

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

DOCKETED 11/14/07

SERVED 11/14/07

Before Administrative Judges:

Ann Marshall Young, Chair  
Dr. Paul B. Abramson  
Dr. Richard F. Cole

In the Matter of:

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

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

November 14, 2007

**MEMORANDUM AND ORDER**  
**(Ruling on Entergy's Motion for Reconsideration of [LBP]-07-12)**

In this memorandum and order we rule on Entergy's motion<sup>1</sup> that we reconsider our ruling in LBP-07-12, in which we denied its motion for summary disposition of Pilgrim Watch Contention 1. Entergy requests leave to file its motion pursuant to 10 C.F.R. § 2.323(e), asserting a "clear and material error of law" in our earlier decision.<sup>2</sup> The Applicant contends that:

[s]ince 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 [sic] and resolve PW-1 in Entergy's favor.<sup>3</sup>

Moreover, Entergy urges this Licensing Board to "accept [Entergy's] conformance with the GALL Report [NUREG-1801, *Generic Aging Lessons Learned Report* (July 2001)], as

---

<sup>1</sup> Entergy's Motion for Reconsideration of LPB-07-12 [sic] (Oct. 29, 2007) [hereinafter Entergy Motion].

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 1-2.

substantial evidence that an aging management program is adequate,” and that we “should permit litigation of the adequacy of such programs only when it is disputed by substantial, competent and probative evidence.”<sup>4</sup>

Citing various case law relating to motions for summary disposition, Entergy lauds its own expert and challenges the expertise, in the field of “aging management programs at nuclear plants,”<sup>5</sup> of Intervenor’s expert, David Ahlfeld, Ph.D., Professor at the University of Massachusetts in the Department of Civil and Environmental Engineering, asserting further that Dr. Ahlfeld also “did not address or rebut the adequacy of Entergy’s aging management programs.”<sup>6</sup>

### **Staff Response to Motion**

The Staff supports Entergy’s motion, agreeing that Pilgrim Watch provided no “competent evidence that refuted the Staff’s and Entergy’s evidence that the AMP [aging management program] is adequate and consistent with GALL.”<sup>7</sup> Staff also argues, essentially repeating its original arguments against Contention 1, that “monitoring for radioactive leaks in the underground pipes and tanks is [not] within the scope of license renewal.”<sup>8</sup>

### **Pilgrim Watch Response to Motion**

Pilgrim Watch argues that Entergy has not met the Commission’s strict “compelling circumstances” standard for reconsideration, citing, *inter alia*, *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Fuel Storage Installation), CLI-06-27, 64 NRC \_\_, \_\_ (slip op.

---

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> NRC Staff Response to [Entergy Motion] at 6 (Nov. 8, 2007).

<sup>8</sup> *Id.* at 8.

at 2) (Nov. 9, 2006).<sup>9</sup> Intervenors also challenge Entergy's argument that compliance with the GALL report should be taken to show the adequacy of its aging management programs.<sup>10</sup> They argue that Dr. Ahlfeld is a "qualified expert in the area of groundwater flow and contaminant transport in the subsurface . . . with extensive experience in monitoring programs," whose testimony should be heard and not weighed in ruling on a motion for summary disposition.<sup>11</sup> They contend that they did present evidence, through Dr. Ahlfeld and references to NRC and industry documents, that constitutes more than "mere allegations and denials."<sup>12</sup>

### **Licensing Board Ruling**

As we stated in LBP-07-12:

[Intervenors' expert] Prof. Ahlfeld states that radioactive contaminants could leak from the condensate storage system, offgas system piping, and the salt service water system. He notes that, while Entergy "describes the several methods they use to prevent leaks from occurring," it "has not demonstrated that [the plant has] sufficient means of detecting leaks if they occur." Noting that leaks can and do occur, at various rates, Prof. Ahlfeld indicates among other things that such leaks are "virtually impossible to detect without the use of direct sampling methods such as monitoring wells."<sup>13</sup>

Based on this and other reasoned statements of Intervenors and their expert, the Licensing Board concluded, among other things:

We find there is a genuine dispute on the central and material issue of whether those Pilgrim aging management programs, or AMPs, that relate to relevant buried pipes and tanks are adequate on their own, without need of any leak

---

<sup>9</sup> Pilgrim Watch's Reply to [Entergy Motion] at 1-3 (Nov. 6, 2007).

