

**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

February 14, 2011

**Pilgrim Watch Reply to NRC Staff's Answers Opposing Pilgrim Watch Amended  
Contention in its Reply to Entergy's and NRC Staff's Answers Opposing PW's  
January 14, 2011 Request for Hearing on New Contention (February 8, 2011)**

**I. INTRODUCTION**

NRC Staff continues to ignore the important differences between a Motion to Reopen under §2.326 and a Request for Hearing under §2.309. Everything said in the Staff's most recent Answer relates only to the first; and is thus irrelevant.

Further, the Staff largely recycles the same arguments presented in its January 7, 2011 *Answer in Opposition to Pilgrim Watch's Request for Hearing on New Contention*; all of which Pilgrim Watch answered in its *Reply to Entergy's and NRC Staff's Answers Opposing Pilgrim Watch Request for Hearing on New Contention* (January 14, 2011) For convenience and to spare the Board, we will briefly respond to Staff's repeated old objections, and largely focus only on the one potentially different, but still irrelevant, Staff argument.

## II. ARGUMENT

The fundamental flaw in the Staff's (and much of Entergy's) argument is that Pilgrim Watch does not seek to "reopen" anything. Rather, its new contention seeks to raise an issue that simply has not been litigated.

Neither this Board nor the Commission can apply the standards for reopening the record to a new contention that raises a new material issue, as opposed to new evidence about an issue that has already been heard. *Commonwealth of Mass. v. NRC*, 924 F.2d 311, 334 (D.C. Cir. 1991)

In *Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1443-44 & n. 11 (D.C. Cir. 1984), the D.C. Circuit had previously noted the inadequacy of the opportunity to request reopening as a substitute for the opportunity to request a hearing required by Section 189(a). The stringency of the reopening standards cannot be applied to new material contentions that deal with un-litigated issues. *Deukmajian v. NRC*, 751 F.2d 1287, 1316-17 (D.C. Cir. 1984), *vacated in part*, 760 F.2d 1320 (D.C. Cir. 1985) (en banc), *and aff'd* 789 F.2d 26 (D.C. Cir. 1985) (en banc), *cert. denied*, 479 U.S. 923 (1986).

None of this has been changed since the NRC put in place new rules streamlining relicensing if the procedural rules were applied to prevent parties from ever raising a material issue, the aggrieved party could bring an as-applied challenge to the validity of the rules (*Union of Concerned Scientists v. NRC*, 920 F.2d 50, (DC Cir. 1990) ("UCS II"). Indeed, NRC's rules make clear that standards differ for request to reopen and requests for new hearings.

Even if PW had asked to reopen a hearing, and it has not, the Staff's arguments that (Staff Answer, p. 2)

1. The record in this proceeding is closed and PW does not meet the criteria for re-opening the record.
2. PW's new contention does not raise a significant safety record.<sup>1</sup>
3. Admission of the new contention would not materially change the result.

These Staff arguments are simply wrong.

PW's Reply to Energy's and NRC Staff's answers demonstrated:

1. The record is not closed; a hearing is scheduled for March 2011.
2. Inaccessible Non-EQ Electric Cables raise an entirely new, un-litigated, safety significant issue.
3. To the extent that the hearing to date may have reached any conclusion on that issue – and once again it has not – admission of PW's new contention would significantly change that result.

The only new twist that the Staff adds to its previous arguments is that “the new contention is unacceptably late because the new facts upon which it is based relate to enhanced monitoring that augments a pre-existing aging management program.” (Staff Answer, p. 2)

Here, three things should be noted. First the Staff admits that PW's new contention is based on new facts.

Second, the only decision upon which the Staff relies, *Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 274 (2009),<sup>2</sup> is directed to reopening a closed record on an already litigated issue. It is not concerned with the entirely different

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<sup>1</sup> PW has previously said that the Staff's position that inaccessible, unqualified electric cables do not present a safety issue is appalling. As shown in PW's previous reply to Entergy and the NRC staff, and as pointed out below, is also approaches the ludicrous. There is no rational basis upon which this Board could properly conclude that this is not a significant unresolved safety issue.

<sup>2</sup> The Board should note that, even with respect to reopening, the jury is out regarding the correctness of NRC's Oyster Creek decision; it is now before the Third Circuit Court of Appeals.

situation involved here – a record that is not closed, and a new contention directed to an issue that has not been litigated.

Third, the NRC Staff again misses the point of PW's Request for Hearing on its new contention. Pilgrim Watch did not say in its December 13, 2010 Request for Hearing that it did not know that buried unqualified cables were a problem or that Entergy had previously submitted an Aging Management Program.

