January 7, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board Panel

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 ANSWER OPPOSING PILGRIM WATCH
REQUEST FOR HEARING ON A NEW CONTENTION

I. INTRODUCTION

Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby oppose Pilgrim Watch's Request for Hearing on a New Contention, submitted on December 13, 2010,[1] alleging that Entergy's aging management program ("AMP") for non-environmentally qualified ("non-EQ") inaccessible cables at the Pilgrim Nuclear Power Station ("Pilgrim") is insufficient. PW Request at 1. Pilgrim Watch's request should be denied because it does not address the standards for reopening a closed record to litigate a new contention, because it is untimely, and because it does not meet the standards applicable to a late-filed contention. In addition, Pilgrim Watch's new contention is inadmissible because it is vague, unsupported, and fails to demonstrate a genuine dispute with the application; and a number of Pilgrim Watch's claims are beyond the scope of this proceeding.

The Commission looks with disfavor on new contentions filed after the initial filing.[2] As the Commission has repeatedly stressed,

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[1] Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station (Dec. 13, 2010) ("PW Request").

[2] Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 638 (2004).

> [O]ur contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, "who must examine the publicly available material and set forth their claims and the support for their claims at the outset." There simply would be "no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements" and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding. Our expanding adjudicatory docket makes it critically important that parties comply with our pleading requirements and that the Board enforce those requirements.

AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009) (footnotes omitted).

Here, Pilgrim Watch is seeking to raise claims that could have been pled at the outset at the proceeding. Pilgrim Watch makes no attempt to address the standards for reopening a closed record to allow such a new contention. Further, while Pilgrim Watch attempts to justify its contention as timely based on a recent NRC Information Notice[3] (see PW Request at 2, 10), that document merely summarizes previously available information and thus provides no good cause for this late filing. In addition, at this late juncture, the other factors related to late contentions also weigh strongly against such expansion. In particular, at this late stage of the proceeding now entering its sixth year, litigating a new contention would significantly delay the completion of the proceeding.

Moreover, the contention fails to meet the admissibility standards. The contention itself is vague and inadequately supported, and in a number of instances, Pilgrim Watch's claims are beyond the scope of this proceeding. Indeed, a significant portion of Pilgrim Watch's Request is cut and pasted from a 2.206 petition that Pilgrim Watch filed last July, and thus obviously relates to the adequacy of the current licensing basis.

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[3] Information Notice 2010-26, Submerged Electrical Cables (Dec. 2, 2010) ("IN 2010-26").

II. BACKGROUND

This proceeding involves the application submitted by Entergy in January 2006 seeking renewal of the operating license for Pilgrim ("Application").[4] On May 25, 2006, Pilgrim Watch filed an intervention petition seeking the admission of five contentions, but none that challenged the aging management program in Application addressing inaccessible cable.[5] This Board admitted two of the five contentions proffered by Pilgrim Watch – Contention 1 relating to buried piping; and Contention 3 challenging certain input data used in the Pilgrim analysis of severe accident mitigation alternatives ("SAMA").[6]

The NRC Staff reviewed the Application and issued the final environmental impact statement in July 2007[7] and the final safety evaluation report ("SER") in November 2007.[8] Following summary disposition of Contention 3,[9] the Board held a hearing on Contention 1 and then closed the evidentiary record on that contention.[10] It then issued a decision resolving that remaining contention in Entergy's favor and terminated the proceeding.[11]

In CLI-10-11, the Commission reversed the summary disposition of the portion of Contention 3 that had raised meteorological modeling issues associated with the SAMA analysis.[12] The Commission therefore remanded Contention 3, "as limited by [its] ruling," to the

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[4] See 71 Fed. Reg. 15,222 (Mar. 27, 2006).

[5] Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) ("Petition to Intervene").

[6] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 349 (2006).

[7] NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station (July 2007).

[8] NUREG-1891, Safety Evaluation Report Related to the License Renewal of Pilgrim Nuclear Power Station (Nov. 2007).

[9] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-07-13, 66 N.R.C. 131 (2007).

[10] Memorandum and Order (Ruling on Pilgrim Watch Motions Regarding Testimony and Proposed Additional Evidence Relating to Pilgrim Watch Contention 1) (June 4, 2008) at 4.

[11] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-08-22, 68 N.R.C. 590, 610 (2008).

[12] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. __, slip op. at 14, 18 (Mar. 26, 2010).

Board for hearing.[13] In CLI-10-14, the Commission denied Pilgrim Watch's request for review of all other Licensing Board decisions that Pilgrim Watch had challenged on appeal.[14]

Now, nearly five years after the availability of the Application and more than three years after the NRC Staff's issuance of the final SER, Pilgrim Watch requests that the Board admit an entirely new contention challenging additional aspects of Pilgrim's AMPs.

A. LICENSE RENEWAL REQUIREMENTS

Under NRC rules, a license renewal application must include an integrated plant assessment ("IPA") demonstrating that, with respect to those structures and components subject to aging management review,[15] the effects of aging will be adequately managed so that intended functions will be maintained consistent with the current licensing basis ("CLB") during the period of extended operation. 10 C.F.R. § 54.21(a)(3). The NRC Staff has prepared the Generic Aging Lessons Learned ("GALL") Report to identify generic AMPs that the Staff has found acceptable, based on experience and analyses. AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 N.R.C. 461, 467 (2008). An applicant may reference the GALL Report to demonstrate that the programs at the applicant's facility correspond to those reviewed and approved therein. Id. at 468. Use of an AMP consistent with the GALL Report constitutes reasonable assurance that the targeted aging effect will be

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[13] Id. at 3.

[14] Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-14, 71 N.R.C. __, slip op. at 3, 39 (June 17, 2010).

[15] Pursuant to 10 C.F.R. § 54.4, the plant systems, structures and components ("SSCs") within the scope of the rule are (1) safety-related SSCs; (2) non-safety related SSCs whose failure could prevent safety-related SSCs from performing their intended functions; and (3) SSCs relied on in safety analyses or plant evaluations to perform functions that demonstrate compliance with certain NRC rules governing fire protection, environmental qualification, pressurized thermal shock, anticipated transients without scram, and station blackout. With respect to these SSCs, the structures and components subject to aging management review are those that (1) perform an intended function without moving parts or without a change in configuration or property, and (2) are not subject to replacement based on a qualified life or specified time period (i.e., only passive, long lived structures). 10 C.F.R. § 54.21(a)(1)(i)-(ii).

adequately managed during the renewal period. Id. See also Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 N.R.C. __, slip op. at 44 (July 8, 2010).

> The GALL Report provides that one way a license renewal applicant may demonstrate that an AMP will effectively manage the effects of aging during the period of extended operation is by stating that a program is "consistent with" or "based on" the GALL Report.

Id. at 45 (emphasis in original) (footnote omitted).[16]

B. AMPS APPLICABLE TO CABLE

The license renewal application for Pilgrim is based on Revision 1 of the GALL Report, which was in effect when the Application was prepared and reviewed. NUREG-1801, Generic Aging Lessons Learned (GALL) Report (Rev. 1, Sept. 2005) ("GALL Rev. 1"). Therefore, this Answer will first describe the relevant AMPs recommended in GALL Rev. 1. However, on December 16, 2010, the NRC issued Revision 2 of the GALL Report. NUREG-1801, Generic Aging Lessons Learned (GALL) Report (Rev. 2, Dec. 2010) (ADAMS Accession No. ML103490041) ("GALL Rev. 2"). As discussed later in this Answer, after the issuance of Revision 2 to the GALL Report, Entergy submitted a supplement to its Application addressing changes in the NRC's recommendations, including those pertaining to inaccessible cable.

GALL Rev.1 describes several AMPs that may be applied to manage effects of aging on electric components not subject to 10 C.F.R. § 50.49 (which Entergy refers to as "non-EQ").[17]

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[16] Referencing a program described in the GALL Report does not insulate a program from being challenged at hearing. Id. at 47.

