

October 9, 2010 (8:00am)

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October 8, 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 BRIEF ON THE UNTIMELINESS OF
PILGRIM WATCH CONCERNS REGARDING THE USE OF MEAN VALUES**

Pursuant to the Atomic Safety and Licensing Board's ("Board") September 23, 2010 Order (Confirming Matters Addressed at September 15, 2010 Telephone Conference), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") submit this reply to the Pilgrim Watch's October 1, 2010 Brief¹ on whether Pilgrim Watch timely raised its concerns about the NRC's practice of using mean consequence output values for severe accident mitigation alternatives ("SAMA") analyses, resulting in an averaging of potential consequences. The arguments raised by Pilgrim Watch are meritless and, for the reasons stated in Entergy's and the NRC Staff's briefs,² Pilgrim Watch's challenge to the NRC's practice of using mean consequence output values for SAMA analyses is untimely.

Pilgrim Watch's Brief rests solely on Contention 3's challenge of certain "input data" (interchangeably referred to by the parties and the Board as "input parameters") for the Pilgrim SAMA analysis, which Pilgrim Watch now – for the first time – seeks to transform into a

¹ Pilgrim Watch's Brief: Petitioner Timely Raised Issue of NRC's Practice to Use Mean Consequence Values in SAMA Analyses (Oct. 1, 2010). ("PW Brief").

² Entergy's Brief on Untimeliness of Pilgrim Watch Concerns Regarding Use of Mean Values (Oct. 1, 2010) ("Entergy Brief"); NRC Staff Brief Regarding Timeliness of Pilgrim Watch's Raising of Means Consequence Concern (Oct. 1, 2010) ("NRC Staff Brief").

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challenge of the NRC's use of mean output consequence values for purposes of SAMA evaluation. Pilgrim Watch ignores the fact that its challenges in Contention 3 were limited to the inputs used for the Pilgrim SAMA analysis and that consequences (population dose and off-site economic costs) are outputs of the analysis. Nowhere does Pilgrim Watch offer any explanation of how its challenge limited to input parameters can now be transformed into a challenge to the use of mean output values. Under the NRC's well-established rules of practice, set out in Entergy's and the NRC Staff's briefs, an intervenor is not free to change the focus and scope of a contention without an amendment meeting applicable standards.

Pilgrim Watch makes no attempt to address the standards in 10 C.F.R. § 2.309(c) and 10 C.F.R. § 2.309(f)(2) that an intervenor must satisfy in order to amend its contention to raise a new claim late in a proceeding. The Commission has held that failure to address the late filing factors is sufficient grounds in and of itself for rejecting a late-filed claim. As such, Pilgrim Watch has failed to show good cause for its late filing. Nor has it established the other factors necessary for the late filing of a claim, such as showing that it would contribute to the development of a sound record.

I. ARGUMENT

A. Pilgrim Watch Erroneously Equates Its Challenge to Input Parameters as a Challenge to Using Mean Consequence Output Values for SAMA Analyses

Pilgrim Watch's claim of timely challenge to the NRC's use of mean consequence output values for SAMA analyses rests solely on its claims raised in Contention 3 that the Pilgrim SAMA analyses "used incorrect input parameters, including meteorology, emergency response, and economic data" PW Brief at 3 (emphasis supplied in PW Brief). From the admitted challenge made by Contention 3 to certain SAMA input parameters, Pilgrim Watch makes a leap

of logic to claim that Contention 3 thereby also challenged any and all SAMA analyses parameters, including mean consequence output values. Pilgrim Watch refers to selective, partial definitions of “parameter”, and makes repeated references to the Board’s and the parties’ use of the word parameter to claim – without any explanation – that the Board and the parties surely understood that Contention 3 challenged the NRC’s practice of averaging potential consequences by using mean consequence outputs.³

Pilgrim Watch’s sole reliance on the use of the word “parameter” in Contention 3 is an attempt to gloss over the fact that Contention 3 never challenged the NRC’s practice of averaging potential consequences by using mean consequence outputs. Nowhere does Contention 3 challenge the use of mean consequence outputs to evaluate SAMAs. Pilgrim Watch’s reference to selective definitions of “parameter” (PW Brief at 3-4) provides no support for its belated claim. Parameter has multiple definitions⁴ and, as used by the Board and parties here, it clearly refers to input data used in the SAMA analysis, as made clear by the Board’s and parties’ interchangeable use of the words “input data” and “input parameters”. It is crystal clear from the language of Contention 3, as admitted by the Board, that Contention 3 is limited to “input data.”⁵

³ PW Brief at 3-12.

