

April 21, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board Panel

April 21, 2008 (4:44 pm)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**ENTERGY'S RESPONSE IN OPPOSITION TO PILGRIM WATCH MOTION
REQUESTING THE RECORD BE HELD OPEN FOR SUA SPONTE
CONSIDERATION OF CUMULATIVE USAGE FACTORS**

Pursuant to 10 C.F.R. § 2.323(c), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively, "Entergy") hereby file their opposition 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"), which Pilgrim Watch filed on the eve of the hearing in this matter on April 9, 2008. The Atomic Safety and Licensing Board Panel ("Board") should reject the Motion for multiple reasons. First, the Motion was filed inexcusably late. Second, the Board has no authority to examine issues sua sponte absent (1) a Board determination that a "serious safety, environmental, or common defense and security matter exists" and (2) Commission approval of such sua sponte examination upon referral of the question by the Board. 10 C.F.R. § 2.340(a). Pilgrim Watch has failed to demonstrate that any serious safety, environmental, or common defense and security matter exists warranting sua sponte review by the Board. Consequently, the Motion should be denied.

I. THE MOTION IS INEXCUSABLY LATE

Pilgrim Watch's Motion should be rejected in the first instance because Pilgrim Watch has offered no justification or excuse for its extremely untimely filing. It is well established that any new information must be acted upon in a timely manner. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 428-29 (2003) ("Petitioners have an obligation to examine the application and publicly available information, and to set forth their claims at the earliest possible moment"). Pilgrim Watch, however, filed the Motion on the evening before the hearing on Pilgrim Watch Contention 1 commenced and erroneously claims that the metal fatigue issue it seeks to raise is "new." Motion at 1. To the contrary, this same issue has been the subject of a contention initially raised in the Vermont Yankee proceeding in May 2006 which was admitted on September 22, 2006. See Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 N.R.C. 131, 183-87 (2006). All Pilgrim Watch raises here is a news article that discusses how the NRC Staff has looked at a similar issue in another license renewal proceeding. Pilgrim Watch has made no showing that information in the article differs from previously available information on the metal fatigue issue, and therefore the article raises nothing new here. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-104, 16 N.R.C. 1627, 1626 (1982). In short, Pilgrim Watch offers no justifiable reason for the Board to look at this issue at this late stage of the adjudicatory proceeding.

II. PILGRIM WATCH HAS NOT RAISED A "SERIOUS" SAFETY ISSUE

Pilgrim Watch's request that the Board examine this issue sua sponte also fails because Pilgrim Watch has not raised a "serious safety, environmental, or common defense and security

matter” that would cause the Board to consider requesting permission from the Commission to examine this issue on its own. 10 C.F.R. § 2.340(a). Under this standard, “extraordinary circumstances” are necessary for the Board to take up an issue on its own. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 23 (1998).¹ Pilgrim Watch’s claims fall far short of making any showing of the extraordinary circumstances necessary for the Board to consider the method used to calculate cumulative usage factors at Pilgrim. According to a statement attributed to an NRC spokesperson and quoted by Pilgrim Watch (Motion at 2), the NRC thinks it “might be the case” that Oyster Creek used a metal fatigue calculation in its license renewal application that was too simplified. (Emphasis added). This sole statement relied upon by Pilgrim Watch does not provide the extraordinary circumstances necessary for the Board to examine this issue on its own with respect to Pilgrim.

At the outset, the Motion fails for lack of a specific factual basis. “Boards have the authority to examine issues not placed in controversy by the parties only where specific facts are brought to their attention indicating that there is a serious safety, environmental, or common defense and security matter.” Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 N.R.C. 1, 7 (1986) (emphasis added) (citing the former 10 C.F.R. § 2.760a and Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 N.R.C. 614, 615 (1981)). Pilgrim Watch merely asks questions, and has provided no specific facts applicable to Pilgrim that would warrant the Board to take up this issue on its own.

¹ The Statement of Policy provides:

Such authority is to be exercised only in extraordinary circumstances. If a board decides to raise matters on its own initiative, a copy of its ruling, setting forth in general terms its reasons, must be transmitted to the Commission and the General Counsel. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614 (1981). The board may not proceed further with sua sponte issues absent the Commission's approval.

48 N.R.C. at 23.

Furthermore, Pilgrim Watch's own Motion belies any claim that it raises a serious safety issue. Pilgrim Watch cites an April 3, 2008 Memorandum from Mr. Samson S. Lee, Acting Director, Division of License Renewal, to the Commissioners entitled "Notification of Information in the Matter of Oyster Creek Nuclear Generating Station License Renewal Application" ("Lee Memo"). Motion at 2 n.1. Therein, Mr. Lee notifies the Commission that (1) the NRC Staff was "reviewing the use of a simplified method to calculate cumulative usage factors (CUF) that may not be conservative" in the Oyster Creek license renewal; and (2) this "may be an issue of public interest." Lee Memo at 1 (emphases added). The Lee Memo concludes, however, that "the staff believes that the safety significance of using the simplified analysis method is low." *Id.* (emphasis added).

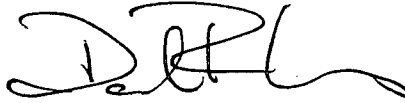
Thus, the very information relied on by Pilgrim Watch in the Motion concludes that this issue does not raise a "serious safety, environmental, or common defense and security matter." 10 C.F.R. § 2.340(a). Accordingly, Pilgrim Watch fails to make any showing of extraordinary circumstances warranting sua sponte review. CLI-98-12, 48 N.R.C. at 23.

Finally, Pilgrim has not performed any CUF calculations using the simplified method at issue here. If it becomes necessary in the future as part of the Fatigue Monitoring Program to perform additional CUF analyses, Pilgrim has committed to "using an NRC-approved version of the ASME code or NRC-approved alternative . . .". Safety Evaluation Report ("SER") at Appendix A, pp. A-10 – A-12 (describing License Renewal Commitment No. 31); see also SER at Section 4.3.3.2 ("the applicant has amended the Fatigue Monitoring program to include the options in Commitment No. 31. . ."). In short, Pilgrim has not used the "simplified analysis" that is the subject of the documents referenced by Pilgrim Watch in its Motion.

III. CONCLUSION

For the foregoing reasons, the Board should deny Pilgrim Watch's Motion.

Respectfully Submitted,



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Dated: April 21, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response In Opposition To Pilgrim Watch Motion Requesting the Record be Held Open For Sua Sponte Consideration of Cumulative Usage Factors," dated April 21, 2008, 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 21st day of April, 2008.

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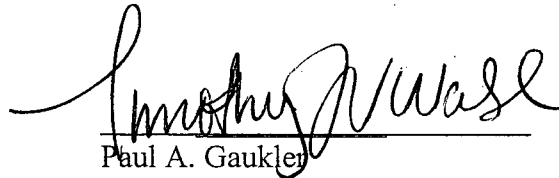
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