[17] Pursuant to 10 C.F.R. § 50.49, safety-related and certain other electric equipment (including cable) located in a harsh environment is subject to testing and analysis requirements to demonstrate its environmental qualification. Where specific electric components covered by this rule are qualified for the life of the plant, the existing calculations and analyses that are part of the CLB demonstrating such environmental qualification constitute time limited aging analyses ("TLAAs"), which are subject to the requirements in 10 C.F.R. § 54.21(c)(1). Section X.E1 of Rev. 1 and Rev. 2 of the GALL Report describes an acceptable program for managing the aging effects

In particular, Section XI.E1 of GALL Rev. 1 provides a program for managing "Electric Cables and Connections Not Subject to 10 CFR 50.49 Environmental Qualification Requirements." This program applies to cables and connections whose configuration is such that most (if not all) of the cables and connections in adverse localized environments are accessible. See GALL Rev. 1 at XI.E-1. The program requires inspections of such cables and connections to provide reasonable assurance that the insulation material for electrical cables and connections will perform its intended function for the period of extended operation.[18]

In addition, Section XI.E3 of GALL Rev. 1 provides a program for managing the effects of aging on "Inaccessible Medium-Voltage Cables Not Subject to 10 CFR 50.49 Environmental Qualification Requirements." This program applies to inaccessible (in conduit or directly buried) medium-voltage[19] cables within the scope of license renewal that are exposed to significant moisture (defined as periodic exposure to moisture that lasts for more than a few days, such as standing water). Id. at XI.E-8. This recommended AMP calls for both periodic actions to prevent cable exposure to significant moisture (such as inspecting for water collection in cable manholes, and draining water as needed) and testing to indicate the condition of the

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associated with these TLAAs (i.e., addressing electric components that are environmentally qualified under 10 C.F.R. § 50.49 for the life of the plant).

The environmental qualification requirements in 10 C.F.R. § 50.49, however, do not apply to equipment located in a mild environment. 10 C.F.R. § 50.49(c). A mild environment is an environment that would at no time be significantly more severe than the environments that would occur during normal plant operations, including anticipated operational occurrences. Id. For electrical equipment located in mild environments, compliance with the environmental design provisions of General Design Criterion ("GDC") 4 are generally achieved and demonstrated by proper incorporation of all relevant environmental conditions into the design process, including the equipment specification. NUREG-0800, Standard Review Plan (Rev. 3, Mar. 2007) at 3.11-2. In addition, 10 C.F.R. § 50.49 may not apply to certain equipment within the scope of 10 C.F.R. § 54.4(a)(3). Therefore, there are electrical components that are subject to aging management review which are not addressed by the environmental qualification requirements in 10 C.F.R. § 50.49.

[18] A separate program, in Section XI.E2 of the GALL Report, applies to high-range-radiation and neutron flux monitoring instrumentation cables in addition to other cables used in high voltage, low-level signal applications that are sensitive to reduction in insulation resistance.

[19] High-voltage (>35 kV) power cables and connections are not included in this program because they have unique, specialized constructions and must be evaluated on an application specific basis. GALL Report at VI.A-1. Pilgrim does not have any inaccessible, high voltage cable subject to aging management review.

insulation. Id. at XI.E-1. The testing must be a proven method for detecting deterioration of the insulation system due to wetting, such as power factor, partial discharge, or polarization index, or other testing that is state-of-the-art at the time the test is performed. Id. at XI.E-7.

Entergy's Application committed to implement these GALL programs, making no exceptions. The Application, at App. B, § B.1.19,[20] committed to implement a program for "Non-EQ Inaccessible Medium-Voltage Cable" that is consistent with Section X1.E3 of GALL Rev. 1. The Application, at App. B, § B.1.21,[21] committed to implement a program for "Non-EQ Insulated Cables and Connections" that is consistent with Section XI.E1 of GALL Rev. 1.

While Section XI.E3 of the GALL Rev. 1 applies only to medium-voltage cable (based on operating experience indicating the potential for moisture-induced deterioration of the insulation to occur in the 2 kV to 35 kV range – see GALL Rev. 1 at XI.E-7, XI.E-9), it provides that "[a]s additional operating experience is obtained, lessons learned can be used to adjust the program, as needed." GALL Rev. 1 at XI.E-9. Both the NRC and industry have continued to monitor operating experience, not just for license renewal but also in connection with the performance monitoring required of all operating plants by the NRC's maintenance rule. See 10 C.F.R. § 50.65(a)(1).

In 2007, the NRC issued Generic Letter 2007-01, informing licensees of failures that had occurred in inaccessible cable subject to wetted environments and requesting that the licensees provide a history of inaccessible power cable failures for all cables within the scope of the maintenance rule, as well as a description of inspection, testing and monitoring programs used to

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[20] See also Application, App. A, § A.2.1.21, providing a description of this program to be included in the Updated Final Safety Analysis Report ("UFSAR") Supplement. During the NRC Staff's review, Entergy provided certain clarifications of its program, which are described in the NRC's SER at 3-18 to 3-21.

[21] See also Application, App. A, § A.2.1.23, providing a description of this program to be included in the UFSAR Supplement.

detect degradation of inaccessible cables. Generic Letter 2007-01, Inaccessible or Underground Power Cable Failures that Disable Accident Mitigation Systems or Cause Plant Transients (Feb. 7, 2007) (ADAMS Accession No. ML070360665) ("GL 2007-01"). The NRC Staff summarized the results of the responses to the Generic Letter in a report in late 2008. Generic Letter 2007, Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transients: Summary Report (Nov. 12, 2008) (ADAMS Accession No. ML082760385) ("GL 2007-01 Summary Report"). Based on its review, the NRC Staff perceived a trend in cable failures, with exposure to water being the predominant contributing factor. Id. at 26. The NRC Staff therefore recommended that licensees have a program for using available diagnostic cable testing methods to assess cable condition and also make reasonable provisions to keep cables dry. Id. In addition, the Staff indicated that it planned to take several actions, including issuing a Regulatory Guide (which at that time the Staff expected to issue by December 2009) identifying the essential elements of a cable monitoring program and taking regulatory actions for licensees who have not demonstrated cable qualification for the current license period. Id. at 27.

The NRC Staff's recommendations, based on its review of the Generic Letter 2007-01 responses, prompted a number of activities in 2009, continuing through 2010. First, the NRC Staff and the industry have each been working on developing guidance on an appropriate cable monitoring program for operating plants (irrespective of license renewal). This includes Brookhaven National Laboratories' preparation for the NRC of NUREG/CR-7000, Essential Elements of a Cable Monitoring Program (Jan. 2010)[22] (referenced in the PW Request at 8, 10, 29-32); EPRI Report 1020804, Plant Support Engineering: Aging Management Program

[22] ADAMS Accession No. ML100540050.

Development Guidance for AC and DC Low-Voltage Power Cable Systems for Nuclear Power Plants (June 2010)[23] (referenced in the PW Request at 16 n.9); and the NRC Staff's issuance of Draft Regulatory Guide DG-1240, Condition Monitoring Program for Electric Cables in Nuclear Power Plants (June 2010).[24]

Second, although the NRC Regulatory Guide had not yet been issued, Entergy proceeded to develop a fleet procedure, EN-DC-346, Cable Monitoring Program, which it issued on December 31, 2009.

Third, in GALL Rev. 2 issued on December 16, 2010, the NRC revised the Section XI.E3 program to include low-voltage power cable (greater than or equal to 400 volts).[25] GALL Rev. 2 at XI.E3-2. The NRC also increased the recommended frequency of the manhole inspections and cable insulation testing. Id.

On January 7, 2011, Entergy submitted a supplement to the Pilgrim license renewal application addressing certain changes in the NRC's recommendations, including the changed recommendations in Section XI.E3 of GALL Rev. 2.[26] The LRA Supplement explains that, consistent with GALL Rev. 2, Entergy is enhancing its AMP for non-EQ inaccessible medium-voltage cables to include low-voltage (400 V to 2 kV) cables, increasing the inspection and testing frequencies of non-EQ inaccessible cables, and describing how relevant operating experience is used to assure program effectiveness. LRA Supplement at 8. Among other

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[23] ADAMS Accession No. ML102210457.

