept. 2004) at 32. In turn, this guidance is based on guidance from the Office of Management and Budget (“OMB”), which provides that “constant dollar benefit-cost analyses of proposed investments and regulations should report net present value . . . using a real discount rate of 7 percent.” OMB, Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts, 57 Fed. Reg. 53,519, 535122-23 (Nov. 10, 1992) (listed as Reference 13 in NUREG/BR-0058 Rev. 4).

## **I. Undervaluation of Farm Property**

Also for the first time, Pilgrim challenges Entergy's valuation of farm property, on which condemnation costs would be based, making various claims that Entergy may have undervalued farm property. Answer at 37, 78-80. However, Pilgrim Watch Contention 3 never raised any claim concerning the valuation of farm property specified in the License Renewal Application, Appendix E, Attachment E.1 at Section E.1.5.2.4 (page E.1-62) of \$23,578 per hectare, or approximately \$9,500 per acre, which Pilgrim Watch now references and challenges for the first time. See Answer at 78. As the Licensing Board noted in admitting the alleged deficiency of MACCS2 to adequately model economic costs, "PW points out that, although costs of . . . condemnation of property that cannot be sufficiently decontaminated . . . are included, not accounted for is any resulting loss of economic activity in Plymouth County of other neighboring counties with significant tourism . . . ." LBP-06-23, 64 N.R.C. at 326. Consequently, Pilgrim Watch has raised this issue out of time, and the Licensing Board should strike from the record Pilgrim Watch's challenge to the valuation of farm property.

## **J. Additional arguments not originally pled**

Pilgrim Watch also raises other arguments for the first time in its Answer which, therefore, are beyond the scope of Contention 3. The following arguments are raised by Pilgrim Watch for the first time in its Answer and, consequently, the Licensing Board should strike these arguments from the record.

### **1. Entergy should use sum of total costs avoided, rather than the mean**

Pilgrim Watch argues in its Answer that Entergy's SAMA analysis should compare the cost of a mitigation alternative to the "sum" of the total costs avoided, rather than the "mean" of the total costs avoided. Answer at 6 (emphases in original). Pilgrim Watch did not even hint at

this argument in Contention 3 as originally pled. Compare Answer at 6 with Petition at 45-48. Consequently, the mean versus sum argument must be rejected as beyond the scope of Contention 3 and should be stricken from the record. Also, Pilgrim Watch provides no qualified expert report to support this argument, and therefore, it must also be stricken for the reasons set forth in Section III below, that portions of the Answer that are unsupported by a qualified witness should be stricken from the record.

**2. Entergy should use cost avoided over the number of years required to remediate consequences**

Pilgrim Watch argues for the first time in its Answer that Entergy has inappropriately calculated the total costs avoided per year rather than calculating a “total of the costs over the number of years that will be required to remediate the consequences.” Answer at 6. Because this argument appears nowhere in Contention 3 as originally pled, the Licensing Board should strike this argument from the record as beyond the scope of the contention. Moreover, this argument is again unsupported by any qualified witness and must also be stricken from the record for this reason as well.

**3. Entergy should model re-suspension of on-site ground contamination**

Pilgrim Watch argues for the first time that off-site exposure resulting from re-suspension of on-site ground contamination needs to modeled as part of the SAMA analysis. Answer at 6, 7, 21, 57. This claim was not raised previously and should be stricken from the record. Furthermore, the significance or relevance of re-suspended on-site ground contamination is unsupported by any qualified witness, and thus, this argument must be stricken from the record for this reason as well.

**4. Entergy's consequences analysis stops at the 50 mile boundary**

Pilgrim Watch argues in its Answer that “Entergy’s consequence analysis stops at the 50 mile boundary. There is nothing magical about the 50 miles.” Answer at 20. This starkly contrasts with the argument advanced by Pilgrim Watch in Contention 3, to wit “the applicant falsely assumes that in a severe accident harmful levels of radiation (and thus the evacuation) will not extend beyond 10 miles.” Petition at 42 (emphasis added). By changing the focus from 10 miles to 50 miles, Pilgrim Watch has impermissibly attempted to alter the thrust of the argument as originally stated in Contention 3. Pilgrim Watch’s argument with respect to 50 miles is beyond the scope of Contention 3 as originally pled. Thus, the Licensing Board should strike the 50 mile argument from the record.