⁴ Merriam-Webster’s Collegiate Dictionary (11th Ed. 2008), defines parameter as “**1 a:** an arbitrary constant whose value characterizes a member of a system (as a family of curves); *also:* a quantity (as a mean or variance) that describes a statistical population; **b:** an independent variable used to express the coordinates of a variable point and functions of them – compare PARAMETRIC EQUATION; **2:** any of a set of physical properties whose values determine the characteristics or behavior of something <parameters of the atmosphere such as temperature, pressure, and density>; **3:** something represented by a parameter: a characteristic element; *broadly:* CHARACTERISTIC, ELEMENT, FACTOR <political dissent as a parameter of modern life>; **4:** LIMIT, BOUNDARY – usually used in plural <the parameters of science fiction>.”

⁵ The contention as admitted reads: “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 patters are incorrect, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, such that further analysis is called for.” Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 341 (2006) (emphasis added).

Furthermore, Pilgrim Watch ignores the clear import of the word “input” used to describe the specific parameters challenged in Contention 3. Mean consequence population dose and off-site economic cost are outputs of the MACCS2 code analysis, and not “input data” or “input parameters as repeatedly suggested by Pilgrim Watch (e.g., PW Brief at 4-5). Population dose and off-site economic costs are the results of the SAMA analysis derived from the computations made by the MACCS2 code using the different SAMA input parameters, or input data.

That population dose and off-site economic costs are the results or outputs of the SAMA analysis is reflected in Appendix E to the Pilgrim Environmental Report (“ER”). Section E.1.5.2 of the Pilgrim ER identifies the input parameters for the Pilgrim SAMA analysis (including the specific inputs challenged by Pilgrim Watch), whereas Section E.1.5.3 and the attached tables identify the results of the SAMA analysis (including the “mean” population dose risk and “mean” off-site economic risk). The expert report filed by Entergy in support of its Motion for Summary Disposition of Contention 3 similarly reflects the fact that population dose and off-site economic costs are outputs, and not inputs, of the SAMA analysis.⁶

In other words, Pilgrim Watch seeks to transform a challenge to certain of the different inputs used in the MACCS2 SAMA analysis to a challenge of the use of mean value outputs for SAMA analyses. It was clearly understood by the parties and the Board, however, that the issues raised in Contention 3, as admitted by the Board, were limited to inputs used in the SAMA analysis. Indeed, Pilgrim Watch repeatedly describes its challenge as one challenging the inputs used in the SAMA analysis.⁷ As set forth in Entergy’s and the NRC Staff’s briefs, nowhere in

⁶ Washington Safety Management Solutions, LLC, *Radiological Dispersion and Consequence Analysis Supporting Pilgrim Nuclear Power Station Severe Accident Mitigation Alternative Analysis*, Revision 1 (May 2007) at 7 and Table 1; see also id. at 39-40. See Exhibit 2 to Declaration of Kevin R. O’Kula (May 16, 2007).

⁷ E.g., PW Brief at 4-5, 10-11.

