

April 21, 2008

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
)	
(Pilgrim Nuclear Power Station))	ASLBP No. 06-848-02-LR

NRC STAFF RESPONSE IN OPPOSITION TO
PILGRIM WATCH MOTION REQUESTING RECORD BE HELD OPEN

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff (“Staff”) hereby responds to “Pilgrim Watch Motion Requesting the Record be Held Open So that the Board May Address a New and Significant Issue [Method to Calculate Cumulative Usage Factors (CUF)] Sua Sponte and Provide Pilgrim Watch an Opportunity for Hearing” (“Motion”), filed on April 9, 2008. For the reasons set forth herein, the Staff submits that Pilgrim Watch’s Motion fails to meet the criteria for either a stay of decision or admission of a new contention, and its Motion is also an improper discovery request. The Motion should therefore be denied.¹

BACKGROUND

On January 25, 2006, Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (collectively, “Entergy”) filed an application to renew the operating license for the Pilgrim

¹ The Staff notes that, procedurally, Pilgrim Watch’s Motion does not fall into a specific category of 10 C.F.R. Part 2 motions, requests, petitions, or filings. Therefore, the Staff has analyzed it with respect to the three requests the Motion most closely resembles: a request for a stay, a request to admit a new contention, and a discovery request.

Nuclear Power Station (“Pilgrim”).² Pilgrim Watch filed a petition to intervene in this matter on May 25, 2006, submitting five contentions for consideration by the Board.³ On October 26, 2006, the Board admitted two of those contentions.⁴ The Board subsequently disposed of one of the two admitted contentions via summary disposition,⁵ leaving Pilgrim Watch Contention 1 as the sole admitted contention in this proceeding. Contention 1, as admitted by the Board, deals solely with aging management of buried pipes and tanks that may contain radioactive water.⁶ An evidentiary hearing on Contention 1 was held in Plymouth, Massachusetts on April 10, 2008.

On April 9, 2008, Pilgrim Watch filed the instant motion asking the Board to hold the record open so that it may “sua sponte” “address a new and significant issue” regarding the method used to calculate the cumulative usage factors (“CUF”) for metal fatigue.⁷ Pilgrim Watch’s brief motion quotes extensively from an April 5, 2008 article in the *Brattleboro Reformer* regarding metal fatigue at Vermont Yankee Nuclear Power Station (“Vermont Yankee”) and

² See Letter from Michael Balduzzi, Entergy Nuclear Operations, to U.S. NRC, Re: License Renewal Application, (January 25, 2006) (Agencywide Documents and Access Management System (“ADAMS”) Accession No. ML060300028).

³ Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006).

⁴ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257 (2006) (“Memorandum and Order on Contentions”).

⁵ See *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131 (Oct. 30, 2007).

⁶ Memorandum and Order on Contentions at 315.

⁷ See Motion.

concludes that because Vermont Yankee and Pilgrim are similar reactors, they must be experiencing similar problems.⁸ Pilgrim Watch ends its Motion with a series of questions.⁹

The Board did not close the record at the conclusion of the evidentiary hearing. This decision was not in response to Pilgrim Watch's Motion; it was in response to a decision of the First Circuit Court of Appeals.¹⁰ Specifically, the First Circuit directed the NRC to keep the Pilgrim proceeding open until fourteen days after the court's mandate issues to allow the Commonwealth of Massachusetts enough time to invoke "interested state" status if it chooses to do so and seek a stay of the proceeding until the resolution of a pending rulemaking petition filed by the Commonwealth.¹¹ Except for a brief discussion regarding timeliness of responses, the Board did not address Pilgrim Watch's Motion at the hearing.

DISCUSSION

I. Pilgrim Watch Has Not Met the Criteria for a Stay

Any party in a proceeding may file an application for a stay of a decision or action of a presiding officer within ten days after service of that decision or action.¹² Pilgrim Watch filed its Motion prior to the April 10, 2008 evidentiary hearing. At that hearing, in response to Staff counsel's inquiry, Judge Young declined to close the record per the direction of the First Circuit. If Pilgrim Watch's Motion to keep the record open is viewed as a motion to stay an action of the presiding officer, it is premature as the record has yet to close. Therefore, to the extent that the

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

¹⁰ *Massachusetts v. N.R.C.*, Nos. 07-1482, 07-1483 (April 8, 2008) (mandate not issued).

¹¹ *Id.* at 31-32.

¹² 10 C.F.R. § 2.342.

