

January 13, 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’S MOTION IN LIMINE TO EXCLUDE FROM EVIDENCE  
PILGRIM WATCH’S SAMA REMAND PRE-FILED TESTIMONY AND EXHIBITS**

Pursuant to 10 C.F.R. § 2.323, Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively, “Entergy”) file the instant motion *in limine* to exclude as evidence Pilgrim Watch SAMA Remand Pre-Filed Testimony (“PW Statement”) as well as many of Pilgrim Watch’s proposed exhibits (“Exhibits”) filed on January 3, 2011.<sup>1</sup> Although captioned as pre-filed testimony, the PW Statement is a statement of position and not expert testimony, because it is merely Pilgrim Watch argument unsupported by a qualified witness. Additionally, many of PW’s Exhibits and portions thereof, are clearly beyond the scope of Pilgrim Watch Contention 3 as remanded by the Commission. Indeed, these Exhibits often concern claims that the Commission and the Board have expressly ruled are beyond the scope of the issues remanded for hearing. Also, certain portions of the Exhibits are unsupported by a

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<sup>1</sup> Entergy also requests that the admission of NRC Exhibits NRC000003 through NRC000007 be limited as described in Section IV of this Motion.

qualified witness. Exhibits that are beyond the scope of Contention 3 or unsupported by a qualified witness should be excluded from the record as irrelevant, unsupported, or otherwise inadmissible for the reasons set forth in more detail later in this Motion.<sup>2</sup>

## **I. BACKGROUND**

On March 26, 2010, the Commission issued a Memorandum and Order<sup>3</sup> reversing in part, and affirming in part, the Board's decision to dismiss Contention 3.<sup>4</sup> In CLI-10-11, the Commission reversed the summary disposition of the portion of Contention 3 that had raised meteorological modeling issues. The Commission therefore remanded Contention 3, "as limited by [its] ruling," to the Board for hearing.<sup>5</sup> The Commission further explained in its August 27, 2010 Memorandum and Order:<sup>6</sup>

[T]he issue on remand focuses on the adequacy of the atmospheric dispersion modeling in the Pilgrim SAMA analysis, not the methodology or underlying assumptions used for translating the atmospheric dispersion modeling results into economic costs.

CLI-10-22 at 7-8 (emphasis in original).

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<sup>2</sup> Pursuant to 10 C.F.R. § 2.323(b), counsel for Entergy has communicated with Mary Lampert of Pilgrim Watch, who advised counsel that Pilgrim Watch objects to this Motion. Counsel for Entergy has also communicated with counsel for the NRC Staff, who advised that the NRC would state its position in its response to the motion, upon having the opportunity to review the Motion.

<sup>3</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. \_\_\_, slip op. at 39 (Mar. 26, 2010) ("CLI-10-11").

<sup>4</sup> Entergy Nuclear generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-07-13, 66 N.R.C 131 (2007).

<sup>5</sup> CLI-10-11 at 3.

<sup>6</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-22, 72 N.R.C. \_\_\_, slip op. at 7-8 (Aug. 27, 2010) ("CLI-10-22").

Pursuant to the Commission's Orders, the Atomic Safety and Licensing Board's ("Board") issued its September 23, 2010 Order<sup>7</sup> setting the schedule for submissions of pre-filed testimony on the meteorological issues remanded in CLI-10-11. The Board set January 3, 2011 as the date for the filing pre-filed testimony and exhibits and February 1, 2011 as the date for filing of rebuttal testimony and exhibits. The September 23 Order also further clarified that the scope of the issue in this proceeding is

whether the meteorological modeling in the Pilgrim SAMA analysis is adequate and reasonable to satisfy NEPA, and whether accounting for the meteorological patterns/issues of concern to Pilgrim Watch could, on its own, credibly alter the Pilgrim SAMA analysis conclusions on which SAMAs are cost-beneficial to implement.

Sept. 23 Order at 1.

