

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFFS INITIAL BRIEF IN RESPONSE TO THE BOARD'S ORDER  
(REGARDING DEADLINES FOR SUBMISSION OF PARTIES)

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's ("Board") Order (Regarding Deadlines for Submissions of Parties) of May 5, 2010 ("Board's Order"), the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to the Board's questions regarding the scope of the remanded Contention 3, the appointment of a settlement judge, and the proposed schedule.<sup>1</sup>

As more fully set forth below, the Staff submits that scope of Contention 3 on remand is limited to whether the effects of additional meteorological data or alternative meteorological modeling will identify newly cost-beneficial Severe Accident Mitigation Alternatives ("SAMAs"). The Staff proposes that the evidentiary hearing be conducted starting on October 19, 2010—the Staff's proposed schedule attached as Exhibit 1 is. Finally, the Staff favors the appointment of a settlement judge to aid in the resolution of the parties' remaining disputed issues.

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<sup>1</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC 131 (2007).

### PROCEDURAL BACKGROUND FOR REMANDED CONTENTION 3

This proceeding concerns the application by Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (collectively "Entergy") to renew the operating license for the Pilgrim Nuclear Power Station ("Pilgrim"). Contention 3 as admitted by the Board on October 16, 2006, stated:

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.<sup>2</sup>

On October 30, 2007, the Board granted Entergy's motion for summary disposition of Contention 3; thus, dismissing Contention 3 from further consideration by the Board.<sup>3</sup> On March 26, 2010, in response to Pilgrim Watch's ("PW") Petition for Review of, *inter alia*, the summary disposition of PW's Contention 3, the Commission issued a Memorandum and Order reversing in part, affirming in part, and remanding Contention 3, as limited by the Commission's Order, to the Board for further proceedings.<sup>4</sup> On May 5, 2010, subsequent to a telephone conference held on May 4, 2010, the Board issued an order requesting briefs on the scope of remanded Contention 3, the appointment of a Settlement Judge, and a proposed schedule.

### DISCUSSION

#### I. The Scope of Remanded Contention 3

The Staff proposes that the remanded Contention 3 be stated as:

Whether the use of additional meteorological data and/or alternative meteorological models would identify any additional

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<sup>2</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 341 (2006).

<sup>3</sup> *Pilgrim*, LBP-07-13, 66 NRC 131. Judge Young dissented from the Board's Order. *Id.* at 156.

<sup>4</sup> *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11 ("Commission's Order"), 71 NRC \_\_\_\_ (March 26, 2010) (slip op. at 39).

SAMAs as being cost-beneficial in addition to the SAMAs identified using the straight-line Gaussian Plume Model contained in the ATMOS module of the MACCS2<sup>5</sup> code.

The Commission's Order clearly stated the issue as "whether the Pilgrim SAMA analysis resulted in erroneous conclusions of the SAMAs found to be cost-beneficial."<sup>6</sup> Although the Commission thought that additional analysis of meteorological issues was warranted, it stated that "the bulk of [PWs] arguments before the Board were unsupported by significantly probative evidence, go well beyond the scope of Contention 3 as originally proffered and admitted, or raise issues beyond the intent and scope of a SAMA analysis."<sup>7</sup> The Commission, in limiting the scope of remanded Contention 3, affirmed that "no genuine dispute concerning the economic costs or evacuation timing inputs will remain," if PW cannot show that "significant meteorological modeling deficiency" alters Pilgrim's SAMA cost-benefit analysis.<sup>8</sup> Outside of PW's dispute regarding meteorology, the Commission strictly limited any further analysis of economic costs and excluded challenges based on evacuation timing and numerous other issues not previously raised by PW, not supported by the original contention, and not admitted by the Board in Contention 3.<sup>9</sup>

A. The Commission Strictly Limited Any Additional Consideration of Economic Costs in Remanded Contention 3

The Commission strictly limited the scope of remanded Contention 3 with regard to PW's additional challenges regarding economic costs.<sup>10</sup> The Commission explained that it was

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<sup>5</sup> MELCOR Accident Consequence Code System 2 (hereinafter "MACCS2 code").

<sup>6</sup> Commission's Order at 37.

<sup>7</sup> *Id.* at 27.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 29, 31-33, 35, 36.