[24] ADAMS Accession No. ML100760364.

[25] Drafts of this revision, including the recommendation to extend the AMP for non-EQ inaccessible cable to low-voltage power cable, were made public in April and September of 2010. Preliminary Draft GALL Report for April Web Post (Track Change Version) (ADAMS ML101190153) at XI.E3-1 to XI.E3-4; ; NUREG-1801, Generic Aging Lessons Learned Report: Tracked Changes Revision 1- Revision 2 (September 23, 2010 Version to Advisory Committee on Reactor Safeguards) (ADAMS Accession No. ML102660312) at XI.E3-1 to XI.E3-6.

[26] Letter from S. Bethay to U.S. NRC, Pilgrim Nuclear Power Station (PNPS) License Renewal Application (LRA) Supplemental Information (Jan. 7, 2011), provided as Exhibit A hereto. Attachment 1 to the letter ("LRA Supplement") contains the LRA supplemental information.

enhancements to the AMP, the Pilgrim inaccessible cable program will test inaccessible medium- and low-voltage cables for degradation of the cable insulation at least once every six years, with the results evaluated to determine the need for increasing the testing frequency. Id. at 8, 9. A proven, commercially available test will be used for detecting cable insulation deterioration for inaccessible medium- and low-voltage cables potentially exposed to significant moisture. Id.. The AMP identifies specific examples of tests that may be used, such as dielectric loss (dissipation factor/power factor), AC voltage withstand, partial discharge, step voltage, time domain reflectometry, insulation resistance and polarization index, line resonance analysis, or other testing that is state-of-the-art at the time the test is performed. Id. Further, inspections for water in manholes containing inaccessible power cables within the program's scope will be performed at least annually, with more frequent inspections performed if necessary based on the evaluation of the inspection results. Id.

III. ARGUMENT

A. PILGRIM WATCH HAS NOT ADDRESSED THE STANDARDS FOR REOPENING THE RECORD

Pilgrim Watch's Request should be denied because Pilgrim Watch has failed to address the standards in 10 C.F.R. § 2.326 for reopening the record to litigate a new contention. While the Commission has remanded certain SAMA issues in Contention 3 to the Board for hearing, the Commission has not reopened the record to allow new contentions to be admitted. If Pilgrim Watch wants to raise a new contention during the remand, it must address and satisfy the standards in 10 C.F.R. § 2.326. See Vermont Yankee, CLI-10-17, slip op. at 10 n.37.

Where, as here, the adjudicatory record has been closed, the Commission's rules specify that a motion to reopen that record to consider additional evidence – including evidence on a new

contention (see 10 C.F.R. § 2.326(d)) – will not be granted unless the following criteria are satisfied:

> 1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
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> 2) The motion must address a significant safety or environmental issue; and
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> 3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

10 C.F.R. § 2.326(a). Further, under the NRC rules,

> The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

10 C.F.R. § 2.326(b). In addition, where a motion to reopen relates to a contention not previously in controversy, a motion to reopen must also satisfy the standards for non-timely contentions in 10 C.F.R. § 2.309(c). 10 C.F.R. § 2.326(d).

The Commission has repeatedly emphasized that "[t]he burden of satisfying the reopening requirements is a heavy one." Oyster Creek, CLI-09-7, 69 N.R.C. at 287 (citing Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 N.R.C. 1, 5 (1986)). "[P]roponents of a reopening motion bear the burden of meeting all of [these] requirements." Id. (citing Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-90-10, 32 N.R.C. 218, 221 (1990)). "Bare assertions and speculation . . . do not supply the requisite support." Id. (citing AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 N.R.C. 658, 674 (2008).

Pilgrim Watch has made no attempt to address the standards for reopening the record. The Declaration of Paul M. Blanch (Dec. 13, 2010) ("Blanch Decl.") that Pilgrim Watch includes with its Request neither addresses nor satisfies 10 C.F.R. § 2.326(b). 10 C.F.R. § 2.326(b) requires a supporting affidavit to address separately each of the criteria in Section 2.326(a) and provide a specific explanation of why each has been met. Mr. Blanch's Declaration does not even mention the relevant criteria, let alone provide a specific explanation why each has been met. Nor does Mr. Blanch's Declaration provide factual or technical bases sufficient to satisfy the criteria in Section 2.326(a). All his Declaration states is that he has "read and reviewed the enclosed proposed contention from Pilgrim Watch and fully support[s] all technical and regulatory aspects of this contention on Inaccessible cables." Blanch Decl. (PW Request at 50).[27] This defect is alone sufficient grounds to reject Pilgrim Watch's Request. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 N.R.C. 62, 76 (1992), citing Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-89-1, 29 N.R.C. 89, 93-94 (1989).

Furthermore, none of the assertions in PW's Request can be construed as satisfying the criteria in 10 C.F.R. § 2.326(a). First, as discussed in more detail later in this Answer, Pilgrim Watch does not demonstrate that its request is timely. Indeed, Pilgrim Watch acknowledges that contentions challenging similar AMPs were raised in the Indian Point license renewal proceeding

[27] It is not clear whether Mr. Blanch's statement means that he is averring to the accuracy of all of the statements in Pilgrim Watch's Request. Pilgrim Watch's Request includes statements that any competent and experienced nuclear engineer would know to be wrong, such as Pilgrim Watch's assertion that "Pilgrim Nuclear Power Station (PNPS), like all other nuclear plants, has thousands of submerged electrical cables throughout the plant." See PW Request at 7. Similarly, Pilgrim Watch's assertion that "[m]ost electrical cables at [Pilgrim] have been exposed to significant moisture over the past 40 years since initial construction in the 1960's" (PW Request at 14) is unfounded. The plant is a sealed structure and most cables are inside that sealed structure. In the same vein, Pilgrim Watch's assertion that "[w]ater travels downward from leaks inside the reactor following along wires to collect below" (PW Request at 15) is unsupported and inaccurate. The Pilgrim reactor is contained in an ASME certified and tested pressure vessel that is continuously monitored to ensure that there is no leakage. There are no wires that penetrate the reactor pressure vessel or communicate physically with the reactor internals and its coolant.

more than three years ago. PW Request at 2.[28] A number of Pilgrim Watch's assertions are taken nearly verbatim from those contentions. Compare New York Petition at 92-94 (¶¶ 1-10) with PW Request at 9-10 (¶¶ 7-15). Much of the remainder of Pilgrim Watch's Request is taken nearly verbatim from a 10 C.F.R. § 2.206 petition that Pilgrim Watch filed last July.[29] Compare PW Request at 7-8 (¶¶ 1, 3) with PW 2.206 Petition at 2 (¶¶ 1, 3); PW Request at 8 (¶¶ 5-6) with PW 2.206 Petition at 2 (¶¶ 2, 4); PW Request at 14 (¶¶ 23-26) with PW 2.206 Petition at 4-6 (¶¶ 11-13); PW Request at 19-29 (¶¶ 30-33) with PW 2.206 Petition at 7-14 (¶¶ 17-18). Obviously, Pilgrim Watch could have raised these claims earlier.

Second, Pilgrim Watch does not demonstrate that its request addresses a significant safety issue. While Pilgrim Watch asserts that failures of safety-related cables may result in accidents and loss of safety-related equipment (PW Request 9, ¶¶ 8-9), "binding case law establishes that a movant who seeks to reopen the record does not show the existence of a significant safety issue merely by showing that a plant component 'perform[s] safety functions and thus ha[s] safety significance.'" Oyster Creek, CLI-08-28, 68 N.R.C. at 672 (emphasis in original) (footnote omitted). While safety-related equipment is obviously important, here Pilgrim Watch fails to demonstrate that there is any significant deficiency with the AMPs in the Pilgrim license renewal application that manage the effects of aging on cables to provide reasonable assurance that they will perform their intended functions. Pilgrim Watch ignores the fact that the Pilgrim AMPs are based on, and consistent with, those recommended in the GALL Report, which the Commission has held constitutes reasonable assurance that the targeted aging

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[28] New York State Notice of Intention to Participate and Petition to Intervene, Docket Nos. 50-247-LR and 50-286-LR (Nov. 30, 2007) (ADAMS Accession No. ML073400187) at 92-103 ("New York Petition").