Contention 3, or elsewhere, did Pilgrim Watch ever challenge the NRC's practice of using mean value consequence outputs for SAMA analyses.⁸ The only NRC SAMA practice challenged in Contention 3 was the use of probabilistic modeling, which the Board rejected and which Pilgrim Watch never appealed, and which is therefore abandoned.⁹

Finally, Entergy's reference in its Contention 3 summary disposition papers to the use of "mean" consequence values for SAMA analyses, referred to by Pilgrim Watch (PW Brief at 9-10), does not support Pilgrim Watch's position here. Entergy was describing the nature of a SAMA analysis to provide context and background for its summary disposition motion.¹⁰ Entergy's Motion never identifies the use of mean consequence output values as one of the challenges raised in Contention 3.¹¹ Nor did Pilgrim Watch's response to the Motion identify the use of mean consequence output values as one of the challenges it raised in Contention 3. Pilgrim Watch's detailed discussion of the "Areas of Dispute" makes no mention of any challenge to the NRC SAMA practice of using mean consequence output values, which results in averaging potential consequences,¹² because no such challenge was ever made in Contention 3.

⁸ Entergy Brief at 4-7; NRC Staff Brief at 6-13.

⁹ Entergy Brief at 6-7.

¹⁰ See, e.g., Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3 (May 17, 2007) at 11.

¹¹ Id. at 12-30.

¹² Pilgrim Watch's Answer Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3 (June 29, 2007) at 50-91. While Pilgrim Watch's "Areas of Dispute" makes no mention of challenging the NRC SAMA practice of using mean consequence values, in the section of Pilgrim Watch's Answer responding to Entergy's Statement of Material Facts, Pilgrim Watch did take issue with Entergy's Statement No. 2 that a "SAMA cost-benefit evaluation looks at whether a SAMA is potentially cost effective by measuring the mean of the total costs avoided versus the cost of implementing the SAMA." However, Pilgrim Watch's stated bases were limited to (1) Entergy's failure to "make a comparison" of the total cost of a SAMA "to the sum of the total costs avoided, not the mean;" (2) the "accuracy of the numbers Entergy put into the analysis;" and (3) the use of "probability modeling . . . which makes all severe accident costs appear negligible." Id. at 6 (emphasis in original). The second basis concerning the accuracy of the inputs is Contention 3 as admitted. Both the first basis, which is simply another way of stating that risk should not be considered in a SAMA analysis, and the third basis are challenges to the use of probability modeling in SAMA analyses, which the Board rejected and which Pilgrim Watch never appealed.

It is the contention and its bases, and not other documents, which define the scope of a contention.

In short, Pilgrim Watch’s attempt to transform its challenge in Contention 3 to different SAMA input parameters to encompass a challenge to the NRC’s practice of using mean consequence outputs for SAMA analyses must be rejected. The only NRC SAMA practice ever challenged in Contention 3 was the use of probabilistic modeling, which was rejected, never appealed, and therefore abandoned.

B. Pilgrim Watch Fails to Address the Late Filing Standards of either 10 C.F.R. § 2.309(f)(2) or 10 C.F.R. § 2.309(c)

Pilgrim Watch claims that the “Principles of 10 C.F.R. § 2.309 are Irrelevant” (PW. Brief at 12-13), and therefore it makes no attempt to address either the late filing standards in 10 C.F.R. § 2.309(f)(2) or in 10 C.F.R. § 2.309(c). Pilgrim Watch does vaguely claim that it “has become aware of information that it wishes to present as evidence in the hearing,”¹³ but it makes no effort to explain what this information is (and it is quite possible that this information is no more than a veiled reference to Pilgrim Watch’s desire to introduce evidence on clean-up costs and other matters that the Commission has explicitly rejected as beyond the scope of the contention). In addition to not identifying what this information is, Pilgrim Watch provides no basis to show that this information was not “previously available” or is “materially different than information previously available” as required under 10 C.F.R. § 2.309(f)(2) for new claims that are not part of an original admitted contention. As set forth in Entergy’s Brief (at 8-9), the use of mean consequence values for the Pilgrim SAMA analysis was clearly set forth in the Pilgrim

¹³ PW Brief at 13.

license renewal Environmental Report, and is therefore not new information on which Pilgrim Watch can base a new claim.

