

February 14, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Entergy Nuclear Generation Co., and	)	Docket No. 50-293-LR
Entergy Nuclear Operations, Inc.	)	
	)	ASLBP No. 06-848-02-LR
(Pilgrim Nuclear Power Station)	)	

NRC STAFF'S ANSWER IN OPPOSITION TO  
PILGRIM WATCH'S JANUARY 20, 2011 AMENDED CONTENTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the staff of the Nuclear Regulatory Commission ("Staff") hereby files its answer in opposition to the amended contention ("Amended Contention") filed by Pilgrim Watch ("PW") on January 20, 2011, regarding the aging management of non-environmentally qualified inaccessible cables and splices at Pilgrim Nuclear Power Station.<sup>1</sup> The Amended Contention may not be admitted because the record in this proceeding is closed and PW does not meet the criteria for re-opening the record: the contention is nontimely without good cause; it does not raise a significant safety issue; and its admission will not lead to a materially different result. Even if the record were open, the Amended Contention is late and PW has failed to establish that its late filing is justified by new or materially different information than was previously available. The Commission has ruled that, in situations like this, an intervenor

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<sup>1</sup> 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 (January 20, 2011) (Agencywide Document Management System ("ADAMS") Accession No. ML11020267).

may not avail itself of the applicant's enhancement of an existing aging management program to support a new and tardy contention. Finally, the Amended Contention challenges the Staff's reasonable assurance determination in its November 2007 Safety Evaluation Report on the Pilgrim license renewal application. Accordingly, the Amended Contention raises an issue that is beyond the scope of this proceeding and should be denied on that additional basis.

#### PROCEDURAL BACKGROUND

Over five years ago, on January 27, 2006, Entergy Nuclear Generating Co. and Entergy Nuclear Operations, Inc. ("Entergy") filed a license renewal application ("LRA") for Pilgrim Nuclear Power Station ("Pilgrim").<sup>2</sup> The LRA included a number of aging management programs ("AMPs"), including an AMP for non-environmentally qualified inaccessible cables and splices ("inaccessible cables").<sup>3</sup> On May 25, 2006, PW filed a petition to intervene and submitted five contentions.<sup>4</sup> None of the contentions challenged Entergy's AMP for inaccessible cables. Of the five contentions, the Atomic Safety and Licensing Board ("Board") admitted Contentions 1 and 3.<sup>5</sup> Contention 1 challenged the adequacy of Entergy's AMP for buried pipes and tanks and Contention 3 challenged the LRA's severe accident mitigation analysis ("SAMA"). The Board dismissed Contention 3 on Entergy's motion for summary disposition. On April 10, 2008, the Board held an evidentiary hearing on Contention 1. On June 4, 2008, the Board formally closed

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<sup>2</sup> LRA Transmittal Letter dated January 25, 2006 from Michael Balduzzi (Entergy) to the NRC. (ADAMS Accession No. ML060300026). The LRA was received by the NRC Staff on January 27, 2006.

<sup>3</sup> LRA, Appendix B, Page B-68 (ADAMS Accession No. ML060300029).

<sup>4</sup> Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) (ADAMS Accession No. ML061630125).

<sup>5</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 341 (2006).

the evidentiary record on Contention 1<sup>6</sup> and, on October 30, 2008, it issued its decision finding in favor of Entergy and terminating the proceeding.<sup>7</sup>

PW appealed and on March 26, 2010, the Commission issued a decision, affirming the Board's dismissal of Contention 1 and reversing in part and affirming in part the Board's summary disposition of Contention 3.<sup>8</sup> The Commission remanded Contention 3 for further proceedings of a very limited nature.<sup>9</sup> The Board has scheduled the remanded SAMA Contention 3 for hearing on March 10, 2011, in Plymouth, Massachusetts.<sup>10</sup>

On December 13, 2010, PW filed a new request for hearing and submitted a contention challenging Entergy's 2006 license renewal application's AMP for inaccessible cables.<sup>11</sup> The Staff and Entergy filed answers opposing the admission of the new contention.<sup>12</sup> The Staff noted that the record was closed and asserted that PW had failed to meet the criteria for re-opening the

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<sup>6</sup> Memorandum and Order (Ruling on Pilgrim Watch Motions Regarding Testimony and Proposed Additional Evidence Relating to Pilgrim Watch Contention 1) (June 4, 2008), at 3 (ADAMS Accession No. ML081560375).

