RAS#J-171

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

ENTERGY'S ANSWER OPPOSING PILGRIM WATCH'S PETITION FOR REVIEW

David R. Lewis
Paul A. Gaukler
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037
Tel. (202) 663-8000

Counsel for Entergy L.L.C.

Dated: November 24, 2008

Temp = SECY-041

DS03

Table of Contents

November 24, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

ENTERGY'S ANSWER OPPOSING PILGRIM WATCH'S PETITION FOR REVIEW

Pursuant to 10 C.F.R. § 2.341, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") submit this response in opposition to the Petition for Review filed by Pilgrim Watch ("PW") in the Pilgrim Nuclear Power Station ("PNPS" or "Pilgrim") license renewal proceeding.[1] The Petition seeks review of three Atomic Safety and Licensing Board ("Board") decisions issued in the proceeding: (1) Initial Decision on the License Renewal Application for PNPS;[2] (2) Memorandum and Order ruling on the motion to dismiss PW's Contention 3;[3] and, (3) Memorandum and Order ruling on standing and admissibility of contentions.[4] As discussed more fully below, the Nuclear Regulatory Commission (the "Commission") should deny the Petition because PW does not identify any substantial question warranting review under the standards of 10 C.F.R. § 2.341(b)(4). In particular, PW fails to identify any error of fact or law in the Board's decisions, which are clearly correct.

---

[1] Pilgrim Watch's Petition for Review of LBP-06-848,[sic] LBP-07-13, LBP-06-23 and The Interlocutory Decisions in The Pilgrim Nuclear Power Station Proceeding (Nov. 12, 2008) ("Petition" or "Pet.").

[2] Initial Decision, LBP-08-22, 68 N.R.C. __ ,slip op. (Oct. 30, 2008) and Concurring Opinion of Administrative Judge Ann Marshall Young to Initial Decision issued October 31, 2008, LBP-08-22, 68 N.R.C. __ ,slip op. (Oct. 31, 2008), (collectively "LBP-08-22").

[3] Memorandum and Order (Ruling on Motion to Dismiss Petitioners Contention 3 regarding Severe Accident Mitigation Alternatives), LBP-07-13, 66 N.R.C. 131 (2007).

[4] Entergy Nuclear Generation Co., et al. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257 (2006).

I. STATEMENT OF THE CASE

This proceeding involves the application by Entergy to renew the operating license for Pilgrim for an additional twenty-year period.[5] On May 25, 2006, PW filed an intervention petition seeking the admission of five contentions.[6] On October 16, 2006, the Board admitted two of PW's contentions: Contention 1, dealing with the aging management of buried pipes and tanks, and Contention 3, regarding analysis of severe accident mitigation alternatives.[7]

On May 17, 2007, Entergy moved for summary disposition of Contention 3.[8] The Staff supported the motion, and PW opposed it.[9] A majority of the Board granted the motion and dismissed PW Contention 3, holding that Entergy had demonstrated the absence of any genuine issue of material fact because it had shown that no additional Severe Accident Mitigation Alternative ("SAMA") would come close to being cost effective even when accounting for the alleged claims raised in the contention.[10]

On June 8, 2007, Entergy moved for summary disposition of Contention 1.[11] The Staff supported the motion and PW opposed It.[12] On October 17, 2007, the Board denied Entergy's motion, but emphasized that the "prevention of leaks *per se*" in buried piping "is not a stated objective of any relevant aging management program" and that the appropriate focus of Contention 1 is prevention of potential age related leakage that might compromise the ability of buried pipes

---

[5] 71 Fed. Reg. 15,222 (Mar. 27, 2006). The current operating license for Pilgrim expires on June 8, 2012. Id.

[6] Request for Hearing and Petition to Intervene By Pilgrim Watch (May 25, 2008) ("Intervention Petition").

[7] See LBP-06-23.

[8] Entergy Motion for Summary Disposition of Pilgrim Watch Contention 3 (May 17, 2007) ("SD Motion").

[9] NRC Staff Response to Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3 (June 29, 2007); Pilgrim Watch's Answer Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3 (June 29, 2007).

[10] LBP-07-13, 66 N.R.C. at 154.

[11] Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 8, 2007).

[12] NRC Staff Response to Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 28, 2007); Pilgrim Watch's Answer Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 1 (June 27, 2007).

to perform their license renewal "intended function."[13] In subsequent orders, the Board continued to emphasize the appropriate focus of Contention 1.[14]

The evidentiary hearing on Contention 1 was held on April 10, 2008. Several weeks after the completion of the hearing, PW moved to strike prior testimony of Entergy and NRC Staff witnesses on the grounds that the testimony was incorrect and misleading based on information that PW had allegedly identified since the hearing.[15] In the alternative, PW requested that the Board reopen the record on Contention 1 and subsequently moved to introduce the allegedly new information into the evidentiary record.[16] Both the NRC Staff and Entergy opposed PW's motions.[17] Finding no merit to PW's motions, the Board denied them on June 4, 2008.[18]

On October 30, 2008, the Board issued its Initial Decision finding in Entergy's favor on Contention 1.[19] On November 12, 2008, PW filed its Petition seeking review of the Board's Initial Decision and related interlocutory rulings on Contention 1 and the Board majority's granting summary disposition on Contention 3. The Petition also seeks review of the Board's denial of PW Contention 4, which claimed that a SAMA analysis of spent fuel pool accidents is required.

II. STANDARD OF REVIEW

A petition for review is granted only at the discretion of the Commission, "giving due weight to the existence of a substantial question with respect to the following relevant considera-

---

[13] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-07-12, 66 N.R.C. 113, 129 (2007).

[14] Order (Revising Schedule for Evidentiary Hearing and Responding to Pilgrim Watch's December 14 and 15 Motions) (Dec. 19, 2007); Order (Denying Pilgrim Watch's Motion for Clarification) (Jan. 11, 2008).

[15] Pilgrim Watch Motion to Strike Incorrect and Misleading Testimony from the Record (May 15, 2008).

[16] Pilgrim Watch Motion to Include as part of the Record Exhibits Attached to Pilgrim Watch Motion to Strike Incorrect and Misleading Testimony from the Record of May 15, 2008 (May 27, 2008).

[17] NRC Staff Response in Opposition to (1) Pilgrim Watch Motion to Strike testimony and (2) Motion to Include as Part of the Record Exhibits Attached to Pilgrim Watch Motion to Strike Testimony (May 27, 2008); Entergy's Answer Opposing Pilgrim Watch's Motion to Strike and Request to Reopen the Hearing (May 27, 2008); Entergy's Answer Opposing Pilgrim Watch's Motion to Include Certain Exhibits in the Record (June 2, 2008).