Likewise, by failing to address the late filing standards in 10 C.F.R. § 2.309(c)(1), Pilgrim Watch has not met its burden to establish the admissibility of its belated challenge to the use of mean consequence output values for SAMA analyses. Section 2.309(c)(2) clearly provides that a “petitioner shall address” all eight factors set forth in Section 2.309(c)(1).¹⁴ Failure to address the pleading requirements for late filings in Section 2.309(c)(1) “constitutes sufficient grounds” for rejecting the untimely challenge.¹⁵

Having failed to address the late-filing factors in 10 C.F.R. § 2.309(c)(1), Pilgrim Watch has not shown “good cause” for its extremely tardy challenge. Commission case law places utmost importance on whether the petitioner has demonstrated sufficient good cause for the untimely filing.¹⁶ Here, Pilgrim Watch has failed to make any showing of good cause whatsoever. Likewise, Pilgrim Watch fails to makes any showing with respect to the other late filing factors, much less a “compelling” showing as required by Commission precedent where no good cause has been established.¹⁷

For example, with respect to factor (viii) – the extent to which the petitioner’s “participation may reasonably be expected to assist in developing a sound record” – Commission

¹⁴ 10 C.F.R. § 2.309(c)(2) (emphasis added).

¹⁵ Florida Power & Light et al. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, et al.), CLI-06-21, 64 N.R.C. 30, 33-34 (2006).

¹⁶ Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 N.R.C. ___, slip op at 4 (Mar. 26, 2010) (“CLI-10-12”); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-02, 51 N.R.C. 77, 79 (2000).

¹⁷ See, e.g., Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 N.R.C. 1725 (1982).

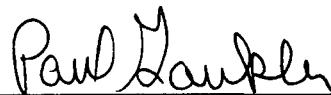
precedent requires that a petitioner addressing this criterion “should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.”¹⁸ Here, Pilgrim Watch has not identified the “precise issues” that it plans to cover, nor has it provided a summary of the points that its prospective witness would make with respect to the use of mean consequence values. Given this lack of information, neither the Board nor the parties have any idea of the testimony that Pilgrim Watch will proffer at hearing, or whether this testimony will contribute to the development of a sound record or merely delay and impede the proceeding by injecting extraneous and irrelevant issues.¹⁹ Such specificity is imperative here, given Pilgrim Watch’s repeated attempts to expand the scope of this hearing beyond the boundaries clearly demarcated by the Board and the Commission in their many orders and decisions.

¹⁸ Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 N.R.C. 241, 246 (1986) (emphasis added). The decision in Braidwood was affirmed by the Fifth Circuit in Citizens for Fair Util. Regulation v. NRC, 898 F.2d 51 (5th Cir.) in which the Fifth Circuit specifically affirmed the need for “specificity” with respect to this factor, stating that, “[w]ithout specificity, the NRC is forced to act as a mystic when determining if the potential intervenor has demonstrated a true ability to contribute to the record or is merely attempting to step in to delay the proceedings or otherwise act as a nuisance intervenor.” 898 F.2d at 55 (emphasis added), cert. denied, 498 U.S. 896 (1990).

¹⁹ Likewise, Pilgrim Watch has failed to establish the bases for the admission of a new contention required under 10 C.F.R. § 2.309(f)(1). This provision requires, among other requirements, a “specific statement” of the issue or law or fact controverted and a “concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.” 10 C.F.R. § 2.309(f)(1)(i) & (v) (emphasis added). Pilgrim Watch has provided no such information here. These standards are to be enforced rigorously. “If any one . . . is not met, a contention must be rejected.” Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); USEC, Inc. (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) (“These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements.” (footnotes omitted)); Fansteel, Inc. (Muskogee Oklahoma Site), CLI-03-13, 58 N.R.C. 195, 203 (2003) (A contention “will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’”) (quoting GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 208 (2000))).

II. CONCLUSION

For all of the reasons stated above and in Entergy's and the NRC Staff's briefs, the Board should not entertain Pilgrim Watch's belated concern with the use of mean values in the Pilgrim SAMA analysis.



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Dated: October 8, 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of Entergy's Reply Brief on the Untimeliness of Pilgrim Watch Concerns Regarding the Use of Mean Values 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 8th day of October, 2010.

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