

October 29, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board Panel

DOCKETED
USNRC

In the Matter of)

October 30, 2007 (8:00am)

Entergy Nuclear Generation Company and)

Docket No. 50-293-LR

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Entergy Nuclear Operations, Inc.)

ASLBP No. 06-848-02-LR

(Pilgrim Nuclear Power Station))

ENTERGY'S MOTION FOR RECONSIDERATION OF LPB-07-12

I. INTRODUCTION

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. ("Entergy") hereby move the Atomic Safety and Licensing Board ("Board") for reconsideration of the Board's October 17, 2007 Memorandum and Order, LBP-07-12 ("Ruling on Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1, Regarding Adequacy of Aging Management Program for Buried Pipes and Tanks and Potential Need for Monitoring Wells to Supplement Program"). Entergy requests leave to file this motion for reconsideration pursuant to 10 C.F.R. § 2.323(e), which allows reconsideration of a decision under special circumstances, including a showing of a clear and material error of law in the decision. Entergy respectfully submits that the decision LBP-07-12 constitutes such an error, as discussed below.

Because Entergy had supported its motion for summary disposition of Pilgrim Watch Contention 1 ("PW-1") with the affidavit of a competent expert, Pilgrim Watch was required under controlling law to proffer rebutting "evidence" establishing a genuine dispute with a material fact. Since Pilgrim Watch did not proffer any expert affidavit, or any other competent evidence, controverting the adequacy of Entergy's aging management program for buried tanks

and piping, the Board was required as a matter of law to grant Entergy's summary disposition and resolve PW-1 in Entergy's favor.

There are also significant policy reasons warranting reconsideration of LBP-07-12. At the Commission's direction and to improve the efficiency and effectiveness of license renewal reviews, the NRC Staff prepared the Generic Aging Lessons Learned ("GALL") Report, NUREG-1801,¹ to compile aging management programs that have been determined to be acceptable through a systematic NRC Staff evaluation of operating experience and program attributes. Entergy submits that to further the NRC's objectives, a Board should accept conformance with the GALL Report as substantial evidence that an aging management program is adequate, and should permit litigation of the adequacy of such programs only when it is disputed by substantial, competent and probative evidence. In support of Entergy's Motion for Summary Disposition, both Entergy and the NRC Staff submitted declarations from qualified experts demonstrating that the aging management programs for buried tanks and piping at the Pilgrim Nuclear Power Station ("Pilgrim") conform with the GALL Report's recommendations. Entergy submits that where, as here, an intervenor has provided no rebuttal evidence, litigating the adequacy of programs conforming to the GALL Report is inappropriate.

Finally, a hearing requires a considerable devotion of attention and resources for all parties, including the applicant and the NRC Staff. A hearing on PW-1 would require experts and management to remain focused on these license renewal matters for many additional months

¹ In SECY-99-148, Credit for Existing Programs for License Renewal (June 3, 1999), the Staff recommended focusing Staff review guidance in the Standard Review Plan for License Renewal (SRP-LR) on areas where existing programs should be augmented. According to the Staff, this option provided "an effective integrated review of programs being relied upon to manage aging for license renewal" and "would reduce unnecessary burden by focusing the staff review on augmented programs for license renewal" (SECY-99-149 at 7). By SRM dated August 27, 1999, the Commission approved the Staff's recommendation and directed the Staff to develop the GALL report to document its evaluation of generic existing programs.

than would otherwise be necessary, diverting their attention from other important matters. A hearing could also delay issuance of the renewed license by months. Such impacts should be avoided where, as here, an intervenor has proffered no material evidence demonstrating its ability to contribute meaningfully to the proceeding.

II. STATEMENT OF CONTROLLING LAW

Under the NRC rules of practice, when a motion for summary decision is made and supported by affidavit, a party opposing the motion may not rest upon the mere allegations or denials of his answer. 10 C.F.R. § 2.710(b).² Thus, as the Commission has held, if a movant satisfies its initial burden and supports its motion by affidavit, “the opposing party must either proffer rebutting evidence or submit an affidavit explaining why it is impractical to do so,” Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 N.R.C. 98, 103 (1993). “[Opponents] have to present contrary evidence that is so significantly probative that it creates a material factual issue.” Id. at n.13 (citing Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-92-8, 35 N.R.C. 145, 154 (1992)). The non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), cert. denied, 481 U.S. 1029 (1987).³

In short, a party opposing a motion for summary judgment must present persuasive evidence that creates a concrete dispute as to the material facts. Mere allegations, speculated

² The standards for summary disposition in 10 C.F.R. § 2.710 apply in informal proceedings under Subpart L. See 10 C.F.R. § 2.1205(c).