[18] Memorandum and Order (Ruling on Pilgrim Watch Motions Regarding Testimony and Proposed Additional Evidence Relating to Pilgrim Watch Contention 1) (June 4, 2008) ("June 4, 2008 Order").

[19] Initial Decision, LBP-08-22.

tions: (i) a finding of material fact that is "clearly erroneous" or conflicts with a finding as to the same fact in a different proceeding; (ii) a necessary legal conclusion that is "without governing precedent" or "contrary to established law;" (iii) the raising of a "substantial and important question of law, policy, or discretion;" (iv) "the conduct of the proceeding involved a prejudicial procedural error;" or (v) the raising of "any other considerations which the Commission may deem to be in the public interest."[20]

Pursuant to 10 C.F.R. § 2.341, the Commission should deny the Petition because, as set forth below, PW has failed to identify any clear error of fact, error of law, procedural error, or abuse of discretion by the Board.[21]

III. PW'S PETITION FOR REVIEW OF THE INITIAL DECISION AND RELATED INTERLOCUTORY RULINGS SHOULD BE DENIED

The Petition identifies no basis warranting Commission review of the Board's rulings on Contention 1. PW's claim that license renewal must reaffirm compliance with the current licensing basis ("CLB") for the plant (Pet. at 3-6) both misinterprets the Commission's license renewal regulations and ignores a long line of Commission precedent that the scope of license renewal is limited to aging management issues. Likewise, PW's other claims – concerning application of the reasonable assurance standard and alleged improper exclusion of evidence – provide no basis for review. None of PW's claims are premised on any clear error of material fact or legal conclusion in conflict with existing precedent.[22] Therefore, the Commission should reject PW's Petition for review of the Board's rulings on Contention 1.

---

[20] 10 C.F.R. § 2.341(b)(4) (emphasis added); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-03-8, 58 N.R.C. 11, 17 (2003).

[21] See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-4, 59 N.R.C. 31, 35 (2004) (holding that the Commission may grant review if there is any clear error as to a material fact or a legal conclusion that conflicts with precedent).

[22] 10 C.F.R. § 2.341(b)(4); Private Fuel Storage, CLI-04-4, 59 N.R.C. at 35.

A. The Board's Limiting the Scope of License Renewal to Aging Management Issues is Fully Consistent with Commission Regulation and Precedent

PW's principal claim – in essence, that it was entitled to litigate compliance with the CLB and therefore the applicant's "program for monitoring radiation on-site and off-site" (Pet. at 4) – is inconsistent with both the license renewal rules and precedent. Contrary to the Petition, the Commission has consistently opined that license renewal proceedings are "not intended to 'duplicate the Commission's ongoing review of operating reactors.'" Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 7 (2001), quoting Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991). Rather, the focus of a license renewal proceeding is on the "potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs" (id.), which means that the proceeding is limited to "a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses." Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 N.R.C. 211, 212 (2001). This rationale expressed in McGuire logically follows from reading 10 C.F.R. § 54.4 in conjunction with 10 C.F.R. § 54.21.

At the broadest level, 10 C.F.R. § 54.4(a) defines the "systems, structure, and components" that are within the general scope of license renewal review. Of these systems, structures and components, only a subset of "structures and components" are subject to aging management review as specified by 10 C.F.R. § 54.21(a)(1).[23] For the subset of "structures and components" identified pursuant to 10 C.F.R. § 54.21(a)(1), the applicant must "demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent

[23] PW completely ignores the requirement of 10 C.F.R. § 54.21(a)(1) that effectively limits the scope of 10 C.F.R. § 54.4 to those "structures and components subject to an aging management review."

with the CLB for the period of extended operation." 10 C.F.R. § 54.21(a)(3) (emphasis added). The "intended functions" of the structures and components subject to aging management review are those functions "that are the bases for including them within the scope of license renewal as specified in [54.4(a)(1)-(3)]." 10 C.F.R. § 54.4(b). As set forth in 10 C.F.R. § 54.4(a)(1)-(3), these license renewal intended functions are limited and do not encompass a plant's entire licensing basis. In particular, they do not encompass the prevention of radioactive leaks *per se* as repeatedly claimed by PW and rejected by the Board.

PW misstates the Commission's regulations and ignores case law when it claims that the Board's decisions (LBP-08-22, LBP-07-13, and LBP-06-23) improperly limited the scope of the hearing to exclude CLB requirements. The crux of PW's mistaken interpretation of the scope of license renewal is PW's failure to recognize that 10 C.F.R.§ 54.4 limits the scope of license renewal to systems, structures and component with certain specified intended functions and that 10 C.F.R.§ 54.21(a)(1) further limits the scope of Section § 54.4 to those "structures and components subject to an aging management review." While PW quotes 10 C.F.R. § 54.21(a)(3), it ignores the fact that the reference to the CLB in this provision is limited to the intended license renewal functions as specified in 10 C.F.R.§ 54.4 and is further limited by Section 54.21(a)(1) to specific structures and components subject to aging management.

In doing so, PW greatly overstates the scope of license renewal.[24] In issuing the final rule that established the requirements that an applicant for renewal of a nuclear power plant operating license must meet, the Commission said "issues that are relevant to both current plant operation

[24] PW's cite to 10 C.F.R. § 54.29 is also misleading. Pet. at 4. "A renewed license may be issued by the Commission...if the Commission finds that: (a) Actions have been identified and have been or will be taken with respect to matters identified in paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorize by the renewed license will continue to be conducted in accordance with the CLB.... These matters are: (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1)." 10 C.F.R. § 54.29 (emphasis added).

and operation during the extended period must be addressed now within the present license term rather than at the time of renewal." 56 Fed. Reg. at 64,946.[25] In 1995, the Commission revised its license renewal rule and, in doing so, affirmed the principle that, with the exception of the detrimental effects of aging and a few other issues related to safety only during the period of extended operation, the existing regulatory processes are deemed adequate to ensure that the licensing bases of currently operating plants provide and maintain an adequate level of safety.[26]

Further, the Commission has explicitly rejected calls to expand the scope of the license renewal rule as sought by PW here. In 2001, the Commission denied a petition for rulemaking that would have revised the scope of license renewal to cover "liquid and gaseous radioactive waste management systems."[27] The Commission denied the petition because (1) "liquid and gaseous radioactive waste management systems are not involved in design and licensing basis events considered for license renewal," and (2) "the existing regulatory process is acceptable for maintaining the performance of the radioactive waste systems throughout the period of extended operation in order to keep exposures to radiation at the current levels below regulatory limits consistent with the conclusions made in the applicable regulations." Id.

