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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of

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Entergy Nuclear Generation Co. and

)

Entergy Nuclear Operations, Inc.

)

Docket No. 50-293-LR

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ASLBP No. 06-848-02-LR

(Pilgrim Nuclear Power Station)

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PILGRIM WATCH MOTION FOR RECONSIDERATION OF CLI-10-11

Mary Lampert

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April 5, 2010

PILGRIM WATCH MOTION FOR RECONSIDERATION OF CLI-10-11

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323(e), 2.341, and 2.345, Pilgrim Watch requests reconsideration of CLI-10-11, the U.S. Nuclear Regulatory Commission's Memorandum and Order of March 26, 2010 ("CLI", or "Commission Order"). There are compelling circumstances, clear and material errors and inconsistencies in portions of the order which could not have been reasonably anticipated, which render the decision invalid, and are prejudicial to Pilgrim Watch and the citizens it represents.

II. FACTUAL AND PROCEDURAL BACKGROUND

The question before the Commission was whether the majority of the ASLB, over an extensive dissent by Chief Judge Young,¹ properly granted summary disposition dismissing Pilgrim Watch's Contention 3 on the ground that there was no disputed issue of material fact (Memorandum and Order Ruling on Motion to Dismiss Petitioner's Contention, October 30, 2007, "Board Decision.") According to the Board majority, Pilgrim Watch "fail[ed] to indicate or present any material fact over which there is a genuine issue." (Board Decision, p. 25)

Contention 3 challenges the Applicant's handling of Severe Accident Mitigation Alternatives (SAMA). As admitted by the ASLB on October 16, 2006, Contention 3² reads that, "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."

¹ Judge Young's Dissenting Opinion is pages 27-43 of the October 30, 2007 Order.

² Pilgrim, LBP-06-23NRC at 115 (Memorandum and Order (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch))

In Sections III.A and B, the Commission Order correctly found that Contention 3 raised disputed issues of material fact with respect to “input data concerning ... meteorological patterns” (“the majority’s decision is not sufficiently comprehensive to support the summary disposition of Contention 3;” “genuine factual issues remain.” (CLI at 25) Accordingly, the Commission Order correctly reversed the majority’s summary dismissal of the meteorological patterns issue in Contention 3 and remanded the issue for hearing. (CLI at 26)

However, the Commission Order went beyond whether summary disposition was justified. The Commission rewrote Contention 3 to limit “input data concerningeconomic consequences” to exclude any input data concerning the effects of a spent fuel accident; and, even in the NRC’s limited accident scenario, to exclude inputs concerning decontamination/interdiction clean-up costs and health costs, all of which are indisputably “economic consequences. (CLI at 28-30). The Commission Order went on to further limit input data concerning economic costs “to the extent that ... meteorological patterns may materially call into question the relevant economic cost and evacuation timing conclusions in the Pilgrim SAMA analysis.” (CLI at 36-37)

The Commission’s decision to rewrite Contention 3 and to limit the inputs that require “further analysis” was wrong, could not have been reasonably anticipated by Pilgrim Watch,³ and should be reconsidered.

To the extent that the Commission Order might be interpreted to limit the evidence Pilgrim Watch may submit at the remand hearing to what it relied on to show that summary disposition was improper, or to

³ The Board decision and the Commission Additional Briefing Order both quoted the admitted Contention which explicitly includes whether “input data concerning ... economic consequences ... are incorrect.” The Commission’s Additional Briefing Order raised the questions “whether any additional SAMA should have been identified as potentially cost beneficial,” and whether any evidence presented by Pilgrim Watch “could materially support the ultimate conclusions of the SAMA cost benefit analysis.” In view of these, Pilgrim Watch could not have reasonably anticipated that the Commission would rewrite Contention 3 to exclude inputs relating to decontamination costs, misunderstand what is encompassed in “economic infrastructure,” and dramatically limit the input data and economic consequences that it would consider in determining whether “any additional SAMA should have been identified” and the evidence that “could materially support the ultimate conclusions of the SAMA cost benefit analysis.”

decide in advance of hearing that the “impacts from severe accidents are small at all plants” and that “no purpose would be served to further refine the SAMA analysis” (CLI at 38, 39), that also would be wrong.

III. ARGUMENT - CLEAR AND MATERIAL ERRORS IN THE DECISION

A. The Commission Improperly Limited Contention 3

The Commission Order selectively quoted a number of previous decisions to the effect that “matters submitted for hearing [should have] at least some minimal foundation ... and provide notice to opposing parties of the issues they will need to defend against,” and that “[i]ntervenors may not ‘freely change the focus of an admitted contention at will’ to add a host of new issues and objections that could have been raised at the outset” (CLI at 28).