<sup>10</sup> *Id.* at 36.

remanding a small portion of the economic costs, in spite of PW's arguments "being insufficient to demonstrate a genuine material dispute with the Pilgrim SAMA analysis's current overall cost-benefit conclusions,"<sup>11</sup> because the "SAMA economic cost calculations ultimately depend upon the results of the meteorological modeling."<sup>12</sup> The Commission explicitly excluded any "distinct 'economic costs' or 'evacuation times' challenges that extend beyond [PW's] meteorological modeling concerns."<sup>13</sup> The Commission discussed PW's opposition to summary disposition regarding economic costs and affirmed the Board's findings that PW "failed to present significantly probative evidence countering the Entergy expert evidence and supplemental analysis on economic costs."<sup>14</sup> In addition, the Commission also noted that "[PW] provide[d] no supported evidence raising a genuine material dispute with the SEIS's conclusion that 'further adjustments to more precisely account for business and tourism would not change the overall conclusions of the SAMA Analysis.'<sup>15</sup>

The Commission, in remanding a small portion of the economic costs to the Board, apparently contemplated that the hearing would involve a two step process. Repeatedly, the Commission emphasized that the remand of Contention 3 included economic costs "only to the extent that Board's merit findings on the adequacy of the meteorological modeling may have a material impact on the economic cost matters raised and admitted as part of Contention 3."<sup>16</sup> The hearing must first address whether PW's meteorological concerns are sufficient to call into

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<sup>11</sup> Commission's Order at 36.

<sup>12</sup> *Id.* at 36.

<sup>13</sup> *Id.* at 27.

<sup>14</sup> *Id.* at 36.

<sup>15</sup> *Id.* at 36 (*citing* NUREG-1437, Supplement 29, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Pilgrim Nuclear Power Station, Final Report Appendices (July 2007) at G-18).

<sup>16</sup> *Id.* at 37.

question the Pilgrim SAMA analysis' conclusions.<sup>17</sup> If the Board concludes that the Pilgrim SAMA conclusions are challenged by the meteorological modeling concerns, then the Board may examine how the economic costs raised by PW—loss of tourism and business value—would be impacted by the meteorological concerns.<sup>18</sup> The Commission structured the analysis for hearing utilizing the two step process in order to fully develop the record on the single issue remaining in dispute between the parties, i.e. the use of additional meteorological data and/or alternative meteorological models.<sup>19</sup> In order for the Board to determine if PW's meteorological concerns would result in newly identified cost-beneficial SAMAs, the SAMA analysis needs to be conducted such that only the meteorological data and models are altered. If the analysis presented by the parties engaged in multiple changes unrelated to PW's meteorological concerns, the Commission and the Board would not be able to determine which change, if any, resulted in the identification of a newly cost-beneficial SAMA. Thus, the Board should structure the hearing to ensure that PW's meteorological concerns are evaluated independently of any other changes to the modeling. To do otherwise would fail to resolve the Commission's stated issue—"whether the Pilgrim SAMA analysis resulted in erroneous conclusion on the SAMAs found to be cost-beneficial to implement" because of the use of the Gaussian plume model incorporated in the ATMOS module to the MACCS2 code.<sup>20</sup> Thus, the scope of the remanded Contention 3 should exclude any challenges to economic costs issues regarding Pilgrim's SAMA analysis, and only consider the effect of the meteorological issues on loss of tourism and

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<sup>17</sup> *Id.* at 27.

<sup>18</sup> Commission's Order at 29.

<sup>19</sup> *Id.* at 27, 36-37.

<sup>20</sup> *See Id.* at 36-37.

business value after determining if those same meteorological issues would result in the identification of a newly cost-beneficial SAMA.

B. Evacuation Times Are Excluded from Remanded Contention 3

The Commission's Order affirmed the Board's holding that "none of [PWs] argument regarding evacuation speed and timing, traffic and other delays, shadow evacuation, etc., raise a genuine material dispute for hearing over the current evacuation times assumptions in the Pilgrim SAMA analysis."<sup>21</sup> The Commission noted that PW failed to contest that two scenarios resulting in 95% of the risk require "at least 12 hours after initiation of the accident until a release would begin."<sup>22</sup> Simply, the severe accidents most likely to result in large economic costs would not be affected by any delays in the evacuation due to their slow progression.<sup>23</sup> Finally, the Commission's Order found that "[PW] presented no supported argument raising a genuine material dispute over the bounding nature of Sensitivity Case 6."<sup>24</sup> Since Sensitivity Case 6 of Pilgrim SAMA analysis bounded all the issues regarding evacuation timing issues, the Board need not consider it any further on remand. Thus, the scope of remanded Contention 3 should exclude any challenges to evacuation time issues regarding Pilgrim's SAMA analysis.