Motion is a request for a stay, it is rendered moot by the Board's decision at the hearing to leave the record open pursuant to the First Circuit mandate.

Even if the Board had closed the record, the Motion fails to meet or address the criteria of 10 C.F.R. § 2.342(b) or (e) for stays of decisions. An application for a stay must contain:

- (1) A concise summary of the decision or action which is requested to be stayed;
- (2) A concise statement of the grounds for stay, with reference to the factors specified in paragraph (e) of this section; and
- (3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.¹³

Further, "[i]n determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider":

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.¹⁴

While the Commission or presiding officer must consider all four factors of 10 C.F.R. § 2.342(e) when ruling on an application for a stay, the first two factors are given the most weight.¹⁵

Finally, "the moving party has the burden of demonstrating that they weigh in its favor."¹⁶

¹³ 10 C.F.R. § 2.342(b).

¹⁴ 10 C.F.R. § 2.342(e).

¹⁵ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 87 n.15 (citing *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985) and *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6-8 (1994)).

II. Pilgrim Watch Has Not Met the Criteria for Admission of a New Contention

Pilgrim Watch's Motion requests that the Board hold the record open so that the Board may "sua sponte" review the methods Pilgrim used to calculate its CUFs and grant Pilgrim Watch hearing rights on that issue. In order to bring this new issue before the Board, Pilgrim Watch must file a motion for leave to file a late-filed contention, pursuant to 10 C.F.R. § 2.309(f)(2). There is no provision in the rules for a motion for the Board to review an issue "sua sponte."¹⁷ The Staff submits that Pilgrim Watch's motion amounts to an attempt to add a new contention without having to meet the criteria for admission of a late-filed contention.

Admission of new contentions after the adjudicatory proceeding has been initiated is governed by three different, yet interrelated, regulations. Petitioners must first demonstrate to the presiding officer that they meet the three-part timeliness requirements of 10 C.F.R. § 2.309(f)(2). For a late-filed contention to be admissible, petitioners must show that: (1) the information upon which the amended or new contention is based was not previously available; (2) the information upon which the amended or new contention is based is materially different than information previously available; and (3) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.¹⁸ If a petitioner fails to satisfy any of the three requirements, a Board may reject the submittal as non-

(. . .continued)

¹⁶ *Id.*

¹⁷ In any event, such a provision would be self-contradictory as "sua sponte" is Latin for "of one's own accord," which, according to *Black's Law Dictionary* (8th ed. 2004) means "without prompting or suggestion; on its own motion."

¹⁸ 10 C.F.R. §§ 2.309(f)(2)(i)-(iii).

timely.¹⁹ However, non-timely submittals are not per se inadmissible.²⁰ Instead, a Board will continue to consider the contention should the petitioner satisfactorily demonstrate that the stringent eight-factor balancing test of 10 C.F.R. § 2.309(c) weighs in favor of admissibility, as discussed below.

If a petitioner demonstrates to the presiding officer that it meets the requirements of either 10 C.F.R. § 2.309(f)(2) or (c), any late-filed contention must still satisfy the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).²¹ Specifically, in order to be admitted, a contention must satisfy the following requirements:

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

¹⁹ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 234 (2006).

²⁰ *Id.* at 234 n.7.

²¹ See e.g., *Florida Power & Light Co., FPL Energy Seabrook, LLC, FPL Energy Duane Arnold, LLC, and Constellation Energy Group, Inc.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 33-34 (2006) (in a case regarding untimely contentions, the Commission held that in addition to the timeliness requirements of 10 C.F.R. § 2.309(f)(2) and (c), petitioners must still meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)); *Oyster Creek*, LBP-06-22, 64 NRC at 234-5; *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813, 822 (2005).

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.²²

As discussed below, Pilgrim Watch has failed to meet any of the above criteria.²³

A. Pilgrim Watch Fails to Meet the Timeliness Requirements of 10 C.F.R. § 2.309(f)(2)

Pilgrim Watch argues that the “new and relevant information regarding serious flaws in the License Renewal Applications” it “received” is directly relevant to Pilgrim because Vermont Yankee and Oyster Creek Nuclear Generating Station (“Oyster Creek”) “are in all critical respects identical [to] Pilgrim NPS.”²⁴ This “new” information upon which Pilgrim Watch relies in

²² 10 C.F.R. § 2.309(f)(1).

²³ See Memorandum and Order on Contentions at 272-274 and “Appendix: Summary of Governing Case Law on Contention Admissibility Standards” at 351-359.