On January 3, 2011, Pilgrim Watch submitted its Statement (erroneously identified as pre-filed testimony) and its proposed Exhibits. PW's Statement includes a collage of arguments previously submitted by Pilgrim Watch without regard to the scope of this proceeding. Similarly, in total disregard of the Commission and Board Orders, many of PW's proposed Exhibits clearly concern issues beyond the scope of this proceeding as defined by those Orders.

## **II. THE PILGRIM WATCH STATEMENT IS NOT EVIDENCE**

Pilgrim Watch's Statement is captioned "Pilgrim Watch SAMA Remand Pre-Filed Testimony." However, the document is not testimony. Rather, it is argument by Pilgrim Watch setting forth its statement of position. The PW Statement cannot be considered pre-filed testimony or evidence of any kind because it is not sponsored by a qualified expert with the

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<sup>7</sup> Order (Confirming Matters Addressed at September 15, 2010, Telephone Conference) (Sept. 23, 2010) ("Sept. 23 Order").

“knowledge, skill, experience, training, or education to testify.” Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 N.R.C. 21, 27 (2004) (citations omitted), citing Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 N.R.C. 453, 475 (1982). Ms. Mary Lampert has provided no evidence that she is an expert concerning the technical areas that form the bases of the arguments advanced in the PW Statement. Accordingly, the PW Statement is merely Pilgrim Watch’s statement of its position and Entergy objects to the admission of the PW Statement, including its appendices, as evidence in this proceeding.

**III. PW EXHIBITS AND PORTIONS THEREOF THAT CONCERN FACTS OUTSIDE THE SCOPE OF THIS PROCEEDING OR THAT ARE UNSUPPORTED BY A QUALIFIED WITNESS SHOULD BE EXCLUDED FROM EVIDENCE**

**A. Egan Declaration, Exhibit PWA00001**

Pilgrim Watch relies on the June 2007 summary disposition declaration of Dr. Bruce Egan, which asserts in part that Entergy should “obtain and properly use sufficient meteorological data in emergency response planning.” Egan Declaration at ¶ 13, Item 20 (Exhibit PWA00001). The Commission, however, ruled that the emergency planning issues addressed in Mr. Egan’s Declaration are beyond the scope of this proceeding.

A key focus of Mr. Egan’s declaration is the issue of emergency planning – the need to provide accurate, “real time” projections of the location and duration of potential public exposures to determine whether, when, and where particular population groups may need to be evacuated. These are issues beyond the scope of SAMA.

CLI-10-11 at 20 (emphasis added). Accordingly, to the extent that Mr. Egan’s statements go to the adequacy of the Pilgrim Station’s emergency planning and not the data used in the SAMA analysis, these statements must be excluded as evidence in this proceeding. For example, Mr.

Egan claims that “highly competent, atmospheric dispersion simulation methodologies” are required to make “important decisions about when population groups should be evacuated from any given area and for what population groups shelter-in-place options should be recommended.” Egan Declaration at ¶ 14. Dr. Egan also claims that “models used for emergency planning or evacuation purposes must be based upon good science” and that “models used for developing evacuation plans or in implementing evacuation plans need to provide realistic projections of expected ambient air concentrations and dosages that the public might be subjected to.” Id. Dr. Egan further claims that a state of the art monitoring system could be employed to track a plume in real time to assist the evacuation process. Id. at ¶ 15. These and other assertions of Dr. Egan that go to the adequacy of Pilgrim Station’s emergency planning and not the data used in the SAMA analysis must be excluded from evidence in accordance with the Commission’s remand Order.

**B. Beyea Declaration and Report, Exhibit PWA00002**

Pilgrim Watch asserts that “using a variable trajectory model, the projected costs could run from \$31 to >\$100 Billion dollars.” PW Statement at 5. This assertion is based on the May 24, 2007 summary disposition Declaration of Dr. Jan Beyea (Exhibit PW00002), which serves as only a cover page to excerpts from Dr. Beyea’s May 25, 2006 Report to The Massachusetts Attorney General on The Potential Consequences of a Spent-Fuel-Pool Fire at the Pilgrim or Vermont Yankee Nuclear Plant (“Spent Fuel Fire Report”). The Spent Fuel Fire Report was filed in support of the Massachusetts Attorney General’s contention concerning spent fuel fires. The cover Declaration of Dr. Beyea merely confirms the “quantitative contents” of the Spent Fuel Fire Report and not the truth of the statements contained therein. Additionally, the cover Declaration neither discusses Pilgrim Watch Contention 3 nor provides any explanation of any

asserted relevance of the Spent Fuel Fire Report to the meteorological claims raised in Pilgrim Watch Contention 3.

