May 19, 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
	)	
	)	ASLBP No. 06-848-02-LR
(Pilgrim Nuclear Power Station)	)	

NRC STAFF RESPONSE IN OPPOSITION TO PILGRIM WATCH MOTION
TO ADD NEW CONTENTION REGARDING THE CUMULATIVE USAGE FACTOR

INTRODUCTION

Pursuant to the Board's May 12, 2008 Order (Setting Deadlines for Provisional Proposed Findings and Conclusions on Contention 1, and for Pleadings Related to Pilgrim Watch's Recent Motion Regarding CUFs) ("May 12 Order"), the Staff hereby responds to Pilgrim Watch's "Motion regarding the Cumulative Usage Factor" ("Motion"),[1] which the Board has asked the Parties to treat as a motion to add a new contention.[2] If Pilgrim Watch's Motion is characterized in this manner, it must be denied on timeliness grounds, due to Pilgrim Watch's failure to satisfy the criteria for admission of new contentions or the applicable balancing test for admission of untimely contentions. Yet, even if the proposed new contention, despite being based solely upon the November 2007 Pilgrim Nuclear Power Station ("Pilgrim") Safety Evaluation Report

[1] Pilgrim Watch Motion Regarding the Cumulative Usage Factor (CUF), (May 5, 2008).

[2] *See* May 12 Order at 3.

("SER"), had been timely, it would still fail to satisfy the basic criteria for contention admission. The Motion should therefore be denied.

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 Nuclear Power Station ("Pilgrim").[3] Pilgrim Watch filed a petition to intervene in this matter on May 25, 2006.[4] On October 26, 2006, the Board admitted two contentions submitted by Pilgrim Watch.[5] The Board subsequently disposed of one of these contentions via summary disposition,[6] leaving Pilgrim Watch Contention 1 as the sole contention in this proceeding. Contention 1, as admitted by the Board, deals with aging management of buried pipes and tanks that may contain radioactive water.[7]

On April 9, 2008, Pilgrim Watch filed its first motion regarding cumulative usage factors (CUF) for metal fatigue, asking the Board to hold the record open so that the Board could "*sua sponte*" address the CUF issue being raised.[8] On April 10, 2008, a one-day evidentiary hearing

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[3] *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); *see also* Entergy, "Pilgrim Nuclear Power Station License Renewal Application" (Jan. 25, 2006) (ADAMS Accession No. ML060300028) ("LRA").

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

[5] *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").

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

[7] Memorandum and Order on Contentions at 315.

[8] *See* "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," (April 9, 2008) ("Initial CUF Motion").

on Contention 1 was held in Plymouth, Massachusetts. At the close of the hearing, however, the Board did not close the record due to a decision by the First Circuit Court of Appeals relating to potential future participation in the Pilgrim proceedings by the Commonwealth of Massachusetts.[9] 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.[10] Except for a brief discussion regarding timeliness of responses, the Board did not address Pilgrim Watch's Initial CUF Motion at the hearing.

Subsequently, the Staff and the Applicant filed responses to the Initial CUF Motion.[11] Thereafter, Pilgrim Watch, without seeking leave to reply, filed a reply to these two responses.[12] The Staff and the Applicant each filed motions to strike the reply on the grounds that Pilgrim Watch had not satisfied the Commission's regulation restricting replies solely to situations where leave is granted following demonstration of "compelling circumstances."[13] Pilgrim Watch,

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

[10] *Id.* at 31-32. Note that on May 16, 2008, the Commission issued an Order directing the Board to close the evidentiary record on Contention 1, "per its usual course." Memorandum and Order, CLI-08-09, slip op. at 5 (May 16, 2008).

[11] "NRC Staff Response to Pilgrim Watch Motion Requesting Record Be Held Open" (Apr. 21, 2008) ("Staff's Response to Initial CUF Motion"); "Entergy's Response in Opposition to Pilgrim Watch's Motion Requesting the Record be Held Open for Sua Sponte Consideration of Cumulative Usage Factors" (Apr. 21, 2008) ("Entergy's Response to Initial CUF Motion").

