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December 17, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

December 18, 2007 (8:30am)

Before the Atomic Safety and Licensing Board Panel

In the Matter of)
)
Entergy Nuclear Generation Company and)
Entergy Nuclear Operations, Inc.)
)
(Pilgrim Nuclear Power Station))

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 50-293-LR
ASLBP No. 06-848-02-LR

**ENTERGY'S ANSWER OPPOSING PILGRIM WATCH'S
MULTIPLE MOTIONS TO RESET AND EXTEND THE HEARING SCHEDULE
AND USE CONFIDENTIAL SETTLEMENT INFORMATION**

I. INTRODUCTION

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. ("Entergy") hereby answer and oppose the three motions that Pilgrim Watch filed over four days, consisting of Pilgrim Watch's motion of December 12, 2007 to reset and extend the hearing schedule,¹ Pilgrim Watch's motion of December 14, 2007 to reset and extend the hearing schedule,² and Pilgrim Watch's motion of December 15, 2007 seeking use of information provided in confidential settlement discussions.³ Entergy provides this combined response to the three

¹ Pilgrim Watch's Motion Requesting that the Order Establishing the Schedule for the Proceedings Be Reset to Extend All Deadlines for Filings Thirty (30) Days Following Complete Information Provided on Event (December 12, 2007) ("First Motion").

Pilgrim Watch filed a previous extension request on October 17. Pilgrim Watch's Motion Requesting that the Order Establishing The Schedule for the Proceedings Be Reset to Extend All Deadlines for Filings at Minimum Thirty (30) Days (Oct. 17, 2007). By Memorandum and Order dated November 14, 2007, the Board extended certain timelines but did not find it appropriate to extend such deadlines by the thirty-day periods requested by Pilgrim Watch. Pilgrim Watch's continual extension requests suggest that it is more interested in delay than in fulfilling its responsibilities as a party in an adjudicatory proceeding.

² Pilgrim Watch's Motion Requesting that the Order Establishing the Schedule for the Proceeding Be Reset to Extend All Deadlines for Filings Thirty (30) Days to Allow Review Documents Provided By Entergy Regarding Monitoring Wells Requested November 20, 2007 Received December 14, 2007 ("Second Motion").

³ Pilgrim Watch's Motion Regarding Admissibility of Factual Evidence (Dec. 15, 2007) ("Third Motion").

TEMPLATE= SECY-037

SECY-02

motions because all three are based on and seek to litigate a groundwater protection initiative (“GPI”) that is not within the scope of the admitted contention. Pilgrim Watch’s motions should be denied because: (1) they are based entirely on information on a groundwater protection initiative that is beyond the scope of the admitted contention, and thus there is no good cause for any extension or basis to allow use of confidential information on the GPI; (2) Pilgrim Watch failed to consult with the parties before filing the First Motion as required by 10 C.F.R. § 2.323(b); and (3) Pilgrim Watch’s Second and Third Motions seek to breach the confidentiality of settlement discussions.

As the Board recently ruled, the material issue in dispute with respect to Contention 1 is whether Pilgrim’s Aging Management Programs (“AMP”) for buried piping and tanks are adequate on their own, without need of any leak detection devices, such as groundwater monitoring, to assure that the pipes and tanks in question will perform their intended function. LBP-07-12 at 16. As the Board put it another way, the only issue is “whether Pilgrim’s existing AMPs have elements that provide appropriate assurance as required under relevant NRC regulations that the buried pipes and tanks will not develop leaks so great as to cause those pipes and tanks to be unable to perform their intended safety functions.” *Id.* at 18.

The groundwater protection initiative that Pilgrim has been implementing is not relied upon or credited as an AMP in the license renewal application, and thus is not relevant to Contention 1. Similarly, the initial measurements taken as part of this initiative are irrelevant, because as explained below they are not indicative of leakage in the buried piping and tanks within the scope of Contention 1. Indeed, had Pilgrim Watch consulted with Entergy as required by 10 C.F.R. § 2.323(b) before filing its First Motion, it would have learned this. Further, Pilgrim Watch’s argument that it needs time for its witnesses to address the confidential

information that Entergy provided on this initiative as part of settlement discussions, and that it should be entitled to use this information, would violate the confidentiality of those discussions. For all these reasons, Pilgrim Watch's motions should be denied.