The Commission has already rejected the spent fuel pool fire issues addressed in the Beyea Declaration and Spent Fuel Fire Report as beyond the scope of this proceeding:

The majority therefore found that Mr. Beyea's report on potential releases from spent fuel pool fires had no bearing on the SAMA contention (SAMAs do not encompass spent fuel pool accidents). The majority further stressed that the Beyea report largely rested on cancer risk claims that went well beyond the scope of the issues in Contention 3, including distinctly new claims that the "dollar equivalent of cancers" should be estimated differently in SAMA analysis.

For the reasons the Board majority gave, we agree that nearly all of Mr. Beyea's report is not relevant to the SAMA issues in Contention 3.

CLI-10-11 at 24 (footnotes omitted).

Therefore, to the extent that the assertions in Dr. Beyea's Declaration and the Spent Pool Fire Report go to issues beyond the meteorological inputs challenged in Contention 3, these assertions must be excluded as evidence in this proceeding. For example, included in the Exhibit PWA00002 excerpts is Table 5 of the Spent Fuel Fire Report, which contains estimated economic consequences allegedly resulting from a radioactive release caused by a spent fuel pool fire referred to in Pilgrim Watch's Statement. Such claims have no bearing on the meteorological inputs at issue in Contention 3.

Moreover, to the extent that Pilgrim Watch relies upon a specific portion of either the Beyea Declaration or Spent Fuel Fire Report that addresses meteorological patterns or phenomena in the New England coastal area, neither Pilgrim Watch nor Dr. Beyea provides any basis to show that Dr. Beyea is qualified by training or experience as a technical expert to review, analyze, or express an opinion on any of the meteorological or plume transport and

modeling issues relevant to Contention 3. See Catawba, CLI-04-21, 60 N.R.C. at 27. Dr. Beyea did not provide a supporting affidavit for Pilgrim Watch on Contention 3, and there is no indication that he has any familiarity with, or expertise concerning, the Contention 3 meteorological or plume transport and modeling issues. Non-expert testimony on a technical issue is accorded no weight. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-55, 20 N.R.C. 1646, 1651 (1984); see Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 N.R.C. 346, 367 (1983) (non-expert cannot sponsor technical analyses for admission as evidence). Therefore, the portions of the Spent Fuel Fire Report that address meteorological patterns or phenomena in the New England coastal area should be excluded from evidence because Dr. Beyea is unqualified to support them.

Therefore, taken together, Exhibit PWA00002 (the Beyea Declaration and Spent Fuel Fire Report) should be excluded *in toto* from the evidentiary record of this proceeding.

**C. Chanin Declaration and Blog, Exhibits PWA00003 and PWA00004**

Exhibits PWA00003 and PWA00004 include the June 5, 2007 summary disposition Declaration of David Chanin, and supporting material. Pilgrim Watch relies on these exhibits for the assertion that “the MACCS2 code used by Entergy is incapable of providing an accurate estimate of economic consequence” and that MACCS2 is not “quality assured.” PW Statement at 15-16 and 65. These exhibits must be excluded because, as clearly and repeatedly stated in the Commission and Board Orders discussed in Section I, economic consequences are beyond the scope of this hearing. Moreover, not only are the assertions beyond the scope of this proceeding, the Board majority has already rejected the documents originating with Mr. Chanin:

If, in any event, we were to consider the proffered material originating with Mr. Chanin, we find that none of the statements attributed to or made by Mr. Chanin indicate any specific error or flaw in MACCS2 or any input or assumptions made by the Applicant in its use in this proceeding, and therefore offer no information regarding the three specific input errors alleged.