Thus, PW's claims (Pet. at 4-6) that the Board improperly excluded consideration of whether Pilgrim satisfied CLB requirements imposed by regulations in 10 C.F.R. Parts 20 and 50 concerning ongoing radiological monitoring are clearly without merit. As the Board correctly recognized, a "review of a license renewal application does not reopen issues relating to a plant's [CLB], or any other issues that are subject to routine and ongoing regulatory oversight and enforcement." AmerGen Energy Co., LLC, (Oyster Creek Nuclear Generating Station), CLI-06-

[25] The Commission went on to say that "with the exception of age-related degradation unique to license renewal and possibly some few other issues related to safety only during extended operation, the regulatory process is adequate to ensure that the licensing bases...provide and maintain an acceptable level of safety for operation... ." Id.

[26] Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461 (May 8, 1995).

[27] Union of Concerned Scientists; Denial of Petition for Rulemaking, 66 Fed. Reg. 65,141 (Dec. 18, 2001).

24, 64 N.R.C. 111, 117-18 (2006) (footnote omitted). Moreover, prior Commission rulings have expressly recognized that the protection of aquatic resources from radioactive contamination is not a function within the scope of 10 C.F.R. § 54.4.[28] Thus, contrary to PW's claims, 10 C.F.R. § 20.1202 and 10 C.F.R. Part 50, Appendices A and B, are part of the CLB that are addressed as part of the ongoing regulatory process during the course of normal operations, and not as part of license renewal which is limited to aging management issues.

In short, PW has failed to demonstrate that the Board's interpretation of the scope of license renewal under 10 C.F.R. Part 54 is contrary to governing precedent or is a departure from established law. To the contrary, acceptance of PW's claims would subvert both the governing regulations and long-standing Commission precedent.

B. The Board's Application of "Reasonable Assurance" Is Fully Consistent With Judicial and Commission Precedent

PW's claim (Pet. at 6-8) that the Board misapplied the reasonable assurance standard similarly ignores existing legal precedent and provides no basis for review. The Commission may issue a renewed license if it finds that "[a]ctions have been identified and have been or will be taken with respect to" the applicant's aging management program "such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB." 10 C.F.R. § 54.29(a) (emphasis added). The "reasonable assurance" standard appears in many areas of the Commission regulations and case law, and while it is not specifically defined in the Atomic Energy Act or Commission regulation, established case law defines the "reasonable assurance" standard.

Case law defines the "reasonable assurance" standard by what it is – and by what it is not. Whether an applicant meets the reasonable assurance standard should be evaluated based on

[28] See, e.g., Turkey Point, CLI-01-17, 54 N.R.C. at 15-17.

"sound technical judgment applied on case-by-case basis" and "compliance with Commission regulations." Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 N.R.C. 327, 340 (2007); citing Union of Concern Scientists v. NRC, 880 F.2d 552, 558 (D.C. Cir. 1989); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 A.E.C. 1003, 1009 (1973).[29] Conversely, the Commission has made it clear that, in providing reasonable assurance, an applicant does not have to meet an "absolute standard." Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 421 (1980). "[R]easonable assurance" is not equal to "beyond a reasonable doubt" – the highest level of burden of persuasion and akin to the 95% confidence level advocated by PW. North Anna Envtl. Coal. v. NRC, 533 F.2d at 667-68 (equating "reasonable assurance" to "beyond a reasonable doubt" results in an overburden on the applicant).

Thus, the "'reasonable assurance' standard of 10 C.F.R. § 54.29(a) must be determined on a case-by-case basis" and "is not susceptible to formalistic quantification or mechanistic application" as sought by PW here. Oyster Creek, LBP-01-17, 66 N.R.C. at 340, citing Union of Concerned Scientists, 880 F.2d at 558. PW has failed to challenge the rationale underlying the Board's application of the reasonable assurance standard and, therefore, does not meet its burden of clearly identifying the errors in the decision. Furthermore, PW's arguments are not supported by any applicable law.[30] Hence, the Petition provides no basis for Commission review and must be denied.

---

[29] See also Nader v. Ray, 363 F. Supp. 946, 954 (D.D.C. 1973) and North Anna Envtl. Coal. v. NRC, 533 F.2d 655, 667 (D.C. Cir. 1976) (rejecting the argument that reasonable assurance requires proof beyond a reasonable doubt and noting that the licensing board equated "reasonable assurance" with "a clear preponderance of the evidence").

[30] PW cites to several decisions, none of which support its argument that "reasonable assurance" requires 95% confidence Pet. at 8 n.13. On the other hand, in a recent rulemaking, the Commission addressed – and rejected – the very argument that PW raises here: "[u]se of 'reasonable assurance' as a basis for judging compliance was not intended to imply a requirement for more stringent analyses (e.g., use of extreme values for important parameters) or for comparison with a potentially more stringent statistical criteria [than mean values of calculations] (e.g., use of the 95th percentile of distribution of the estimate of dose).... The Commission does not believe that the NRC's use

C. The Board Properly Rejected PW's Attempt to Introduce New Evidence after the Contention 1 Hearing

After the Commission directed "the Board to close the evidentiary record on Contention 1," Memorandum and Order, CLI-08-9, 67 N.R.C. 353, 356 (2007), PW sought to introduce allegedly new information into the evidentiary record.[31] The Board properly treated the newly submitted evidence as a motion to reopen the record as the evidentiary record for Contention 1 had been effectively closed as of the end of the April hearing.[32] The Board also properly ruled that PW met none of the bases for reopening the record pursuant to 10 C.F.R. § 2.326(a)(1) or (a)(3), i.e., the request was untimely and PW had made no showing that the proffered information would likely lead to a materially different result.[33] Other than its mistaken claim that the Contention 1 evidentiary record remained open (Pet. at 9), PW points to no alleged error in the Board's ruling. Hence, the Petition provides no basis for Commission review.

IV. PW'S PETITION FOR REVIEW OF LBP-07-13 SHOULD BE DENIED

The Board majority correctly granted Entergy summary disposition of PW Contention 3 because Entergy demonstrated the absence of any genuine issue of material fact – namely, that no additional SAMAs would become cost effective even when taking into consideration PW's claims. LBP-07-13, 66 N.R.C. at 144-46. Contention 3, as admitted by the Board, was limited to whether certain input data for the SAMA analyses were inadequate such that further analysis

---

of 'reasonable assurance' as a basis for judging compliance compels focus on extreme values (i.e., tails of distributions) ... ." Disposal of High-Level Radioactive Wastes in a Proposed Geological Repository at Yucca Mountain, Nevada, 66 Fed. Reg. 55,732, 55,739-40 (Nov. 2, 2001).