[29] Letter from M. Lampert to NRC Executive Director of Operations, Re: Pilgrim Watch 2.206 Petition Regarding Inadequacy of Entergy's Management of Non-Environmentally Qualified Inaccessible Cables & Wiring at Pilgrim Station (July 19, 2010) (ADAMS Accession No. ML102090024) ("PW 2.206 Petition").

effect will be adequately managed during the renewal period. Oyster Creek, CLI-08-23, 68 N.R.C. at 468 (2008); Vermont Yankee, CLI-10-17, slip op. at 44.

Finally, Pilgrim Watch does not demonstrate that a materially different result would be likely had any newly proffered evidence been considered initially, as required by 10 C.F.R. § 2.326(a)(3). Pilgrim Watch asserts that it is not required to prove its case or provide factual support "of the quality that is necessary to withstand a summary disposition motion." PW Request at 5. These assertions ignore the "deliberatively heavy" burden placed on the party seeking reopening to demonstrate that a materially different result would be likely. Oyster Creek, CLI-08-28, 68 N.R.C. at 674. At this late stage of the proceeding, is it not sufficient simply to raise an issue.

B. PILGRIM WATCH'S NEW CONTENTION IS UNTIMELY

Pilgrim Watch's proposed new contention is untimely because it is not based on information that was previously unavailable. Indeed, as previously discussed, Pilgrim Watch's new contention appears to be largely an amalgam of a contention raised in the Indian Point license renewal proceeding three years ago and assertions made in the PW 2.206 Petition six months ago. Although Pilgrim Watch now attempts to justify its contention as timely based on the issuance of IN 2010-26, that document merely summarizes information previously available.

10 C.F.R. § 2.309(f)(2) states that "[c]ontentions must be based on documents or other information available at the time the petition [to intervene] is to be filed, such as the application [and] safety analysis report." An intervenor has an "ironclad obligation to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 N.R.C. 135, 147 (1993)

(footnote omitted). Other than new or amended contentions challenging new data or conclusions in the NRC Staff's environmental impact statement (not applicable here), the NRC rules allow new contentions to be filed after this initial filing only with the leave of the presiding officer upon a showing that:

> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
>
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i)-(iii).

Under these standards, it is not sufficient to simply point to some new document (such as the NRC Information Notice). Rather, under the standards in 10 C.F.R. § 2.309(f)(2)(i)-(iii), a proponent of a new contention must show that <u>the information</u> in that document is new and <u>materially different</u> from that previously available, that this new and materially different information forms the basis for the new contention, and that the new contention was submitted promptly after that information became available. Pilgrim Watch glosses over these standards, never addresses 10 C.F.R. § 2.309(f)(2)(ii), and makes no showing that any information in IN 2010-26 is materially different from that previously available.

In essence, a proponent of a new contention must show that it could not have raised its contention earlier. "[T]he unavailability of [a] document does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner." <u>Duke Power Co.</u> (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C.1041, 1043 (1983). An intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was

publicly available "for some time" prior to the filing of the contention. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 N.R.C. 13, 21 (1986). Intervenors are not free simply "to add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding." Oyster Creek, CLI-09-7, 69 N.R.C. at 272 (footnote omitted).

In particular, as the Commission has recently held, a petitioner cannot "delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention." Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. __, slip op. at 17 (Sept. 30, 2010). "To conclude otherwise would turn on its head the regulatory requirement that new contentions be based on 'information . . . not previously available.'" Id. at 17-18 (emphasis in original) (footnote omitted).

Here, IN 2010-26 merely summarizes and discusses previously available NRC inspection reports issued between September 11, 2007 and May 11, 2010. IN 2010-26 at 1-5 (summarizing inspection reports for various nuclear power plants, none of which is Pilgrim). And the NRC conclusions drawn from those inspection findings, as reflected in the Discussion section of IN 2010-26 (see id. at 6-7), are very similar to statements made in prior NRC documents such as Generic Letter 2007-01, the GL 2007-01 Summary Report, and NUREG/CR-7000. Indeed, the paragraph from IN 2010-26 quoted on page 11 of PW's Request is identical to a paragraph at the bottom of page 3 of the GL 2007-01 Summary Report. The paragraph quoted at the top of page 12 of PW's Request (paragraph b) is similar to a paragraph in the middle of page 4 of the GL 2007-01 Summary Report. The next statement quoted on page 12 of PW's Request (paragraph c) is identical to a statement on the top of page 4 of the GL 2007-01 Summary Report. Finally,

the paragraph quoted on page 13 of PW's Request (in ¶ 20) is nearly identical to language in the middle of page 4 of the GL 2007-01 Summary Report.[30]

Pilgrim Watch makes several claims that IN 2010-26 contains new information, but each of these claims is specious. First, Pilgrim Watch asserts that "[t]his document shows that numerous cables have been exposed to submergence and moisture." PW Request at 10. However, as another Atomic Safety and Licensing Board recently ruled in rejecting a similar, late-filed contention in the Vermont Yankee license renewal proceeding,

> the potential for such submergence, and the need to manage and address it, has been apparent from the outset of this proceeding. Indeed, the potential for wetting or submergence is a central point of Entergy's AMP.

Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 N.R.C. __, slip op at 23 (Oct. 28, 2010).

In this regard, Section XI.E3 of GALL Rev. 1 states, "some cables may be exposed to condensation and wetting in inaccessible locations, such as conduits, cable trenches, cable troughs, duct banks, underground vaults, or direct buried installations." GALL Rev. 1 at XI.E-7. It continues:

> [I]f duct bank conduit has low points in the routing, there could be potential for long-term submergence at these low points. In addition, concrete raceways may crack due to soil settling over a long period of time and manhole covers may not be watertight. Additionally, in certain areas, the water table is high in seasonal cycles and therefore, the raceways may get refilled soon after purging.

Id. (emphasis added). It further states:

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[30] The only paragraph from IN 2010-26 quoted by Pilgrim Watch that is not taken nearly verbatim from the GL 2007-01 Summary Report is paragraph d at the bottom of page 12 of PW's Request. That paragraph, however, provides the NRC recommendations that existing licensees take corrective action upon discovery of cable in a submerged condition, such as removal of the water in the short term and establishment of a condition monitoring program in the long term. Since this paragraph is a recommendation for current licensees and is, in any event, consistent with the recommendations in the GALL Report, it is not materially different from information previously available and does not provide the basis for any new contention.

> This program applies to inaccessible (e.g., in conduit or direct buried) medium-voltage cables within the scope of license renewal that are exposed to significant moisture simultaneously with significant voltage. Significant moisture is defined as periodic exposures to moisture that last more than a few days (e.g., cable in standing water).

Id. at XI.E-8 (emphasis added). In sum, as the Licensing Board correctly held in the Vermont Yankee license renewal proceeding, the potential for inaccessible cable to be exposed to water, including submergence, has been apparent from the outset of this proceeding. This information is not new.[31]

Moreover, Pilgrim Watch cannot claim in good faith that it was previously unaware that inaccessible cable may be exposed to wet conditions, including submergence. Pilgrim Watch's 2.206 Petition, filed last July, shows that Pilgrim Watch was completely aware of the potential for cable to be exposed to such conditions.[32]

Pilgrim Watch's argument that IN 2010-26 contains new information because Pilgrim is specifically mentioned (PW Request at 10) is equally specious. IN 2010-26 makes only passing reference to Pilgrim as one of the plants whose cable submergence inspection findings were summarized in another NRC Information Notice eight years ago in 2002. IN 2010-26 at 6. This information is hardly new. Furthermore, IN 2010-26 states that these inspection findings "did

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[31] Nor can Pilgrim Watch claim that it was unaware that such cable might be exposed to localized conditions more severe than the specified service environment for the cable. The whole purpose of the Section XI.E3 AMP is to manage the effects of aging on cable exposed to "adverse localized environment," which is defined as follows:

> An adverse localized environment is a condition in a limited plant area that is significantly more severe than the specified service environment for the cable.