LBP-07-13, 66 N.R.C. at 149 (footnote omitted). The contents of Mr. Chanin's Declaration and supporting documents are unchanged and, therefore, again fail to address the meteorological modeling and inputs that Pilgrim Watch Challenges in Contention 3.

The Chanin Declaration and supporting documents are, therefore, irrelevant to scope of this proceeding as defined by the Commission in its Orders and accordingly should be excluded from the evidentiary record.

**D. Emergency Planning, Exhibits PWA00005 and PWA00013**

Pilgrim Watch claims to have "presented evidence" supporting its challenge to the meteorological inputs used in the SAMA analysis. PW Statement at 4-5. The evidence to which Pilgrim Watch refers consists of the materials authored and referred to by Mr. Richard Rothstein in his summary disposition Declaration (Exhibit PWA00005). However, Pilgrim Watch has not submitted as a pre-filed exhibit the materials referenced in PWA00005, entitled Meteorological and Air Quality Modeling Considerations applicable for Various NRC Regulatory Licensing Programs (ADAMS Accession No. ML070440358). Therefore, the referenced materials cannot be considered evidence in this proceeding.<sup>8</sup>

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<sup>8</sup> "Any cited exhibits that are not provided in the preceding format shall not be considered to have been submitted as evidence in the proceeding. Mere reference to a document, even if by ADAMS accession number, is not appropriate. Relevant parts of any document to be relied upon as evidence must be submitted as directed above." Order (Regarding Telephone Conference and Direction on Pre-Filed Evidentiary Material) (Nov. 23, 2010) at 3; see also CLI-10-11 at 25 n.97 ("For future proceedings, we make clear that any documents or other evidence referenced in parties' briefs must be available in the case record. Licensing Boards and the Commission should not be expected to consider items never provided on the record.").



Furthermore, the Rothstein materials fail to address the appropriateness of the data used in the SAMA analysis. Rather, they impermissibly challenge existing measures for emergency planning. As stated above, the Commission ruled that “emergency planning” and “real time projections” for population evacuation purposes are “issues beyond the scope of SAMA.” CLI-10-11 at 20. Furthermore, the Board majority has already rejected the Rothstein Declaration and its supporting materials as beyond the scope of the SAMA meteorological and transport and modeling issues raised in Contention 3:

[Pilgrim Watch submits] [c]ertain correspondence from Richard Rothstein (largely dated in 2005 and 2006, with the most recent being an e-mail dated January 2007), in which he addresses his general concerns with meteorological and evacuation modeling, but none of which addresses any specific portion of the Applicant’s SAMA modeling or any potential flaws or errors in the SAMA analysis. Thus this material is unresponsive of an opposition to the Motion for Summary Disposition because it fails to identify any material fact at issue regarding the SAMA analysis.

LBP-07-13, 66 N.R.C. at 149. Because the assertions in the Rothstein Declaration go to issues beyond the meteorological inputs challenged in Contention 3, Exhibit PWA00005 must be excluded from the evidentiary record for this proceeding.

Similarly, the DOE Meteorological Monitoring guide (Exhibit PWA00013)<sup>9</sup> relied upon by Pilgrim Watch to assert that the “straight-line Gaussian models could not only underestimate the consequences of a release, but also can incorrectly identify locations where higher concentrations can occur” (PW Statement at 31) solely addresses meteorological modeling for the purposes of emergency planning. The quote in its entirety reads:

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<sup>9</sup> Chapter 4 of Meteorological Monitoring, of guide DOE/EH-0173T, Environmental Regulatory Guide for Radiological Effluent Monitoring and Environmental Surveillance (“DOE Report”).

For emergency response applications, which require real-time meteorological measurements for diagnostic consequence assessment evaluations, and weather forecasting information for prognostic consequence assessment determinations, straight-line Gaussian transport and dispersion models are inappropriate for facilities that are located in valleys, near coastlines or mountains, and on large sites with varying terrain. At some of the DOE sites with this type of topographic setting, there are significant radiological and chemical hazards in multiple locations. In these settings, strictly applied straight-line Gaussian models could not only underestimate the consequences of a release, but also can incorrectly identify locations where higher concentrations can occur.