II. RESPONSE TO FIRST MOTION

Pilgrim Watch's First Motion, which seeks an indeterminate extension until "complete" information is received on some initial results of the GPI, should be denied because the GPI is not an aging management program within the scope of Contention 1 or this proceeding. Similarly, the initial measurements are irrelevant, because as explained below they are not indicative of leakage in the buried piping and tanks within the scope of Contention 1.⁴ Pilgrim Watch's First Motion must also be denied because Pilgrim Watch failed to consult with the parties before filing the Second Motion as required by 10 C.F.R. § 2.323(b).

Entergy has been implementing a GPI at each of its nuclear plants, including Pilgrim, following the guidance in NEI-07-07, "Industry Ground Water Protection Initiative – Final Guidance Document" (August 2007). The GPI is being implemented at Pilgrim to assure groundwater protection, and not to manage the aging of components within the scope of the license renewal rules. The GPI is not credited as an aging management program in the Pilgrim license renewal application, and therefore is not within the scope of Contention 1.

As part of its GPI, Entergy recently installed four new groundwater monitoring wells at Pilgrim. The locations of these wells were selected strategically, with the input of a hydrogeologist, taking into account possible sources of groundwater contamination and

⁴ Pilgrim Watch Contention 1 consists of those buried tanks and pipes within the scope of the license renewal rule which contain radioactively contaminated water. The piping from the Condensate Storage Tanks (CST) is the only buried piping meeting this criterion, although the Salt Service Water (SSW) discharge piping could also potentially contain radioactivity if an unlikely cross-contamination event were to occur.

hydrogeology of the site. The four new monitoring wells are designated as MW-201, MW-202, MW-203, and MW-204. MW-201 is located between the Radwaste Building and the Intake Embayment, to the northeast of the Reactor Building and near the Intake Embayment. MW-202 is located between the Condensate Storage Tanks and the Intake Embayment. MW-203 is west of the Reactor Building, in the vicinity of Off-gas System piping running to the Main Stack. MW-204 is adjacent to the Discharge Canal, between the Intake Structure and the Discharge Canal, near where the liquid radwaste system piping discharges to the canal. A fifth, pre-existing monitoring well, MW-4, is located on the far side (southeast corner) of the Turbine Building, and is considered a control well. A map showing these wells is attached.

The first samples from the four new monitoring wells were taken on November 29 and were sent to an offsite laboratory for analysis. Split samples were also provided to the Commonwealth of Massachusetts Department of Public Health. The results of Entergy's sample analysis are as follows:

Well No.	Initial Tritium Measurement (pCi/l)	Confirmatory Tritium Measurement (pCi/l)
MW-201	3192 ± 162	3300 ± 164
MW-202	451 ± 135	733 ± 142
MW-203	NDA < 447	
MW-204	1366 ± 144	1586 ± 150

The results of the Commonwealth's analysis of split samples have not yet been received.

Under the GPI, the Lower Level of Detection ("LLD") specified as 3,000 pCi/l for tritium in the Pilgrim Offsite Dose Calculation Manual ("ODCM") is used as a threshold for determining whether additional action is required, including voluntarily informing stakeholders, conducting further analysis, and investigating the cause of the contamination. This threshold of

3,000 pCi/l is far below the 20,000 pCi/l safe drinking water standard established by the U.S. EPA for tritium.⁵ See 40 C.F.R. § 141.25.

As is evident from the sample results above, only MW-201 exceeded the 3,000 pCi/l threshold. MW-201 is not proximate to either the CST or SSW system buried piping.⁶ Further, the measurements of tritium in monitoring well MW-202 near the CST are well below the ODCM threshold and well below the levels that would be expected if buried CST piping were leaking.

In sum, the measurements of tritium are not indicative of any leakage from the CST or SSW piping subject to Contention 1.⁷ To the contrary, the measurement in MW-202 suggests that leakage from the CST is not occurring. The concentration of tritium in the CST is on the order of 10,000,000 pCi/l; and therefore if leakage from the CST buried piping were occurring, one would expect tritium measurements in MW-202 to be far higher than the 451 to 733 pCi/l concentrations recorded. The measurements in the monitoring wells say nothing with respect to the SSW piping, because the SSW is not a normal source of any radioactivity. For these reasons, the measurements of tritium do not indicate any deficiency in the aging management programs

⁵ The monitoring wells are not used for drinking water. The comparison with the drinking water standard is provided merely to indicate that the threshold in the ODCM and the recent measurements are very low – far lower than the level that would have any significant health and safety implications.

⁶ MW-201 is approximately 200 feet northeast of the CST, and separated from the CST by other structures. MW-201 is even farther from SSW discharge piping, which runs from the west side of the Reactor Building to the Discharge Canal.