**5. Entergy did not specify how it derived Value of Non-Farm Wealth or explain how the Value of Non-Farm Wealth was projected from 2002 to 2032**

Pilgrim Watch argues for the first time in its Answer that Entergy did not specify how it derived the Value of Non-Farm Wealth or explain how non-farm property value was projected out to 2032. Answer at 37-38, 77-78. Based on its analysis, Pilgrim Watch concludes that the proper non-farm property value to use in the SAMA analysis should be, at least for Duxbury, \$529,412.80, *Id.* at 77, not \$189,041 per person. *Id.* at 73, 77. Entergy’s use of the \$189,041 per person non-farm property value is clearly stated in the Environmental Report. PNPS License renewal Application, Appendix E, Attachment E at E.1-62. Pilgrim Watch did not challenge this value in Contention 3 as originally pled. Therefore, Pilgrim Watch’s challenge to this value is untimely. Thus, the Licensing Board should strike from the record the impermissibly late arguments made by Pilgrim Watch concerning the derivation of that value. Furthermore, Pilgrim Watch provides no qualified witness in support of its position to challenge the testimony of Dr.

Kevin O’Kula that use of the Value of Non-Farm Wealth of \$189,041 per person from the original SAMA analysis is “highly conservative.”<sup>8</sup>

### **III. THE PORTIONS OF THE ANSWER THAT ARE UNSUPPORTED BY A QUALIFIED WITNESS SHOULD BE STRICKEN FROM THE RECORD**

Pilgrim Watch’s Answer impermissibly (1) advances numerous arguments that are unsupported by a qualified witness; and (2) relies on testimony supplied by non-expert declarants. Ms. Mary Lampert has provided no evidence that she is an expert concerning the technical areas that form the basis of many arguments advanced in the Answer that are not otherwise supported by a declarant or other document. Certain testimony offered in support of the Answer likewise lacks expert qualification. Non-expert testimony on a technical issue is accorded no weight. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-55, 20 N.R.C. 1646, 1651 (1984); see Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 N.R.C. 346, 367 (1983) (non-expert cannot sponsor technical analyses for admission as evidence). Therefore, the arguments advanced by Pilgrim Watch without support from a qualified witness and the non-expert testimony should be stricken from the record.

The following arguments raised by Pilgrim Watch in the Answer are made without the support of qualified witness and should be stricken from the record:

1. Pilgrim Watch repeatedly claims, without any qualified witness support, that the evacuation time estimates used in the SAMA analysis assume that only a portion of the population

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<sup>8</sup> Declaration of Kevin R. O’Kula (May 16, 2007) (“O’Kula Declaration”) at ¶ 41 and note 4; see also “Radiological Dispersion and Consequence Analysis Supporting Pilgrim Nuclear Power Station Severe Accident Mitigation Alternative Analysis, Revision 1 (May 2007)” (“O’Kula Report”) at 29-30, 33-34.

within the 10 mile EPZ will evacuate. Answer at 25, 30, 59, and 64-65. This claim was made in the original contention, Petition at 40, and as pointed out in the Sowdon declaration<sup>9</sup> (at ¶ 20) and the O’Kula Report (at 27) is simply incorrect. Pilgrim Watch’s Answer simply repeats the claim made in its Petition with no qualified witness support to challenge the Sowdon Declaration or the O’Kula Report.

2. Pilgrim Watch asserts that Entergy has miscalculated non-farm wealth but provides no qualified witness support for its assertions. Answer at 37-38, 73-76.
3. Pilgrim Watch advances its rationale for how the value of non farm property should be calculated, but provides no qualified witness support for its rationale. Answer at 76-77.
4. Pilgrim Watch argues that the “real value of business, its projected potential (multiplier), is perhaps 10 times its annual goods and services. . . .” but provides no qualified witness support for its assertions. Answer at 38; see also id. at 40, 86.
5. Pilgrim Watch asserts that “[l]oss of trained workers is another ‘cost’ ignored. Trained workers who are familiar with that particular business are assets to consider.” Answer at 38-39. Pilgrim Watch provides no qualified witness support for its assertions.
6. Pilgrim Watch argues that Entergy should use a different depreciation rate, such as the cost of replacement, in its economic analysis, but provides no qualified witness support for its assertions. Answer at 39, 80.

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<sup>9</sup> Declaration of Thomas L. Sowdon in Support of Entergy’s Motion for Summary Disposition of Pilgrim Watch Contention 3 (May 15, 2007).