What PW did say is that it did not know until December 2, 2010 that, despite the flurry of paper that the NRC has produced over the years recognizing that there is a serious problem with Inaccessible Non-EQ electric cables,<sup>3</sup> the NRC had decided to not require the industry to do anything to significantly and properly address those problems. Indeed, all of the papers that NRC Staff and Entergy cite to show why everyone should have known of this problem led PW and the public to assume that the NRC would seriously address the issue. Are Entergy and the Staff really arguing that, despite how much the NRC cries “wolf,” PW should have know that the NRC really wouldn't do anything to force Entergy and PNPS to catch the wolf?

As a matter of practicality late filed contentions are often based in part upon new information and in part upon information that was known at the time of the initial deadline. The United States Nuclear Regulatory Commission Staff Practice and Procedure Digest- March 2010 says that, “The answer to the ‘good cause’ factor may involve more than looking at the dates on the various documents submitted by the petitioners. Instead, the inquiry turns on a more complex determination about when, as a cumulative matter, the separate pieces of the new information “puzzle” were sufficiently in place to make the particular concerns espoused reasonably

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<sup>3</sup> NRC Information Notice 2010-26: Submerged Electrical Cables, Background (p., 6-7) reviews NRC Information Notices and Generic Letters 2002-2010, Attached to PW Request New Hearing, December 13, 2010

apparent. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 26 (1996), emphasis added. As there said:

[I]f the new and material information was revealed in a piecemeal fashion, and where the foundation for the contention is not reasonably available until the later pieces fall into place. In such cases, the licensing board must determine when, as a cumulative matter, the separate pieces of the information puzzle were sufficiently in place to make the particular concerns readily apparent. Vermont Yankee, LBP-06-14, 63 NRC at 57

The important piece of the information puzzle, that despite all of its previous statements the NRC really wasn't going to require licensees to anything seriously about their unsafe, unqualified, inaccessible cables, was not in place until December 2, 2010.

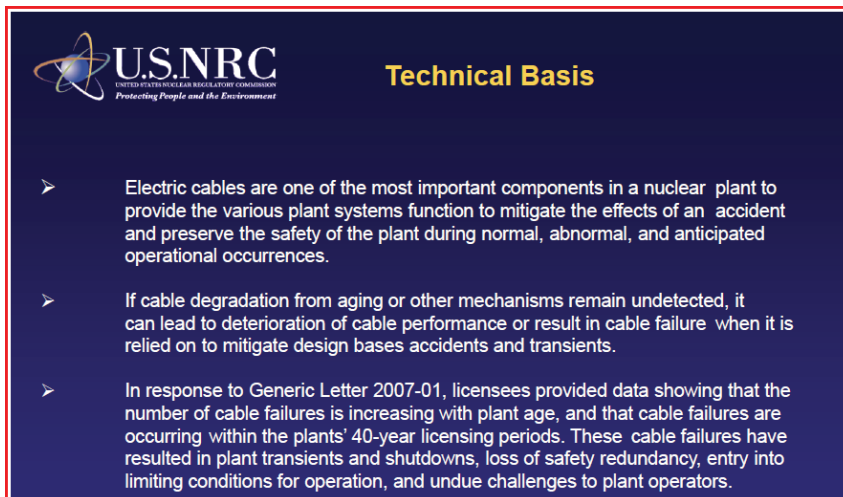
### **III. THE BOARD'S DUTY**

Finally, even if the record here had been closed (which it has not), this Board cannot properly avoid considering the significant safety issue raised by PW's new contention:

Sua sponte reopening is required when a Board becomes aware, from any source, of a significant unresolved safety issue or of possible POST HEARING MATTERS 12 JANUARY 2010 major changes in facts material to the resolution of major environmental issues. Commonwealth Edison Co. (LaSalle County Nuclear Station, Units 1 & 2), ALAB-153, 6 AEC 821 (1973); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358 (1973) (NRC Practice Manual, Post Hearing Matters, 11-12.)

Despite the Staff's present protestations to the contrary, it could not be clearer in a presentation that Mr. Matthews made August 19, 2009, not that long before he submitted his declaration to support the NRC legal staff's position that failing cables were not a safety issue,

Mr. Matthews could not have been clearer that electric cables are one of the most important components needed to mitigate the effects of an accident and preserve plant safety:



The image shows a slide from a USNRC presentation. The slide has a dark blue background with white and yellow text. In the top left corner is the USNRC logo, which includes a stylized atom symbol and the text 'USNRC' and 'Protecting People and the Environment'. To the right of the logo is the title 'Technical Basis' in yellow. Below the title are three bullet points, each preceded by a yellow arrowhead. The text of the slide is as follows:

NRC Public Meeting "Inaccessible or Underground Cable Performance Issues at Nuclear Power Plants," August 10, 2010, chaired by Staff witness, Mr. Roy Mathew, NRC/NRR (ML092460425), slide 10.

