

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

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Paul B. Abramson
Dr. Richard F. Cole

In the Matter of:

ENTERGY NUCLEAR GENERATION
COMPANY AND ENTERGY NUCLEAR
OPERATIONS, INC.
(Pilgrim Nuclear Power Station)

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

September 23, 2010

ORDER
(Confirming Matters Addressed at September 15, 2010, Telephone Conference)

On September 15, 2010, the Licensing Board held a telephone conference to address scheduling and other issues relating to the adjudication of Contention 3. The following matters were addressed at this conference:

Regarding the Motion for Clarification filed by Pilgrim Watch, the Board advised Intervenor's Representative that the hearing on Contention 3 will be bifurcated, to the following extent: If the Board decides in favor of Intervenor on the primary and threshold issue of *whether the meteorological modeling in the Pilgrim SAMA analysis is adequate and reasonable to satisfy NEPA, and whether accounting for the meteorological patterns/issues of concern to Pilgrim Watch could, on its own, credibly alter the Pilgrim SAMA analysis conclusions on which SAMAs are cost-beneficial to implement* (hereinafter referred to as "the meteorological modeling issues"), the hearing will proceed to consideration of whether, and the extent to which, additional issues as set forth below will be heard.

Further, in analyzing the meteorological modeling issues and all appropriate evidence and argument thereon, the Board will, if it finds they were timely raised, consider whether

Pilgrim Watch's concerns about the NRC's practice of using mean consequence values in SAMA analyses, resulting in an averaging of potential consequences (hereinafter referred to as "averaging practice concerns"), could bring into question the reasonableness of this NRC practice and affect the Board's findings and conclusions on the meteorological modeling issues.

The parties shall address the question of whether Pilgrim Watch timely raised its averaging practice concerns in briefs filed in accordance with the following deadlines:

- Simultaneous briefs from all parties shall be filed by October 1, 2010.
- Simultaneous responses from all parties shall be filed by October 8, 2010.

In addressing the timeliness issue, the parties shall address whether Pilgrim Watch, either explicitly or implicitly, raised the averaging practice concerns in its original Contention 3; and, if not, when such concerns were first raised and whether, taking all relevant circumstances into consideration and applying the principles stated at 10 C.F.R. § 2.309(c) and (f)(2), the raising of such concerns was timely. The parties shall cite specific portions and language in the original Contention 3 and related filings where such concerns were or should have been discussed, and clearly explain how the concerns were or were not raised in the cited portions and language.

During the teleconference, the Board also advised that it would not be ruling (except as clarified herein) on Pilgrim Watch's Motion for Clarification at this time, but that Pilgrim Watch may, if it so wishes, request the Commission to clarify whether the issues identified as issues (1) and (2) in the Board's Order of September 2, 2010,¹ (hereinafter referred to as "the admitted

¹ These issues are:

(1) The extent to which the evacuation matters raised and admitted as part of Contention 3 could call into question the cost benefit analysis conclusions in the Pilgrim SAMA analysis. See *Entergy Nuclear Generation Co. and Entergy Nuclear Operations Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC __, __ (slip op. at 35 n.136) (Mar. 26, 2010).

(continued. . .)

evacuation and economic cost issues”) are still potential issues for adjudication in the remand of Contention 3, in light of how CLI-10-15 and CLI-10-22 inform the interpretation of CLI-10-11 provisions found at *Pilgrim*, CLI-10-11, 71 NRC at ___ and ___ (slip op. at 35 n.136; 36-37), and whether CLI-10-11 still stands in full including the provisions relating to these issues.

If the Board, in ruling on the meteorological modeling issues, finds any meteorological modeling deficiencies that could materially call into question the Pilgrim SAMA cost benefit analysis conclusions, at that point the Board would, absent earlier clear direction provided by the Commission in response to any Motion for Clarification filed with it, permit briefing by the parties on whether and the extent to which the admitted evacuation and economic cost issues should thereafter be adjudicated. In any such briefs, the parties would be expected to address indications in CLI-10-15 and CLI-10-22 that the Commission had reversed itself regarding its earlier statements in CLI-10-11 that the admitted evacuation and economic cost issues should be adjudicated if the Board’s merits conclusions on meteorological modeling “may have a material impact on or otherwise materially call into question” the admitted evacuation and economic cost issues.²

The parties shall simultaneously submit their prefiled direct testimony on the meteorological modeling issues by January 3, 2011. In this testimony the parties shall, in addition to providing other evidence they deem appropriate and necessary, to the best of their

(. . .continued)

(2) The extent to which the economic cost matters raised and admitted as part of Contention 3 could call into question the cost benefit analysis conclusions in the Pilgrim SAMA analysis. See *id.* at ___ (slip op. at 36-37).