⁷ Indeed, at this juncture, the measurements do not indicate leakage in any buried tanks or piping, even including those like the liquid radwaste system piping that is beyond the scope of this license renewal proceeding. It is possible that the measured levels reflect nothing more than typical deposition of tritium from the gaseous plant effluent.

that will apply to the CST and SSW buried piping.⁸ Further, the GPI itself is not an aging management program and is not relied upon at all in the Pilgrim license renewal application.

Accordingly, Pilgrim Watch's request in its First Motion to "reset" the hearing schedule and extend all deadlines by 30 days following "complete" information on what Pilgrim Watch characterizes as an "event" lacks merit. The measurements have little relevance, and Pilgrim Watch has provided no explanation why it needs this information to proceed. Indeed, it appears that Pilgrim Watch is simply trying once more to turn Contention 1 into a groundwater protection contention, contrary to the Board's ruling in LPB-07-12 (slip op. at 16-18). Thus, Pilgrim Watch's First Motion fails to demonstrate good cause for its extension request, as required by 10 C.F.R. § 2.307(a).⁹

Further, as stated earlier, Pilgrim Watch made no attempt to consult with the Entergy to attempt to resolve the First Motion, as is required by 10 C.F.R. § 2.323(b). Pursuant to 10 C.F.R. § 2.323(b), "[a] motion must be rejected" if it does not include a certification that the movant made a sincere effort to contact the other parties to resolve the issues. This is particularly appropriate here, where Pilgrim Watch is asking for an indeterminate extension to gain information without making any effort to find out if such information is relevant.

Finally, this answer has now provided Pilgrim Watch with the sampling results and locations, which is in essence all the information that is currently available on the measurements.

⁸ As the Board has stated, the only issue regarding Contention 1 is "whether Pilgrim's existing AMPs have elements that provide appropriate assurance as required under relevant NRC regulations that the buried pipes and tanks will not develop leaks so great as to cause those pipes and tanks to be unable to perform their intended safety functions." LBP-07-12, slip op. at 18.

⁹ Furthermore, as stated by the Commission in its Statement of Policy on Conduct of Adjudicatory Proceedings, while extensions may be granted under some circumstances, "this should be done only when warranted by unavoidable and extreme circumstances." Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 21 (1998) (emphasis added).

Follow-up actions have not yet been determined but could involve long-term monitoring of well samples to assess whether a trend exists. Extending the hearing to await such information would result in an undue delay, and would be inconsistent with the model milestones in 10 C.F.R. Part 2, App. B, which calls for commencement of a hearing in a Subpart L proceeding within 175 days after the SER and FEIS.

III. RESPONSE TO SECOND MOTION

Pilgrim Watch's Second Motion, which seeks to reset all deadlines to allow review and testimony on information on the GPI provided as part of confidential settlement discussions, should similarly be denied because the GPI is not within the scope of Contention 1 and the information on the GPI is irrelevant. Thus, there is no good cause for this further extension request or basis to allow Pilgrim Watch to further breach the confidentiality of those settlement discussions.

Entergy has engaged in certain settlement discussions with Pilgrim Watch, which both parties agreed would be kept confidential. While Entergy continues to treat those discussions as confidential, Entergy provides the following limited information because it is necessary to respond to Pilgrim Watch's unauthorized disclosures and to correct misrepresentations by Pilgrim Watch concerning the settlement discussions and the confidential information that was provided.

In April, 2007, before filing its motion for summary disposition of Contention 1, Entergy initiated settlement discussions with Pilgrim Watch, consistent with the obligation in 10 C.F.R. § 2.323(b) to attempt to resolve the dispute before filing that motion. Because Entergy believed that Pilgrim Watch's real interest was in having a groundwater protection program, Entergy

provided certain information on its proposed implementation of the GPI. The parties, however, were unable to reach a settlement.

The failure to reach a settlement did not prevent Entergy from proceeding with the implementation of the GPI. Entergy proceeded with its plans because, while the GPI is not an AMP and therefore irrelevant to Contention 1, Entergy is nevertheless committed to responsible environmental stewardship. Indeed, it is entirely unreasonable for Pilgrim Watch to assume that Entergy would not move forward with its proposed actions, or that having failed to reach settlement, Pilgrim Watch was somehow entitled to remain involved or be kept informed of those actions.