GALL Rev. 1 at XI.E-7 (emphasis added). Thus, this too is not new.

[32] Many of Pilgrim Watch's pleadings in this proceeding have shown that Pilgrim Watch has been monitoring the Indian Point license renewal proceeding continuously and carefully, and has been in frequent communication with the intervenors and their experts in that proceeding. Therefore, it is very likely that Pilgrim Watch has known of the contentions in that proceeding challenging the aging management programs for inaccessible cable since they were filed in 2007. Indeed, Pilgrim Watch's Request merely states that it did not learn about the submerged cable issue until after it filed its May 2006 Petition to Intervene. See PW Request at 2.

not identify any specific violations of NRC requirements" (which Pilgrim Watch conveniently fails to mention). Id.

Next, Pilgrim Watch claims that IN 2010-26 includes new information because the NRC has concluded in that document that "that cable submergence in water is serious." PW Request at 10. This argument also fails because the importance that the NRC Staff places on addressing cable submergence has been apparent in GALL Rev. 1 (issued in 2005), in Generic Letter 2007-01, in the GL 2007-01 Summary Report, in NUREG/CR-7000, and in draft Regulatory Guide DG-1240. As already discussed, the statements from IN 2010-26 that Pilgrim Watch quotes in its Request are for the most part nearly identical to the NRC Staff's statements in the GL 2007-01 Summary Report.

Finally, Pilgrim Watch argues that because IN 2010-26 only expresses the NRC Staff's recommendations as opposed to requirements, only relicensing provides a mechanism for ensuring that this issue will be addressed. PW Request at 10-11. Nothing in this line of argument suggests that any information in IN 2010-26 is new. Moreover, nothing in this argument suggests any deficiency in the AMP for inaccessible non-EQ cable. To the contrary, this argument simply demonstrates that Pilgrim Watch's concerns do not relate to the AMP, but rather to the sufficiency of the actions that the NRC Staff is taking with regard to plants operating under their current licenses.

Apart from the absence of new and materially different information in IN 2010-26, Pilgrim Watch's claims do not in fact appear to be based on anything in this Information Notice. As far as Entergy can determine, the bases for Pilgrim Watch's contending that the AMP for non-EQ inaccessible cable is insufficient are set out in paragraphs 10 through 15, and paragraph

32 of the PW Request. Not one of the claims in these paragraphs refers or relates to, or relies upon, the Information Notice. Every one of these claims could have been raised long ago.

C. PILGRIM WATCH DOES NOT MEET THE LATE FILING STANDARDS IN 10 C.F.R. § 2.309(C)

Pilgrim Watch's late-filed contention should not be admitted because Pilgrim Watch has shown no good cause for its extreme tardiness and a balancing of the remaining factors in 10 C.F.R. § 2.309(c) does not outweigh this failure.

Section 2.309(c)(1) provides that non-timely contentions will not be entertained absent a determination by the Board that the contentions should be admitted based upon a balancing of the following factors:

> (i) Good cause, if any, for the failure to file on time;
>
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
>
> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
>
> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
>
> (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
>
> (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
>
> (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1)(i)-(viii). In keeping with the Commission's disfavor of contentions submitted after the initial filing, these factors are "stringent." Oyster Creek, CLI-09-7, 69

N.R.C. at 260, citing Florida Power & Light Co. et al. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, *et al.*), CLI-06-21, 64 N.R.C. 30, 33 (2006). "Late petitioners properly have a substantial burden in justifying their tardiness." Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273, 275 (1975).

Commission case law places most importance on whether the petitioner has demonstrated sufficient good cause for the untimely filing.[33] "Good cause" has been consistently interpreted to mean that a proposed new contention be based on information that was not previously available, and was timely submitted in light of that new information. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 125-26 (2009) citing Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 N.R.C. 1, 6 (2008).

Pilgrim Watch fails to establish sufficient good cause to excuse its very late-filed contention. For the same reasons why the contention is not timely under Section 2.309(f)(2), Pilgrim Watch has failed to demonstrate good cause for the late contention because it is not based on new information, and Pilgrim Watch could have raised each of its claims months, if not years, ago.

Under NRC case law, failure to demonstrate good cause requires the petitioner to make a "compelling" showing with respect to the other factors. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 N.R.C. 156, 165 (1993). In other words,

> A petitioner's showing must be highly persuasive; it would be a rare case where [the Commission] would excuse a non-timely petition absent good cause.

Watts Bar, CLI-10-12, slip op. at 4 (footnote omitted).

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

In balancing the remaining late-filed contention factors, the Commission grants considerable weight to factors seven and eight.

> We regard as highly important the intervenor's ability to contribute to the development of a sound record on a particular contention. We also are giving significant weight to the potential delay, if any, which might ensue from admitting a particular contention.

Consumers Power Co. (Midland Plant, Units 1 and 2) LBP-82-63, 16 N.R.C. 571, 577 (1982) (citations omitted), citing South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 881, 895 (1981). See also Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 N.R.C. 241, 245-46 (1986). Both the seventh and eight factors weigh against admitting the contention.

With regard to the seventh factor, adding a new contention will, without a doubt, delay and broaden the proceeding significantly. In this proceeding, the Staff's final EIS for Pilgrim was issued in July 2007 and the final SER was issued in November 2007. Therefore, any further adjudicatory proceedings will necessarily delay the proceeding's completion. Moreover, this proceeding itself is entering its sixth year, notwithstanding the Commission's goal to complete such proceedings in two and one half years.[34]

Concerning the eighth factor, it cannot be reasonably expected that Pilgrim Watch will assist in developing a sound record. "When a petitioner addresses this … criterion it 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." Watts Bar, CLI-10-12, slip op. at 10-11 (footnote omitted); see also Braidwood, CLI-86-8, 23 N.R.C. at 246. This Pilgrim

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[34] In contested license renewal proceedings, the Commission's long-standing goal has been the issuance of a Commission decision in about two and one half years from the date that the application was received. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 42 (1998); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-98-17, 48 N.R.C. 123, 126 (1998). In this proceeding, Entergy's application to renew the Pilgrim operating license was filed in January 2006.

Watch has failed to do. For example, when discussing recommendations for submerged cables contained in NUREG/CR-7000, Pilgrim Watch merely asserts that it "expect[s]" Mr. Blanch "to comment on these [recommendations] and come forward with other suggestions during the proceeding." PW Request at 30. In addition, Mr. Blanch's Declaration states only that he has reviewed and supports the proposed contention. Blanch Decl. (PW Request at 50). Nowhere does Pilgrim Watch or Mr. Blanch provide a summary of any proposed testimony. Further, Mr. Blanch's Declaration does not identify any special expertise with cable monitoring programs at commercial nuclear power reactors.

Thus, factors one, seven and eight – the three most significant factors – count heavily against Pilgrim Watch. The other factors in 10 C.F.R. § 2.309(c)(1) are less important (see, e.g., Diablo Canyon, CLI-08-1, 67 N.R.C. at 6; Comanche Peak, CLI-93-4, 37 N.R.C. at 165), and therefore cannot outweigh Pilgrim Watch's failure to demonstrate good cause or meet factors (vii) and (viii).

D. PILGRIM WATCH'S NEW CONTENTION DOES NOT MEET THE STRICT CONTENTION ADMISSIBILITY REQUIREMENTS

Even if Pilgrim Watch had met the standards for reopening a closed record and the standards for a late contention (which it has not), its contention would still be inadmissible because it does not satisfy the pleading requirements in 10 C.F.R. § 2.309(f)(1). Even if a proponent of a new contention satisfies the requirements of 10 C.F.R. § 2.309(f)(2) and 10 C.F.R. § 2.309(c), it must still demonstrate that its new contention satisfies the admissibility standards in 10 C.F.R. § 2.309(f)(1)(i)-(vi). Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 N.R.C. 355, 362-63 (1993).