<sup>7</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-08-22, 68 NRC 590, 595 (2008).

<sup>8</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC \_\_\_\_ (Mar. 26, 2010) (slip op. at 39).

<sup>9</sup> *Id.*

<sup>10</sup> Order (Rescheduling Hearing and Oral Argument) (Jan. 5, 2011) at 1 (ADAMS Accession No. ML110050353).

<sup>11</sup> 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 (December 13, 2010) (ADAMS Accession No. ML103500400).

<sup>12</sup> See NRC Staff Answer In Opposition to Pilgrim Watch Request For Hearing On A New Contention (January 7, 2011) (ADAMS Accession No. ML110070837); Entergy Answer Opposing Pilgrim Watch Request For Hearing On A New Contention (January 7, 2011) (ADAMS Accession No. ML110070451).

record.<sup>13</sup> Moreover, the Staff argued, the contention failed to meet the requirements for admission of a late-filed contention.<sup>14</sup>

In its reply to the Staff and Entergy's answers, on January 14, 2011, PW stated its intention to amend the new contention. PW asserted that Entergy had amended its AMP and, therefore, PW would be amending its contention. In its January 14, 2011 reply, PW stated that the new contention would read as follows:

Entergy's Aging Management Plan (*as amended by Entergy on January 7, 2011*) for non-environmentally qualified (EQ) inaccessible cables and cable splices at Pilgrim Station is insufficient to provide reasonable assurance that these cables will be in compliance with NRC Regulations and public health and safety shall be protected during license renewal.<sup>15</sup>

Because the January 14 filing could have been construed as the filing of a new contention, the Staff outlined its opposition in a pleading it filed on February 3, 2011.<sup>16</sup> On January 20, 2011, PW submitted another request for hearing along with the amended contention that is the subject of this answer.<sup>17</sup> PW used identical language in the contentions filed on January 14 and January 20, 2011.

On January 24, 2011, Entergy filed a motion to strike PW's reply to the Staff and

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<sup>13</sup> See NRC Staff Answer In Opposition to Pilgrim Watch Request For Hearing On A New Contention (January 7, 2011) (ADAMS Accession No. ML110070837) at 1-2, 4-17.

<sup>14</sup> See *id.* at 17-19.

<sup>15</sup> Pilgrim Watch Reply to Entergy's and NRC Staff's Answers Opposing Pilgrim Watch Request for Hearing on New Contention (January 14, 2011) (ADAMS Accession No. ML110140322) at 2 (emphasis in original).

<sup>16</sup> See NRC Staff's Response In Support Of Entergy's Motion To Strike (February 3, 2011) (ADAMS Accession No. ML110341685).

<sup>17</sup> 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 (January 20, 2011) (ADAMS Accession No. ML110200267).

Entergy's answers on the new contention.<sup>18</sup> Entergy sought to strike the affidavit of PW's witness and portions of PW's reply that Entergy viewed as impermissibly supplementing the bases for the contention. The Staff filed a response supporting the motion to strike and PW filed a response opposing it.<sup>19</sup> That motion is pending before the Board.

## DISCUSSION

### I. Legal Standards

Once the record is closed, it will not be reopened except upon a strong, well-supported showing of singular circumstances. Accordingly, the regulations provide that a motion to re-open the record will not be granted unless it satisfies the following three criteria:

- (1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety issue; and
- (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). *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 688 (2008). The motion must be accompanied by an affidavit that provides the factual and/or technical bases for the movant's claim that the three criteria in section 2.326(a) are satisfied. 10 C.F.R. § 2.326(b). The evidence supporting the motion to reopen must not only be new, it must satisfy the Commission's admissibility standards in 10 C.F.R.

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<sup>18</sup> 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 (January 24, 2011) (ADAMS Accession No. ML110240701).

<sup>19</sup> NRC Staff's Response in Support of Entergy's Motion to Strike (February 3, 2011)(ADAMS Accession No. ML110341685); 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 (January 31, 2011)(ADAMS Accession No. ML110310220).