Following the Board's denial of Entergy's motion for summary disposition, Entergy again initiated settlement discussions. On November 20, 2007, the parties and their experts engaged in a conference call in which Entergy provided certain information on the steps that it had taken to implement the GPI. Thus, Pilgrim Watch's statement that it learned "by happenstance that monitoring wells have been installed" (Second Motion at 2, emphasis added) is inaccurate. At the very outset of the call, both parties reiterated their agreement that the discussions and information exchange would be treated as confidential settlement discussions. During the November 20, 2007 conference call, Pilgrim Watch asked a number of questions, including questions concerning the location and construction of the wells that had been installed, which Entergy indicated it would attempt to address. While the provision of this information was delayed somewhat by the Thanksgiving holiday and the need to prepare for oral argument in the First Circuit (relating to the Massachusetts appeal in this proceeding), Entergy's counsel informed Ms. Lampert on December 6 that the information would be provided shortly. Thus, Pilgrim Watch's statement that "Pilgrim Watch received, again by happenstance, a packet of new

information, without any prior notification by the Applicant that the information was being sent” (Second Motion at 2, emphasis added) is also inaccurate.¹⁰

For these same reasons, Pilgrim Watch’s assertion that Applicant “blind-sided it” is without merit. To the contrary, Pilgrim Watch learned on the November 20 conference call that additional wells had been installed. Further, Entergy had no obligation to provide any information on the GPI to Pilgrim Watch, since the GPI is not credited or relied upon as an AMP, but voluntarily did so to promote settlement. Thus, Entergy has acted in good faith and has been forthcoming.

There is likewise no merit in Pilgrim Watch’s claim that it needs more time now so that their experts can “redo” their testimony. (Second Motion at 3). Pilgrim Watch’s testimony should be addressing the adequacy of Entergy’s AMPs, and not the GPI since it is not an AMP. The information that Entergy provided as confidential settlement discussions is not relevant to the adequacy of the AMPs described and credited in the Pilgrim license renewal application. Once more, Pilgrim Watch is simply looking for the opportunity to litigate groundwater protection, but that is not the issue in this proceeding. Since the information on the GPI is irrelevant to the admitted contention, there is no good cause for an extension as required by 10 C.F.R. § 2.307(a).

Further, allowing Pilgrim Watch to address in its testimony the documents that Entergy provided in confidential settlement discussions would violate the confidentiality of those settlement discussions and deter all further settlement discussions. The December 12 letter

¹⁰ This information was sent by Federal Express on December 12 to the service address for Pilgrim Watch’s representative, Ms. Lampert. Pilgrim Watch’s statement that the package “was discovered by happenstance” (Second Motion at 3) is remarkable.

providing the information that Entergy had committed to provide as part of the confidential settlement discussions was clearly labeled “CONFIDENTIAL – SETTLEMENT DISCUSSION.” The letter stated that the documents attached thereto “are being provided as part of these confidential settlement discussions.” Further, each of the documents was labeled “Confidential – Provided in Connection with Settlement Discussions.”

The Board should not allow Pilgrim Watch to breach the confidentiality of these discussions. The Commission has a long-standing policy of promoting settlement. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 19 (1998); Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 455-56 (1981). If the settlement discussions, including the exchange of information and papers as part of those discussions, cannot be kept confidential, the ability to have the sort of frank exchange needed to reach agreements would be greatly impeded.

IV. RESPONSE TO THIRD MOTION

Like the Second Motion, Pilgrim Watch’s Third Motion should be denied because it seeks to use documents that (1) are irrelevant to the Contention 1, and (2) were provided as part of confidential settlement discussions. Those documents were clearly labeled as confidential and provided as part of settlement discussions, and Pilgrim Watch concedes that it agreed to the confidentiality of the discussions.

Pilgrim Watch’s Third Motion attempts to sidestep its agreement by claiming that it only agreed that “the offers and terms of settlement” would be kept confidential and not discoverable factual information. These arguments miss the mark for two reasons. First, the information that Entergy provided to describe its GPI is not relevant to Contention 1 and therefore not

discoverable or admissible in this proceeding.¹¹ Therefore, Entergy was entitled to provide it in confidence, and did so specifically to avoid the current situation where Pilgrim Watch now seeks to use this information to attack a program that is beyond the scope of the proceeding.¹²

