

February 1, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

| | | |
|----------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| ENTERGY NUCLEAR GENERATION |) | |
| COMPANY AND |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. |) | Docket No. 50-293-LR |
| |) | |
| (Pilgrim Nuclear Power Station) |) | |

NRC STAFF'S RESPONSE TO
PILGRIM WATCH NOTICE TO COMMISSION REGARDING
NEW AND SIGNIFICANT INFORMATION PERTAINING TO PILGRIM WATCH'S
PETITION FOR REVIEW OF LBP-06-848

INTRODUCTION

The staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to Pilgrim Watch Notice to Commission Regarding New and Significant Information Pertaining to Pilgrim Watch's Petition for Review of LBP-06-848 ("Notice"), dated January 21, 2010. The Notice claims that a recent paper from the Staff, SECY-09-0174, contradicts a holding of the Atomic Safety and Licensing Board ("ASLB") on review in this proceeding.¹ For the reasons set forth below, this Notice to the Commission should not be considered to the extent it attempts to argue the merits of Pilgrim Watch's Petition for Review of LBP-06-848, LBP-07-13, LBP-06-23 and the Interlocutory Decisions in the Pilgrim Nuclear Power Station Proceeding ("Petition for Review").²

¹ Notice at 1-2 (*citing* SECY-09-0174, Staff Progress in Evaluation of Buried Piping at Nuclear Reactor Facilities, at 3, attach., at 6, 7 (Dec. 2, 2009) (ADAMS Accession No. ML093160004) ("SECY-09-0174")).

² Petition for Review (Nov. 12, 2008) (ADAMS Accession No. ML083240599). Although Pilgrim Watch's Petition for Review referred to the Atomic Safety and Licensing Board's Initial Decision as LBP-06-848, the actual number for that opinion is LBP-08-22. *Compare* Petition for Review at 1 *with* Entergy (continued. . .)

DISCUSSION

In previous decisions, the Commission has declined to consider communications arguing the merits of a pending petition for review.³ The Staff would expect parties to notify the Commission of the status and availability of pertinent information.⁴ But, Pilgrim Watch's Notice goes beyond the permissible scope of a notification and attempts to argue the merits of the pending Petition for Review. Specifically, the Notice mistakenly concludes that "SECY-09-0174 makes clear that the ASLB was incorrect in concluding that the only thing that matters about buried pipes and tanks was that [the leaks] are so great as to permit a design base failure."⁵ To the extent Pilgrim Watch's Notice argues the merits of the case, i.e. the ASLB erred, the Commission should disregard it. The Staff's assertion that the Commission should disregard the Notice is further supported by the fact that Pilgrim Watch's Notice not only argues that the ASLB was incorrect but does so based on information, the SECY paper, that is already before the Commission.

Even if the Commission were to consider the notice, the SECY paper does not reach the conclusions Pilgrim Watch suggests. Pilgrim Watch argues that SECY-09-0174 contradicts a

(. . .continued)

Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Initial Decision, LBP-08-22, 68 NRC 590 (2008).

³ See *AmerGen Energy Co. LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 284 n.277 (2009) (stating that a letter to the Commission was not a part of the record when the intervenor filed the letter while a petition for review was pending before the Commission and the letter contained additional argument); *AmerGen Energy Co. LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 676 n.74 (2008) (same).

⁴ In response to the Chairman's tasking to the Staff, on December 2, 2009, the Staff formally provided SECY-09-0174 to the Commission. Consequently, Pilgrim Watch's notification to the Commission of a paper already before the Commission is duplicative.

⁵ Notice at 2.

holding of the ASLB. While Pilgrim Watch asserts that systems, structures, and components within the scope of review for license renewal must be evaluated to determine if they will comply with all aspects of the plant's continuing licensing basis during the period of extended operation,⁶ the Board took a more narrow view. The Board concluded that such systems, structures, and components must only be evaluated to determine if they will perform their intended safety function during the period of extended operation.⁷ SECY-09-0174 reaches a similar result. That paper states, "The license renewal rule requires applicants for license renewal to demonstrate that for each applicable structure, system, or component, the effects of aging will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis for the period of extended operation."⁸ Thus, contrary to Pilgrim Watch's conclusions, both the ASLB's decisions and SECY-09-0174 recognize that the scope of license renewal is limited to whether the licensee will maintain an in-scope-structure, system, or component's intended safety function during the period of extended operation. The parties have already extensively briefed the merits of this conclusion.⁹

⁶ Petition for Review at 4.

⁷ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-12, 68 NRC 113, 128-30 (2007).

⁸ SECY-09-0174, attach., at 6.

⁹ Petition for Review, at 2-6; Entergy's Answer Opposing Pilgrim Watch's Petition for Review, at 5-8 (Nov. 24, 2008) (ADAMS Accession No. ML083380181); NRC Staff's Answer in Opposition to Pilgrim Watch's Petition for Review of LBP-08-22, LBP-07-13, LBP-06-23 and Interlocutory Decisions, at 7-12 (Nov. 24, 2008) (ADAMS Accession No. ML083300089); Pilgrim Watch Reply to Entergy's Answer Opposing Pilgrim Watch's Petition for Review, at 1-2 (Dec. 1, 2008) (ADAMS Accession No. ML083440445); Pilgrim Watch Reply to NRC Staff's Answer in Opposition to Pilgrim Watch's Petition for Review of LBP-08-22, LBP-07-13, LBP-06-23 and Interlocutory Decisions, at 1 (Dec. 1, 2008) (ADAMS Accession No. ML083440446).

CONCLUSION

For the reasons set forth above, the Commission should disregard attempts to argue the merits of the proceeding through notifications to the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian G. Harris", is written over a horizontal line.

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Dated at Rockville, Maryland
this 1st day of February 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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| In the Matter of |) | |
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| Entergy Nuclear Generation Co. and |) | |
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| (Pilgrim Nuclear Power Station) |) | ASLBP No. 06-848-02-LR |
| |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC Staff's Response to Pilgrim Watch Notice to Commission Regarding New and Significant Information Pertaining to Pilgrim Watch's Petition for Review of LBP-06-848" 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 1st day of February, 2010.

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