Licensing Board Order (Scheduling Telephone Conference) (Sept. 2, 2010) at 2-3.

² See *id.*

ability respond to the Board member inquiries set forth in Appendix A, attached hereto.

Electronic copies of any exhibits and other documentary material cited in the parties' prefiled testimony (except for traditionally cited legal authority) shall be provided with the testimony, as separate electronic documents. Further instruction on the marking, formatting, and filing of prefiled testimony and exhibits using the NRC Digital Data Management System (DDMS) shall be provided by Order and in a telephone conference to be held November 16, 2010.

The Parties shall simultaneously file their prefiled rebuttal testimony by February 1, 2011.

Board members may submit additional specific questions to the parties before, during, and/or after the submission of prefiled testimony.

The evidentiary hearing on the meteorological modeling issues, as defined above, will be held on a date to be announced, which the Board currently expects to be in late February or the first half of March 2011.

If the Board, in analyzing the issue of the adequacy of the meteorological modeling in the Pilgrim SAMA analysis, determines that such modeling is adequate and reasonable under NEPA, and that there is no significant meteorological modeling deficiency calling into question the Pilgrim SAMA cost-benefit analysis conclusions, then the Board's action on the adjudication on remand would be complete.

If, on the other hand, in considering and ruling on the adequacy of the meteorological modeling in the Pilgrim SAMA analysis, the Board finds any meteorological modeling deficiencies that could call into question the Pilgrim SAMA cost-benefit analysis conclusions, at that point the Board would consider whether and the extent to which the admitted evacuation and economic cost issues should be adjudicated, as stated above. If the Board determines that a further hearing on these issues should be held, it will consult with the parties at that time to discuss the time the parties will need to prepare for such a hearing.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 23, 2010³

³ Copies of this Order were provided to all parties and/or representatives for parties by e-mail transmission on this date.

APPENDIX A

To September 23, 2010, Board Order

The Commission has noted two matters regarding meteorological patterns which were raised by Pilgrim Watch:

- a. the “sea breeze” effect,⁴ and
- b. the “hot spot” effect alluded to by Beyea.⁵

The Parties are therefore requested to address in their prefiled direct testimony the following inquiries:

1. Regarding the meteorological phenomena at issue in this remand hearing, describe in depth each of the following, with supporting data also provided, to the extent available:⁶

- a. The annual frequency of occurrence of the “sea breeze” effect and the “hot spot” effect, and the respective duration of each such occurrence;
- b. The spatial and time-dependent pattern of wind and other meteorological phenomenological parameters associated with each such occurrence, or, if such data are not available, expert professional opinion for such parameters, and scientific literature references supporting those opinions;
- c. The radioactive deposition distribution you would expect to occur from each such occurrence, assuming a normalized source term. If such depositions are not readily discernable or determinable, a computer model, such as those contained in ATMOS (excluding the straight line Gaussian plume portion) or another model selected by the relevant expert may be utilized to provide such information;
- d. How that deposition would differ from that expected using a straight-line Gaussian plume model; and

⁴ See *Entergy Nuclear Generating Co. and Entergy Nuclear Operations Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC __, __ (slip op. at 5, 14, 19-21).

⁵ See *id.* at __ (slip op. at 23).

⁶ If actual data is not available, provide scientific literature supporting any testimony on each subject. In all instances where scientific literature is cited, entire articles shall be provided, or, where the cited material is a book or extremely long article, relevant portions providing appropriate context shall be provided.

e. The cost differential caused by the differences indicated in subsection d above (to be provided quantitatively if practicable, or if not, supported qualitative estimates may be provided).

2. Regarding the radioactive contamination to be computed from the dispersion and deposition caused by the meteorological patterns at issue, describe in sufficient detail for scientific understanding the following:

a. How the source term to be used for each computation of radioactivity dispersion and deposition is determined (i.e., what is the frequency distribution of source terms used in SAMA analyses for the Pilgrim Plant and how is a particular source term selected to be assumed for each dispersion/deposition computation);

b. The degree of conservatism imbedded in that methodology, its sources, and the rationale for each source of conservatism;

c. The extent to which those conservatisms cause the resultant deposition to be conservative. Be as quantitative as is practicable, but qualitative discussions are acceptable where quantitative analysis is not practicable.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (CONFIRMING MATTERS ADDRESSED AT SEPTEMBER 15, 2010, TELEPHONE CONFERENCE) have been served upon the following persons by U.S. mail, first class, or through NRC internal mail.

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Docket No. 50-293-LR
ORDER (CONFIRMING MATTERS ADDRESSED AT SEPTEMBER 15, 2010,
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[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of September 2010.