§ 2.337(a); it must be “relevant, material, and reliable.” *Id.* at 672. Moreover, “the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition.” *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005).

The standard for admissibility of a contention associated with a motion to reopen is also high. *See Private Fuel Storage*, CLI-05-12, 61 NRC at 350. The contention must, of course, meet the general admissibility requirements at 10 C.F.R. § 2.309(f). It must raise an issue within the scope of the proceeding; it must raise a material issue; the petitioner must provide a brief explanation of the basis for the contention and a concise statement of the alleged facts and expert opinions that support its position and on which it intends to rely at a hearing; and the petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(ii)-(vi). In addition, the regulations at 10 C.F.R. § 2.326(d) expressly state that where the contention raises an issue not previously in controversy, the contention must satisfy the requirements for admission of nontimely contentions under 10 C.F.R. § 2.309(c). Nontimely contentions will only be admitted 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).<sup>20</sup>

Late-filed contentions, or contentions filed after the initial filing period has passed, are allowed "only 'upon a showing that – (i) [t]he information upon which the amended or new contention is based was not previously available; (ii) [t]he information upon which the amended or new contention is based is materially different than information previously available; and (iii) [t]he amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.'" *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004) (quoting 10 C.F.R. § 2.309(f)(2)(i)-(iii) (alterations in original)).

## II. Pilgrim Watch Is Not Entitled to Reopen the Record

As the Staff explained in its January 7, 2011 Answer in Opposition to Pilgrim Watch's Request for Hearing on New Contention, PW does not meet the regulatory requirements for reopening the record. PW's request for hearing for this amended contention is not timely; it does not raise a significant safety issue; and it does not demonstrate that the proposed contention would likely lead to a materially different result. In *Entergy Nuclear Vermont Yankee, L.L.C.* (Vermont Yankee Nuclear Power Plant, LBP-10-19, 72 NRC \_\_ (October 28, 2010) (slip op. at 2), a board denied a motion to reopen the record to admit a contention similar to the one at issue here regarding submerged inaccessible cables. The board found that the contention was not

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<sup>20</sup> The Staff discussed reopening and contention admissibility at length in NRC Staff's Answer in Opposition to Pilgrim Watch Request for Hearing on New Contention (January 7, 2011) (ADAMS Accession No. ML110070837), and hereby incorporates that discussion and argument by reference.

timely. The board noted that the intervenor had not challenged the original AMP even though “the potential for [ ] 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 in [the applicant’s] AMP.” *Id.* at 23. The board also found that the intervenor had proffered “conclusory assumptions and predictions as to what [the intervenor] thinks that the Board would have done” had the Board considered the newly proffered evidence initially. This, the board ruled, was insufficient: “A motion to reopen requires more than a possibility. It requires a demonstration that the petitioner is likely to succeed.” *Id.* at 27.

Similarly here, PW’s request for hearing is not timely because it is not based on new information or information materially different from information previously available. PW’s reliance on Entergy’s 2011 enhancement of its AMP for inaccessible cables and the December 2010 publication of Information Notice 2010-26 is misplaced. The enhancement and the information notice do not constitute new information. Entergy identified the AMP it intended to use for inaccessible cables in its license renewal application in 2006 and PW did not challenge that original AMP. If, as PW now claims, the enhanced AMP is inadequate, the original unenhanced AMP must have been even more inadequate and yet PW did not challenge that original AMP. PW cannot challenge the AMP now, at this late stage of the proceeding.

None of the other documents PW relies on will support the amended contention either. Information Notice 2010-26 was preceded in 2007 by Generic Letter (“GL”) 2007-01<sup>21</sup>, in 2008 by the GL Summary Report,<sup>22</sup> and in January 2010 by NUREG/CR 7000,<sup>23</sup> all of which discuss this

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<sup>21</sup> Generic Letter (“GL”) 2007-01 “Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transients,” (Feb. 7, 2007) (ADAMS Accession No. ML07360665).