For this reason, Pilgrim Watch's reference to Fed. R. Evid. 408 is inapposite. Entergy agrees that evidence which is "otherwise discoverable" may not be excluded merely because it is presented in compromise negotiations, but that is not the case here.¹³ Pilgrim Watch has made no showing that the attachments to the December 12 letter are discoverable – i.e., Pilgrim Watch has made no showing that they are relevant to Contention 1. Pilgrim Watch as the movant seeking an order has the burden of proof on its motion (10 C.F.R. § 2.235), and courts have suggested that a party seeking settlement documents has the burden of making a "particularized showing" of relevance. See, e.g., Lesal Interiors, Inc. v. Resolution Trust Corp., 153 F.R.D. 552, 562 (D.N.J. 1994); Fidelity Federal Savings and Loan Ass'n v. Felicetti, 148 F.R.D. 532, 533-34

¹¹ Pilgrim Watch would not be barred from using the same information if it were produced in discovery in another proceeding, or if Pilgrim Watch obtains it from a public source.

¹² Pilgrim Watch's claim that these documents are purely factual and a compilation of old, historical documents and near copies of the NEI-07-07 (Third Motion at 1-2) is inaccurate. The hydrogeological assessment, for example, provides expert opinion and is in fact privileged work product. Pilgrim Watch is of course free to use NEI-07-07, or any information or documents that it obtains from any other public source or discovers in any other proceeding. What Pilgrim Watch is not free to do is to agree to maintain the confidentiality of information on the GPI that Entergy was not required to provide, and then violate its agreement on the grounds that the information proceeds from industry guidance and knowledge of the site hydrology.

¹³ It should be noted that Pilgrim Watch quotes a previous version of Rule 408, as it existed prior to 2006 amendments. The language emphasized by Pilgrim Watch no longer exists in the rule. See Fed. R. Evid. 408 (2007). The language was deleted as superfluous. Id., Advisory Committee Note accompanying 2006 Amendment. The intent was to prevent a party from trying to immunize admissible information, such as a pre-existing document, through the pretense of disclosing it during compromise negotiations. Id., citing Ramada Development Co. v. Rauch, 644 F.2d 1097 (5th Cir. 1981). In contrast, the documents that Entergy provided were not relevant to the admitted contention, and therefore not admissible in the first instance. Thus, there has been no attempt to "try[]" to immunize admissible information."

(E.D.Pa. 1993). Here, Pilgrim Watch has the documents in question and thus is fully capable of addressing the relevance of the documents but has failed to demonstrate any.¹⁴

Second, Pilgrim Watch's assertion that it agreed only to protect the "offers and terms of settlement"¹⁵ is an inaccurate, post-hoc recharacterization.¹⁶ What Pilgrim Watch and Entergy agreed was to keep confidential the settlement discussions and not use the information exchanged against each other, so that there could be a candid dialog and exchange. The labeling of the December 12, 2007 letter and labeling of the documents themselves leave no doubt that they were provided in confidence. If Pilgrim Watch believes that there was any misunderstanding on its part, it should return those documents immediately, rather than violate the spirit of the settlement discussions.

Further, the documents that Entergy provided were part and parcel of the offer and terms of settlement. Entergy was providing information in response to Pilgrim Watch's questions during the settlement discussions to describe the features of the GPI which Pilgrim Watch might accept. Having solicited the hydrogeological assessment, information on well location and construction, and other details on the GPI as part of the settlement discussions, specifically for

¹⁴ Pilgrim Watch's Third Motion does not discuss the relevance of the documents at all. Pilgrim Watch's Second Motion merely asserts that "[m]onitoring is clearly relevant to this case..." Second Motion at 1. This bald, conclusory assertion does not meet Pilgrim Watch's burden of making a particularized showing, and is in any event simply at odds with the Board's rulings in LBP-07-12. See LBP-07-12 at 16, 18.

¹⁵ Pilgrim Watch states that there is no information contained in those documents of any details of a settlement offer or even mentioning a settlement offer. Third Motion at 2. Pilgrim Watch conveniently omits any mention of the December 12 letter which transmitted the documents. That letter stated, "Attached are a number of documents addressing the questions that you asked during our November 20 conference call discussing the possibility of settling Pilgrim Watch Contention 1. These documents, which are provided as part of these confidential settlement discussions, consist of ..." Moreover, the documents were provided to describe and justify a program (a program that is currently entirely voluntary) that might be formalized to settle Pilgrim Watch's concerns.

¹⁶ Pilgrim Watch made this claim only after it had consulted with Entergy's counsel and had been told that Entergy would not consent to use of the settlement documents.

the purpose of assessing the settlement offer, Pilgrim Watch should not be permitted to violate the confidentiality of those discussions with impunity.

