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September 21, 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 RESPONSE TO
PILGRIM WATCH'S MEMO REGARDING PROPOSED SCHEDULE**

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby respond to Pilgrim Watch's Memo Regarding Proposed Schedule (Sept. 21, 2010). Pilgrim Watch's position that pretrial filings should occur in mid-January, 2011, with a hearing in mid-March (PW Memo at 1), is simply dilatory, inconsistent with Pilgrim Watch's obligations as a party in an adjudicatory proceeding, and dismissive of Entergy's right to timely decision-making:

Despite the Board's specific request during its September 15 teleconference that Pilgrim Watch report on the availability of its witnesses, Pilgrim Watch makes no claim that its witnesses are unavailable or unable to work on their testimony. Moreover, Pilgrim Watch has previously indicated that its witnesses would be available to prepare testimony at the beginning of September, could file that testimony by October 15, and would be available for a hearing after November 25. See Pilgrim Watch's Response to ASLB's May 5, 2010 Order (May 12, 2010) at 8-9. If Pilgrim Watch was previously able to prepare its testimony in six weeks, there is no good reason why it now needs more than three months.

Pilgrim Watch's claim that the Board's "refusal" to respond to its questions somehow prevents Pilgrim Watch from knowing how to proceed (PW Memo at 1) is without merit. Pil-

grim Watch has received ample instruction on the scope of the remanded meteorological issues in the Commission's March 26, 2010 Memorandum and Order (CLI-10-11), the Commission's June 17, 2010 Memorandum and Order (CLI-10-15, denying Pilgrim Watch's motion for reconsideration), the Commission's August 27, 2010 Memorandum and Order (CLI-10-22), and the Licensing Board's September 2, 2010 Order. Pilgrim Watch has already had six months since the Commission remanded these issues in which to work on its case (as well as the months it had to develop its case prior to the summary disposition of its contention earlier in this proceeding). While Pilgrim Watch may be uncertain whether it will also be permitted to submit testimony challenging NRC's practice of using mean consequence values, there is nothing preventing Pilgrim Watch from preparing its testimony on the meteorological issues.

Similarly, Pilgrim Watch's complaint that it has limited resources (PW Memo at 2) provides no grounds for the excessively long schedule that Pilgrim Watch seeks. 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 unwillingness to commit resources.

Moreover, it is unfortunate that Pilgrim Watch fails to appreciate the impact of its inaction on the hundreds of Pilgrim Station employees, who are left to guess at the prospects for continued employment beyond the next two years. Equally unfortunate is Pilgrim Watch’s lack of appreciation for the impact of its delays on Pilgrim Station’s ability to make business and investment decisions. The absence of a timely decision on Entergy’s license renewal application makes it unclear whether Entergy should be investing in plant improvements to support extended operation. The absence of a timely decision also makes decisions on fuel procurement challenging and is an impediment to Entergy’s ability to enter into contracts for the sale of the plant’s power beyond its current expiration date. As the Commission stated, “applicants for a license are . . . entitled to a prompt resolution of disputes concerning their applications.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 19 (1998).

Finally, Pilgrim Watch’s assertion that it is not its fault that the Commission took over two months to rule on its recusal motion (PW Memo at 3) overlooks the obvious – that Pilgrim Watch’s recusal motion was itself inappropriate. Since Pilgrim Watch was in communication with David Chanin, it knew that Judge Abramson had no involvement in developing the

MACCS2 code. Since Pilgrim Watch's motion was not well founded, it should not now be rewarded for the delay that its decision to proceed with this motion has caused.

For all these reasons, Entergy objects to Pilgrim Watch's continuing efforts to delay this proceeding and avoid its obligations as a party. Entergy submits that a reasonable schedule would be for the parties to submit their prefiled testimony on November 15 (which is more than the six weeks that Pilgrim Watch claimed that it needed in May, and ample time to adjust its testimony if the Board allows evidence on averaging), for rebuttal testimony to be submitted by December 15, and for the evidentiary hearing to begin the week of January 10.¹

Respectfully Submitted,



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¹ Entergy's witness, Dr. Hanna, is not available the week of January 17. In addition, Dr. Hanna will be teaching a three-week course in Cyprus in the February – March timeframe, and needs to know when the hearing will occur so that the specific three week interval can be chosen to avoid any conflict with the hearing date.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response to Pilgrim Watch's Memo Regarding Proposed Schedule" 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 21st day of September, 2010.

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