<sup>22</sup> GL 2007-01 “Inaccessible or Underground Power Cable Failures That Disable Accident (continued. . .)

very issue. The issue of inaccessible submerged cable degradation is thus clearly not a new one. PW asserts that it only recently learned of the issue,<sup>24</sup> but as one board commented in rejecting a similar argument, an intervenor cannot “satisfy the ‘previously unavailable’ information standard by showing that, as a subjective matter, he or she only recently became aware of, or realized the significance of, public information that was previously available to all. The ‘previously unavailable’ standard is not a subjective one.” *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 142 (2009), *reversed on other grounds*, CLI-10-02, 71 NRC \_\_\_\_ (Jan. 7, 2010).

PW has, moreover, failed to raise a significant safety issue and thus it does not meet the requirement at 10 C.F.R. § 2.326(a)(2) for reopening the record. In its January 7, 2011 pleading, the Staff explained that the submergence of safety-related electric cables at Pilgrim is not a significant safety issue: Entergy has taken corrective action to identify underground cables and to identify manholes for dewatering and, pursuant to 10 C.F.R. Part 50, Entergy must test and maintain safety-related electric cables to ensure that they can perform their intended functions; in addition, NRC’s ongoing oversight of licensee operations verifies licensee compliance. In support, the Staff attached the Affidavit of Roy Mathew, Team Leader, Electrical Engineering Branch, NRC Office of Nuclear Reactor Regulation.

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(. . .continued)

Mitigation Systems or Cause Plant Transient: Summary Report” (Nov. 12, 2008) (ADAMS Accession No. ML082760385).

<sup>23</sup> NUREG/CR 7000 “Essential Elements of an Electric Cable Monitoring Program (January 2010) (available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr7000/cr7000.pdf>).

<sup>24</sup> 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 (January 20, 2011) (ADAMS Accession No. ML11020267) at 53-54.

PW has also failed to demonstrate that “a materially different result . . . would have been likely had the newly proffered evidence been considered initially.” 10 C.F.R. § 2.326(a)(3). The Commission has held that in a motion to reopen, “the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition.” *Independent Spent Fuel Storage Installation*, CLI-05-12, 61 NRC at 350. Nevertheless, PW insists that it need not make this showing, arguing that intervenors are not required to prove their case at the contention admissibility stage of the proceeding.<sup>25</sup> While this is correct at the contention admissibility stage at the beginning of a proceeding, or even for a late-filed contention under 10 C.F.R. § 2.309(f)(2), it is not correct when a contention is proffered after the record has closed. The regulation at 10 C.F.R. § 2.326(a)(3) requires demonstration of “a materially different result.” PW has not met that requirement. Accordingly, the record in this matter should not be reopened to admit the Amended Contention.

Finally, PW does not meet the requirements at 10 C.F.R. § 2.309(c) for admission of a nontimely contention. Of the eight factors that go into the determination of admissibility of nontimely contentions, the factor that is accorded the most weight is good cause for the nontimely filing. As discussed below, *infra* at 11 to 13, PW cannot rely on Entergy’s enhancement of the AMP to satisfy the requirement of good cause. PW had 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 NRC 135, 147 (1993). That publicly available documentary material included the license renewal

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<sup>25</sup> Pilgrim Watch Reply to Entergy’s and NRC Staff’s Answers Opposing Pilgrim Watch Request for Hearing on New Contention (January 14, 2011) (ADAMS Accession No. ML110140322) at 14.

application filed in 2006. And the license renewal application included the original AMP for inaccessible cables. PW should have proffered a contention on inaccessible cables when it filed its first request for hearing in 2006. The enhancement of the AMP does not give PW a second chance to challenge the program and it cannot be used to satisfy the requirement of good cause for the nontimely filing.

III. The Amended Contention Does Not Meet the Requirements for Admission of a Late-Filed Contention Under 10 C.F.R. § 2.309(f)(2)

PW steadfastly maintains that the record has not been closed and that the requirements for reopening are, therefore, inapplicable.<sup>26</sup> Even if PW were correct, the Amended Contention would still be inadmissible because it is late and it is not based on new or materially different information.

