

December 31, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Entergy Nuclear Generation Co. and	)	
Entergy Nuclear Operations, Inc.	)	Docket No. 50-293-LR
	)	
	)	ASLBP No. 06-848-02-LR
(Pilgrim Nuclear Power Station)	)	

NRC STAFF RESPONSE TO PILGRIM WATCH MOTION FOR CLARIFICATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff (“Staff”) hereby files its response to “Pilgrim Watch Motion for Clarification” (“Motion”), filed on December 21, 2007. For the reasons set forth herein, the Staff submits that Pilgrim Watch improperly attempts to expand the scope of Contention 1 beyond the specific issue admitted by the Licensing Board, and improperly seeks to raise concerns outside the scope of Contention 1 as filed, admitted, narrowed, and clarified.

For the reasons set forth below, the Staff opposes the Motion.

BACKGROUND

As originally admitted to this proceeding in October 2006, Pilgrim Watch Contention 1 read:

The Aging Management program proposed in the Pilgrim Application for license renewal is inadequate with regard to aging management of buried pipes and tanks that contain radioactively contaminated water, because it does not provide for monitoring wells that would detect leakage.<sup>1</sup>

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<sup>1</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations Inc. (Pilgrim Nuclear Power Station)*, LBP-06-23, 64 NRC 257, 315 (2006) (“Memorandum and Order on Contentions”).

The scope of the contention was narrowed by the Board in October 2007 in its decision<sup>2</sup> denying Entergy's motion for summary disposition.<sup>3</sup> The Board found genuine a dispute regarding:

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 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>4</sup>

To clarify for all parties involved, the Board explicitly narrowed the issue by stating that:

the only issue remaining . . . is whether or not monitoring wells are necessary to assure that the buried pipes and tanks at issue will continue to perform their safety function during the license renewal period — or, put another way, 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.<sup>5</sup>

On October 29, 2007, Entergy filed a motion for reconsideration of the Board's denial of summary disposition of Contention 1.<sup>6</sup> The Board denied Entergy's Motion for Reconsideration, finding, again, that a genuine dispute continued to exist with respect to

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<sup>2</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations Inc.* (Pilgrim Nuclear Power Station), LBP-07-12, 66 NRC \_\_\_\_, (2007). ("Summary Disposition Order").

<sup>3</sup> Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 8, 2007).

<sup>4</sup> LBP-07-12, 66 NRC at \_\_, slip op. at 16.

<sup>5</sup> *Id.* at 18.

<sup>6</sup> Entergy's Motion for Reconsideration of LBP-07-12 (October 29, 2007) ("Motion for Reconsideration").

“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.”<sup>7</sup>

On December 21, 2007, Pilgrim Watch filed its motion for clarification. For the reasons set forth below, the motion should be denied.

#### DISCUSSION

As a result of the Board's decisions cited above, which narrowed and clarified the contention, the Staff respectfully submits that the scope of Contention 1 is limited to:

whether or not monitoring wells are necessary to assure that the buried pipes and tanks [carrying radioactive liquid] at issue will continue to perform their safety function during the license renewal period — or, put another way, whether Pilgrim's existing AMPs have elements that provide appropriate assurance as required under relevant NRC regulations that the buried pipes and tanks [carrying radioactive liquid] will not develop leaks so great as to cause those pipes and tanks to be unable to perform their intended safety functions.<sup>8</sup>

A. Buried Pipes and Tanks within Scope Are Clearly Limited to Those Carrying Radioactive Liquid

Pilgrim Watch argues that the Board's Summary Disposition Order intended to expand the scope of Contention 1 from the buried pipes and tanks carrying radioactive liquid to all buried pipes and tanks in scope for license renewal, regardless of the material carried within. Pilgrim Watch bases this argument primarily on a footnote from the Memorandum and Order on Contentions, which calls for a possible need for clarification regarding which buried pipes and

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<sup>7</sup> *Id.*

<sup>8</sup> Memorandum and Order (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), LBP-07-12, 66 NRC \_\_\_\_ (Oct. 17, 2007) (slip op.) at 18 (“Summary Disposition Order”).

tanks carrying radioactive liquid will be within scope for this proceeding.<sup>9</sup> In the Summary Disposition Order, the Board never specifically referred to buried pipes and tanks “carrying radioactive liquid,” presumably because the scope of buried pipes and tanks in question had been clear for the past year, as outlined and addressed by all parties and the Board. Pilgrim Watch, however, chose to make an inductive leap in logic, assuming that because the Board never specifically said “radioactive liquid” that they intended to implicitly broaden Contention 1 from the Memorandum and Order on Contentions to all buried pipes and tanks in scope for license renewal.

In the Summary Disposition Order, the Board makes multiple references to the fact that the scope of Contention 1 is limited to only those buried pipes and tanks carrying radioactive liquid. For instance, the Board refers to the “relevant”<sup>10</sup> buried pipes and tanks, and the buried pipes and tanks “at issue,”<sup>11</sup> from which it should be inferred that there are buried pipes and tanks that are irrelevant and not at issue, thus clearly not encompassing *all* buried pipes and tanks in scope for license renewal. Also, footnotes 78<sup>12</sup> and 79<sup>13</sup> of the Summary Disposition

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<sup>9</sup> Motion at 3 (citing, Memorandum and Order on Contentions, LBP-06-23, 64 NRC at 315 n. 261.