[12] "Pilgrim Watch Replies to Entergy's and NRC's Responses Opposing Pilgrim Watch's Motion Requesting that The record be Held Open for Sua Sponte Consideration of Cumulative Usage Factors" (Apr. 30, 2008) ("Pilgrim Watch April 30 Reply").

[13] NRC Staff Motion to Strike Pilgrim Watch Reply to NRC Staff Response to Pilgrim Watch's Motion to Hold the Record Open" (May 2, 2008) ("Staff May 2 Motion to Strike"); "Entergy's Motion to Strike Pilgrim Watch's Reply to Entergy's and NRC's Responses Opposing Pilgrim Watch's Motion (continued. . .)

prompted by these motions to strike, filed the instant Motion. Because the Motion is in most respects, and in all material respects, identical to the Pilgrim Watch April 30 Reply, the Staff filed a motion to strike the Motion on the grounds that it represented another impermissible reply.[14]

The Board has, to this date, not ruled on any of the above motions. In its May 12 Order, however, the Board stated that, "treating Pilgrim Watch's [Motion] as being in effect the submission of a new contention, the Board directs the NRC Staff and Entergy to include in their responses thereto argument regarding the admissibility of such contention under 10 C.F.R. § 2.309(f)(1)."[15] The Board then gave the Staff and Entergy until May 19 to file these responses. The instant filing by the Staff responds to this Board direction.

DISCUSSION

I. Proposed New Contention is Untimely and Does Not Satisfy the Balancing Test or Criteria for Admission of New Contention

Because the deadline for filing initial petitions to intervene has long passed, Pilgrim Watch's proposed contention, to be potentially admissible, must first either (1) meet the standards for contention timeliness under 10 C.F.R. § 2.309(f)(2) or (2) demonstrate that the balancing test under 10 C.F.R. § 2.309(c) weighs in favor of admission.[16] Only upon demonstration that the proposed contention satisfies the requirements of at least one of these

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(. . .continued)

Requesting that The record be Held Open for Sua Sponte Consideration of Cumulative Usage Factors" (May 1, 2008) ("Entergy Motion to Strike").

[14] "NRC Staff motion to Strike Pilgrim Watch Motion Regarding the Cumulative Usage Factor" (May 8, 2008) ("Staff's May 8 Motion to Strike").

[15] May 12 Order at 3.

[16] *See* 10 C.F.R. § 2.309(c); 10 C.F.R. § 2.309(f)(2).

two regulatory provisions does it become necessary to determine whether the proposed contention satisfies the general contention admissibility requirements under 10 C.F.R. § 2.309(f)(1). In other words, if neither § 2.309(f)(2) nor § 2.309(c) is satisfied, the proposed contention must be deemed inadmissible.[17]

First, Pilgrim Watch's proposed contention clearly fails to satisfy 10 C.F.R. § 2.309(f)(2). To satisfy that provision, Pilgrim Watch 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] Further, the Board has ordered that contentions based upon new or newly available information be filed *within "30 days after date information received or reasonably available*."[19]

Pilgrim Watch's contention claims that certain metal-fatigue-related commitments made by Entergy are inadequate because, in Pilgrim Watch's view, the language in the SER commitment summary tables is not sufficiently thorough or restrictive.[20] These commitments are described in the SER, and Pilgrim Watch cites to the SER in order to identify them.[21] The SER was published in November, 2007, and has been publicly available since then. Therefore,

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

[18] 10 C.F.R. §§ 2.309(f)(2)(i)-(iii).

[19] Order (Establishing Schedule for Proceeding and Addressing Related Matters) (Dec. 20, 2006) (unpublished) at 7.

[20] Motion at 5 (Part D), 6-10 (discussion of commitments).

