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RULEMAKINGS AND  
ADJUDICATIONS STAFF

**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)	)	

**PILGRIM WATCH'S REPLY TO ENTERGY'S SUBMISSION ON  
SCOPE AND SCHEDULE FOR REMANDED HEARING**

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May 17, 2010

**PILGRIM WATCH'S REPLY TO ENTERGY'S SUBMISSION ON  
SCOPE AND SCHEDULE FOR REMANDED HEARING**

The underlying consistency to *Entergy's Submission on the Scope and Schedule for Remanded Hearing* ("Entergy") is that it opposes a settlement judge because it fears what effective monitoring would show, wants a "rush to judgment" because it fears what evidence Pilgrim Watch would present if given time to prepare, and seeks drastically to limit the scope of any hearing because it fears truly cost-beneficial SAMAs. This Board cannot force Entergy to settle; but it can ensure a fair hearing in which the real issues are heard.

**I. STATEMENT OF THE ISSUES FOR HEARING**

Entergy' request that "the board should interpret the Commission's decision in a manner that gives effect to all of the Commission's rulings and avoids any inconsistency." (Entergy at 7, underlining added), effectively admits that the Commission's Order (CLI-10-11, Com.Ord.") is both unclear and inconsistent.

To justify its proposed scope, Entergy cherry-picks quotes from the Commission Order, and effectively ignores statements in the Order that demonstrate precisely the contrary (See *Pilgrim Watch Response to ASLB's May 25, 2010 Order* (PW Response), pp. 3-6. Whose set of eyes should the Board believe? The Commission's Order lacks clarity; but its concluding (and hence the most important) sentence in the Order is clear that whether "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" is a central issue.

The Commission Order, to be sure, is full of statements to the effect that "unless it looks plausible" (Com.Ord. at 39), and "if the Board on remand were to conclude that there is material deficiency in the meteorological patterns modeling" (Com.Ord at 27, Entergy at 7). But rather than limiting, these conditional statements emphasize that the scope of hearing includes, for

example, whether other factors, inputs and assumptions (see Com.Ord., p. 39), and a model that examined a site specific variable plume rather than a straight-line Gaussian plume (see Com.Ord., pp. 16-17; the Commission recognized the overlap between input data and the models embedded in the code, and that contention 3 includes the validity of the MACCS2 meteorological model) could significantly change the size and location of the affected area, deposition, damage to economic infrastructure<sup>1</sup> and business activity, and thus the cost-benefit analysis.

Entergy's (and to a greater extent the Staff's) attempt to preclude Pilgrim Watch from showing that it is plausible that the "inclusions of an additional factor or use of other assumptions [would] change the cost-benefit considerations" and that there are "material deficiencies in the meteorological modeling" is contrary to the Commission Order. Quite plainly the Board cannot make a determination whether something is "material" or "look(s) genuinely plausible" until they have heard our evidence. And the Commission "include[d] as part of our remand the economic costs issue ... to the extent that the Board's merits 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." (Com.Ord., p. 36)

Also, the Commission did not say that evacuation timing estimates are off the table. Pilgrim Watch expects to show that, e.g., meteorological modeling deficiencies wrongly determined the area that would need to be evacuated, and if it does so, the Commission's Remand recognized that "dispute[s] concerning economic costs or evacuation timing inputs will remain." (Com.Ord., p. 27).

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<sup>1</sup> The NRC Staff reply correctly points out that contention 3 encompasses "economic infrastructure." (Staff, p. 5; see Commission Order, p. 25). The cost of damage to economic infrastructure necessarily includes the costs necessary to restore it to pre-significant accident condition so that, e.g., normal business, tourist and other activities can resume..

Finally, three additional points:

a. Statistical Averaging: Entergy argues that the May 4, Board Order that the specific issue on remand, “should refer to the ‘mean’ rather than the ‘median’ results.” Entergy at 2. The Commission said “NRC practice” not “NRC regulation.” Absent a regulation, it is proper to allow evidence as to Entergy’s statistical analysis used in their SAMA.