[31] Supra at n.15 & n.16.

[32] June 4, 2008 Order at 2-4; see also Official Hearing Transcript at 871 (Judge Abramson). The sole basis of error asserted in the Petition is that the evidentiary record remained open. However, as explained in the Board's June 4, 2008 Order, the evidentiary record was effectively closed for Contention 1 and remained open solely for purposes unrelated to Contention 1. See June 4, 2008 Order at 3.

[33] June 4, 2008 Order at 5-9. Furthermore, as noted by the Board, Entergy had produced, as part of its required discovery disclosures, documents that described in detail the design, installation, repairs and testing of the cured in place liners which PW acknowledged that it had never reviewed in its preparation for hearing. See June 4, 2008 Order at 7.

was called for.[34] As discussed below, Entergy's motion provided such further analysis in the form of sensitivity studies which demonstrated that changes in the input data would have no material effect on determining whether additional SAMAs were cost beneficial -- i.e., no additional SAMAs would become cost beneficial even when taking into account the alleged inadequacies in the inputs. In its response, PW merely repeated its claims of inadequate input data and never came forward with facts to dispute the results of Entergy's sensitivity analysis, which showed that changes in the input data had negligible, immaterial effect on the SAMA results.

In short, contrary to PW's claims, the Board majority did not engage in the weighing of competing evidence, but rather found that PW had provided no evidence to dispute the fundamental premise of Entergy's motion for summary disposition. Likewise, the numerous other claims raised by PW in its Petition provide no basis for the Commission to review the Board majority's decision.[35] None of PW's claims raise the possibility that the Board's rulings made a clear error as to a material fact or made a legal conclusion in conflict with existing precedent.[36] Therefore, the Commission should deny PW's Petition for review of LBP-07-13.

A. The Majority Correctly Applied The Standards for Summary Disposition

PW's claim that the Board majority misapplied the legal standards for summary disposition (Pet. at 13-14) has no basis because the Board applied black letter law in granting Entergy's

---

[34] Contention 3 as admitted by the full Board states:

> Applicant's SAMA analysis for the Pilgrim plant is deficient in that the input data concerning (1) evacuation times, (2) economic consequences, and (3) meteorological patterns are incorrect, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, such that further analysis is called for.

LBP-06-23, 64 N.R.C. at 341. As discussed infra, in admitting Contention 3, the Board rejected methodological claims concerning the adequacy of the MACCS2 code used to perform the SAMA analysis.

[35] PW's claim that the Board majority failed to require consideration of the consequences of a spent fuel fire and acts of malice in a SAMA analysis as a basis for Commission review of Contention 3 is analogous to PW's petition for Commission review of the Board's rejection of Contention 4. These issues, as well as others (such as the impact of low dose radiation), were never asserted as part of Contention 3 and are beyond the scope of the contention.

[36] 10 C.F.R. § 2.341(b)(4); Private Fuel Storage, CLI-04-4, 59 N.R.C. at 35.

motion for summary disposition. Expounding on well accepted standards,[37] the Board majority emphasized that the "determinative factor" at issue here was whether there was "any issue of material fact remaining in dispute," which would be determined by examining the parties' filings. LBP-07-13, 66 N.R.C. at 139 (emphasis in original). Quoting Supreme Court precedent, Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986), the Board majority noted that "the substantive law will identify which facts are material" and that "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." LBP-07-13, 66 N.R.C. at 139-40 (emphasis added). Here, the facts material to the outcome are whether changes to the input data would make additional SAMAs cost beneficial.

The Board majority went on to note, again based on black letter Supreme Court precedent, that it is not enough to simply find that a "scintilla of evidence in support of a [non-movant's] case" exists to reject a summary disposition motion. Id. at 140-41 n.8 (quoting Anderson). Nor is it sufficient to "show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, the determinative question is whether there is any evidence upon which a trier of fact could find in favor of the non-movant. LBP-07-13, 66 N.R.C. at 140-41 n.8 (citing Anderson). To avoid summary disposition, the non-movant must "present contrary evidence that [is] so 'significantly probative' as to create a material factual issue. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-92-08, 35 N.R.C. 145, 154 (1992) (quoting Anderson). Otherwise, the trier of fact "must direct a verdict (i.e., grant summary disposition) if, under the governing law, there can be but one reasonable conclusion as to the verdict." LBP-07-13, 66 N.R.C. at 140

[37] The Board majority incorporated by reference the legal standards for summary disposition contained in the NRC's regulations, Federal rules, and Federal case law from the full Board's ruling denying summary disposition of PW Contention 1. See LBP-07-13, 66 N.R.C. at 139-41; LBP-07-12, 66 N.R.C. at 124-28.

n.8 (quoting Anderson (emphasis added). This is the standard for summary disposition required by Supreme Court mandate, and the Board majority correctly applied the standard.

Therefore, relying on Anderson, the Board majority correctly held that the substantive law at issue here was "whether or not there are facts at issue which can affect whether or not a particular SAMA is cost-effective." Id. at 140. As determined by the Board majority, the answer to this question is no. In response to Entergy's summary disposition motion, which was premised on sensitivity analyses using different inputs and resulted in no additional SAMAs becoming cost effective, PW merely repeated its claims of data deficiencies without showing that any of the alleged deficiencies could affect the outcome of a SAMA.

Specifically, Entergy performed sensitivity analyses which showed that changes in the inputs for meteorological patterns, evacuation time, and economic consequences would not significantly affect the determination of whether the SAMAs were cost beneficial. For any additional SAMAs to become potentially cost effective, the benefits would have to increase by more than 100%. SD Motion at 31 & n.28. This is because the SAMA closest to becoming potentially cost effective had a baseline benefit of approximately $2.5 million, or less than half of the estimated cost (more than $5,000,000) of implementing the SAMA. Id.. Thus, the baseline benefit would have to increase by more than 100% before any additional SAMAs would potentially become cost beneficial. Id. See also LBP-07-13, 66 N.R.C. at 145 n.14.