The Commission has held that where a program already exists and the intervenor has not challenged that program, enhancements to that program will not constitute the “new information” needed for admission of a late-filed contention. *Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-09-7, 69 NRC 235, 273 (2009). The Commission’s determination in *Oyster Creek* is controlling precedent and requires dismissal of the Amended Contention. Just as in *Oyster Creek*, the intervenor here is attempting to use the enhancement of an existing program to support a late-filed contention. And just as in *Oyster Creek*, that attempt should be denied. The *Oyster Creek* board denied the contention, explaining that

[A]s a matter of law and logic, if – as Citizens allege – Amergen’s *enhanced* monitoring program is inadequate, then AmerGen’s *unenhanced* monitoring program embodied in its [license renewal application] was *a fortiori* inadequate, and Citizens had a regulatory obligation to challenge it in their original Petition To Intervene.

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<sup>26</sup> Pilgrim Watch Reply to Entergy’s and NRC Staff’s Answers Opposing Pilgrim Watch Request for Hearing on New Contention at 8-9.

*Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 246 (2006), *quoted with approval in Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 273 (2009). Similar facts here warrant a similar legal result. If the enhanced AMP for inaccessible cables is inadequate, as a matter of law and logic, the unenhanced AMP must have been inadequate as well and thus PW had a regulatory obligation to challenge it. But PW did not challenge the unenhanced AMP when it filed its original contentions. It cannot use the enhanced AMP to support a contention on inaccessible cables at this late date.

Entergy submitted an AMP for inaccessible cables in its original license renewal application. Entergy stated that its AMP was consistent with NUREG-1801, Generic Aging Lessons Learned, Revision 1, Section XI.E3 (2005) (“GALL Rev. 1”).<sup>27</sup> GALL Rev. 1, Section XI.E3, provided that aging for inaccessible medium voltage cables (2KV to 35KV cables) exposed to significant moisture would be managed by testing the cables for degradation at least once every ten years and inspecting manholes for water at least once every two years (with manhole inspection frequency based on actual plant experience with water accumulation in manholes).<sup>28</sup>

Based on its review of industry responses to NRC Generic Letter 2007-01, “Inaccessible or Underground Power Cable Failures That Disable Accident Mitigation Systems or Cause Plant Transients” and NRC and industry guidance documents, Entergy stated that it would expand the scope of its aging management program for inaccessible cables to include inaccessible low-

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<sup>27</sup> GALL Rev. 1, Section XI.E3, at page XI E-7 (ADAMS Accession No. ML052780376).

<sup>28</sup> GALL Rev. 1, Section XI.E3, at page XI E-8.

voltage power cables (400V to 2KV).<sup>29</sup> Entergy explained that it would test the cables for degradation at least every six years and inspect manholes at least annually, with more frequent testing and inspection based on its evaluation of the test and inspection results.<sup>30</sup> In addition, Entergy stated that it would perform additional manhole inspections prior to predicted heavy rains or flooding events to verify that the drainage systems work properly.<sup>31</sup> The enhanced AMP thus has an expanded scope and more frequent testing and inspection than the original AMP. If, as PW claims, the enhanced AMP is inadequate, then the original AMP must have been inadequate and yet PW did not challenge the original AMP in its original petition for hearing and contentions filed in 2006. It cannot do so now, especially in light of the fact that the record in this matter is closed as to all issues except for the narrow meteorological SAMA issue on remand from the Commission. See *Oyster Creek*, CLI-09-7, 69 NRC at 274 (2009); *Oyster Creek*, LBP-06-22, 64 NRC at 246. Under similar circumstances, the *Vermont Yankee* board wrote: “if Entergy’s AMP suffers from the inadequacies enumerated by [the intervenor], then it has been inadequate since the beginning of this proceeding.” *Vermont Yankee*, LBP-10-19, 72 NRC \_\_\_\_, slip op at 23.

V. The Amended Contention Constitutes an Impermissible Challenge to the Adequacy of the Staff’s Review

It is well-settled that safety contentions, such as the Amended Contention, must address inadequacies in the licensee’s application; contentions that claim inadequacies in the Staff’s safety review are not admissible. *Curators of the University of Missouri*, CLI-95-1, 41 NRC 71 (1995). In *Curators of the University of Missouri*, the Commission explained:

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<sup>29</sup> Letter from Stephen J. Bethay, Entergy Nuclear Operations, Inc. to U.S. Nuclear Regulatory Commission, re Pilgrim Nuclear Power Station License Renewal Application Supplemental Information, dated January 7, 2011, Attachment 1, page 8 (ADAMS Accession No. ML110200058).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 9.