What the Commission failed to understand is that Pilgrim Watch’s “Contention 3 as originally proffered and admitted” broadly challenged the inputs used by Entergy to account for the economic consequences of a severe accident, and specifically identified the costs of decontamination/interdiction as one of the inputs to the MAACS2 model. The Commission’s conclusion that these are “new arguments not fairly encompassed by Contention 3 as originally proffered and admitted” (CLI at. 29) was incorrect.

Pilgrim Watch’s Petition to Intervene⁴ said, for example:

The Environmental Report is inadequate because it ignores the true off-site radiological and economic consequences of a severe accident at Pilgrim in its Severe Accident Mitigation Alternatives (SAMA) analysis.

The Environmental Report inadequately accounts for off-site health exposure and economic costs in its SAMA analysis of severe accidents.

Entergy used incorrect input data to analyze severe accident consequences.... Neither the MAACS2 model used to analyze consequence nor the input data provided by the applicant provide an accurate assessment of the off-site dose and economic consequences of a severe accident. Further, “Entergy’s inputs to the code, including meteorological data, demographics, emergency response, and regional economic data, were incomplete, incorrect

⁴ Request for Hearing and Petition to Intervene by Pilgrim Watch, “Petition to Intervene”, pp. 26, 34-35, 43-45, 45, emphasis added, NRC Electronic Library, Adams Accession No. ML061630125

or out of date. These inaccuracies result in incorrect conclusions drawn about accident consequences and minimize the likely risks of a severe accident.”

The MACCS2 model analysis of economic costs include the cost of decontamination, the cost of condemnation of property that cannot be decontaminated to a specified level, and a lump sum compensation payment to all members of the public who are forced to relocate either temporarily or permanently as a result of the accident. These would include the costs associated with the emergency phase (i.e., evacuation and short-term relocation), costs associated with the intermediate phase (i.e., per-diem costs for relocation for the duration of the intermediate phase), and decontamination or interdiction for the longer term. (1997 User Guide, section 7)

Dr. Edwin Lyman performed a MACCS2 analysis for Indian Point to assess what the costs of a severe accident at that plant would be. He more realistically concluded that in a severe accident there would be, “damages from hundreds of billions to trillions of dollars, and the permanent displacement of millions of individuals.” *Chernobyl on the Hudson, supra* at 54. In his analysis he used only the MACCS2 economic cost parameters, not the actual economic costs of a severe accident in the region, which Petitioners contend should include loss of economic infrastructure and tourism.

Contrary to the assumptions apparently underlying the Commission’s Order, Pilgrim Watch’s Petition to Intervene did “provide notice to the opposing parties of the issues they will need to defend against” (CLI at 28). In fact, both Entergy and the Staff recognized at the outset that one of the issues raised by Contention 3, and that they would “need to defend against,” was inputs relating to decontamination, interdiction and other costs relating to economic infrastructure. For example,

1. Entergy agreed that it was a “material fact” that the “MACCS2 model accounts for a wide range of economic costs, including... (3) cost of decontaminating land and buildings and (4) loss of building/land use and any corresponding lost return on investment and depreciation associated with decontamination and interdiction.... “(Entergy’s Statement of Material Facts, May 17, 2007, par. 45, referencing Entergy’s expert O’Kula’s Decl. at 34 and the WSMS Report at 29)
2. The Applicant’s and NRC’s Experts specifically addressed costs of decontamination, and said that they are accounted for in the model. (Declaration of Kevin R. O’Kula, May 16, 2007,

par 34; and for NRC Staff an Affidavit of Joseph A. Jones and Dr. Nathan Bixler Concerning Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3, June 25, 2007, par.

19)

The Board also recognized that inputs relating to decontamination and other economic infrastructure costs were part of Contention 3. Although the Staff and Entergy moved to strike Pilgrim Watch's evidence relating to decontamination costs, the Board did not grant the motion. Further, the Board Decision said that the Petition to Intervene was "intended to challenge [economic input computations] ... relating specifically to ... loss of economic infrastructure" (Board Decision pp., 10-11).

The Commission's statement that "off-site 'economic costs'" were limited to only a few costs such as "loss of economic activity in Plymouth County" and "tourism" (CLI at 29), and that decontamination/cleanup and health costs were added after the contention was accepted,⁵ is simply incorrect. The original contention was not so limited. It did include these items; and the Board's Order in part so acknowledged. Pilgrim Watch did not add anything to expand the scope of the contention beyond what was accepted by the Board, recognized by Entergy and NRC Staff, and already of record throughout the filings.