DOE Report at 4-6 (emphasis added). Indeed, the entire content of the DOE Report addresses emergency planning, and not the SAMA meteorological issues disputed in this proceeding.

Consequently, the DOE Report (PWA Exhibit 00013) must also be excluded from the evidentiary record in this proceeding as irrelevant.

**E. Economic Consequences and Cost Estimates, Exhibits PWA00008, PWA00009, and PWA00015**

Disregarding the Commission's and Board's Orders on the limited scope of this hearing, Pilgrim Watch offers a number of other exhibits (in addition to PWA00002, PWA00003, PWA00004 discussed above) to support its various economic consequences claims. See, e.g., PW Statement at 38, arguing for an alternative method for calculating consequences. Because economic consequence issues are beyond the scope of this hearing, these documents are also beyond the scope of this hearing.

The materials in Exhibits PWA00008, PWA00009, and PWA00015 do not address any of the meteorological patterns or issues challenged by Contention 3, but instead challenge the calculation of economic consequences.<sup>10</sup> For example, PWA00008 is an entire presentation on

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<sup>10</sup> B. Reichmuth, *et al.*, "Economic Consequences of a Rad/Nuc attack: Cleanup Standards Significantly Affect Cost," Pacific Northwest National Laboratory, 2005 (Exhibit PWA00008); R. Luna, "Survey of Costs Arising from Potential Radionuclide Scattering Events," Sandia National Laboratories, WM2008 Conference (Feb. 2008)

the “Economic Consequences of a Rad/Nuc Attack.” Exhibit PWA00008 at 1. The presentation addresses clean up standards, economic consequence evaluation, evacuation costs, and decontamination costs, and makes no mention of any of the meteorological issues that are part of this proceeding. Similarly, PWA00009 discusses cleanup cost estimation over the last thirty years and the dependence of cost estimates on population density, but fails to address the meteorological matters at issue in Contention 3. Pilgrim Watch also submits a wholly irrelevant report on a 1987 radiological accident in Goiania, Brazil (Exhibit PWA00015) as an example of a failure to properly consider the cost of cleanup. However, economic inputs and cost calculations are beyond the scope of this proceeding,

As such, all three Exhibits are beyond the scope of this proceeding and should be excluded from the evidentiary record.

**F. The Spengler and Keeler Report, Exhibit PWA00011**

Pilgrim Watch Exhibit PWA00011 consists of excerpts from J.D. Spengler and G.J. Keeler, “Feasibility of Exposure Assessment for the Pilgrim Nuclear Power Plant” (May 12, 1988) (“Spengler Report”). While Entergy does not object to those portions of the Spengler Report that discuss the sea breeze phenomena in the vicinity of the Pilgrim Station, portions of the Report concern a retrospective epidemiological investigation of releases occurring during normal plant operation. See, e.g., Summary Findings 2 and 3 at pp. 1-2, Section 8.5 at p. 31, and portions of Section 10.1 at pp. 37-38. These portions of the Spengler Report go beyond the meteorological inputs challenged in Contention 3 and should be excluded from the evidentiary record in the proceeding.

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(Exhibit PWA00009); and, “Revisiting Goiania: Toward a Final Repository for Radioactive Waste,” IAEA Bulletin 1993 (Exhibit PWA00015).

**G. Dr. Lyman, MAAP Code-Lessons Learned and Emergency Dose Assessment, Exhibits PWA00012 and PWA00019**

In the PW Statement, Pilgrim Watch's relies on E. Lyman, "A Critique of The Radiological Consequence Assessment Conducted in Support of The Indian Point Severe Accident Mitigation Alternatives Analysis" (Nov. 2007) ("Lyman Report") (Exhibit PWA00012) to challenge the source term generated by Entergy using the MAPP Code for use in the Pilgrim SAMA analysis. However, as the Commission ruled in its March 26, 2010 Order, Contention 3 as pled by Pilgrim Watch does not challenge source term:

Contention 3 as submitted and admitted did not include specific challenges to the Pilgrim SAMA analysis's consideration of source term magnitude, timing, duration and energy of release.