²⁴ The Staff does not dispute Pilgrim Watch’s assertion that Pilgrim, Vermont Yankee, and Oyster Creek are all General Electric (“GE”) Mark 1 Boiling Water Reactors (“BWR”). However, Pilgrim Watch fails to bring forward any other plant-specific facts to prove that Pilgrim is directly comparable to Vermont Yankee or Oyster Creek, such as operating history, similarity of relevant components, type of calculations used, environmental factors, current licensing basis, etc. Specifically, there is no evidence to show that Vermont Yankee, Oyster Creek, and Pilgrim have undergone identical aging and/or transients or that the plants have identical affected nozzles (recirculation, feedwater, and core spray line nozzles).

its Motion comes from an April 5, 2008 article in the *Brattleboro Reformer*. However, it is not clear as to what specific information forms the basis for Pilgrim Watch's Motion or how such information could qualify as "new." If the information and conclusion is that metal fatigue and CUF calculations were a problem at Vermont Yankee and therefore are a problem for Pilgrim, the facts relating to Vermont Yankee have been in the public record for at least seven months, thus making the matter non-timely.²⁵ On September 4, 2007, New England Coalition ("NEC") submitted a Motion to File a Timely New or Amended Contention²⁶ that claimed Vermont Yankee's original CUF calculations "were flawed by numerous uncertainties, unjustified assumptions and insufficient conservatism, and produced unrealistically optimistic results."²⁷ This Motion was made publicly available in ADAMS on September 17, 2007. If Pilgrim Watch is indeed making the argument that any issue at one GE Mark 1 BWR is directly applicable to all other GE Mark 1 BWRs,²⁸ then the only reasonable date to begin the tolling of the late-filed contention deadline is when the Vermont Yankee CUF calculation issue first became publicly available: September 17, 2007.

The Board, however, did relax the regulations' timeliness requirements in a November 2006 Order.²⁹ While the regulations require the time to begin tolling upon a piece of "new"

²⁵ In its Appendix to the November 29, 2006 Order (Regarding Schedule for Proceeding and Related Matters), the Board stated that the "[d]eadline for contentions based on new information" is "30 days after [the] date information was received or reasonably available."

²⁶ New England Coalition, Inc.'s (NEC) Motion to File a Timely New or Amended Contention (Sept. 4, 2007) (ADAMS Accession No. ML072530900).

²⁷ *Id.* at 3.

²⁸ Consistency demands that should Pilgrim Watch be allowed to make that argument to support their Motion substantively, they must live with it procedurally as well. See Motion at 1.

²⁹ Appendix to the November 29, 2006 Order (Regarding Schedule for Proceeding and Related Matters).

information's availability, the Board instead inserted a reasonableness factor: the time begins tolling on the "date information was received or reasonably available."³⁰ Given Pilgrim Watch's theory that any issue applicable to one GE Mark I BWR is applicable to all, it seems reasonable to expect that Pilgrim Watch would keep track of major developments in concurrent NRC relicensing adjudications of GE Mark I BWRs, especially where the plant in question, Vermont Yankee, is in a neighboring state.³¹ At the very least, then, Pilgrim Watch should reasonably have known this allegedly "new" information when the Vermont Yankee Atomic Safety and Licensing Board admitted a contention on this issue in a decision made publicly available on November 8, 2007.³² Further, petitioners in license renewal proceedings have an "'ironclad obligation' to examine the [license renewal] application and publicly available documents to uncover any information that could serve as the foundation for a contention."³³ Therefore, even taking reasonableness into account, Pilgrim Watch's Motion would still be non-timely.

Finally, two other factors weigh in favor of the Board finding reasonable availability to begin in either September or November, 2007: (1) Pilgrim Watch's main witness, Arnold Gundersen, also worked with the intervenor in the Vermont Yankee adjudication for a portion of that proceeding; and (2) petitioners for all four current relicensing adjudications combined efforts, sharing information and resources, to file a joint petition to suspend their respective

³⁰ *Id.*

³¹ The Staff, however, does not concede its point that the information became reasonably available on September 17, 2007, because it finds it reasonable to believe that petitioners in relicensing proceedings will avail themselves of the vast and easily accessible public record of other ongoing proceedings, thus gaining an awareness of the pertinent issues in those other proceedings.

³² *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261 (2007).