Indeed, the Commission's statement that Pilgrim Watch did so is inconsistent with its recognition, also at CLI 29, that Pilgrim Watch "more generally ... asserted," right from the start in its Petition for Review, May 25, 2006, "that the economic costs analysis should include the 'loss of economic infrastructure.'" The "loss of economic infrastructure" includes the loss of, or costs to remediate (in other words decontamination and interdiction costs) facilities - such as water management infrastructure (including drinking water supply), waste management facilities (including hazardous waste disposal), communication, transportation and distribution networks, financial institutions, energy supply systems,

⁵ CLI-10-11, Section C, New Arguments Not part of the Original Contention, at 28; Section D, Issues Outside the Scope of SAMA Analysis, at 32; Section E, Challenges to Evacuation Inputs, at 34, Section F, Economic Inputs, at 35

factories, farms, schools, hospitals, and public buildings – that make economic activity possible. Had the Commission understood the scope of “loss of economic infrastructure, the Commission, like Entergy, would have been fully aware that Petitioners added nothing new. The examples listed above show that the Entergy, the Staff and the Board recognized, from the outset, that the challenged “input data concerning ... economic consequences” included decontamination and interdiction cost inputs. It also included health costs and the effects of a spent fuel accident, contrary to the Commission Order.

The Commission also incorrectly found that “The majority properly rejected the various new ‘health’ ...arguments because they are not fairly encompassed by the description of Contention 3 that Pilgrim Watch set forth in its petition for hearing.” (CLI at 30) However the Commission overlooked that Contention 3 as originally brought forward said that, “The Environmental Report inadequately accounts for *off-site health exposure and economic costs* in its SAMA analysis of severe accidents.” (Pilgrim Watch’s Petition to Intervene at 26, emphasis added) Although the Board made clear that it would not permit health consequences per se to be brought forward in re-licensing adjudications [LBP-06-23, NRC at 341-348], it is equally clear that health costs are an important part of an analysis of economic consequences that must be properly “put in” to the SAMA analysis. Health costs are part of the record in 21 instances in Pilgrim Watch’s Opposition to the Motion for Summary Disposition (see examples at 33, 34, 35, 46, 81-84.)⁶ Pilgrim Watch made clear that a proper SAMA analysis must base health costs on dose response knowledge from the 21st century and not from dose response knowledge 40 years ago.

⁶ For example, in addition to the Beyea declaration with extensive discussion:

P. 33 - Entergy also failed to use updated cancer risk coefficients and failed to consider other health effects in making their < 2% consequence estimate

P. 33 - Entergy also failed to use updated cancer risk coefficients and failed to consider other health effects in estimating a "maximum change 3% increase in PDR."

P.34 - Entergy also failed to use updated cancer risk coefficients and failed to consider other health effects in their estimate of "6% increase in PDR."

P35 - Entergy also failed to use updated cancer risk coefficients and failed to consider other health effects.

Finally, the Commission also incorrectly found that spent fuel pool accidents were beyond scope (CLI at 33), despite the facts brought forward by Pilgrim Watch that: (1) the offsite cost risk of a spent fuel pool fire at Pilgrim is substantially higher than the offsite cost of a release from a core-damage accident; and (2) Section 5 of the GEIS, not Section 6, deals with severe accidents and nothing in Section 5 of the GEIS excludes severe accidents involving what at Pilgrim is the largest inventory of radioactive materials – the spent fuel pool. The Commission also incorrectly called this a “new” claim by Pilgrim Watch. Not so. Spent fuel pool accidents were first mentioned in Pilgrim Watch’s Motion to Intervene at 39. Subsequently in Pilgrim Watch’s Answer Opposing Entergy’s Motion For Summary Disposition Of Pilgrim Watch Contention 3, June 29, 2007 (at 47-8) explained that, “consequences from a core release potentially 8 times less (than) from Cs-137 than predicted from a pool release,” and provided extensive references to spent fuel pool economic consequences in Declaration of Dr. Jan Beyea, Report To The Massachusetts Attorney General On The Potential Consequences Of A Spent-Fuel-Pool Fire At The Pilgrim Or Vermont Yankee Nuclear Plant, May 25, 2006.

The Commission’s conclusion that Pilgrim Watch has “raise[d] a number of distinctly new arguments not fairly encompassed by Contention 3 as originally proffered and admitted” was wrong. It should be reconsidered and Pilgrim Watch should be permitted to present at hearing any evidence encompassed by the admitted contention’s statement that “Applicant’s SAMA analysis for the Pilgrim Plant is deficient in that input data concerning ... economic consequences ... are incorrect, resulting in incorrect conclusions about the costs versus Benefits of possible mitigation alternatives, such that further analysis is called for.”

