**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of Docket # 50-293-LR

Entergy Corporation

Pilgrim Nuclear Power Station

License Renewal Application January 31, 2011

**PILGRIM WATCH REPLY TO ENTERGY'S MOTION TO STRIKE PORTIONS OF PILGRIM WATCH'S REPLY TO ENTERGY'S AND THE NRC STAFF'S ANSWERS OPPOSING PILGRIM WATCH'S REQUEST FOR HEARING ON A NEW CONTENTION (O1.24.11)**

Pilgrim Watch opposes *Entergy's Motion To Strike Portions Of Pilgrim Watch's Reply To Entergy's And The NRC Staff's Answers Opposing Pilgrim Watch's Request For Hearing On A New Contention* filed by Entergy January 24, 2011.

Entergy Motion raises two unfounded complaints:

- PW's Reply raises new, impermissible arguments and factual assertions;
- PW made scurrilous, ad hominem attacks on NRC Staff

## I. The Factual Assertions in PW's Reply and Blanch Affidavit Should Not Be Stricken

Entergy's argument, in substance, is that:

a. If an intervener files a contention based on Entergy's Aging Management Program (AMP) in effect at the time the contention was filed, and

b. Entergy files an amended AMP on the same day that it answers the contention and argues that amended AMP solves the problems pointed to in the AMP in effect when the contention was filed,

c. The intervenor, Pilgrim Watch, is barred from supplementing its original contention to address Entergy's new amended AMP.

None of the legal cases cited by Entergy support Entergy's byzantine argument or result. Indeed, Entergy's quotation from *Palisades*: "new claims in a reply 'would unfairly deprive other participants (i.e., Pilgrim Watch) an opportunity to rebut the new claims" (Entergy Motion, p. 3) shows precisely why Pilgrim Watch cannot fairly be barred from replying to Entergy's new Amended AMP.[1]

Entergy's argument also is not supported by any Rule. The only rule cited by Entergy, 10 C.F.R. §209(f)(2), indicates that questions to be considered with regard to a new contention include whether the information on which the new contention is based was not previously available, whether it is materially different, and whether the new contention was timely filed. But this rule deals with new contentions; it is not directed to PW's right to address new facts raised by Entergy in its reply to PW's already-filed contention. And even if 10 C.F.R. §209(f)(2) might somehow be relevant, it could hardly be clearer that the new facts addressed by PW (i.e. Entergy's amended AMP) were not previously available (Energy filed its new Amended AMP on the same day it filed its opposition to PW's contention) and are materially different (if they were not, Entergy would not have bothered to file the amended AMP or have to argue that the

[1] Entergy's reliance on the new Amended AMP in its opposition to PW's contention does not seem meet the requirement of 10 C.F.R. Part 2 regulations that a reply is to "be narrowly focused on the legal or logical arguments presented." Entergy and NRC Staff introduced entirely new facts in their Answers. If those facts are part of "the legal or logical arguments presented" by PW's original contention; PW has the right to address them. If they are not, Entergy's opposition to PW's original contention should be stricken.

new Amended AMP somehow solved the problems with the previous one), and that PW's reply to these new facts was timely submitted.

What is "Good for the Goose" should be "Good for the Gander." If Entergy can file a new Amended AMP in response to PW's contention, PW must be allowed to respond to that new Amended AMP.

Antipating Entergy's faulty position, PW has filed a new contention squarely addressing the "new information" that became available when Entergy replied to this contention on January 7, 2010. For efficiency, and it is Entergy that repeatedly complains about the length of this proceeding, PW suggests that the Board effectively combine and proceed with consideration of both.[2]

Neither anything in PW's reply nor Mr. Blanch's affidavit should be stricken. NRC Legal Staff filed no Motion to Strike; therefore we conclude that they agree with Pilgrim Watch.

## II. Pilgrim Watch Did Not Make "Scurrilous, Ad Hominem Attacks on the NRC Staff and the NRC Staff Affiant."

Entergy needs a dictionary. Pilgrim Watch was indeed appalled (i.e., dismayed) by the fact that the Staff argued that, and an experienced NRC employee submitted a declaration to the effect that, failures in buried non-accessible, non-qualified cables are not a safety issue. We do not doubt that the Staff's argument accurately reflects the NRC's real position[3], or that Mr.

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[2] PW noted that Representative Upton recently complained that re-licensing proceedings were taking too long. PW hopes that protection of the public will not fall prey to political considerations and the financial interests of the nuclear power industry.

[3] Pilgrim Watch Request For Hearing On A New Contention (Dec. 13, 2010) pointed to Information Notice 20 10-26, Submerged Electrical Cables, that provided new information that despite its previous statements that cable submergence in water is serious, the NRC has not required PNPS to take any action (IN pg., 1). That IN, and the NRC position (as stated by the Staff and Mr. Matthews) that this is not a safety issue, make clear that only relicensing provides a mechanism for ensuring that this significant aging management issue at PNPS will be addressed.

Matthews'declaration accurately reflects his and his employer's views. What is dismaying is that, if this is truly the NRC's view, it starkly shows why an NRC inspection report is nearly always "Green," and why the NRC continues not to require licensees to replace cables that are submerged and non-environmentally qualified or to sufficiently enhance their Aging Management Programs so that these cables will be replaced before they fail. Despite its statements that "you can feel safe because sometimes we look at some of these cables," the NRC in reality refuses to admit that failing cables are really important enough to require their replacement and a sufficiently robust AMP.

Pilgrim Watch's position that the NRC's and its employee's position that failing cables are not a safety issue is appalling, but nothing about PW's saying so is indecently abusive (i.e., scurrilous). Neither is it an *ad hominem* attack. PW does not doubt that Mr. Matthews is experienced and that his declaration accurately expresses both the NRC's and his view. That is precisely the problem. Pilgrim Watch's dispute is not with Mr. Matthews personally; it is with his and the NRC's now-stated position that submerged, non-qualified, and failing cables are not "a significant safety issue." It is that NRC position that Pilgrim Watch finds neither just nor reasonable (i.e., to be unconscionable), and that gave rise to PW's ultimate question whether there is anyone protecting the public.

Respectfully Submitted,

Signed Electronically
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