Entergy supported its motion with a lengthy expert report and declaration demonstrating that the effect of wide-ranging changes to the input parameters challenged by PW are negligible and immaterial to the results of the SAMA analysis. See SD Motion, O'Kula Declaration and WSMS Report. The maximum increase in benefit in terms of reduced population dose risk and off-site economic cost risk resulting from any of the sensitivity analyses for implementing addi-

tional SAMAs would be less than 4% – far less than the 100% increase in benefit required. SD Motion at 10; LBP-07-13, 66 N.R.C. at 138. Therefore, Entergy demonstrated that none of the SAMAs that had not been previously cost-beneficial would become cost effective even when taking into consideration the alleged inadequacies in the SAMA inputs claimed by PW.

PW claims (Pet. at 15-18) that it disputed material facts by asserting that different inputs should be used for meteorological patterns, evacuation time, and economic cost data. But nowhere does PW provide any evidence to dispute the fundamental determination demonstrated by Entergy's bounding sensitivity analyses that using different inputs would result in no material change in the determination of cost-beneficial SAMAs. LBP-07-13, 66 N.R.C. at 147.

For example, with respect to PW's claims of inadequate data inputs for the evacuation time estimate (Pet. at 17-18),[38] Entergy conducted Sensitivity Case 6 which assumed no mitigating action (e.g., no evacuation) was taken in response to a severe accident. SD Motion at 18; LBP-07-13, 66 N.R.C. at 144-45. Sensitivity Case 6, which subsumed and bounded PW's alleged claims of erroneous inputs, resulted in a 2% increase in cost risk of the postulated release events, far less than the more than 100% increase that would be required before any additional SAMA would be identified as potentially cost effective. SD Motion at 18. The Board majority held that PW failed to substantively challenge these results and that the analysis convincingly demonstrated that changes in the evacuation time assumptions cannot make any difference in determining whether a SAMA would be cost effective. LBP-07-13, 66 N.R.C. at 144-45. PW's Petition ignores both Sensitivity Case 6 and the Board majority's reasoning and simply repeats the same complaints of inadequate data inputs originally made in Contention 3.

[38] PW erroneously claims – without citation to any support – that Entergy's SAMA evacuation analyses assumed that not everyone within the 10-mile EPZ would evacuate. Pet. at 17. PW's claims are (1) demonstrably wrong (see SD Motion at 22 and declaration of Thomas Sowdon at ¶ 20), and (2) rendered moot by the fact that the additional sensitivity analysis showed that, even with no evacuation, no additional SAMA would become cost beneficial.

The same holds for PW's claim of alleged inadequacies concerning the economic and meteorological inputs where Entergy similarly performed additional sensitivity analyses that accounted for inputs PW claimed were lacking. With respect to loss of tourism or business activity (see Pet. at 18), Entergy performed additional sensitivity analyses that included the regional gross domestic product as an input to the MACCS2 code, representing total value of goods and services produced in the area, so as to directly account for any loss of tourism, business activity, wages, etc. SD Motion at 26-27. This sensitivity analysis resulted in an increase of total cost risk of 1% – two orders of magnitude lower – compared to the 100% increase in cost risk required for any additional SAMAs to become potentially cost effective. Id. at 27. PW maintains that Entergy underestimated certain costs and ignored others, including assuming inappropriately low values of non-farm wealth and underestimated decontamination costs. Pet. at 18. But, as the Board majority noted, PW "offer[ed] no counterpoints to the results of Entergy's newly supplied analyses examining larger impact from loss of regional economic activity, including effects on business and tourism, which clearly indicate that the size of the changes in economic impact cannot approach the increment required to make any non-implemented SAMA cost-effective." LBP-07-13, 66 N.R.C. at 146 (emphasis added).

Likewise, with respect to PW's challenges to the meteorological inputs (Pet. 14-17), the Board majority noted that the SAMA analysis incorporated a wide variation in meteorological patterns[39] and held that "Sensitivity Case 6 (when considered together with the other analyses submitted by Entergy[40]) demonstrates the lack of effect upon the economic viability of any not-

[39] The SAMA analyses simulated multiple plumes for each postulated release condition which took into account different meteorological patterns that would be experienced at the site. SD Motion at 13.

[40] Among the Entergy's other sensitivity analyses were two sensitivity cases specifically designed to evaluate the effect of weather variability and terrain changes on the results of the SAMA analysis which showed negligible effects from varying the weather or the terrain used in the base case analysis. SD Motion at 14. Sensitivity Case 2 was run to estimate the effects of changing wind direction trajectory in the MACCS2 consequence analysis by

implemented SAMA of any potential errors in wind and meteorological modeling during the evacuation phase or thereafter." LBP-07-13, 66 N.R.C. at 146. Nowhere did PW present evidence to show that its alleged inadequacies would materially impact the SAMA cost benefit analysis. In this same respect, PW did not "challenge Entergy's assertion that the [meteorological] computations prepared by [Entergy] are conservative (i.e., they predict worse consequences, and, therefore, high costs of any particular event)" and failed to present any "specific information which indicates otherwise." Id. at 151. In short, PW's numerous alleged deficiencies are immaterial because PW failed to present any evidence that their correction would result in any additional SAMA becoming potentially cost effective.

PW relies (Pet. at 14) on Judge Young's dissent for the claim that the Board majority improperly weighed the competing evidence in granting summary disposition. However, no such improper weighing of evidence occurred. Judge Young's claim (LBP-07-13, 66 N.R.C. at 156) that the Board majority undertook "extensive examination of the facts" which resulted in impermissible weighing of the evidence is mistaken, for nothing in the Board majority's opinion suggests that it weighed evidence or found that the balance of the evidence tipped in favor of granting Entergy's summary disposition motion. Rather, the Board majority "carefully examin[ed] the evidence presented in the parties affidavits" in order to determine the potential materiality of the support offered PW "to allow a rational finder of fact to find" in its favor. LBP-07-13, 66 N.R.C. at 141 & n.9 (quoting Anderson). The Board majority reviewed each expert declaration or piece of evidence offered by PW in order to determine whether they "present[ed] contrary

---

choosing different meteorological input data for release categories that last longer than an hour. Id. The results from Sensitivity Case 2 show a negligible increase in PDR and OECR of 3%. Id. Sensitivity Case 3 approximated a terrain change by releasing the plume at the ground level, rather than at 30 meters high in the base case, and the results show a 1% increase in PDR and a 4% increase in OECR. Id. at 14-15. The increases in PDR and OECR from Sensitivity Cases 2 and 3 are far less than that required to result in identifying any additional potentially cost-beneficial SAMAs. Id. at 15.

evidence that was so 'significantly probative' as to create a material factual issue," Seabrook, CLI-92-8, 35 N.R.C. at 154 (quoting Anderson), and ultimately concluded in each case that the evidence was beyond the scope of the contention, or failed to challenge any material fact at issue. LBP-07-13, 66 N.R.C. at 147-54. Nowhere did the Board majority attempt to "'untangle the expert affidavits and decide 'which experts are more correct'" as Judge Young argues. Id. at 164.