<sup>10</sup> “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 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.” Summary Disposition Order at 16 (emphasis added).

<sup>11</sup> “Thus, the only issue remaining before this Licensing Board regarding Contention 1 is whether or not monitoring wells are necessary to assure that *the buried pipes and tanks at issue* will continue to perform their safety function during the license renewal period . . .” *Id.* at 18 (emphasis added).

<sup>12</sup> “Also in dispute is the ancillary matter of whether the SSW system and offgas system piping may contain radioactive liquid and should therefore be considered vis-à-vis proposed safety-function-failure leak detection.” *Id.* at 18, fn.78.

<sup>13</sup> “A system of monitoring wells, appropriately placed taking into account actual geological conditions and locations of relevant components that could contain radioactive liquid, might well, by (continued. . .)

Order would surely be irrelevant and immaterial to the main issue, if not entirely superfluous, if the scope included all buried pipes and tanks. Further, in clarifying what is not at issue, the Board stated that it does not “see any relevant, litigable dispute at this point regarding any health effects of leaking radioactive liquid.”<sup>14</sup> The Board further sharpens its point in a footnote stating:

It goes without saying that detection of leaks would indeed protect the public health — whether by assuring that components perform intended functions, by otherwise preventing doses to the public in violation of NRC regulations, and/or by any other means. But issues concerned with monitoring of radiological releases, or determinations of how leakage could harm health or the environment, are not legitimately in dispute here, because they do not relate to aging and/or because they are addressed as part of ongoing regulatory processes.<sup>15</sup>

This makes clear that the Board sees the issue of leaks and radioactive liquid as inextricably intertwined for the purposes of this Contention, such that the need to continually couch “buried pipes and tanks” with the phrase “carrying radioactive liquid” is unnecessary. Finally, the Board’s latest order made clear that the scope was limited to buried pipes and tanks carrying radioactive liquid when it requested only three pieces of information from Entergy:

(a) clearly identify each buried pipe and tank which may potentially contain radioactive fluids; (b) identify the intended safety function of such pipe or tank; (c) specify the procedures by which Entergy will determine, during the license extension period, whether there are leaks present which might endanger the ability of that pipe or tank to meet its intended safety function, whether or not such

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(. . .continued)

detecting leaks, allow for earlier and/or more effective detection and correction of any problems that might compromise the intended functions of relevant components.” *Id.* at 18, fn.79.

<sup>14</sup> *Id.* at 18.

<sup>15</sup> *Id.* at 18, fn.81.

procedures are part of routine maintenance and operation or part of the aging management program.<sup>16</sup>

Therefore, because the buried pipes and tanks in scope for Contention 1 have always been clearly limited to those containing radioactive liquid, the attempt to broaden the scope of Contention 1 to include all buried pipes and tanks subject to aging management review is without merit and, thus, no clarification is necessary.

B. Motion with Respect to Buried Pipes and Tanks is Not Timely

10 CFR § 2.323 (a) requires all motions to “be made no later than ten (10) after the occurrence or circumstance from which the motion arises.” Pilgrim Watch claims to need clarification based on orders from October 16, 2006 and October 17, 2007. Nothing was stated in the December 19, 2007 Board order<sup>17</sup> that raised new issues or provided new information for Pilgrim Watch with respect to this motion; if anything, it made this filing entirely superfluous. Therefore, because the occurrence or circumstance from which this need for clarification arose occurred over two months ago, in mid-October, which is well over the ten day limit, this motion is untimely and should not be considered.

C. Pilgrim Watch’s Clarification Request Regarding Materials Entergy Must Provide is an Improper Discovery Request

In Subpart L proceedings, parties are prohibited from seeking “discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories or otherwise” except as allowed in Subpart C. 10 C.F.R. § 2.1203(d); see *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power

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<sup>16</sup> Order (Revising Schedule for Evidentiary Hearing and Responding to Pilgrim Watch’s December 14 and 15 Motions) (Dec. 19, 2007) at 2-3.

<sup>17</sup> *Id.*

Station), LBP-05-33, 62 NRC 828, 841 (2005). In crafting Subpart C, the Commission attempted to make adjudication less burdensome for all parties, with respect to time and resources. As such, the only “discovery” that occurs in Subpart L hearings relates to the general requirements for mandatory document disclosure, which each party must comply with throughout the course of the proceeding. Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2194 (Jan. 14, 2004).

Pilgrim Watch attempts to veil their extensive discovery request as part of a motion for clarification. However, the Board, which has “the responsibility to perform the bulk of the inquiry at evidentiary hearings,” already specifically outlined exactly what information it needs to perform its function and build the proper adjudicatory record. The virtually five pages of additional requests for information submitted by Pilgrim Watch are therefore not only unnecessary, but also improper under the rules of Subparts C and L.

CONCLUSION

For the reasons discussed above, the Board should deny Pilgrim Watch’s motion.

Respectfully submitted,

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Kimberly A. Sexton  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 31<sup>st</sup> day of December, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PILGRIM WATCH MOTION FOR CLARIFICATION" in the above-captioned proceeding have been served on the following by electronic mail and deposit in the U.S. Nuclear Regulatory Commission's internal mail system as indicated by a single asterisk(\*), or by electronic mail and deposit in the U.S. Mail System, as indicated by a double asterisk (\*\*) this 31<sup>st</sup> day of December 2007.

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