

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

DOCKETED 01/11/08

SERVED 01/11/08

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

January 11, 2008

ORDER

(Denying Pilgrim Watch's Motion for Clarification)

On December 19, 2007, a majority of this Board issued a scheduling order for the evidentiary hearing in the Pilgrim Nuclear Power Station license renewal proceeding.¹ On December 21, 2007, the Intervenor, Pilgrim Watch, filed a Motion for Clarification regarding certain issues asserted to have arisen out of the December 19 Order.² For the reasons discussed below, we deny Pilgrim Watch's Motion for Clarification.

Pilgrim Watch's Motion seeks answers to two questions: (1) what buried pipes and tanks are now under consideration before the Board; and (2) what materials must the Applicant, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. ("Entergy"), provide to Pilgrim Watch by January 8, 2008.³ Pilgrim Watch suggests that while the original Memorandum and Order admitting Contention 1⁴ limited its focus to buried pipes and tanks that

¹ Licensing Board Order (Revising Schedule for Evidentiary Hearing and Responding to Pilgrim Watch's December 14 and 15 Motions) (Dec. 19, 2007) (unpublished) [hereinafter "December 19th Order"].

² Pilgrim Watch Motion for Clarification (Dec. 21, 2007) [hereinafter "PW Motion"].

³ Id. at 2.

⁴ Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257 (2006).

contain radioactively contaminated water, footnote 261 of the order⁵ essentially provided the opportunity for further definition in the future of which pipes and tanks are at issue.⁶ Pilgrim Watch asserts that the Board, in our order denying Entergy's summary disposition motion,⁷ further defined pipes and tanks to include all buried pipes and tanks, not simply those that may contain radioactively contaminated water.⁸ Pilgrim Watch attempts to demonstrate why the other buried pipes and tanks (those without radioactively contaminated water) are thus also within the scope of the Contention.⁹

Additionally, Pilgrim Watch requests further clarification as to what Entergy must provide pursuant to our December 19th Order. In this section of its motion, Pilgrim Watch lists the documents and information that it believes Entergy should provide by January 8, 2008.¹⁰

Entergy and the Staff in their responses object, arguing among other things that the Summary Disposition Order did not expand the scope of the contention and by definition could actually only dismiss or narrow the contention;¹¹ that Pilgrim Watch has essentially

⁵ Pilgrim LBP-06-23, 64 NRC at 315 n.261. "With respect to exactly which pipes and tanks do fall within Pilgrim's aging management program, this is addressed to an extent in the Application, although further definition may be required as the adjudication of this case proceeds forward."

⁶ PW Motion at 3.

⁷ Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-07-12, 66 NRC __ (slip op.) (Oct. 17, 2007) [hereinafter "Summary Disposition Order"]

⁸ PW Motion at 3-4.

⁹ Id. at 5-7.

¹⁰ Id. at 7-11.

¹¹ Entergy's Answer Opposing Pilgrim Watch's Motion for Clarification at 2 (Dec. 31, 2007) [hereinafter Entergy Answer].

misinterpreted the Board's position in the Summary Disposition Order;¹² that the motion is not timely, as the clarification sought is really based on issues stemming from the original order admitting the contention and the Summary Disposition Order;¹³ and that Pilgrim Watch's request for clarity on what information Entergy must provide is an improper discovery request not permitted by NRC rules.¹⁴

Addressing, first, Pilgrim Watch's motion for clarification insofar as it seeks to expand the buried pipes and tanks at issue to include those that do not contain radioactively contaminated water, we deny the motion. Even though, as Pilgrim Watch argues, we did indicate in our original Memorandum and Order admitting Contention 1 that "further definition may be required as the adjudication of this case proceeds forward,"¹⁵ this statement was made in the general context of the principle that the scope of a contention is defined, among other things, primarily by the original contention as submitted.¹⁶ A contention may then be limited or reframed by the board in admitting all or part of it, and, as anticipated in footnote 261, further defined as a case proceeds — within the context of the general principle noted. In this case, Pilgrim Watch's original contention concerned only "systems and components that may contain radioactively contaminated water,"¹⁷ and the Board then admitted the contention, limited somewhat from its

¹² NRC Staff Response to Pilgrim Watch Motion for Clarification at 3-6 (Dec. 31, 2007) [hereinafter Staff Response].

¹³ Id. at 6.

¹⁴ Entergy Answer at 3-6; Staff Response at 6-7.

¹⁵ Pilgrim LBP-06-23, 64 NRC at 315 n.261.

¹⁶ See e.g. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 & n.11 (1988); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 709 (1985), aff'd in part and review otherwise declined, CLI-86-5, 23 NRC 125 (1986) (An intervenor is "bound by the literal terms of its own contention.")

¹⁷ Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006).

original scope, but still concerning only “buried pipes and tanks that contain radioactively contaminated water.”¹⁸ As the Staff has pointed out in its Response, nothing that has occurred since would alter this.¹⁹

NRC regulations permit the filing of new and late-filed contentions, as well as amendments to contentions, in some circumstances.²⁰ However, even assuming that the new construction of the contention that is urged may have originally been admissible, no legal support has been offered to support the proposition that the rules would permit the expansion of the scope of an already-admitted contention beyond that which was clearly intended in the original contention and in the contention as admitted, absent a showing that the requirements of 10 C.F.R. § 2.309(c), (f)(2), apply and have been met. Pilgrim Watch has not made such a showing in its motion, and therefore the motion must be denied.

With regard to the motion insofar as it seeks clarification of what materials must be provided by Entergy in its initial filings, the motion is also denied. As to any alleged failures to disclose, any party who believes that there has been an inappropriate failure to disclose information that should have been disclosed under 10 C.F.R. § 2.336 may file a motion to compel disclosure of information it deems relevant, providing appropriate support and justification for its motion.

As to the specific questions Pilgrim Watch seeks to have Entergy answer, there is no procedural provision of which we are aware in 10 C.F.R. Subpart 2, including the continuing disclosure responsibilities under 10 C.F.R. § 2.336, that would allow such specific questions, or interrogatories, in effect seeking what may include the creation of new documents that do not

¹⁸ Pilgrim, LBP-06-23, 64 NRC at 315.

¹⁹ Staff Response at 4-6.

²⁰ See 10 C.F.R. § 2.309(c), (f)(2).

currently exist. Of course, the failure of any party to provide any relevant information in its written testimony might play into any rulings on whether it has met its burden of going forward or ultimate burden of proof, as the case may be. Moreover, any party may seek to have the Board ask any questions it wishes to have answered, by the deadline — Monday, March 17, 2008 — for all parties to file their proposed questions for the Board to pose to witnesses under 10 C.F.R. § 2.1207(a)(3). By the same deadline, any party may seek to conduct cross-examination by filing a motion seeking permission to do so (along with a cross-examination plan) pursuant to 10 C.F.R. § 2.1204(b). Any such submission of questions and/or motion to cross-examine should, of course, include appropriate argument on why proposed questions are necessary to bring out relevant information and should therefore be permitted.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD²¹

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 11, 2008

²¹ Copies of this Order were sent this date by Internet electronic mail transmission to counsel and representatives for all participants.

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 ORDER (DENYING PILGRIM WATCH'S MOTION FOR CLARIFICATION) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-293-LR
LB ORDER (DENYING PILGRIM WATCH'S MOTION
FOR CLARIFICATION)

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[Original signed by Evangeline S. Ngbea]

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Dated at Rockville, Maryland
this 11th day of January 2008