[21] Motion at 6-10 (discussing SER Commitments 31 and 35).

at minimum, the Motion is several months late. Moreover, as the SER indicates, the information in Commitments 31 and 35 was based upon documents submitted by Entergy prior to publication of the SER, rendering Pilgrim Watch's proposed contention even more untimely.[22]

In fact, the information contained in the SER Commitments in question was available in similar form in the initial LRA itself. As the LRA specifically acknowledges at Section 4.3.3, "Four of nine components reviewed have environmentally adjusted CUF of greater than 1.0."[23] The LRA then provides a commitment to address this that is similar to (though not quite the same as) the Commitments 31 and 35 in the SER.[24] Thus, what would seem to be a materially comparable challenge to Pilgrim's application on the issue of addressing environmentally adjusted metal fatigue CUFs that exceed 1.0 could have been raised by Pilgrim Watch *in its initial petition to intervene*. Pilgrim Watch has not explained how any distinctions between Entergy's original LRA commitments regarding metal fatigue and its most up-to-date commitments (i.e. those reflected in the SER, which in turn was based upon earlier Entergy submissions) provide materially new information that forms the basis for their contention. Accordingly, it is fair to conclude that Pilgrim Watch is almost two years late with this contention. Of course, even if any updates to the LRA that are reflected in the SER *do* provide the basis for Pilgrim Watch's contention, this information would, again, have been available upon publication of the SER in November of 2007, as well as prior to that via Entergy's submissions to the NRC

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[22] *See* SER at A-10 (Listing letters that are the "Source" of Commitment 31), A-13 (same for Commitment 35). The most recent of these letters, which includes the text of SER Commitments 31 and 35 in their entirety, was made publicly available on August 3, 2007. *See* E-mail from Perry Buckberg to James Davis et al. re: "Pilgrim LRA Amendment 19 – 7/30/2007" (Jul. 30, 2007) (ADAMS Accession No. ML072150602) at Attachment A pp. 5-6.

[23] LRA at 4.3-8 – 4.3-9.

[24] *See id*.

on this metal fatigue topic. In sum, Pilgrim Watch's proposed new contention is untimely by, at the very least, several months, and by as much as two years, and does not meet any of the criteria of 10 C.F.R. § 2.309 (f)(2).

Even untimely contentions, though, can potentially still be admissible if a balancing of the factors under § 2.309(c) weighs in favor of admission.[25] Of the eight factors listed in § 2.309(c), timeliness is afforded the most weight by the Commission. *See, e.g., Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 564 (2005). Thus, because there is no good cause alleged for the late filing by Pilgrim Watch, it has a heavier burden than if there was a failure to meet the other factors. Petitioners must "address the factors…in its nontimely filing."[26] Despite (1) the clear untimeliness of its

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[25] The eight factors listed at § 2.309(c)(1) are as follows:

> (i) Good cause, if any, for the failure to file on time;
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> (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;
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> (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;
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> (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
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> (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

[26] 10 C.F.R. § 2.309(c)(2).

contention, (2) the express mandate in § 2.309(c)(2) to address the § 2.309(c)(1) factors when a contention is untimely, and (3) the Staff's express referencing of this requirement in the Staff's Response to Initial CUF Motion,[27] Pilgrim Watch did not address the § 2.309(c)(1) factors.[28] Therefore, Pilgrim Watch has failed to demonstrate that its untimely contention should be admitted in spite of its untimeliness.[29] Accordingly, Pilgrim Watch's Motion, in so far as it is being viewed as a motion to submit a new contention, should be denied.

II. Contention Fails to Satisfy 10 C.F.R. § 2.309(f)(1) General Admissibility Criteria

As discussed above, Pilgrim Watch's proposed new contention, which was filed nearly two years after the deadline for initial petitions for intervention had passed,[30] must be rejected because it is clearly untimely and because Pilgrim Watch has failed to even address the

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[27] Staff's Response to Initial CUF Motion at 10-11 ("[T]he petitioner must address all eight factors in its non-timely filing in order for the Board to consider the request….Pilgrim Watch failed to address any of the eight factors. Therefore, the Board should dismiss the Motion."). The Staff's Response to Initial CUF Motion also cited Commission and Board case law (*Calvert Cliffs; Calvert Cliffs ISFSI; Nine Mile Point; R.E. Ginna; Turkey Point; St. Lucie; Seabrook; and Duane Arnold*, CLI-06-21, 64 NRC 328, 334 (1999); *Oyster Creek*, LBP-06-22, 64 NRC at 234 n.7) confirming that nontimely contentions which fail entirely, or even just partly, to address the § 2.309(c)(1) factors are to be rejected.

