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ADJUDICATIONS STAFF

May 17, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

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 REPLY TO
PILGRIM WATCH'S RESPONSE TO ASLB'S MAY 5, 2010 ORDER

Pursuant to the Atomic Safety and Licensing Board's ("Board") May 5, 2010 Order, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby reply to Pilgrim Watch's Response to ASLB's May 5, 2010 Order (May 12, 2010) ("PW Response").

I. PILGRIM WATCH MISREPRESENTS THE STATEMENTS IN CLI-10-11 DEFINING THE SCOPE OF THE REMANDED HEARING

Pilgrim Watch repeatedly mischaracterizes the last page of CLI-10-11 as allowing Pilgrim Watch to broadly challenge any factor, assumption or model that would change the cost benefit conclusions. On page 1 of the PW Response, Pilgrim Watch inaccurately claims:

[T]he March 26, 2010 Commission Order (Com Or.), CLI-10-11, requires the following issues to be tried at hearing. . . whether the inclusion of additional factors or use of other assumptions or models would change the cost-benefit conclusions (Com. Or., p.39).

At page 4, Pilgrim Watch again inaccurately asserts:

And at the end of its Order, the Commission makes it very clear that [Pilgrim Watch] may introduce a wide range of evidence to show 'that inclusion of an additional factor or use of other models may change the cost-benefit conclusions for the SAMA candidates evaluated.'").

Yet again on page 10, Pilgrim Watch inaccurately asserts:

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The very last sentence of the Commission's Order says very clearly that [Pilgrim Watch] can include all the "additional factors, assumptions, models that may change the cost benefit conclusions for the SAMA candidates evaluated."

The last sentence of the Commission's Order says nothing about the scope of the remanded issue, but rather provides general advice on NRC SAMA analyses:

As a policy matter, license renewal applicants are not required to base their SAMA analysis upon consequence values at the 95th percentile consequence level (the level used for the GEIS severe accident environmental impacts analysis). Unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated, no purpose would be served to further refine the SAMA analysis, whose goal is only to determine what safety enhancements are cost-effective to implement.

Entergy Nuclear Generation Co. and Entergy Nuclear Operations Inc. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. __ (Mar. 26, 2010) ("CLI-10-11"), slip op. at 39. Pilgrim Watch's repeated misrepresentation of the Commission's decision demonstrates the lack of support for its position.

Pilgrim Watch mischaracterizes other portions of the Commission's decision as well. For example, on page 1 of its Response, Pilgrim Watch cites CLI-10-10 at 26 as requiring a hearing on "[t]he adequacy of the model underlying the SAMA analysis." The closest language on page 26 of the Commission's decision refers to "the adequacy of the meteorological modeling underpinning the SAMA analysis." CLI-10-11 at 26 (emphasis added). Also on page 1 of its Response, Pilgrim Watch cites CLI-10-11 at 17 as requiring a hearing on "[w]hether the model used by Entergy requires, allows for, or otherwise takes into account particular input data related to various inputs."¹ There is no support for this assertion on page 17 of the Commission's decision. Entergy assumes that Pilgrim Watch intended to refer to page 15 of the Commission's decision,

¹ Pilgrim Watch also refers to this language without citation on page 4 of its Response.

but the discussion on that page relates clearly and solely to whether Pilgrim Watch's challenge to meteorological input data logically encompassed a challenge to the meteorological model.

Pilgrim Watch's repeated attempts to interpret the Commission's decision as allowing "a wide range of evidence" on additional factors, assumptions or models that may change the SAMA cost benefit conclusions(PW Response at 4), including evidence on "ameliorating" damage to economic infrastructure and business activity (id.), leads Entergy to surmise that Pilgrim Watch is once more attempting to expand the proceeding to include challenges to the economic model, claims of underestimated clean up costs, health effects, and other such issues which the Commission has explicitly affirmed are beyond the scope of the admitted Contention. As the Commission has explicitly and unambiguously declared:

The majority properly rejected the various new "health" or cancer risk arguments as late because they are not fairly encompassed by the description of Contention 3 that Pilgrim Watch set forth in its petition for hearing. Pilgrim Watch's new claims of dramatically underestimated decontamination or clean-up costs also are not reasonably inferable from the economic cost challenges proffered in Contention 3, as both Entergy and the Staff argue. These claims simply were not encompassed by the specific business-related bases – *e.g.*, "economic infrastructure and tourism" – proffered by Pilgrim Watch in Contention 3. Pilgrim Watch never sought to amend Contention 3 to add these issues, and the record was never developed on them. We have long stressed that "NRC adjudicatory proceedings would prove endless if parties were free . . . to introduce entirely new claims which they either originally opted not to make or which simply did not occur to them at the outset."¹²⁰ Nor does Pilgrim Watch, in any event, demonstrate a *supported* genuine material issue – bearing on the overall SAMA cost-benefit results – for these new economic cost analysis claims.

CLI-10-11 at 30-31 (footnotes omitted).

II. PILGRIM WATCH'S PROPOSED SCHEDULE IS UNREASONABLE AND INCONSISTENT WITH ITS OBLIGATIONS AS A PARTY

Pilgrim Watch's assertion that it needs over six months to prepare for hearing is unreasonable, as is its assertion that its experts cannot even begin working on this matter until September. See PW Response at 8-9. As the Commission has stated, "the fact that a party may have

personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.” Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 454 (1981). Indeed, “[i]t is well-settled that a participant in an NRC proceeding should anticipate having to manipulate its resources, however, limited, to meet its obligations,” Wisconsin Electric Power Co., (Point Beach Nuclear Plant, Unit 1), ALAB-719, 17 N.R.C. 387, 394 (1983) (citations omitted), and “it has long been a ‘basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation,’” even pro se participants who are likely to have less available time and resources. Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3) CLI-99-11, 49 N.R.C. 328, 338-39 (1999), citing Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041 (1048 (1983). See also USEC INC. (American Centrifuge Plant), CLI-06-10, 63 N.R.C. 451, 456 (2006) (“[T]hose participating in our proceeding[s] must be prepared to expend the necessary effort.”); Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-46, 22 N.R.C. 830, 832 (1985) (Though a “proceeding may impose a heavy burden . . . [t]he pressures of other professional responsibilities are not a basis for alleviating that burden”). Entergy respectfully submits that the schedule in this proceeding should not be dictated by Pilgrim Watch’s inability to fulfill its obligations as a litigant.

Further, based on Pilgrim Watch’s identification during the May 4, 2010 conference call of its expected witnesses, Entergy is concerned that Pilgrim Watch’s proposed schedule is driven by Pilgrim Watch’s desire to develop broad new testimony addressing modeling issues far beyond the scope of the remand, including testimony on health costs, spent fuel pool fires, and cleanup costs. For example, Pilgrim Watch identified Richard Clapp as a potential witness who

would be providing testimony on health costs, but the Commission has affirmed that health costs claims were beyond the scope of Contention 3. CLI-10-11 at 30. Pilgrim Watch also identified Gordon Thompson as a witness. While Pilgrim Watch has not explained what Gordon Thompson's testimony will address, this witness has been closely associated with the spent fuel pool fire claims, which the Commission has also affirmed are beyond the scope of the Contention (as well as a challenge to the NRC rules). Id. at 33. Similarly, Pilgrim Watch identified David Chanin as a potential witness, which strongly suggests that Pilgrim Watch is seeking to introduce the same comments on the MACCS2 economic model and consideration of clean up costs that the Commission affirmed were outside the scope of the proceeding. See id. at 30-31 & n.121. Pilgrim Watch's persistent attempts to expand the hearing, not only beyond the limited scope of the remanded contention but also beyond the scope of the original contention, cannot serve as justification for its excessive and dilatory proposed schedule.

Respectfully Submitted,



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Dated: May 17, 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Reply to Pilgrim Watch Response to ASLB's May 5, 2010 Order" 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 17th day of May, 2010.

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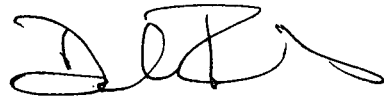
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