10 C.F.R. § 2.309(f)(1) requires that a hearing request set for any contention with particularity and:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in connection is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide 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; and
>
> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1)(i)-(vi). Pilgrim Watch's contention does not meet these standards.

1. The New Contention is Unduly Vague

Pilgrim Watch's new contention is vague and thus fails to meet 10 C.F.R. § 2.309(f)(1) and (f)(1)(i). 10 C.F.R. § 2.309(f)(1) requires contentions to be set forth with particularity, and 10 C.F.R. § 2.309(f)(1)(i) requires a "specific" statement of the issue to be raised or controverted. Pilgrim Watch's new contention, set forth on page 1 of its Request, merely asserts that the aging management plan for non-EQ inaccessible cable is insufficient, without specifying any reasons. One is then left to comb through 50 pages of discussion in an effort to glean why

that AMP is allegedly insufficient. Pilgrim Watch's failure to clearly identify any alleged deficiencies in its contention makes its contention inadmissible.

2. The New Contention is Not Supported with a Concise Statement of Alleged Fact or Expert Opinion

Pilgrim Watch's new contention is not supported with a concise statement of alleged fact or expert opinion, as required by 10 C.F.R. § 2.309(f)(1)(v). While Pilgrim Watch refers to this requirement on page 5 of its Request, its discussion simply refers to Mr. Blanch's Declaration (which says nothing other than that he supports the contention), Entergy's Application, "government documents," and the alleged insufficiency of the AMP at Indian Point. These vague references do not provide the requisite, concise statement of facts or expert opinion. A mere reference to documents, without any explanation of their implications or significance, does not provide an adequate basis for a contention. See Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

Moreover, the allegations elsewhere in Pilgrim Watch's Request that appear to take issue with sufficiency of the AMP for non-EQ inaccessible cable (which Entergy believes are in paragraphs 10-15 and 32 of PW's Request) are not supported by any facts or expert. Pilgrim Watch simply makes bald claims without one whit of support.

Because Pilgrim Watch has provided no tangible information, no expert opinion, and no substantive affidavits, the contention is inadmissible. Fansteel Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 N.R.C. 195, 203 (2003). See also South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 N.R.C. __, slip op. at 23 (Jan. 7, 2010) (affirming licensing board decision rejecting a contention because the expert's conclusory statements failed to challenge information in the application).

3. The New Contention Fails to Provide Sufficient Information Showing that a Genuine Dispute Exists On a Material Issue of Law or Fact

Pilgrim Watch's new contention is inadmissible because it is not supported by sufficient information to show that a genuine dispute exists with the Application on a material issue of law or fact, as required by 10 C.F.R. §§ 2.309(f)(1)(vi). Pilgrim Watch's arguments, largely based on its own unsupported reasoning, are insufficient to demonstrate a genuine material dispute with the Pilgrim AMPs for non-EQ inaccessible cable. Under the NRC's Rules of Practice, "a protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that such a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989) (quoting Conn. Bankers Ass'n v. Bd. of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980)).

Pilgrim Watch makes a number of claims challenging the sufficiency of the AMP for non-EQ inaccessible cable (which Entergy has attempted to identify seriatim below), but a cursory examination of these claims reveals that Pilgrim Watch has provided no support for the claims and has failed to sufficiently challenge the program as explained in the Application or GALL Report. Furthermore, some of these claims are now moot by the enhancements Entergy has made to its AMP for non-EQ inaccessible cable as provided in the LRA Supplement based on GALL Rev. 2.

Pilgrim Watch's assertion in paragraph 10 of its Request that Entergy has not demonstrated that the effects of aging will be adequately managed (PW Request at 9, ¶ 10) is vague and conclusory. Entergy committed to an AMP for non-EQ inaccessible cable that was consistent with the recommendations in GALL Rev. 1, and has now enhanced that AMP to address additional recommendations in GALL Rev. 2. As the Commission has held, such a

commitment provides reasonable assurance that the targeted aging effects will be adequately managed. Vermont Yankee, CLI-10-17 at 44-45. In light of this holding and Pilgrim Watch's failure to provide any explanation of, or support for, its claim, the assertion in paragraph 10 does not demonstrate any genuine material dispute with Entergy's Application.

Pilgrim Watch's assertion in paragraph 11 that Energy has failed to identify the location and extent of non-EQ inaccessible cables at Pilgrim (PW Request at 9, ¶ 11) does not raise a genuine dispute with the Application, because Pilgrim Watch does not identify any requirement in the NRC's rules requiring a license renewal applicant to specify the location of components, or the extent to which they are inaccessible.[35] Further, Pilgrim Watch provides no explanation why such information is necessary to determine whether the specific measures that Entergy has committed to implement are adequate.

Pilgrim Watch's assertion in paragraph 12 that Energy has failed to address specific recommendations in SAND96-0344 (PW Request at 10, ¶ 12) does not raise a genuine dispute with the Application, because Pilgrim Watch has failed to identify any specific recommendation that has been ignored. Pilgrim Watch refers to paragraph 32d of its Request (see id.), but that paragraph too fails to identify any specific recommendation that has been ignored. In addition, Pilgrim Watch ignores and fails to dispute the statements in the GALL Report indicating that the Section XI.E3 program (with which the Pilgrim AMP is consistent) considers the technical information and guidance in SAND96-0334. See GALL Rev. 1 at XI.E-7. See also GALL Rev. 2 at XI.E3-4. Thus, this claim does not demonstrate a genuine dispute with the Application.

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[35] As the GALL Report explains, "[e]lectrical cables and their required terminations (i.e., connections) are typically reviewed as a single commodity." GALL Rev. 1 at VI.A-1; see also NUREG-1800, Rev. 1, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, at 2.1-5, 2.1-13.

For much the same reason, Pilgrim Watch's assertion that Entergy has failed to address the recommendations in NUREG/CR-7000 (PW Request at 10, ¶ 13) does not demonstrate any genuine dispute with the Application. While Pilgrim Watch quotes portions of this report in paragraphs 34 and 35, it fails to identify specific recommendations that should be included in the AMP. In essence, the sections of NUREG/CR-7000 quoted by Pilgrim Watch indicate that underground cable environments need to be monitored, and that a cable insulation monitoring program should also be performed using certain types of tests. This is in fact what the Section XI.E3 AMP calls for. Indeed, the types of cable insulation tests described in NUREG/CR-7000 are the types called for in Section XI.E3 of both GALL Rev. 1 and GALL Rev. 2. Section XI.E3 of GALL Rev. 2 specifically states this AMP considers the technical information in NUREG/CR-7000 (GALL Rev. 2 at XI.E3-4), and Entergy has revised its AMP for non-EQ inaccessible cable to address the additional recommendations in GALL Rev. 2, including specifying dielectric loss (dissipation factor/power factor), AC voltage withstand, partial discharge, step voltage, time domain reflectometry, insulation resistance and polarization index, line resonance analysis, or other testing that is state-of-the-art at the time the test is performed, as examples of acceptable cable insulation tests. LRA Supplement at 8, 9.

Pilgrim Watch's claim in paragraph 14 of its Request – that there is no technical basis provided to support extension of operations using the existing non-EQ inaccessible cables without an adequate AMP (PW Request at 10, ¶ 14) – fails to demonstrate a genuine dispute with the Application because this paragraph simply presumes that Entergy's AMP for non-EQ inaccessible cable is inadequate, without specifying any reason or providing any support. Pilgrim Watch later claims that the "NRC agrees" that "there are no existing methods to assure operability short of visual inspection and/or replacement with cables designed for operation in a

wet or submerged environment." PW Request at 16, ¶ 27. However, the NRC presentation slides to which Pilgrim Watch refers as purported support for this claim (see PW Request at 16 n.10) say nothing of the kind.[36]

Pilgrim Watch's assertion in paragraph 15 (echoed in paragraph 32f) – that there is no technical basis provided to justify differences between programs for aging management of accessible cables and inaccessible cables (PW Request at 10, ¶ 15; PW Request at 23, ¶ 32f) fails to demonstrate a genuine dispute with the Application because it does not demonstrate any deficiency in either program. Obviously, the difference in these two programs is that accessible cable insulation can be directly inspected, and inaccessible cable insulation cannot. Pilgrim Watch provides no reason why different aging management programs cannot be applied to these two classes of cable.