[28] Pilgrim Watch never argued that the "Background" information Pilgrim Watch includes regarding the NRC's May 1, 2008 notice of public comment for a proposed Regulatory Issue Summary ("RIS") regarding use of a simplified calculation to determine CUF values forms a basis for their contention. If one were make to such an argument, however, the argument would have no apparent basis. For one thing, Pilgrim Watch provides no basis for concluding that any of these "simplified calculations" were even used by Entergy for purposes of Pilgrim's renewal application. Indeed, Entergy has expressly stated to the Board that it has not, and has no plans to, use these simplified calculations. Entergy's Response to Initial CUF Motion at 4. Finally, as discussed in the Staff's May 8 Motion to Strike, Pilgrim Watch's inclusion of the RIS material in the Motion's "Background" section did not actually lead Pilgrim Watch to substantively change the remainder of its April 30 Reply (which had not mentioned the RIS) in any significant way when converting that reply into the instant Motion. *See* Staff's May 8 Motion to Strike at 2.

[29] The Staff notes that it does not concede that Pilgrim Watch could have established a favorable balance of the § 2.309(c) factors if it had attempted to do so in its Motion.

[30] *See* "Entergy Nuclear Operations, Inc., Pilgrim Nuclear Power Station; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility (continued. . .)

10 C.F.R. § 2.309(c)(1) factors (or the 10 C.F.R. § 2.309 (f)(2) criteria), let alone demonstrate a favorable balance. As explained above, therefore, analysis of the 10 C.F.R. § 2.309(f)(1) factors is unnecessary. The Board, however, has specifically directed the Staff to address the 10 C.F.R. § 2.309(f)(1) general contention admissibility factors in this response. The following discussion, therefore, will address those factors.

As discussed above, contentions filed after initial petitions to intervene are due must, *in addition to* satisfying either § 2.309(f)(2) or § 2.309(c), also satisfy the general admissibility requirements under § 2.309(f)(1) that apply to all proposed contentions. Section 2.309(f)(1) requires that all contentions:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (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;
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> (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
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> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of

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(. . .continued)

Operating License No. DPR-35 for an Additional 20-Year Period," 71 Fed. Reg. 15222, 15222 (Mar. 27, 2006) (setting 60-day deadline for hearing requests).

> 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.[31]

The Commission has held with regard to the agency's general contention admissibility requirements that "[i]f any one of these requirements is not met, a contention must be rejected."[32] As discussed below, even if Pilgrim Watch's contention did satisfy either section 2.309(f)(2) or § 2.309(c) – which it does not – the contention would still be inadmissible due its failure to provide sufficient references to specific supporting sources or documents, which violates § 2.309(f)(1)(v), and its to failure to demonstrate any genuine dispute on a material issue of law or fact, which violates § 2.309(f)(1)(vi).

The contention, as submitted, reads:

> The LRA does not include an adequate plan to monitor and manage the effects of aging due to metal fatigue on key reactor components that are subject to an aging management review, pursuant to 10 C.F.R. § 54.21(a), and an evaluation of time limited aging analysis, pursuant to 10 C.F.R. § 54.21(c).

Motion at 3. To begin with, there are indeed certain elements of § 2.309(f)(1) that Pilgrim Watch does seem to satisfy, specifically, §§ 2.309(f)(1)(i), (ii), (iii), and (iv). In the Staff's view, by making the basic parameters of its contention reasonably clear and by raising a challenge on an issue that the Staff agrees is within the scope of license renewal, Pilgrim Watch has partially satisfied section 2.309(f)(1). But the remaining elements – §§ 2.309(f)(1)(v) and (vi) – are

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[31] 10 C.F.R. § 2.309(f)(1).