B. The Commission May Not Properly Limit Pilgrim Watch’s Evidence at Hearing.

In its Order, the Commission seems to have forgotten that the issue before it was whether summary disposition was proper – it was not whether there was support for an ASLB decision that had been rendered after a full hearing.

The Board correctly said that “a party is not required to prove its case in making or opposing a motion for summary disposition.” (Board Order, p. 6) In opposing summary disposition, Pilgrim Watch presented evidence sufficient to show that, contrary to the Board Order, there were disputed issues of material fact. To the extent that the Commission Order might be interpreted to say that Pilgrim Watch has somehow waived its right to present any further or additional evidence at the remand hearing, that would be improper.

It also would be contrary to the Commission’s and Board’s own rules. The ASLB granted summary disposition on Contention 3 on October 30, 2007; and the Board Scheduling Order set a hearing date no earlier than February 26, 2008 and required the parties were to submit the evidence on which they would rely at the hearing, i.e., their statements of position, written direct testimony and exhibits, on December 3, 2007. Had summary disposition not been granted, Pilgrim Watch would have assembled and submitted all of the evidence to support Contention 3 upon which it intended to rely at hearing on or before December 3, in accord with that ASLB order. But summary disposition was granted well before that date, and Pilgrim Watch was never required to do so. There is no proper basis to limit the evidence that Pilgrim Watch may present at the remand hearing to simply the evidence PW pointed to in order to show that summary disposition should not have been granted.

At the remand hearing, Pilgrim Watch expects to present evidence showing that the inputs relating to economic consequences, including Entergy’s inputs concerning decontamination, interdiction and health costs were incorrect, and that a proper analysis using proper inputs, and considering spent fuel pool accident consequences, would lead to a very different cost-benefit analysis.

C. The Commission’s Discussion of SAMA Analyses (Section F, pp 37- 39)

The Commission Order said that it is free “to select [its] own methodology so long as that methodology is reasonable” (CLI at. 37), and that “it is NRC practice to utilize the *mean* values of the consequence distributions” and an “averaging of potential consequences.” (CLI at p. 38-39)

Pilgrim Watch agrees that the NRC is “not require[d] ...to use technologies and methodologies that are still ‘emerging’ and under development, or to study phenomena ‘for which there are not yet standard methods of measurement of analysis.’” (CLI at p. 37) But it would not be “reasonable” to cling to flawed, decades-old technologies and methodologies, to ignore clear ways in which more reliable results might be obtained, or to ignore technologies and methodologies that are regularly used by other federal agencies.

More important, Pilgrim Watch does not agree with what the Commission describes as “NRC practice” meeting the Commission’s obligation to protect the public. The Commission’s statement that NRC’s GEIS for license renewal found that “the societal and economic impacts from severe accidents are small in all plants” (CLI at 38) seems to effectively say that the issue already has been decided.

And even if some SAMA analysis might survive such a prejudgment, the NRC practice described at pp. 38-39 of the Commission Order - “mean values of the consequences for each postulated release scenario or category,” “multiplied by the estimated frequency of occurrence of specific accident scenarios to determine population dose risk and offsite economic risk for each type of accident studied” – would ensure that the result of the SAMA analysis will be a dose risk and economic risk that is so low that the industry will never be required to provide real mitigation alternatives that might prevent or reduce the impact of an accident. Even if, as said by the Commission, a “NRC SAMA analysis is neither a worst-case nor a best case impacts analysis” (CLI at. 38), it must be realistic and not a “fantasy case.”

IV. CONCLUSION

By using incorrect and unrealistic parameters in its SAMA analysis Entergy arrives at a result that downplays the likely consequences of a severe accident at PNPS, and thus incorrectly discounts possible mitigation alternatives. This could have enormous implications for public health and safety. It would permit Entergy to avoid a potentially cost effective mitigation alternative that could prevent or reduce the impacts of that accident. Petitioners allege the Environmental Report’s SAMA analysis is deficient and the deficiency could significantly impact health and safety.

Errors in the Commission's order (CLI-10-11), reviewed in the foregoing, preclude remedy and will not "foster both informed decision-making and informed public participation, and thus to ensure the agency does not act upon incomplete information, only to regret its decision after it is too late to correct" (*citing Louisiana Energy Services (Claiborne Enrichment Center)*, CLI-98-3, 47 NRC 77, 88 (1998))."

Respectfully submitted,

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April 5, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of

Docket # 50-293-LR

Entergy Corporation

Pilgrim Nuclear Power Station

License Renewal Application

April 5, 2010

CERTIFICATE OF SERVICE

I hereby certify that Pilgrim Watch Motion for Reconsideration of CLI-10-11 was served April 5, 2010 in the above captioned proceeding to the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class.

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Hearing Docket

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