Pilgrim Watch's assertion in paragraph 32a that "one- time inspection in 10 years is too infrequent" (PW Request at 21, ¶ 32a) fails to demonstrate a genuine material dispute with the Application for a multitude of reasons. First, the AMP for non-EQ inaccessible cable does not rely on any "one-time inspection," so Pilgrim Watch's claim does not even address the AMP in the Application. Rather, the AMP for non-EQ inaccessible cable relies on a combination of (1) periodic actions to prevent cables from being exposed to significant moisture, such as inspecting for water collection in cable manholes, and draining water, as needed; and (2) periodic testing to provide an indication of the condition of the conductor insulation. GALL Rev. 1 provides for an

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[36] It is well established that, in determining the admissibility of a contention, licensing boards are to "carefully examine[]" documents provided in support of a contention to determine whether they "supply an adequate basis for the contention." See, e.g., Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 N.R.C. 253, 265 (2004). A document put forth by a petitioner as the basis for a contention is subject to Board scrutiny, both as to the portions that support the petitioners' assertions and those that do not. See, e.g., Virginia Electric & Power Co. (Combined License Application for North Anna Unit 3), LBP-08-15, 68 N.R.C. 294, 334 n.207 (Aug. 15, 2008); Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 N.R.C. 61, 90 and n.30 (1996). See also id. at 88-89 (rejecting a contention where the document referenced by petitioner on its face failed to establish a disputed material issue).

inspection interval "based on actual plant experience with water accumulation in the manhole" and "at least once every two years, " and for insulation testing at a 10-year interval. GALL Rev. 1 at XI.E-8. GALL Rev. 2 similarly provides for the inspection frequency to be based on plant specific operating experience, but has increased the minimum inspection frequency to at least annually, and has increased the minimum frequency for insulation testing to at least once every six years. GALL Rev. 2 at XI.E3-2. Entergy has incorporated these recommendations into the AMP for non-EQ inaccessible cable. LRA Supplement at 8, 9.

Second, assuming that Pilgrim Watch is seeking to challenge the insulation testing frequency, Pilgrim Watch provides no basis for such a challenge. Pilgrim Watch asserts (without any support) that "corrosion/degradation is a rate process and the rate is not constant with time" (PW Request at 21, ¶ 32a), but corrosion is not even an aging effect applicable to cable insulation; and Pilgrim Watch provides no information that would support the claim of accelerating aging or the need for more frequent testing. Nor does Pilgrim Watch address or dispute the statements in both GALL Rev. 1 and GALL Rev. 2 that insulation degradation is a "slow process" making the recommended testing intervals adequate. GALL Rev. 1 at XI E-8; GALL Rev. 2 at XI.E3-2. Pilgrim Watch does not challenge this information, and therefore fails to genuinely dispute it.

Pilgrim Watch's assertion in paragraph 32b that the "programs lack specificity" (PW Request at 22, ¶ 32b) fails to demonstrate any genuine dispute with the Application. First, Pilgrim Watch's assertion appears to be making some claims that are unrelated to its contention. Pilgrim Watch's proposed contention, as set forth on page 1 of the PW Request, challenges only the AMP for non-EQ inaccessible cable. Paragraph 32b asserts that the "programs" lack specificity appears to challenge the program for accessible cable as well. Indeed, Pilgrim

Watch's complaint that reference to a "representative sample" is too vague (¶ 32b) does not relate to or challenge the AMP for non-EQ inaccessible cable because that phrase is not used anywhere in this AMP.

Consequently, Pilgrim Watch's assertion in paragraph 32b devolves solely to the complaint that the language in the GALL Report calling for "periodic actions" to prevent cables from being exposed to significant moisture, such as inspecting for water collection in cable manholes, and draining water, "as needed" is too vague. (See GALL Rev. 1 at XI.E-8; GALL Rev. 2 at XI.E3-2. This complaint does not demonstrate a genuine dispute with the Application because Pilgrim Watch simply ignores the additional language in the AMP indicating that the inspection intervals will be based on plant-specific operating experience, setting a minimum inspection frequency, and (with the issuance of GALL Rev. 2) requiring more frequent inspections based on evaluation of inspection results. Entergy's Application addresses each of these recommendations. Pilgrim Watch does not address these aspects of the program, and thus fails to raise any genuine dispute with their adequacy.

Pilgrim Watch's assertion in paragraph 32c – that the AMP for non-EQ inaccessible cable "does not provide for the fact that not all inaccessible cables are capable of inspection by manholes" (PW Request at 22, ¶ 32c) – does not demonstrate a genuine dispute with the Application because it mischaracterizes and fails to address the relevant features of the AMP. The AMP for non-EQ inaccessible cable calls for inspection of cable manholes for water collection, not inspection of all of the inaccessible cables. See LRA Supplement at 8, 9; GALL Rev. 2 at XI.E3-2. Because the cable beyond these points is inaccessible, the AMP provides for testing by proven methods capable of detecting deterioration of the insulation due to wetting or submergence.

If Pilgrim Watch's point is that these inspections cannot absolutely assure that cable will not be exposed to water between inspected manholes, its assertion still fails to demonstrate any genuine dispute with the application. Both GALL Rev. 1 and GALL Rev. 2 acknowledge that the inspection program "is not sufficient to assure that water is not trapped elsewhere in the raceways," but rather is "necessary to minimize the potential for insulation degradation." GALL Rev. 1 XI.E-7; GALL Rev. 2 at XI.E3-1. Thus, the program in fact recognizes the concern Pilgrim Watch raises. In order to address that concern, that same program goes on to provide for testing the condition of the conductor insulation for cables exposed to significant moisture. Id.; see also Application, App. B § B.1.19. Thus, Pilgrim Watch's concern fails to materially challenge the program put in place to detect potential insulation degradation for that inaccessible cable.

In paragraph 32d, Pilgrim Watch repeats its claim that the AMP for non-EQ inaccessible cable fails to address recommendations in SAND96-0344 (PW Request at 22, ¶ 32d), but fails to identify any specific recommendation that is ignored or provide any explanation why any additional action is needed. PW also quotes SAND96-0344 as stating that "[n]o currently available technique was identified as being effective in monitoring the electrical aging of medium-voltage power cables." PW Request at 22, ¶ 32d. This statement in a 14-year old report does not demonstrate any genuine dispute with Entergy's AMP for non-EQ inaccessible cable, or the current recommendations in the GALL Report, particularly since both the GALL Report and NUREG/CR-7000 have now both identified specific types of tests capable of monitoring the condition of cable insulation. Pilgrim Watch provides no information indicating that these specified tests are inadequate.

In paragraph 32e, Pilgrim Watch asserts that the non-EQ inaccessible and accessible cable programs are new programs for which there is no operating experience, and therefore, there is no basis to assume their capability. PW Request at 23, ¶ 32e. The adequacy of the AMP for accessible non-EQ cable is beyond the scope of Pilgrim Watch's contention, which as set forth on page 1 of the PW Request, only challenges the AMP for non-EQ inaccessible cable. With respect to the AMP for non-EQ inaccessible cable, this claim does not raise any genuine dispute with the AMP, or the recommendations in the GALL Report on which it is based. First, Pilgrim Watch provides no information indicating that the AMP will be ineffective. Further, that a program is new does not mean that it is inadequate. Clearly, the NRC Staff has been giving careful consideration to the development of an effective cable monitoring program for a number of years, including commissioning studies like NUREG/CR-7000 to study the effectiveness of available techniques. The GALL Report itself indicates that the recommended AMP for non-EQ inaccessible cable builds off these studies.