[32] *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) (addressing 10 C.F.R. § 2.714(b)(2), which is the predecessor to the current 10 C.F.R. § 2.309(f)(1)).

where Pilgrim Watch's proposed contention is insuffficient. Thus, the contention must be rejected.

As to § 2.309(f)(1)(v), Pilgrim Watch does include a statement of facts. Pilgrim Watch fails, however, to provide any viable basis via citations to "specific sources or documents" for its allegations that the potential for environmentally corrected CUFs over 1.0 would preclude a reasonable assurance finding. Pilgrim Watch's Motion cites to no documents, and references no expert testimony, to support its various allegations that the issue being raised legitimately calls into question the NRC's ability to make reasonable assurance findings for Pilgrim. Rather, the Motion simply asserts such things as "the Commission cannot honestly make the required findings that there is reasonable assurance" because "Pilgrim's safety depends on proper resolution of the metal fatigue issue,"[33] and "[f]ailure from fatigue can result in dangerous pipe ruptures, component malfunction, or the migration of loose pieces of metal through the reactor system."[34] Indeed, Pilgrim Watch provides no indication in its Motion that it will be relying on expert testimony at all in the event its proposed contention is admitted. Pilgrim Watch suggests instead that the Board might rely upon its own "outside, independent expert to examine the issue under full and open public scrutiny."[35] Consequently, it is unclear that Pilgrim Watch will have anything to add on this issue other than bare assertions of its representative unsupported by relevant expertise. Pilgrim Watch has thus failed to provide the sources or documentation necessary to justify admission of her contention under 10 C.F.R. § 2.309(f)(1)(v).

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[33] Motion at 11.

[34] Motion at 6. *See also* Motion at 4 ("This could potentially result in catastrophic failure during day-to-day operation, or more likely during anticipated or unanticipated transients.").

[35] Motion at 11.

Pilgrim Watch also fails in its attempt to demonstrate a genuine dispute on a material issue of law or fact, as is required under 10 C.F.R. § 2.309(f)(1)(vi). Pilgrim Watch's alleged disputes with Entergy involve commitments made by Entergy to the NRC that are listed in the SER as Commitments 31 and 35. But Pilgrim Watch's challenge focuses solely on the language in the SER commitment tables (Appendix A of the SER), virtually ignoring the various other relevant documents that flesh out the commitments that the commitment tables briefly summarize. As made clear in the SER (rather than the commitment tables), Commitments 31 and 35 represent only a brief summary of the results of substantial correspondence between the NRC and Entergy regarding the metal fatigue aspects of the LRA.[36] The LRA, as well as the aforementioned correspondence, explains Entergy's commitments with much greater specificity than is included in the commitment summary tables. For example, as discussed in the SER at 4-49, Entergy responded to a Staff request for additional information ("RAI") by explaining the parameters of the AMP it would submit under Commitment 31 corrective action option #2. The SER also explains the basis for the Staff's assessment that this corrective action option was acceptable.[37] Further, as the SER makes clear, the Fatigue Monitoring program that Pilgrim proposes to utilize for managing the aging effects of metal fatigue is based largely on the AMP set forth in NUREG-1801, "Generic Aging Lessons Learned" ("GALL Report").[38] Pilgrim Watch provides no indication that it has even looked at these other materials, much less that it has any specific disputes with their substance. Pilgrim Watch's suggestion that the nature of Pilgrim's

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[36] *See* SER at 4-41, 4-44 – 4-50. Note also that the commitment tables themselves reference the documents that are the "Source" of the summarized commitments. *See, e.g.*, SER at A-10, A-13 ("Source" column information for Commitments 31 and 35, respectively).

[37] SER at 4-49.

[38] NUREG 1801, Vol. 2, Rev. 1, "Generic Aging Lessons Learned (GALL) Report: Tabulation of Results" (Sep. 2005).

metal fatigue AMPs will be wholly unknown to the NRC and the public until potentially 2010 is therefore simply incorrect, and is apparently based entirely upon what Pilgrim Watch reads in the SER commitment table. Because Pilgrim Watch simply ignores the documents that provide the detail behind the SER commitment summary language it challenges, its claim that the commitments in question "are vague, incomplete, and lacking in transparency" does not demonstrate a genuine dispute on a material issue of law or fact between Pilgrim Watch and Entergy.