³ Furthermore, “if the factual context makes the non-moving party’s claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue.” Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987), cert. denied, 484 U.S. 1006 (1988) (emphasis in original).

guesses, and naked assertions are insufficient to defeat a properly supported motion for summary disposition. See, e.g., Seabrook, CLI-92-8, 35 N.R.C. at 154 (an expert's speculation which lacked first-hand knowledge and was "at best an 'educated guess'" was not sufficiently probative to create a material factual issue); Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-629, 13 N.R.C. 75, 81 (1981) ("naked assertions" even when made by an expert are insufficient to defeat summary disposition). Likewise, assertions that more information is required to resolve an issue does not defeat summary disposition. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 N.R.C. 451, 455 (1980) ("general denial of the assertion" coupled with a claimed need for "more information" does not raise a material issue of fact).

III. LBP-07-12 CONSTITUTED A CLEAR AND MATERIAL ERROR OF LAW BY NOT FOLLOWING THIS CONTROLLING LAW

Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 8, 2007) was supported by the Declaration of Alan Cox,⁴ Entergy's Technical Manager, License Renewal. Mr. Cox is a nuclear engineer with 30 years of experience, including experience preparing seven license renewal applications and peer reviewing another eleven. His qualifications as an expert were clearly established and were not contested by Pilgrim Watch. Mr. Cox described the aging management programs applicable to buried tanks and piping within the scope of the license renewal rule at Pilgrim, and demonstrated the effectiveness of these programs to ensure that the buried tanks and piping would perform their intended function. This demonstration included explaining the conformance of the programs with the GALL Report, discussing the operating experience supporting the adequacy of the programs, and providing his

⁴ Declaration of Alan Cox in Support of Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 5, 2007) ("Cox, Decl.").

professional expert opinion on their effectiveness. Cox. Decl., ¶¶ 17-27. The conformance of Entergy's aging management programs with the GALL Report is particularly weighty evidence because that Report constitutes the NRC Staff's compilation of aging management programs that have been determined to be acceptable through a systematic accumulation of information and evaluation of program attributes. Id., ¶ 20 n.5.

The adequacy of Entergy's aging management programs was also supported by an affidavit from NRC Staff expert, Dr. James A. Davis. Affidavit of Dr. James A. Davis Concerning Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 25, 2007) ("Davis Aff."). Dr. Davis holds a PhD in metallurgical engineering and has 39 years of experience in material engineering with over 20 years of experience in the nuclear power industry. Dr. Davis presented the results of the NRC Staff's Safety Evaluation Report concluding that the aging management programs for buried tanks and piping at Pilgrim are consistent with the GALL Report. Davis Aff., ¶ 12. He also presented the Staff's conclusion that "Entergy has demonstrated that the effects of aging of underground pipes and tanks that may contain radioactively contaminated water will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis (CLB) for the period of extended operation, as required by 10 C.F.R. § 54.21(a)(3)." Id., ¶ 27.

Pilgrim Watch's Answer Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 27, 2007) ("Pilgrim Watch Answer") presented no evidence rebutting the declarations and expert opinions of either Mr. Cox or Dr. Davis. The only Declaration supporting Pilgrim Watch's Answer, a Declaration of David Ahlfeld, did not address or rebut the adequacy of Entergy's aging management programs. Dr. Ahlfeld stated that Entergy has not demonstrated that it will have sufficient means to detect leaks if they occur (Ahlfeld

Decl., ¶ 2). However, this statement does not address Entergy's aging management programs and provides no indication that they are ineffective. Dr. Ahlfeld stated that decades of experience with subsurface facilities demonstrates that leaks of contaminants can and do occur. Id. This vague and general statement has no particular relationship to the buried tanks and piping at Pilgrim or to the aging management programs that Entergy applies to these components. It certainly does not establish that Entergy's specific aging management programs are ineffective. Moreover, Dr. Ahlfeld's statements focus on the alleged need to detect leaks of "contaminants" to protect groundwater, and are not at all related to assuring that the buried tanks and pipes can perform their function of delivering water. Therefore, his statement is entirely irrelevant. As the Board ruled, "prevention of leaks *per se* is not a stated objective of any relevant aging management program." LPB-07-12 at 17.