> This AMP considers the technical information and generic communication guidance provided in NUREG/CR-5643; IEEE Std. 1205-2000; SAND96-0344; EPRI 109619; EPRI 103834-P1-2; NRC Information Notice [IN] 2002-12; NRC GL 2007-01; NRC GL 2007-01 Summary Report; NRC Inspection Procedure, Attachment 71111.06, Flood Protection Measures; NRC Inspection Procedure, Attachment 71111.01, Adverse Weather Protection; RG 1.211 Rev 0; DG-1240; and NUREG/CR-7000.

GALL Rev. 2 at XI.E3-4. In light of this identified and substantial basis for the AMP, Pilgrim Watch's bald, unsupported assertion raises no genuine dispute.

In paragraph 32f, Pilgrim Watch repeats its claim that there is no basis to distinguish accessible and inaccessible cable (already addressed above), but also suggests that the AMP for non-EQ inaccessible cable fails to include certain insulation testing methods identified in Generic Letter 2007-01. PW Request at 23-24, ¶ 32f. This claim too fails to raise any genuine

dispute with the Application. The tests identified in Generic Letter 2007-01 are the types of tests recommended by both GALL Rev. 1 and GALL Rev. 2 and specified in Entergy's AMP. See LRA Supplement at 8, 9. Pilgrim Watch does not provide any information indicating that the tests identified in the AMP are inadequate.

Finally, Pilgrim Watch's assertion in paragraph 32g – that the NRC and Pilgrim did not require or include a program to manage low-voltage cable (PW Request at 24, ¶ 32g) – does not demonstrate a genuine dispute with the Application, because (in addition to being unsupported) this claim is moot. GALL Rev. 2 revised the recommended AMP for non-EQ inaccessible cable to extend it to low-voltage power cable, and Entergy modified its AMP accordingly. LRA Supplement at 8, 9.

Pilgrim Watch also raises multiple challenges to the NRC Staff SER (PW Request at 24-29). The Commission's rules do not permit contentions challenging the NRC Staff's safety evaluation.

> Apart from NEPA issues, which are specifically dealt with in the rule, a contention will not be admitted if the allegation is that the NRC staff has not performed an adequate analysis. With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC Staff performance.

54 Fed. Reg. at 33,171 (footnote omitted), citing Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 N.R.C. 777, 807, review declined, CLI-83-12, 18 N.R.C. 1309 (1983).

> The adequacy of the applicant's license application, not the NRC Staff's safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the [content of the Safety Evaluation Report] are not cognizable in a proceeding.

69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004) (citation omitted). As the Commission has therefore held, "[t]he NRC has not, and will not, litigate claims about the adequacy of the Staff's safety

review in licensing adjudications." Oyster Creek, CLI-08-23, 68 N.R.C. at 476 (footnote omitted). Thus, a contention challenging the adequacy of the Staff's SER is inadmissible. U.S. Army (Jefferson Proving Ground Site), LBP-06-27, 64 N.R.C. 438, 456 (2006).

4. The New Contention Raises Certain Issues that are Immaterial to and Outside the Scope of this Proceeding

While Pilgrim Watch purports to challenge the AMP for non-EQ inaccessible cable, much of the information in PW's Request concerns Pilgrim's current compliance with NRC requirements, not the adequacy of the AMP in the Application. In particular, much of Pilgrim Watch's new contention is taken from its 2.206 Petition, which is obviously focused on activities under the current license.

For example, Pilgrim Watch's request refers to a July 2010 inspection report[37] in which the NRC Staff noted its observance of water in certain manholes containing non-safety related cable. Despite the fact that the NRC inspection report found no regulatory requirement violation associated with this observation (see PW Request at 52, Attachment C), Pilgrim Watch asserts that this Report demonstrates that both "NRC oversight and Entergy's compliance are inadequate to provide 'reasonable assurance' that these electric wires will function when required now. . . ." PW Request at 18 (emphasis added). This inspection finding pertains to whether Entergy should be taking steps under its current license to keep cable dry, and does not relate to the AMP for non-EQ inaccessible cable, which Entergy has not committed to implement until 2012.[38] While Entergy issued a cable reliability procedure on December 31, 2009 in response to the NRC

[37] ADAMS Accession No. ML102100150. This Inspection Report was discussed in Supplement (1) to Pilgrim Watch 2.206 Petition Regarding Inadequacy of Entergy's Management of Non-Environmentally Qualified Inaccessible Cables & Wiring at Pilgrim Station (Aug. 6, 2010) (ADAMS Accession No. ML102210411). Pilgrim Watch has thus known of this Inspection Report for months.

[38] Letter from S. Bethay to U.S. NRC, License Renewal Application Amendment 8 (Sept. 13, 2006) (ADAMS Accession No. ML062650072) Attachment A at 3.

Staff's recommendations for monitoring under current licenses, those actions are not at issue in this proceeding.

Pilgrim Watch also asserts (without any support) that "Pilgrim has a history of submerged and/or wetted cables" (PW Request at 8); "[m]ost electrical cables at [Pilgrim] have been exposed to significant moisture over the past 40 years since initial construction in the 1960's" (PW Request at 14); and "[d]uring installation these wires were likely damaged, meaning scrapes and other damage likely occurred in the surface of the insulation and possibly deeper" (PW Request at 17, footnote omitted). All of these issues relate to the current period of Pilgrim's operation, not the period of extended operation or the programs identified in the Application that will be in place to manage the effects of aging, and are therefore beyond the scope of this proceeding.

In addition, Pilgrim Watch asserts that the NRC has "utterly failed to say that failed or failing cables should be replaced or otherwise updated to bring the cables into compliance with NRC Regulations" (PW Request at 13); the NRC has "not require[ed] plants to take any action" to address submergence of inaccessible cables (PW Request at 10-11); the NRC has not ordered any corrective action (PW Request at 13); and that the NRC and Entergy failed to include a program "to manage low voltage cables for the <u>present period</u> . . ." (PW Request at 24, emphasis added). All of these issues pertain to Pilgrim's CLB and say nothing of the AMPs identified in the Application and evaluated in the NRC Staff's SER.

Pilgrim Watch quotes verbatim from the conclusion of NUREG/CR-7000, which states that in-service testing of safety-related systems can demonstrate the function of the cables under test conditions, but does not provide specific information on the status of cable aging degradation processes nor the physical integrity and dielectric strength of its insulation and jacket materials.

PW Request at 30. This discussion relates to in-service testing conducted under current operating licenses (which is not the same as the condition monitoring tests specified in the GALL Report and AMP), and is therefore not an issue within the scope of this proceeding.

Thus, Pilgrim Watch raises a host of issues that are outside the scope of this proceeding and immaterial to the findings. Such issues do not meet the requirements in 10 C.F.R. §§ 2.309(f)(1)(iii) and (iv) and are not admissible in this proceeding. See 10 C.F.R. § 54.30. See also Florida Power & Light Co. (Turkey Point Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 7 (2001) ("License renewal reviews are not intended to 'duplicate the Commission's ongoing reviews of operating reactors.'"); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 22 (1998) ("with respect to license renewal, under the governing regulations in 10 CFR Part 54, the review of license renewal applications is confined to matters relevant to the extended period of operation requested by the applicant."); Millstone, CLI-04-36, 60 N.R.C. at 638 ("a license renewal proceeding is not the proper forum for the NRC to consider operational issues.").

IV. CONCLUSION

In sum, Pilgrim Watch's Request should be denied because Pilgrim Watch has not met the standards for reopening the record, has not met the standards for raising a late contention, and has not met the standards for an admissible contention. The Information Notice that Pilgrim Watch uses as purported justification for this late filing appears to be nothing more than a pretext for raising issues that could have been pled at the outset of this proceeding.

For all of the foregoing reasons, Pilgrim Watch's Request should be denied.

/Signed electronically by David R. Lewis/

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Dated: January 7, 2011

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that "Entergy's Answer Opposing Pilgrim Watch Request for Hearing on a New Contention" was provided to the Electronic Information Exchange for service on the individuals below, this 7th day of January, 2011. In addition, a copy of this pleading was provided by email to the persons designated by an asterisk below.

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