Pilgrim Watch also fails to raise a genuine dispute of material fact when it contends that the Commitments leave room for Entergy to illegitimately rig calculations to demonstrate acceptable environmentally corrected CUF values.[39] Pilgrim Watch provides no information to suggest that there are no legitimate ways by which Entergy could refine its calculation methods that would potentially lead to lower CUF values.[40] Further, Pilgrim Watch fails to mention the discussion in the SER at p. 4-49 about Entergy's plans for performing any environmentally corrected CUF calculations it plans to perform, and fails to mention the applicant-submitted documentation that relates to that SER discussion.[41] This discussion in the SER indicates that Entergy's calculations will be based upon specific methods found in particular NUREG/CR documents and would conform with a particular ASME code section that the NRC has

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[39] Motion at 8 ("We note that 'verify that the cumulative usage factors (CUFs) are less than 1' appears to suggest doing the math to get the 'right' answer."). *See also* Motion at 9.

[40] For example, it may turn out that some conservatisms included in previous metal fatigue analyses that were conducted without the benefit of nearly forty years of operating experience at Pilgrim might turn out to have been unnecessarily conservative when assessed in light of this operating experience. Consequently, it might be perfectly appropriate for Entergy, in such a scenario, to alter some of these conservatisms as justified by the plant's operating experience, which could in turn lead to lower environmentally corrected CUF values.

[41] *See* SER at 4-49

endorsed.[42] Pilgrim Watch makes no attempt in its Motion to take issue with these particular calculation methods. Ultimately, then, Pilgrim Watch is merely speculating that Entergy might act inappropriately in the future, and so is not actually raising a genuine dispute between itself and the application.

In addition, these various failures by Pilgrim Watch to address, or even acknowledge the existence of, the documents which flesh out the language in the SER commitment table summaries represents another failure to satisfy the § 2.309(f)(1)(v) requirement to provide "facts or expert opinions which support the requestor's/petitioner's position on the issue…together with references to the specific sources and documents which the requestor/petitioner intends to rely."

One more apparent aspect of Pilgrim Watch's proposed contention deals with the "Enhancement or Implementation Schedule" listed with the Commitments in the SER commitment summary tables. There appears, however, to be no actual dispute raised here. It is clear from the two Commitments in question (31 and 35) that managing the effects of aging through a monitoring program is only one of multiple possible ways, under the Commitments' terms, that Entergy could go about ensuring that environmentally adjusted CUF values above 1.0 are not reached during the extended operation period.[43] In other words, the Commitment is to perform one out of a specified set of possible tasks. Pilgrim Watch simply repeats this indisputable fact and then asserts, without explanation as to what it seeks to accomplish via the assertion, that where one particular option is not mandatory, "it is no commitment."[44] This

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[42] *Id.*

[43] *See* SER at A-10 – A-13.

[44] Motion at 9.

alleged challenge to Commitments 31 and 35 is therefore just a reiteration of what those commitments say that attempts, via rhetoric, to add vaguely negative connotations to the Commitments. Therefore, it does not constitute a genuine dispute with the applicant on an issue of material law or fact.

In sum, Pilgrim Watch's contention amounts to speculation about potential unscrupulous future action by Entergy when performing calculations, incorrect assertions about the absence of information, and misreading of Commitment language. No genuine dispute on any material issue of law or fact is presented. Therefore, Pilgrim Watch has failed to satisfy 10 C.F.R. § 2.309(f)(vi).

CONCLUSION

For the reasons stated above, the Staff respectfully requests that the Board deny Pilgrim Watch's Motion.

Respectfully Submitted,

/RA/

James E. Adler
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 19th of May, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO PILGRIM WATCH MOTION TO ADD NEW CONTENTION REGARDING THE CUMULATIVE USAGE FACTOR" 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 19th day of May, 2008.

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