Finally, Dr. Ahlfeld states that no site "can guarantee that leaks will not occur." Ahlfeld Decl., ¶ 2. This, statement too is irrelevant and immaterial. The standard for license renewal is not one requiring an absolute guarantee, but rather "reasonable assurance." See 10 C.F.R. § 54.29(a). See also Nuclear Power Plant License Renewal Final Rule, 60 Fed. Reg. 22,461, 22,479 (1995) ("... the [license renewal] process is not intended to demonstrate absolute assurance that structures or components will not fail, but rather that there is reasonable assurance that they will perform such that the intended functions ... are maintained consistent with the CLB"). In addition, for the buried tanks and pipes within the scope of the license renewal rules, the intended function that must be reasonably assured is delivery of water, not prevention of leaks.

It should also be noted that Dr. Ahlfeld's declaration does not demonstrate any experience with aging management programs at nuclear power plants. Dr. Ahfeld's declaration

states that his research and work is in the area of “groundwater flow and contaminant transport in the subsurface.” Ahlfeld Decl., ¶ 1. None of the papers listed on his resume relate to aging management of components. Dr. Ahlfeld provides no indication that he is familiar with Entergy’s programs, NRC standards, or the professional judgments reflected in the GALL Report. NRC regulations require that affidavits accompanying or opposing a motion for summary disposition “must set forth the facts that would be admissible in evidence, and must demonstrate affirmatively that the affiant is competent to testify to the matters stated in the affidavit.” 10 C.F.R. § 2.710(b) (emphasis added); see also Seabrook, 92-8, 35 N.R.C. at 154 (expert speculation lacking first-hand knowledge is “at best an ‘educated guess’” and not sufficiently probative to create a material factual issue).

All other portions of Pilgrim Watch’s Answer, including those portions to which the Board referred in LBP-07-12 as disputing the adequacy of the aging management programs for buried tanks and piping,⁵ constitute mere allegations unsupported by any affidavit or other competent, admissible evidence. Under the NRC rules, such allegations unsupported by evidence are insufficient to overcome a summary disposition motion supported by affidavit, such as Entergy’s Motion for Summary Disposition of PW-1. 10 C.F.R. § 2.710(b); see also Allens Creek, ALAB-629, 13 N.R.C. at 81 (“naked assertions” are insufficient to defeat summary disposition).

Moreover, Pilgrim Watch’s mere allegations and denials were irrelevant. Pilgrim Watch alleged that Entergy’s aging management programs are inadequate because they do not include

⁵ See LBP-07-12 at 10 & nn.46-50, referring to Pilgrim Watch Answer at 18-29.

the means to detect unmonitored leaks that might contaminate groundwater.⁶ As correctly held by the Board (LPB-07-12 at 17), this is simply not the purpose of the aging management programs. Therefore, Pilgrim Watch's claims raise no material issue.⁷

Pilgrim Watch's unsupported allegations concerning operating experience were equally irrelevant. Pilgrim Watch's Answer referred to leakage from HPCI piping at Dresden (Pilgrim Watch Answer at 14), but failed to respond to Mr. Cox's Declaration demonstrating that the HPCI piping at Dresden was non-safety related and made of aluminum, whereas the same piping at Pilgrim is safety-related and made of stainless steel. Pilgrim Watch provided no rebuttal evidence establishing the relevance of leakage at other plants. Pilgrim Watch provided no evidence showing that any leakage at other stations involved the same materials in the same environment as Pilgrim, involved the same aging management programs, or resulted in any loss of an intended function that Pilgrim's buried tanks and piping are required to perform.

⁶ See, e.g., Pilgrim Watch Answer at 17 ("Entergy describes methods they use to try to prevent leaks; but Entergy has not demonstrated they have sufficient means to detect leaks if they occur"); *id.* ("The applicant fails to acknowledge that a purpose of the AMP is to assure the integrity of the system so that there are no unmonitored leaks from the system's pipes and unmonitored contamination offsite"); *id.* at 18 ("[W]e dispute that these are sufficient 'preventative' measures to provide reasonable assurance that there will not be unmonitored releases offsite from leaks"). Emphases added.

⁷ Similarly, Pilgrim Watch's allegations that there may be other buried pipe and tank components containing radioactive liquids is irrelevant, because the scope of equipment subject to aging management is determined by the functions in 10 C.F.R. § 54.4, and not by the presence of radioactive liquids. See Cox. Decl., ¶ 8-9. Pilgrim Watch provides no evidence indicating that there are any other components required by 10 C.F.R. § 54.4 to be managed by the Buried Tank and Piping program at Pilgrim.