C. PW's Other Concerns With the SAMA Analysis Are Also Excluded From Remanded Contention 3

Both before the Commission and during the scheduling conference with the Board on May 4, 2010, PW alleged that scope of remanded Contention 3 should include challenges to decontamination, health costs, cancer mortality risk, and spent fuel pool fires among others. However, the Commission was clear that these issues were either not encompassed or

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<sup>21</sup> Commission's Order at 35.

<sup>22</sup> *Id.* at 35.

<sup>23</sup> *Id.* at 35.

<sup>24</sup> *Id.* at 35. "Sensitivity Case 6 'assessed the population as though they were continuing their regular activities' and 'assessed the shadow evacuation ....' *Id.*

supported by PWs bases for Contention 3 or beyond the scope of the SAMA analysis. In reference to decontamination costs, health costs, and increased cancer mortality, the Commission affirmed the Board's holding that "[t]hese claims simply were not encompassed by the specific business-related bases—e.g. 'economic infrastructure and tourism'—proffered by [PW] in contention 3."<sup>25</sup> In regard to spent fuel pool fires, the Commission held that "[t]hese claims fall beyond the scope of NRC SAMA analysis and impermissibly challenge our regulations."<sup>26</sup> Thus, these newly asserted challenges by PW should be excluded from the scope of remanded Contention 3.

II. The Staff Supports the Appointment of a Settlement Judge by the Chief Administrative Judge

The Staff supports the appointment of a settlement judge by the Chief Administrative Judge. A settlement judge may aid the parties in resolving the issues that prevented settlement during the earlier portion of these proceedings. The appointment of a settlement judge may also help to preserve judicial and party resources that would be expended in conducting a hearing that could be settled more efficiently, amicably, and to the parties' mutual satisfaction through mediation with the settlement judge.

III. The Staffs Proposed Schedule

The Staff has attached, as Exhibit 1, a proposed schedule through the filing of responses to the proposed findings of fact and conclusions of law. The Staff proposes that the evidentiary hearing be conducted starting on October 19, 2010.<sup>27</sup> The Staffs proposed schedule

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<sup>25</sup> Commission's Order at 31.

<sup>26</sup> *Id.* at 33.

<sup>27</sup> Although the Staff would prefer to propose an earlier date for the conduct of the hearing, the Staff's experts have existing limitations on their ability to prepare for and travel to a hearing. The Staff's experts are unable to begin their review until July 2010. During August 2010, the Staff's experts would not be able to travel to participate in a hearing. The Staff also notes that Rosh Hashanah and Yom Kippur occur on September 8-10, 2010, and September 17, 2010.

addresses only a hearing limited to the effects of the PW's meteorological concerns on the identification of newly cost-beneficial SAMAs.<sup>28</sup> The Commission's Order explicitly contemplated that the Board would first make its findings on whether PW's meteorological concerns were material to Pilgrim's SAMA analysis.<sup>29</sup> Regardless of the how the Board proceeds on PW's meteorological issues, the hearing should not address and the parties should not be allowed to corringe arguments regarding both the meteorological effects on the SAMA analysis and the meteorological effects on economic costs, as the Board's finding of whether PW's meteorological concerns have a material effect on the Pilgrim's SAMA analysis is a necessary predicate to determining whether the meteorological concerns affect the economic costs—i.e. loss of tourism and business value.<sup>30</sup> Thus, limiting the hearing to whether PW's meteorological concerns would identify a newly cost-beneficial SAMA will result in the most efficient resolution of the issues before the Board and minimize the expenditure of valuable judicial and party resources on issues that are conditionally within scope only after the Board finds that Pilgrim's SAMA analysis is materially affected by PW's meteorological concerns..

#### CONCLUSION

Because the Commission explicitly limited the scope of the remanded Contention 3 to whether any additional SAMAs would be identified as cost-beneficial when utilizing additional meteorological data and alternative meteorological models, separate and distinct challenges to economic costs should be excluded from the hearing except as directly resulting from the meteorological changes. To the extent that PW pursues other avenues of challenge including

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<sup>28</sup> The Staff's proposed schedule does not address any additional scheduling necessary should the Board find that PW's meteorological concerns would result in the identification of newly cost-beneficial SAMAs at Pilgrim. The Staff would suggest that any additional scheduling, if necessary, be resolved after the Board's finding on the single issue remanded by the Commission, as discussed above.