Numerous other NRC documents going back at least to 1996 show that unqualified, inaccessible cables are a significant safety issue, and that the risks that they create remain:

- SAND96-0344, 1996, at page 6.4: It said, for example, that, “No currently available technique was identified as being effective at monitoring the electrical aging of medium-voltage power cables.”
- IN 1989-63: Possible submergence of electric circuits located above the flood level because of water intrusion and lack of drainage.
- IN 2002-12: Submerged Safety Related Electric Cables (ML020790238) Reviewed, for example, cable failures at the Oyster Creek NPS and Davis-Besse NPS that resulted from submerged safety-related cables in manholes and duct banks that were subjected to long-term flooding problems.
- 2002 to 2004: The NRR staff reviewed available operating experience of cable failures and observed that some cables at nuclear power plants, which were qualified for 40 years through licensees’ equipment qualification programs, were failing before the end of the qualified life of the cables. The staff identified 23 licensee event reports and two morning reports from 1988 to 2004 that described failures of buried medium-voltage alternating current and low-voltage direct current power cables that resulted from insulation failure. In most

of the reported cases, the failed cables had been in service for 10 years or more. (Cited in NRC Information Notice 2010-26, page 6.)

- 2006: The NRC began a detailed review of underground electrical power cables after moisture-induced cable failures were identified at some plants. “The cables were exposed to submergence in water, condensation, wetting, and other environmental stresses. Because these cables are not designed or qualified for submerged or moist environments, the possibility that more than one cable could fail has increased; this failure could disable safety-related accident mitigation systems.” (Ibid)
- GL 2007-01 Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems of Cause Plant Transients (ML70360665) The NRC issued GL 2007-01 to gather information on inaccessible or underground power cable failures for all cables within the scope of the Maintenance Rule. The NRC staff identified 269 cable failures based on its review of responses from all licensees (65 sites and 104 reactor units). These failure data indicated an increasing trend in underground cable failures, and the predominant contributing factor was submergence or moisture intrusion that degraded the insulation. Summary Report GL 2007-01 (ML 082760385)
- NUREG/CR 7000, January 2010: The Forward says that, “Electric cables are one of the most important components in a nuclear plant because they provide the power needed to operate safety-related equipment and to transmit signals to and from the various controllers used to perform safety operations in the plant.” 5.1 Conclusions: “In-service testing of systems and components does not provide specific information on the status of cable aging degradation processes and the physical integrity and dielectric strength of its insulation and jacket materials.”
- IN-2010, December 2, 2010: “Some of the cable failures have resulted in plant transients and shutdowns, loss of safety redundancy, entries into limiting conditions for operation, and challenges to plant operators. Cables not designed or qualified for, but exposed to, wet or submerged environments have the potential to degrade. Cable degradation increases the probability that more than one cable will fail on demand because of a cable fault, lightning surge, or a switching transient. Although a single failure is within the plant design basis, multiple failures of this kind would be challenging for plant operators. Also, an increased potential exists for a common-mode failure of accident mitigating system cables if they are subjected to the same environment and degradation mechanism for which they are not designed or qualified for.”

#### IV. CONCLUSION

The NRC's own rules, and the Atomic Energy Acts' hearing rights, would be violated if this contention were not admitted; because the issue is material, entirely new, and has not been previously litigated. In the Oyster Creek License Renewal Adjudication Process, Judge Baratta correctly warned that:<sup>4</sup>

[T]o deny Citizens' motion and eliminate their access to the only means that will allow them to confront what appears to be a significant safety issue would be a grave error.

The most recent edition of the NRC Digest says that "Public participation through intervention is a positive factor in the licensing process and Intervenors perform a valuable function and are to be complimented and encouraged." (Prehearing Matters, 11)

PW trusts that the NRC means what it has said, and that the Intervenor here will be permitted to perform their indisputably "valuable function," be allowed "to confront ... a significant issue," that that the Board will help insure that the NRC will fulfill its "responsibilities for protecting public health and safety, the common defense and security, and the environment."

Respectfully Submitted,

Signed Electronically

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<sup>4</sup> Memorandum and Order (Denying Citizens' Motion to Reopen the Record and to Add a New Contention) (2008/07/24-LB), Dissent