[T]he University rather than the Staff bears the burden of proof in this proceeding. Consequently, the adequacy of Staff's safety review is, in the final analysis, not determinative of whether the application should be approved. Given these facts, it would have been pointless for the Presiding Officer to rule upon the adequacy of Staff's review. Moreover, even assuming *arguendo* that Staff did conduct an insufficient review, a denial of a meritorious application on that ground would be grossly unfair – punishing the applicant for an error by Staff. The subject of the litigation in this proceeding is the University's entitlement to the license amendment, not the adequacy of Staff's review of those amendments.

*Id.* at 121-22; *Amergen Energy Co, LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 477 (2008); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station), CLI-08-17, 68 NRC 231, 237 (2008), *citing Pa'ina Hawaii, LLC*, CLI-08-3, 67 NRC 151,168 n.73 (2008); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 472-73 (2001). As an Atomic Safety and Licensing Appeal Board observed, while an intervenor "is free to challenge directly an unresolved generic safety issue by filing a proper contention, . . . it may not proceed on the basis of allegations that the staff has somehow failed in its performance." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), *review declined*, CLI-83-32, 18 NRC 1309 (1983). Recently, in rejecting a contention challenging the Staff's license renewal review, the Commission noted, "Our contention pleading rules emphasize that the petitioner must show that a 'genuine dispute *exists with the applicant/licensee* on a material issue of law or fact'." *Oyster Creek*, CLI-09-23, 68 NRC at 477 (2008) (emphasis in original) (*citing* 10 C.F.R. § 2.309(f)(1)(vi)). *See also* Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989).

In its Amended Contention, PW asserts that the Staff's Safety Evaluation Report "does not provide reasonable assurance" that inaccessible cables will be in compliance with NRC

regulations or that public health and safety will be protected.<sup>32</sup> PW complains that

[r]ather than ensuing (sic) that cabling exposed to “significant moisture” is designed and qualified to operate under that condition (as required by NRC Regulations), Pilgrim’s SER accepts under-designed and unqualified cabling as long as one periodically checks from time to time to see that the cables still work (at that moment), or are not then wet, submerged or degraded.<sup>33</sup>

PW criticizes the Staff’s license renewal audit procedures and the Staff’s acceptance of Entergy’s commitment to develop procedures to address cables exposed to significant moisture.<sup>34</sup> The Amended Contention thus directly challenges the Staff’s review of the license renewal application. To the extent that the Amended Contention raises a dispute with the Staff, as opposed to the applicant, Entergy, the contention raises an issue that is outside of the scope of this proceeding and, therefore, inadmissible.

#### CONCLUSION

Pilgrim Watch’s Amended Contention on inaccessible cables may not be admitted. The record in this proceeding is closed and PW does not meet the criteria for re-opening the record and thus cannot raise this contention at this time. Even if the record were open, the Amended Contention is late and PW has failed to justify its late filing. Finally, the Amended Contention challenges the Staff’s reasonable assurance determination in its November 2007 Safety Evaluation Report on the Pilgrim license renewal application and raises an issue that is beyond

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<sup>32</sup> PW Request for Hearing (January 20, 2011), at 40.

<sup>33</sup> *Id.* at 41.

<sup>34</sup> *Id.* at 42-43.

the scope of this proceeding. For the foregoing reasons and as explained above, the Amended Contention should be denied.

Respectfully submitted,

**/Signed Electronically By Beth N. Mizuno/**

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Dated at Rockville, Maryland  
this 14<sup>th</sup> day of February, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
ENTERGY NUCLEAR OPERATIONS, INC. ) Docket No. 50-293-LR  
 )  
(Pilgrim Nuclear Power Station) )  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC Staff's Answer in Opposition to Pilgrim Watch's January 20, 2011 Amended Contention" have been served upon the following by the Electronic Information Exchange, with courtesy copies sent by electronic mail, this 14<sup>th</sup> day of February, 2011:

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