CLI-10-11 at 33 n.23. Consequently, the Lyman Report's discussion of the source term used by Entergy is not relevant to Contention 3 and must be excluded from the record in this evidentiary proceeding.<sup>11</sup> Likewise, the last page of the NRC 2009 Dispersion Modeling Complex Terrain presentation (Exhibit PWA00019) also addresses source term, and Entergy objects to entry of this portion of Exhibit PWA00019 into the evidentiary record for this proceeding.

The Lyman Report also challenges the population dose conversion factors used to estimate the cost of health effects generated by radiation exposure. However, as discussed above, challenges to economic cost estimates used for SAMA analysis are beyond the scope of this proceeding on remand. Accordingly, the Lyman Report challenges to SAMA economic cost estimates should be excluded from the evidentiary record for this proceeding.

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<sup>11</sup> Similarly, as noted in Entergy's Initial Statement of Position on Pilgrim Watch (Jan. 3, 2011) at 1 n.2, Entergy believes that the "Testimony of Dr. Kevin R. O'Kula on Source Term Used in the Pilgrim Nuclear Power Station Severe Accident Mitigation Alternatives (SAMA) Analysis" (ENT000012) submitted in response to Board Question No. 2 in the Appendix of the Board's Sept. 23 Order is not relevant to Contention 3.

Finally, Pilgrim Watch relies on the Lyman Report to argue against the use of mean consequence values used in the SAMA analysis.<sup>12</sup> These portions of the Lyman Report must be excluded from evidence in this proceeding because the Board majority has unequivocally held that “the mean consequence values issue was not timely raised and therefore the issue will not be entertained by the Board during the evidentiary hearing on Contention 3.” Order (Ruling on Timeliness of Mean Consequence Issue) (Nov. 23, 2010) at 1-2.

Taken together, the Lyman Report contains nothing relevant to any issue within the scope of this proceeding on Contention 3 and should be excluded from the evidentiary record in its entirety.

#### **H. Generic Challenges to Probabilistic Modeling, Exhibits PWA00014 and PWA00020**

Pilgrim Watch clearly goes beyond the meteorological matters at issue in this proceeding and addresses issues that it expressly acknowledges are beyond the scope of this proceeding. PW Statement at 50. For example, Pilgrim Watch addresses issues that it considers “Beyond Meteorology,” which include: (1) Probabilistic Modeling; (2) Amount of Radioactive Release – Size of Accident; (3) Core Release; (4) Spent Fuel Pool Release, (5) Use of the MACCS2 Code; (6) Cleanup/Decontamination, Health and Other Costs; and (7) Evacuation Time Estimates. These issues exceed the scope of this proceeding. Pilgrim Watch attaches proposed exhibits that it relies upon for this out-of-scope discussion. The Exhibits supporting these out-of-scope arguments go beyond the scope of the meteorological matters disputed in this proceeding and should therefore be excluded from the evidentiary record.

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<sup>12</sup> Lyman Report at 2.

In addition to the Pilgrim Watch exhibits already discussed above, Pilgrim Watch relies upon the April 2010 report by Kamiar Jamali (Exhibit PWA00014) (“Jamali Report”), which offers a generic attack on probabilistic modeling. The Jamali Report discusses the limitations of probabilistic modeling and does not address the appropriateness of the data used in the SAMA analysis. Pilgrim Watch also offers as evidence for its generic attack on probabilistic modeling, the procedures for performing a probabilistic risk assessment at the Kalinin Nuclear Power Station in the Russian Federation (Exhibit PWA00015). Pilgrim Watch merely cites to the entire report without any additional explanation, and again there is no connection between the Exhibit and the alleged deficiencies in the SAMA analysis.