³³ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 24-25 (2001).

license renewal proceedings pending resolution of an Office of the Inspector General report on license renewal. Thus, the instant Motion was filed at least four, if not six, months past the late-filed contention deadline.

B. Pilgrim Watch Fails to Meet the Eight-Factor Balancing Test of 10 C.F.R. § 2.309(c)

Non-timely contentions may still be entertained by the Board if after balancing all eight factors in 10 C.F.R. § 2.309(c)(1) the Board determines the contention should be admitted. However, the petitioner must address all eight factors in its non-timely filing in order for the Board to consider the request.³⁴ The eight factors are:

- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
- (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
- (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
- (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.³⁵

³⁴ 10 C.F.R. § 2.309(c)(2).

³⁵ *Id.*

Pilgrim Watch failed to address any of the eight factors. Therefore, the Board should dismiss the Motion.³⁶

C. Pilgrim Watch Fails to Meet the General Contention Admissibility Requirements of 10 C.F.R. § 2.309(f)(1)

Although Pilgrim Watch fashions the Motion as a request for the Board to address the “new” issue “sua sponte,” the Staff contends that the Motion is in reality a motion to admit a late-filed contention without meeting the required criteria. The “contention rule is strict by design,” having been “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.’”³⁷ The Commission has stated that the contention rules “bar contentions where petitioners have only ‘what amounts to generalized suspicions, hoping to substantiate them later.’”³⁸ Pilgrim Watch’s Motion neither meets the letter, nor the intent, of the pleading requirements; specifically, it fails to satisfy 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi).

³⁶ See *Oyster Creek*, LBP-06-22, 64 NRC at 234 n.7, where the Board stated that due to Citizens’ failure to address 10 C.F.R. § 2.309(c) in its filings, the “Board *must* reject nontimely aspects of Citizens’ contention” (emphasis added). Further, the Commission has rejected a non-timely contention due to the failure of the petitioner to address two of the eight factors. *Calvert Cliffs*; *Calvert Cliffs ISFSI*; *Nine Mile Point*; *R.E. Ginna*; *Turkey Point*; *St. Lucie*; *Seabrook*; and *Duane Arnold*, CLI-06-21, 64 NRC 30, 33-34 (2006).

³⁷ Memorandum and Order on Contentions at 272, *quoting Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) (*citing Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)).

³⁸ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003) (*citing Oconee*, CLI-99-11, 49 NRC at 337-39).

1. Pilgrim Watch Does Not Provide a Specific Statement of the Issue of Law or Fact or a Brief Explanation of the Basis for its Contention

10 C.F.R. § 2.309(f)(i) and (ii) requires petitioners to “explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]”³⁹ and demonstrate that there is a “sufficient foundation assigned for it to warrant further exploration.”⁴⁰ While a petitioner is not required “to provide an exhaustive list of possible bases,” they must “provide sufficient alleged factual or legal bases to support their contention.”⁴¹

Pilgrim Watch’s Motion fails to state an actual contention. Instead, it lists a series of questions that it apparently wants the Board to investigate at a hearing:

whether NRC staffers looked at conditions at Pilgrim because of the metal fatigue issues raised; and if so, what were their findings; and did Pilgrim use a method that was too simplified that would impact public safety?⁴²

This does not provide the type of specificity required by Commission regulations and case law. Further, Pilgrim Watch’s proposed basis is a newspaper article concerning simplified CUF calculations at Vermont Yankee and possibly at Oyster Creek, a Board Notification related solely to Oyster Creek Nuclear Generating Station,⁴³ and comments by a NRC spokesperson

³⁹ *Millstone*, CLI-01-24, 54 NRC at 359-360.

⁴⁰ See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 428 (1990) (footnote omitted).

⁴¹ *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004).

⁴² Motion at 2.

⁴³ It should be noted that, relative to any claimed public safety impact from the Oyster Creek notification, the Staff “believes that the safety significance of using the simplified analysis method is low based on the risk assessments performed by the staff in resolving generic safety issues (GSI)-166 and GSI-190.” “Notification of Information in the Matter of Oyster Creek Nuclear Generating Station License Renewal Application,” Board Notification 2008-01 (Apr. 3, 2008) (ADAMS Accession No. ML080930335).

that “other plants . . . might be affected by this.” At no point does Pilgrim Watch allege, let alone provide any evidence, that Pilgrim used a simplified method in its CUF calculations.⁴⁴ In fact, it acknowledges that it has no plant-specific information. The Motion therefore violates the Commission bar against contentions that supply “generalized suspicions” with a hope of “substantiat[ing] . . . later,” thus requiring its exclusion.