For example, the Board majority rejected the Chanin affidavit not because Entergy's evidence outweighed it, but rather because the Chanin affidavit contained "not a single statement by Mr. Chanin addressing any specific result obtained by the Applicant or addressing the Applicant's input or computations in this instance or any instance in any manner or indicating, even broadly, that the results obtained by the Applicant are not conservative." Id. at 149. The Board majority rejected the Egan affidavit because it "proffer[ed] no support for a challenge to the input to, or the particular results of, the analytical results which lead to the evaluation of the cost-effectiveness of any SAMA." Id. at 150.

The Board majority's examination of the materials supporting PW's response to Entergy's motion was entirely appropriate because, as the Supreme Court has noted, "the purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (quoting Advisory Comm. Note to 1963 Amendment of Fed. R. Civ. P. 56(e)). Indeed, both the Commission's regulations and Commission precedent require a careful examination of the materials offered by the parties in support of their respective positions. A party opposing a motion for summary disposition cannot "rest on 'mere allegations or denials,' but must set forth specific facts showing that there is a genuine issue." Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 N.R.C. 98, 102 (1993) (footnote omitted). Thus, contrary to PW's claim of mis-

application of the summary disposition standards, the Board was obligated to determine whether the specific facts pled amounted to a genuine issue of fact.

The Board majority did not weigh competing evidence, nor could it, because PW simply failed to offer evidence or any substantive challenge to counter the results of Entergy's sensitivity analyses – that the maximum change which the alleged errors in meteorological, evacuation time, and economic input could produce fell far below what was needed for the next SAMA to become cost beneficial. LBP-07-13, 66 N.R.C. at 147. The Board majority appropriately "review[ed] the record as a whole" and gave credence to evidence supporting Entergy that was not contradicted. Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 151 (2000) (citing Anderson). Here no evidence controverted the fundamental premise of Entergy's motion that no additional SAMA would become cost effective even when taking into consideration the alleged inadequacies in the inputs claimed by PW.

Finding the absence of any genuine issue of material fact, the Board majority appropriately granted summary disposition. No purpose would be served by litigation of claims that will have no material impact on the result. Only time and resources are wasted. The Board majority's decision is fully in accordance with the requirements and legal precedent concerning summary disposition. As such, PW's claims provide no basis for Commission review.

B. PW's Other Claims of Error Provide No Basis for Review

PW's other claims of error in the Board majority's decision likewise have no merit and offer no basis for Commission review. Contrary to PW's claim, the Board majority did not improperly exclude areas of inquiry. The full Board's decision admitting Contention 3 is clear that, as admitted, Contention 3 is limited to challenging "certain specific input data" to the "SAMA analysis." LBP-06-23, 64 N.R.C. at 338-39. Contention 3, as originally pled, did challenge the use of "probabilistic modeling," as well as the adequacy of the MACCS 2 code used by Pilgrim.

LBP-06-23, 64 N.R.C. at 323-24, 332. However, these issues were not included in the admitted contention. See Id. at 341. The full Board narrowed the scope of the contention by holding that, "to the extent that any part of the contention or basis may be construed as challenging on a generic basis the use of probabilistic techniques that evaluate risk, we find any such portion(s) to be inadmissible" because "[t]he use of probabilistic risk assessment and modeling is obviously accepted and standard practice in SAMA analyses." LBP-06-23, 64 N.R.C. at 340. Furthermore, in its reply, PW unequivocally stated that Contention 3 "focuses mainly on the input parameters used in the accident modeling software," Id. at 334 (quoting PW Reply). Thus, Contention 3, as admitted, challenged only the adequacy of certain inputs used in the SAMA analysis. The full Board expressly rejected a broad-based challenge to the methodology used to perform SAMAs.

PW also claims (Pet. at 12-13) that, in granting summary disposition, the Board majority inappropriately excluded areas of inquiry into the adequacy of the MACCS2 code, the SAMA analysis use of probabilistic rather than deterministic methodologies, and alleged health effects of low doses of radiation. However, it is clear from the full Board's order admitting the contention that none of these areas of inquiry fall within the scope of Contention 3.

The adequacy of the MACCS2 code and the use of probabilistic rather than deterministic methodologies do not concern the accuracy of the economic, evacuation time, and meteorological inputs, or whether different inputs might change the results of the SAMA analysis. Thus, in ruling on summary disposition, the Board majority held that PW's attack on the MACCS2 code was previously raised and rejected at the contention admissibility stage and is outside the scope of the proceeding. LBP-07-13, 66 N.R.C. at 143-44, 149. Moreover, the Board majority stated that, even if it were to consider PW's challenge to the MACCS2 code (through PW's affiant Mr. Bruce Egan, an air-quality meteorologist and not a MACCS2 code expert), it found this approach

lacking because Mr. Egan "proffer[ed] no support for a challenge to the input to, or the particular results of, the analytical results which lead to the evaluation of the cost effectiveness of any SAMA." Id. at 150. As further indications of lack of materiality, the Board noted that, despite his claims that more sophisticated methods could and should be used, Mr. Egan never controverted Entergy and the Staff statements that the Gausian plume model results "are in good agreement with and generally more conservative than the results obtained by more sophisticated models" and that Entergy had conservatively applied the Gausian methodology "to produce overall conservative results." Id. at 151.

Similarly, the Board majority (as well as Judge Young[41]) found that PW did not raise the health effects of low doses of radiation as an economic consequence in Contention 3 but rather only pled loss of economic activity and loss of economic infrastructure and tourism. Id. at 145 (citing PW Intervention Petition).[42] NRC precedent is clear: "New bases for a contention cannot be introduced [at] any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2)."[43] PW made no attempt to address those late-filing criteria. Thus, the Board majority correctly ruled that PW's attempt to litigate those issues fell outside the scope of the admitted contention. LBP-07-13, 66 N.R.C. at 145-46. PW's belated attempt to repackage its low radiation dose claims as part of Contention 3 provides no basis to warrant Commission review.