2. MACCS2 Modules: Entergy spends considerable time discussing the “three primary modules” of the MACSS2, ATMOS, EARLY, and CHRONC, and how they and the code supposedly work (at 3-4, 7, 8). At this stage, any conclusions on this subject are premature; the limitations of the code and how changes to it would affect the cost-benefit analysis are what this hearing is about.

3. Sensitivity Analysis: Entergy cannot rely on its old sensitivity analyses to avoid a real determination of whether any additional SAMAs would be cost effective (Entergy, 4). If that analysis had provided what Entergy now urges, the Commission would not have reversed and remanded.

We conclude by reminding the Board that NRC policy is to “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)*).” Both of these goals require examination into the issues set forth at page 1 of Pilgrim Watch’s initial Response to ASLB’s May 5, 2010 Order.

## **II. Settlement Judge**

Unlike both Pilgrim Watch and NRC Staff, “Entergy is still considering whether to reinitiate settlement discussions; it does not at this juncture wish to have a settlement judge

appointed.” Among other things, this is inconsistent with Entergy complaint that this proceeding is placing a burden upon them.

If Entergy truly wants this proceeding to conclude relatively quickly, and without ongoing appeals to the Commission and beyond, there are only three choices: settle; hear all the evidence pertinent to any of the issues raised by any of the parties; or hope that the Commission decides the pending Motion for Reconsideration and clarifies its previous Order.

### **III. Proposed Schedule**

Entergy proposed a rushed schedule that would require written evidence to be submitted in June, and to complete all phases of the proceeding by the end of August. This proposal was made despite the fact that Entergy had full knowledge that Pilgrim Watch’s two key witnesses Dr. Bruce Egan (meteorologist) and Arnold Gundersen (nuclear engineer) will not be available to begin work until early September. These witnesses have work commitments for other “full – freight” clients;<sup>2</sup> and PW does not have the support staff and funds that are available to both Entergy and NRC Staff to prepare for a rushed schedule.

Does Entergy propose that Pilgrim Watch go forward without witnesses and not be allowed to present evidence; and would the Board allow this to happen?

Entergy’s proposal also drastically shortens the periods in which parties must prepare their filings and respond to those of others. This Board’s order setting the schedule for hearing Contention 1 provided a minimum of two and a half months (December 3, 2007 to February 26, 2008 or March 11, 2008) between the initial filings and hearing. Entergy would shorten the time to six weeks. Entergy may have the money, staff and resources to proceed at this rate; it knows that Pilgrim Watch does not.

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<sup>2</sup> Although it had no concern for Pilgrim Watch, the NRC Staff says that the hearing should be deferred to accommodate its experts. See NRC Staff Brief, p. 7, footnote 27.

Entergy's complaint that "continued delay in a final decision ... is injurious and unnecessary" (Entergy, p. 9) ignores it is neither PW's, Entergy's nor the Board's fault that the Commission took nearly two years to make a decision on PW's Petition for Review, filed November 12, 2008; and that Entergy's complaints about "delay" are completely inconsistent with its disinterest in settlement.

It ignores also that it is hardly unusual that a "final decision" not be made until less than a year before expiration of the original license. Recent extended proceedings, of which Entergy and NRC are fully aware, are shown in the table below. Pilgrim Watch's proposed schedule would conclude the hearing a year and a half before the Pilgrim license will expire.

	<b>Oyster Creek</b>	<b>Vermont (EVY)</b>	<b>Pilgrim</b>
License Issued	12/1/69	03/21/72	06/08/72
License Expires	12/1/2009	03/21/2012	06/08/12
LRA Filed	07/22/05	01/27/06	01/27/06
Renewal License issued	07/8/09- 10 months prior to license expiration		

Respectfully submitted,



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May 17, 2001

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of

Docket # 50-293-LR

Entergy Corporation

Pilgrim Nuclear Power Station

License Renewal Application

May 17, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that *Pilgrim Watch Reply to Entergy's Submission On Scope and Schedule for Remanded Hearing* was served May 17, 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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