It should also be noted that the references in Dr. Ahlfeld's Declaration (at ¶ 2) and Pilgrim Watch's Answer (at 10-12, 16) to the off-gas system piping are irrelevant. The off-gas system does not contain any buried pipes and tanks that are within the scope of the license renewal rule. See Pilgrim License Renewal Application at 2.3-59 and Table 3.3.2-14-19; see also *id.* at Table 2.2-1a and Table 2.3.3.14-A (off-gas system included in license renewal under 10 C.F.R. § 54.4(a)(2) because of potential interaction with safety-related components). Pilgrim Watch and Dr. Ahlfeld apparently confuse the off-gas system (which supports the non-safety related condenser) with the standby gas treatment system (which provides an accident mitigation function). The two are not the same. Compare Pilgrim License Renewal Application at 2.3-59 (describing the off-gas system) with *id.* at 2.3-20 to 21 (describing the standby gas treatment system).

Likewise, Pilgrim Watch's allegations concerning previous leaks in Pilgrim's Salt Service Water inlet piping (Pilgrim Watch Answer at 22)⁸ is irrelevant. Pilgrim Watch alleged that this piping has been replaced "with the same external and internal coatings so that they are likely to leak again." Pilgrim Watch Answer at 22. Once more, Pilgrim Watch ignored and failed to respond to Mr. Cox's Declaration, which explained that the original carbon steel inlet piping was replaced with titanium pipe. Cox. Decl., ¶ 26.⁹ Pilgrim Watch also ignored and failed to respond to Mr. Cox's averment that the Service Water Integrity Program, which "includes provisions for visual inspections, eddy current testing of heat exchanger tubes, ultrasonic testing, radiography testing, and heat transfer capability testing" was effective in detecting the previous degradation of the rubber liner. *Id.* Pilgrim Watch provided no rebutting evidence showing that the new titanium inlet pipes are susceptible to degradation, or that the Service Water Integrity program is ineffective.

In sum, in response to Entergy's summary disposition motion, Pilgrim Watch provided no competent or probative evidence demonstrating any material dispute with the adequacy of the aging management programs for buried tanks and piping at Pilgrim. Instead, Pilgrim Watch responded with merely vague and essentially irrelevant allegations. Under the NRC's rule at 10

⁸ Pilgrim Watch purports to quote a section of the Pilgrim license renewal application (Pilgrim Watch Answer at 22), but the quoted statement is from the NRC Staff's Safety Evaluation Report. *See* "Safety Evaluation Report Related to the License Renewal of Pilgrim Nuclear Power Station" (June 2007) at 3-37. Moreover, as discussed above, it is clear that Pilgrim Watch failed to understand the facts. For such reasons, a licensing board is under no obligation to consider documents merely quoted or cited in support of a motion without a competent affidavit. Carolina Power & Light Co. (Shearon Harris Nuclear Plant, Units 1 and 2), LBP-84-7, 19 N.R.C. 432, 435-36, 458-59 (1984); *see First Nat'l Life Ins. Co. v. Cal. Life Ins. Co.*, 876 F.2d 877, 881 (11th Cir.), reh'g denied, en banc, 887 F.2d 1093 (1989).

⁹ *See also* Cox. Decl., ¶ 19, n.4. Portions of the SSW discharge pipes were also replaced with carbon steel piping coated internally and externally with cured-in-place epoxy coatings, and the entire length of the discharge pipes were internally lined with cured-in-place pipe linings. Cox. Decl., ¶ 26. Pilgrim Watch provided no evidence rebutting the effectiveness of these modifications, and further provided no expert opinion or other competent evidence of how any hypothetical leak in the discharge piping would prevent the SSW from performing its function of providing water for cooling equipment.

C.F.R. § 2.710(b) and case law, such allegations were insufficient to defeat Entergy's properly supported summary disposition motion.

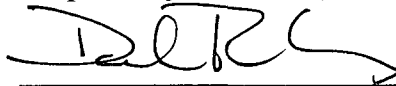
IV. CONCLUSION

For all of the reasons stated above, the Board should grant Entergy's request for leave to file this motion, reconsider LBP-07-12, and grant Entergy's original motion for summary disposition of PW-1 on the grounds that Pilgrim Watch failed to proffer any rebutting evidence demonstrating that a material issue of fact remains in dispute.

V. CERTIFICATION

In accordance with 10 C.F.R. § 2.323(b) and the Scheduling Order, counsel for Entergy conferred with the parties prior to the filing of the Motion. Both the Staff and Pilgrim Watch consent to leave for the filing of this Motion but will address the merits of the Motion in their respective responses.

Respectfully Submitted,



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Dated: October 29, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Motion for Reconsideration of LBP-07-12," dated October 29, 2007, 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 29th day of October 2007.

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