Finally, PW asserts (but offers no argument) that the Board majority inappropriately required it to provide detailed calculations in response to Entergy's summary disposition motion,

---

[41] LBP-07-13, 66 N.R.C. at 166 ("With respect to Intervenors' newly submitted health and other non-tourism-related economic cost factors, it is true that Intervenors provided no notice that these types of costs were challenged in particular, focusing more on economic matters related to lost business value, economic infrastructure, and tourism") (Dissenting Opinion of Judge Young) (emphases added) (citing PW Intervention Petition).

[42] The only challenge raised by PW concerning health effects of low doses of radiation was in Contention 5, which the full Board rejected as outside the scope of license renewal. LBP-06-23, 64 N.R.C. at 347-48.

[43] Nuclear Management Company, LLC (Palisades Nuclear Plant), CLI-06-17, 63 N.R.C. 727, 732 (2006).

whereas PW Contention 3 only sought further analysis by Entergy. Pet. at 11. PW's claim that the Board required detailed calculations is demonstrably incorrect. Here, the material facts at issue were those facts which would affect the conclusion of whether a particular SAMA is cost effective. LBP-07-13, 66 N.R.C. at 140. Entergy premised its summary disposition motion on the results of sensitivity analyses – in effect the further analysis sought by Contention 3 – that accounted for the alleged deficiencies in input. These analyses demonstrated that no additional SAMA comes close to being cost effective under these bounding analyses. Id. at 147.

It is evident on the face of PW's response to the summary disposition motion (as well as its petition for review) that PW never challenged the conclusion in Entergy's bounding analyses that the maximum change which these alleged oversights or errors could produce was far below that needed to make a SAMA cost effective. Id. This is the reason that the Board rejected PW's pleadings. Indeed, none of the expert declarations accompanying PW's answer to the summary disposition motion challenged Entergy's results. For example, the Board majority held that Mr. Egan's declaration on meteorological impacts "offer[ed] not a single specific criticism or contradiction of the newly submitted Entergy analyses." Id. at 152. Absent direct challenge from PW to the assumptions and conclusions in the sensitivity analyses, the Board majority followed established legal precedent and appropriately granted the motion for summary disposition. Hence, the Petition provides no basis for review of LBP-07-13.

V. PW'S PETITION FOR REVIEW OF THE BOARD RULING ON THE ADMISSIBILITY OF CONTENTION 4 SHOULD BE DENIED

Lastly, PW's Petition (at 19-24) requests Commission review of the Board's dismissal of Contention 4, which raised issues of asserted environmental impacts of spent fuel pool accidents essentially identical to the Commonwealth of Massachusetts ("Commonwealth") contention that the Board likewise dismissed because spent fuel environmental impacts are Category 1 issues

beyond the scope of license renewal proceedings.[44] Because the Commission[45] and the First Circuit[46] have already upheld the Board's dismissal of the Commonwealth's essentially identical contention, PW's Petition raises no novel issues that would warrant Commission review. While PW Contention 4 raises claims not directly made in the Commonwealth's contention, PW's additional claims would have the Commission ignore its own precedent and regulations (which are directly on point) and the clear language of the Generic Environmental Impact Statement ("GEIS") that spent fuel issues are Category 1 issues. Such arguments can provide no basis that would warrant Commission review of the Board's ruling on Contention 4.

A. On-site Spent Fuel Storage – Including Accident Risks and Their Mitigation – Is A Category 1 Issue That Is Not Subject to Litigation in Individual License Renewal Proceedings and Therefore Requires No SAMA Discussion

PW's claim (Pet. 20-22) that spent fuel pool accidents fall within the SAMA requirements of 10 C.F.R. § 51.53(c)(3)(ii)(L) ignores direct Commission precedent and also misreads the GEIS. The Commission clearly held in Turkey Point that onsite management of spent nuclear fuel – including potential accidents risks and their mitigation – is a Category 1 issue, encompassed by the GEIS findings, that cannot be challenged in license renewal proceedings:

> The GEIS's finding encompasses spent fuel accident risks and their mitigation. See GEIS at xlviii, 6-72 to 6-76, 6-86, and 6-92. The NRC has spent years studying in great detail the risks and consequences of potential spent fuel pool accidents, and the GEIS analysis is rooted in these earlier studies. NRC studies and the agency's operational experience support the conclusion that onsite reactor spent fuel storage, which has continued for decades, presents no undue risk to public health and safety. Because the GEIS analysis of onsite fuel storage encompasses the risk of accidents, [a contention seeking to raise spent fuel pool storage accidents in a license renewal proceeding] falls beyond the scope of individual license renewal proceedings.

Turkey Point, CLI-01-17, 54 N.R.C. at 21 (emphasis added). See also 10 C.F.R. Part 51, App.

---

[44] LBP-06-23, 64 N.R.C. at 286, relying on Turkey Point, CLI-01-17, 54 N.R.C. at 21-22.

[45] CLI-07-3, 65 N.R.C. 13, 21 (2007).

[46] Massachusetts v. U. S. 522 F.3d 115, 130 (1st Cir. 2008).

B, Table B-1. In this context, the Commission directly addressed whether 10 C.F.R. § 51.53(c)(3)(ii)(L) requires a SAMA analysis for spent fuel pool accidents and held:

> . . . Part 51's reference to "severe accident mitigation alternatives applies to nuclear reactor accidents, not spent fuel storage accidents.

Turkey Point, CLI-01-17, 54 N.R.C. at 21 (emphasis in original).[47]

Contrary to PW's claims, the Turkey Point decision is wholly consistent with the GEIS. Section 5.4 of the GEIS specifically defines a "severe accident" for the purpose of SAMA analysis as "instances of particular vulnerability to core melt or unusually poor containment performance given a core-melt accident."[48] GEIS at 5-106 (emphasis added). Furthermore, PW's claim (Pet. at 22) that GEIS Section 6 only concerns normal operations is wrong. Section 6 makes it abundantly clear that the Category 1 determination for on-site spent fuel storage equally applies to spent nuclear fuel accidents, including a finding that, "even under the worst probable cause of a loss of spent fuel pool coolant (a severe seismic-generated accident causing a catastrophic failure of the pool), the likelihood of a fuel-cladding fire is highly remote." GEIS at 6-72 – 6-75 (citation omitted). Also, the GEIS expressly concludes that "consideration of mitigation alternatives within the context of renewal of a power reactor license" is not required for on-site storage of spent fuel. GEIS at 6-86. In short, it is PW, not the Commission, that misreads the GEIS.

Accordingly, PW's claim ignores the explicit findings of the GEIS, the codification of those findings in the NRC's rules, and the Commission's precedent in Turkey Point and in this proceeding affirming those findings. As such, PW's claims provide no basis for review.