The Board rejected the portion of Contention 3 challenging the use of probabilistic modeling:

[T]o the extent that any part of the contention or basis may be construed as challenging on a generic basis the use of probabilistic techniques that evaluate risk, we find any such portion(s) to be inadmissible. The use of probabilistic risk assessment and modeling is obviously accepted and standard practice in SAMA analyses.

Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 340 (2006) (footnote omitted). Both Exhibits are therefore beyond the scope of this proceeding and should be excluded from the evidentiary record.

#### **IV. NRC STAFF EXHIBITS**

The NRC Staff submitted as pre-filed exhibits five documents that had been previously submitted by the parties in this proceeding. These are Pilgrim Watch’s contention and

supporting documents,<sup>13</sup> the answers to Pilgrim Watch's contention filed by Entergy and the Staff,<sup>14</sup> the report of Washington Safety Management WSMS-TR-07-0005, Revision 1, filed in support of Entergy's Motion for Summary Disposition,<sup>15</sup> and Dr. Egan's Declaration filed in opposition to Entergy's Motion for Summary Disposition.<sup>16</sup> These exhibits are identified by Staff's witness Nathan E. Bixler in response to a question asking Mr. Bixler what he reviewed to prepare his testimony. Based on conversation with counsel for the Staff, Entergy understands that the Staff is offering these exhibits (NRC000003 through NRC000007) for the limited purpose of showing Mr. Bixler's familiarity with, and knowledge of, the issues in this proceeding, and not for the truth of the matter asserted in the exhibits.<sup>17</sup> Entergy does not object to the admission of these exhibits for this limited purpose and agrees with counsel for the Staff that their admission should be so limited. In particular, Pilgrim Watch's contention and supporting materials are not admissible for the truth of the matter asserted, for they contain Pilgrim Watch's unqualified assertions on a wide range of topics, most of them beyond the scope of this proceeding.<sup>18</sup>

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<sup>13</sup> Request for Hearing and Petition to Intervene (May 25, 2006) (Exhibit NRC000003).

<sup>14</sup> Entergy's Answer to the Request for Hearing and Petition to Intervene by Pilgrim Watch and Notice of Adoption of Contention (June 26, 2006) (Exhibit NRC000004); NRC Staff's Response to Request for Hearing and Petition to Intervene Filed by Pilgrim Watch (June 19, 2006) (Exhibit NRC000005).

<sup>15</sup> WSMS-TR-07-0005, Revision 1, "Radiological Dispersion and Consequence Analysis Supporting Pilgrim Nuclear Station Severe Accident Mitigation Alternative Analysis" (May 2007) (Exhibit NRC000006).

<sup>16</sup> Declaration of Bruce A. Egan, Sc.D., CCM, in Support of Pilgrim Watch's Response Opposing Entergy's Motion for Summary Disposition of Pilgrim Watch Contention 3 (June 20, 2007) (Exhibit NRC000007).

<sup>17</sup> NRC Staff Testimony Of Nathan E. Bixler And S. Tina Ghosh Concerning The Impact Of Alternative Meteorological Models On The Severe Accident Mitigation Alternatives Analysis (Jan. 3, 2011) at A5a. Other than in Answer A5a, Mr. Bixler does not refer to these documents in his testimony.

<sup>18</sup> The other four exhibits (NRC000003 through NRC000007) also contain much information beyond the scope of this proceeding.

## V. CONCLUSION

For the foregoing reasons, Pilgrim Watch's Exhibits and portions of Exhibits that concern issues outside the scope of this remanded proceeding or that are unsupported by a qualified witness and Pilgrim Watch's Statement should be excluded from the evidentiary record for this proceeding.

Respectfully Submitted,

[Signed Electronically By Paul A. Gaukler]

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Dated: January 13, 2011



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(Pilgrim Nuclear Power Station)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of “Entergy’s Motion In Limine to Exclude from Evidence Pilgrim Watch’s SAMA Remand Pre-Filed Testimony and Exhibits” were provided to the Electronic Information Exchange for service on the individuals below, this 13<sup>th</sup> 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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