<sup>29</sup> Commission's Order at 27, 36.

<sup>30</sup> *Id.*



evacuation timing, decontamination costs, health effects, etc., those issues should also be excluded from the scope of the contention and the hearing. Finally, the use of a single hearing limited to whether PW's meteorological issues are material to Pilgrim's SAMA analysis would result in the most efficient use of resources and clearest record for the Board's decision.

Respectfully submitted,

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

Brian G. Harris

Susan L. Uttal  
Brian G. Harris  
Michael G. Dreher  
Counsel for NRC Staff

Dated at Rockville, Maryland  
This 12th day of May, 2010

Exhibit 1

**Staff's Proposed Schedule For Pilgrim's License Renewal Hearing**

<b>Event</b>	<b>Date</b>
Mandatory Disclosures, Final List of Witness, and Interested Governments identify if they intend to participate in the Hearing	May 28, 2010
Intervenors' Initial Statements of Position, Pre-filed Direct Testimony, Affidavits, and Exhibits	June 18, 2010
Entergy's Initial Statements of Position, Pre-filed Direct Testimony, Affidavits, and Exhibits	July 19, 2010
Staff's Initial Statements of Position, Pre-filed Direct Testimony, Affidavits, and Exhibits	July 19, 2010
Intervenors', Rebuttal Statements of Position, Pre-filed Rebuttal Testimony, Affidavits, and Exhibits Due	August 16, 2010
Motions in Limine and Motions for Cross-Examination	August 30, 2010
Responses to Motions in Limine and Motions for Cross-Examination	September 13, 2010
Board Ruling on Motions in Limine and Motions for Cross-Examination	September 23, 2010
Proposed Direct Examination Questions for Board to ask Witnesses	October 8, 2010
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Evidentiary Hearing Begins	October 19, 2010
Proposed Findings of Fact and Conclusions of Law	November 19, 2011
Responses to Proposed Findings of Fact and Conclusions of Law	December 3, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
ENTERGY NUCLEAR GENERATION )  
COMPANY AND ENTERGY NUCLEAR ) Docket No. 150-293-LR  
OPERATIONS, INC. )  
 )  
(Pilgrim Nuclear Generating Station) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC Staffs Initial Brief In Response The Board's Order (Regarding Deadlines For Submission Of Parties)" and "Exhibit 1–Staffs Proposed Schedule for Pilgrim's License Renewal Hearing" 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 12<sup>th</sup> day of May, 2010.

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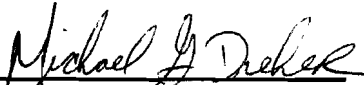
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**Cc:** Uttal, Susan; Harris, Brian; Newell, Brian; Whorral, Matthew; Williamson, Edward; Jones, Andrea  
**Subject:** Correction -- Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR  
**Attachments:** Corrected Exhibit 1 -- Staff's Proposed Schedule for Remanded Contention 3.doc; 05132010 Corrected Exhibit 1.pdf

Good morning,

Please find attached a corrected copy (in PDF and Word formats) of "NRC Staff Initial Brief in Response to the Board's Order, Corrected Exhibit 1." The Staff's filing yesterday contained a typographical error in Exhibit 1: the proposed dates for submission of "Proposed Findings of Fact and Conclusions of Law" and Responses thereto should read "November 19, 2010" and "December 3, 2010," respectively. A corrected copy of Exhibit 1 is also being provided by mail. If you have any trouble opening the attachments, please let me know.

Best regards,  
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Corrected Exhibit 1

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-293-LR
	)	
(Pilgrim Nuclear Power Station)	)	ASLBP No. 06-848-02-LR
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC Staff Initial Brief in Response to the Board's Order, Corrected Exhibit 1" in the above-captioned proceeding have been served on the following by electronic mail and deposit in the U.S. Nuclear Regulatory Commission's internal mail system, or, as indicated by an asterisk(\*), by electronic mail and deposit in the U.S. Mail System, this 13th day of May, 2010.

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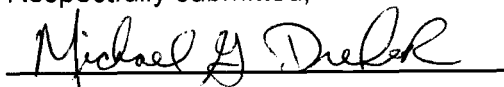
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