7. Pilgrim Watch argues that a 10 % appreciation out to 30 years, rather than the 12% rate of return calculated by Entergy, would “seem[] reasonable,” but provides no qualified witness support for its assertion. Answer at 80.
8. Pilgrim Watch provides extensive data tables and argument concerning the costs per mile, cost per geographic sector, and a cost summary comparison assuming an accident occurs, but provides no qualified witness support for either its argument or the tables. Answer at 41-44, 87-90.
9. Pilgrim Watch asserts that “the engineers who created [the] RASCAL [software] freely admit that it simply does not work that well,” but provides no qualified witness to support its assertion or explain its relevance to the claims raised in Pilgrim Watch Contention 3.  
Answer at 54.
10. Pilgrim Watch asserts that the MACCS2 code only accounts for “mitigative costs,” but provides no qualified witness support for its assertion. Answer at 73.
11. Pilgrim Watch provides its own definition of evacuation speed – that it should include the “time it takes for the members of the public directed to evacuate to be registered, monitored, and decontaminated, if necessary, at the relocation center.” Answer at 24, 63. Pilgrim Watch, however, provides no qualified witness support for its definition.
12. Pilgrim Watch asserts that the evacuation time delay estimates are unreasonable but provides no qualified witness support for its position. Answer at 26-27, 30-31, 46-47, 60-62.

13. Pilgrim Watch asserts that the evacuation time estimates were based on scenarios that are not realistic, but provides no qualified witness support for its position. Answer at 28-29, 46-47, 62-64, 69-70.

14. Pilgrim Watch disputes the statements in Dr. O’Kula’s declaration that any uncertainty in the evacuation delay time and the evacuation speed input parameters is inconsequential, but Pilgrim Watch provides no qualified witness to support its dispute. Answer at 35-36.

With respect to the following testimony offered in support of its Answer, Pilgrim Watch has not shown that the testimony is made by a person qualified by training or experience in the technical area for which the testimony is offered. Accordingly, this testimony should be stricken from the record:

1. Recommendations to the Board of Selectman, Town of Plymouth, (Jan. 2006). No expert declaration is provided by Pilgrim Watch to support the statements in this document.
2. Testimony of Nancy M. Oates, Duxbury Town Clerk, regarding Article 39 – Pilgrim Plume Transport Model. Neither Pilgrim Watch nor Ms. Oates provide any basis to find that Ms. Oates is qualified by training or experience as a technical expert to review, analyze, or express an opinion on plume transport modeling.
3. Declaration of Andre Martecchini in Support of Pilgrim Watch’s Response Opposing Entergy’s Motion for Summary Disposition of Pilgrim Watch Contention 3. Neither Pilgrim Watch nor Mr. Martecchini provide any basis to find that Mr. Martecchini is qualified by training or experience as an expert to review, analyze, or express an opinion on the

evacuation delay time and evacuation speed information used as input data in the SAMA analysis.

4. Declaration of Representative Matthew C. Patrick in Support of Pilgrim Watch's Response Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3. Neither Pilgrim Watch nor Mr. Patrick provide any basis to find that Mr. Patrick is qualified by training or experience as an expert to review, analyze, or express an opinion on the emergency planning input data to be used in the PNPS SAMA analysis.

#### **IV. CONCLUSION**

Pilgrim Watch has impermissibly raised issues outside the scope of Contention 3 and has not provided qualified support for many of the arguments it makes in its Answer. Thus, the Board should grant Entergy's Motion to Strike Portions of Pilgrim Watch's Answer Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3.

#### **V. CERTIFICATION**

In accordance with 10 C.F.R. §2.323(b) and the Scheduling Order, counsel for Entergy conferred with the parties in a sincere effort to resolve the matters at issue in the instant Motion prior to the filing of the Motion, but was unsuccessful in doing so.

Respectfully Submitted,



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Dated: July 9, 2007

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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 Motion to Strike Portions of Pilgrim Watch’s Answer Opposing Entergy’s Motion for Summary Disposition of Pilgrim Watch Contention 3” were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 9<sup>th</sup> day of July, 2007.

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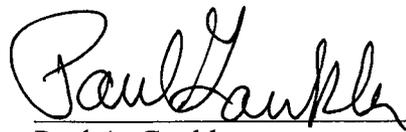
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