---

[47] PW suggests that the Commission looked at the "wrong regulation." Pet. at 22. However, the Commission quoted from the entry for "Severe accidents" in Table B-1 of Appendix B to 10 C.F.R. Part 51 which directly references 10 C.F.R. § 51.53(c)(3)(ii)(L).

[48] The Commission's decision in Turkey Point is also consistent with the NRC's "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants," which defines "[s]evere nuclear accidents [as] those in which substantial damage is done to the reactor core whether or not there are serious offsite consequences." 50 Fed. Reg. 32,138 (Aug. 1985) (emphasis added).

B. PW Failed to Seek A Waiver To Challenge The Rule

PW's claim (Pet. at 23-24) that Entergy was required to consider new and significant information in its Environmental Report is the same claim reviewed and rejected by the Commission earlier in this proceeding with respect to the Commonwealth's contention. CLI-07-3, 65 N.R.C. at 19-23. As held in CLI-07-03, a petitioner who seeks to challenge a Category 1 finding in a license renewal proceeding must petition to waive the rule in that proceeding based on "special circumstances . . . such that the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted." Id. at 20 (footnote omitted).

Thus, PW's failure to seek a waiver of the rule in this proceeding is fatal to its claim. PW's assertions that no waiver of the rule was necessary for the Board to consider new and significant information (Pet. at 23 n. 41), and that the Commission's regulations do not "exempt[] Category 1 impacts from the scope of issues that must be addressed in NEPA contentions" (Pet. at 24) are the same arguments reviewed and already rejected by the Commission in CLI-07-3.

PW complains that the waiver requirement is a "vastly different standard than that required for a contention to be admissible in 2.309(f)," which does not require a petitioner to prove its case at the outset. Pet. at 23 n.41. To the contrary, the Commission has the authority to fashion procedures for addressing issues that come before it.[49] The Commission used this authority to make clear that "Part 51 treats all spent fuel pool accidents, whatever their cause, as generic, Category 1 events not suitable for case-by-case adjudication." Turkey Point, CLI-01-17, 54 N.R.C. at 22 (emphasis added) (citation omitted). Thus, a petitioner must seek the Commis-

[49] Longstanding Supreme Court precedent holds that the Commission is "free to fashion [its] own rules of procedure and to pursue methods of inquiry capable of permitting [it] to discharge [its] multitudinous duties," and has the discretion to proceed "by general rule, or by individual, ad hoc litigation" in discharging those duties. LBP-06-23, 64 N.R.C. at 299 n.170 (quoting Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543 (1978) (citations omitted) and SEC v. Chenery Corp., 332 U.S. 194, 203 (1947)).

sion's permission to litigate a Category 1 issue in an individual proceeding; otherwise, there would be no point to resolving issues generically. CLI-07-3, 65 N.R.C. at 21.

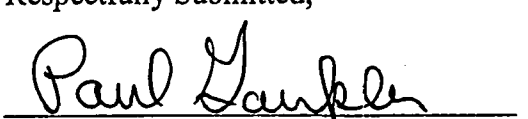
Even had PW petitioned for a waiver, the information it seeks to raise is neither new nor significant, and its claims do not allege that special circumstances exist at Pilgrim such that the rule would not serve the purpose for which it was adopted. Much of the information PW raised in its Intervention Petition (at pp. 62-78) was years, if not decades, old, and would apply to other nuclear reactors.[50] Indeed, even in the instant Petition, PW directs the Commission's attention to filings in the Indian Point license renewal proceeding as a source of purported new and significant information. Pet. at 24. PW does not assert that special circumstances exist here and, therefore, would not have met the standards for waiver of the rule in this proceeding.

Hence, the Petition provides no basis for Commission review because the Board, in accordance with well-established Commission precedent, appropriately rejected PW's attempt to litigate purportedly new and significant information absent any petition for waiver of the rule.

VI. CONCLUSION

For the reasons set forth above, the Board should reject PW's Petition.

Respectfully Submitted,



David R. Lewis
Paul A. Gaukler
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Tel. (202) 663-8000
Counsel for Entergy

Dated: November 24, 2008

[50] See, e.g., Intervention Petition at 67 (referring to BWR Mark II and Mark II reactors). Additionally, much of the information raised by PW (e.g., the National Academy of Sciences report entitled "Safety and Security of Commercial Spent Nuclear Fuel Storage") has since been rejected by the Commission as neither new nor significant. 73 Fed. Reg. 46,204 (Aug. 8, 2008) (denying the petitions for rulemaking submitted by the Attorney General of the Commonwealth of Massachusetts and the Attorney General of California).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Answer Opposing Pilgrim Watch's Petition for Review" 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 24th day of November 2008.

*Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
secy@nrc.gov; hearingdocket@nrc.gov

*Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ocaamail@nrc.gov

*Hon. Dale E. Kline
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
chairman@nrc.gov

*Hon. Peter B. Lyons
Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
cmrlyons@nrc.gov

*Hon. Gregory B. Jaczko
Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
cmrjaczko@nrc.gov

*Hon. Kristine L. Svinicki
Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
cmrsvinicki@nrc.gov

*Administrative Judge
Ann Marshall Young, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
amy@nrc.gov

*Administrative Judge
Dr. Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
rfc1@nrc.gov

*Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
pba@nrc.gov

Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

*Matthew Brock, Assistant Attorney General
Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Martha.Coakley@state.ma.us
Matthew.Brock@state.ma.us

*Susan L. Uttal, Esq.
*Marcia Simon, Esq.
*Andrea Z. Jones, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Susan.Uttal@nrc.gov; Marcia.simon@nrc.gov;
andrea.jones@nrc.gov

*Ms. Mary Lampert
148 Washington Street
Duxbury, MA 02332
mary.lampert@comcast.net

*Mr. Mark D. Sylvia
Town Manager
Town of Plymouth
11 Lincoln St.
Plymouth, MA 02360
msylvia@townhall.plymouth.ma.us

*Sheila Slocum Hollis, Esq.
Duane Morris LLP
505 9th Street, NW
Suite 1000
Washington, DC 20006
sshollis@duanemorris.com

*Chief Kevin M. Nord
Fire Chief and Director, Duxbury Emergency
Management Agency
688 Tremont Street
P.O. Box 2824
Duxbury, MA 02331
nord@town.duxbury.ma.us

*Richard R. MacDonald
Town Manager
878 Tremont Street
Duxbury, MA 02332
macdonald@town.duxbury.ma.us

Paul Gaukler
Paul A. Gaukler