2. Pilgrim Watch Does Not Provide Any Facts or Expert Opinion to Support its Contention

Contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v), Pilgrim Watch “‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation’”⁴⁵ to attempt to demonstrate that Pilgrim may have used a simplified CUF calculation. Instead it asks the Board to assume that if one GE Mark 1 BWR used a simplified calculation, then all must have.

Further, Pilgrim Watch’s concluding list of questions more realistically resembles a discovery request, which is an inappropriate basis for a contention. The Commission has stated that a contention is to be rejected:

where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant facts.⁴⁶

⁴⁴ Further, and most importantly, Pilgrim did not use the type of simplified CUF calculations in its metal fatigue analysis that is the subject of the Vermont Yankee and Oyster Creek inquiries. See NUREG-1891, “Safety Evaluation Report Related to the License Renewal of Pilgrim Nuclear Power Station” (Sept. 2007, Published Nov. 2007) at A-10 – A-13 (“SER”) (where Pilgrim made Commitments 31 and 35 stating that two years prior to entering the period of extended operation it will refine its fatigue analyses to include environmental effects and verify that environmentally adjusted CUFs are less than 1.0). Pilgrim’s License Renewal Application (“LRA”), SER, and, specifically, its commitments for CUF calculations fully comply with the rules for managing time-limited aging analyses under 10 C.F.R. § 54.21(c)(1)(iii). *Id.* at ¶ 4.3.3.4 at 4-50 – 4-51.

⁴⁵ *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (*quoting GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

⁴⁶ Final Rule, “Rules of Practice for Domestic Licensing Proceedings: Procedural Changes in the (continued. . .)

The Commission later expanded on this by explaining that contentions must be screened out where “[p]etitioners [] themselves have no particular expertise – or expert assistance – and no particularized grievance, but are hoping something will turn up later as a result of NRC Staff work.”⁴⁷ Thus, the Board should reject Pilgrim Watch’s contention.

3. Pilgrim Watch Does Not Point to Any Supposed Deficiency in the Applicant’s LRA

Pilgrim Watch fails to meet the most basic requirement of contention admissibility: stating “the applicant’s position and the petitioner’s opposing view”⁴⁸ or demonstrating “why the application is deficient.”⁴⁹ At no point does Pilgrim Watch provide a section of the LRA or SER that it disputes or attempt to actually demonstrate that any required information is omitted from the LRA. Instead, it only generally addresses metal fatigue and CUF calculations. The requirements of 10 C.F.R. § 2.309(f)(1)(vi) are therefore not satisfied. Thus, Pilgrim Watch’s contention must be denied.

III. Pilgrim Watch’s Motion is an Improper Discovery Request

Alternatively, Pilgrim Watch’s Motion may be viewed as 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

(. . .continued)

Hearing Process,” 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989).

⁴⁷ *Oconee*, CLI-99-11, 49 NRC at 342.

⁴⁸ 54 Fed. Reg. at 33,170; *Millstone*, CLI-01-24, 54 NRC at 358.

⁴⁹ 54 Fed. Reg. at 33,170; *Arizona Public Service Co., et. al.* (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI-91-12, 34 NRC 149, 156.

otherwise” except as allowed in Subpart C.⁵⁰ 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.⁵¹ Further, this “discovery” is only with respect to the relevant contention.⁵² Thus, there is no requirement for Entergy or the NRC to provide information to the parties regarding issues not formally in dispute. Therefore, the Motion should be denied.

CONCLUSION

For the many reasons discussed above, the Staff respectfully requests that the Board deny Pilgrim Watch’s Motion.

Respectfully Submitted,

/RA/

Kimberly A. Sexton
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 21st day of April, 2008

⁵⁰ 10 C.F.R. § 2.1203(d); see *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828, 841 (2005).

⁵¹ Final Rule, “Changes to Adjudicatory Process,” 69 Fed. Reg. 2182, 2194 (Jan. 14, 2004).

⁵² See 10 C.F.R. § 2.336.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO PILGRIM WATCH MOTION REQUESTING RECORD BE HELD OPEN" in the above-captioned proceeding have been served on the following by electronic mail and by deposit in the U.S. Nuclear Regulatory Commission's internal mail system, or, as indicated by an asterisk (*), by electronic mail and by deposit in the U.S. Mail system this 21st day of April, 2008.

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