V. CONCLUSION

For all of the foregoing reasons, Pilgrim Watch's motions should be denied

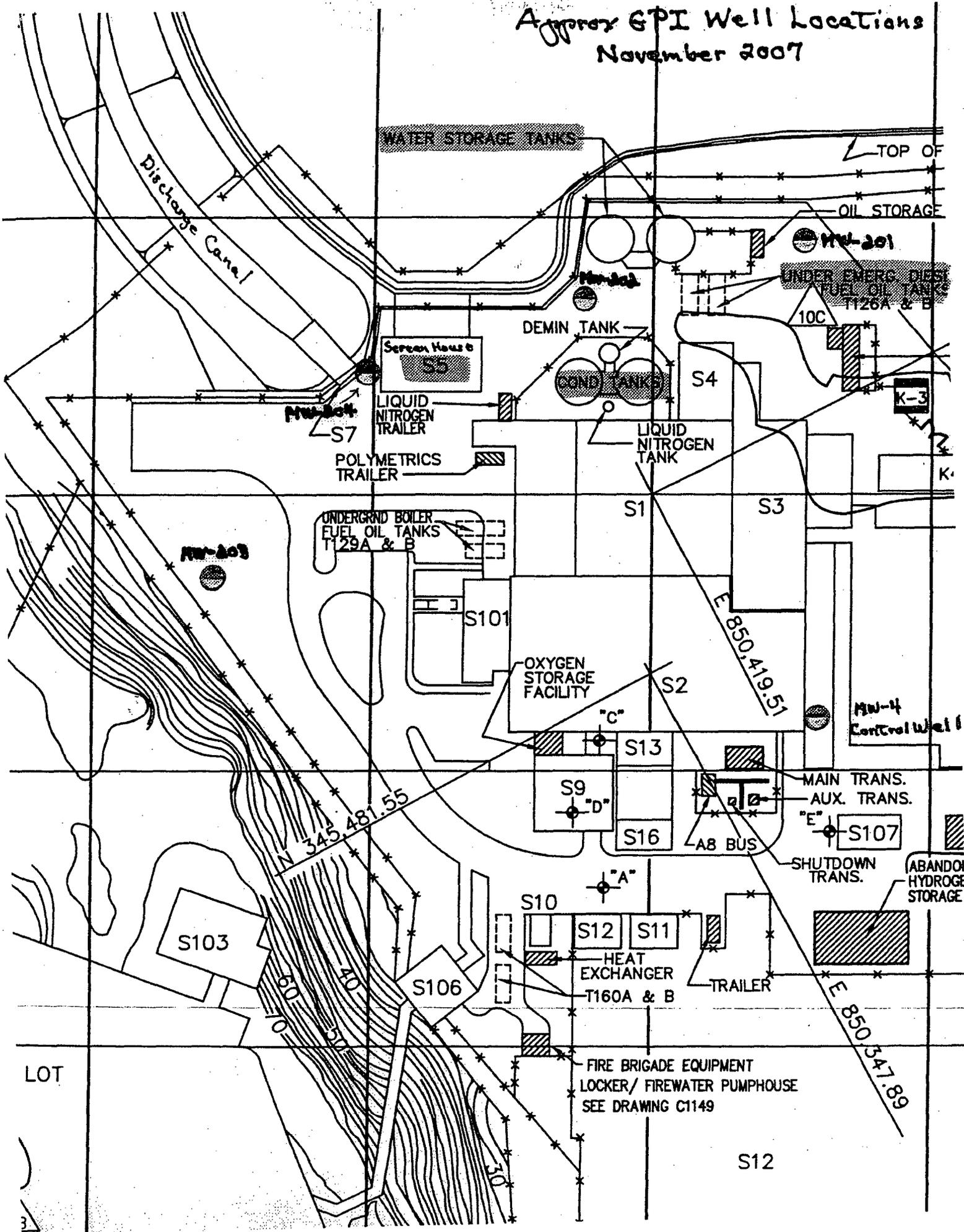
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Dated: December 17, 2007

Approx GPI Well Locations
November 2007



**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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Entergy Nuclear Generation Company and)	Docket No. 50-293-LR
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(Pilgrim Nuclear Power Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Answer Opposing Pilgrim Watch's Multiple Motions to Reset and Extend the Hearing Schedule and Use Confidential Settlement Information," dated December 17, 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 17th day of December, 2007.

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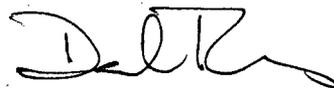
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