<sup>10</sup> *Id.* at 3-6.

<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> *Entergy Nuclear Generation Co. And Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-12, 65 NRC \_\_\_\_, \_\_\_\_ (Oct. 17, 2007) (slip op. at 8) (citing Declaration of David Ahlfeld, PhD, PE In Support of Pilgrim Watch's Response Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 at 1 (June 18, 2007) [hereinafter Ahlfeld Declaration]).

detection devices (Intervenors propose monitoring wells), to assure that the pipes and tanks in question will perform their intended functions and thereby protect public health and safety.<sup>14</sup>

We find no reason — let alone compelling circumstances — to reconsider this ruling. First, it is clear that guidance documents such as the GALL Report do not constitute regulatory requirements and are not binding.<sup>15</sup> Second, although Entergy would have us construe the requirement of appropriate support in opposition to a motion for summary disposition very narrowly, it is clear that Prof. Ahlfeld, an engineer himself, has appropriate expertise to speak to the subjects on which he provided his opinion in support of Pilgrim Watch’s opposition to Entergy’s summary disposition motion.<sup>16</sup>

There is clearly a genuine dispute on a material issue of fact and law regarding whether Entergy’s aging management program has leak detection provisions sufficient to prevent the subject buried pipes and tanks from failing to satisfy their intended safety function (which the Applicant in its motion describes as “delivering water”<sup>17</sup>). Pilgrim Watch’s contention, which is essentially a contention of omission, is that Entergy’s aging management plan is inadequate

---

<sup>14</sup> *Id.* at 16.

<sup>15</sup> See *Curators of the Univ. of Mo.*, CLI-95-1, 41 NRC 71, 98, 100 (1995); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532, 544-45 (1986).

<sup>16</sup> We find Entergy’s additional argument concerning allocation of resources for litigation, see Entergy Motion at 2-3, to be completely unrelated to any standards for reconsideration, and void of legal support. In light of its obvious lack of merit, we have not addressed it further herein.

<sup>17</sup> Entergy Motion at 6.

because it does not contain any provision for detecting such leakage, and that monitoring wells are therefore necessary to fulfil this function.

The motion to reconsider of Entergy is therefore DENIED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

\_\_\_\_\_  
/RA/  
Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

\_\_\_\_\_  
/RA/  
Dr. Paul B. Abramson  
ADMINISTRATIVE JUDGE

\_\_\_\_\_  
/RA/  
Dr. Richard F. Cole  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 14, 2007<sup>18</sup>

---

<sup>18</sup> Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to all counsel or representatives for parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON ENTERGY'S MOTION FOR RECONSIDERATION OF [LBP] 07-12) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Ann Marshall Young, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Richard F. Cole  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Susan L. Uttal, Esq.  
David Roth, Esq.  
Andrea L. Silvia, Esq.  
Kimberly Sexton, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

David R. Lewis, Esq.  
Paul A. Gaukler, Esq.  
Pillsbury, Winthrop, Shaw, Pittman, LLP  
2300 N. Street, N.W.  
Washington, DC 20037-1128

Docket No. 50-293-LR  
LB MEMORANDUM AND ORDER (RULING ON ENTERGY'S  
MOTION FOR RECONSIDERATION OF [LBP] 07-12)

Perry H. Buckberg, Project Manager  
Plant Licensing Branch I-I  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Mail Stop O11-F1  
Washington, DC 20555-0001

Mary Lampert, Director  
Pilgrim Watch  
148 Washington Street  
Duxbury, MA 02332

Sheila Slocum Hollis, Esq.  
Town of Plymouth MA  
Duane Morris, LLP  
1667 K. Street, N.W.  
Suite 700  
Washington, D.C. 20006

Mark D. Sylvia, Town Manager  
Town Manager's Office  
11 Lincoln Street  
Plymouth, MA 02360

Terrence A. Burke, Esq  
Entergy Nuclear  
1340 Echelon Parkway  
Mail Stop: M-ECH-62  
Jackson, MS 39213

Chief Kevin M. Nord  
Fire Chief & Director Duxbury Emergency  
Management Agency  
668 Tremont Street  
Duxbury, MA 02332

[Original signed by Evangeline S. Ngbea]

---

Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 14<sup>th</sup> day of November 2007