

February 14, 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)	)	

**ENERGY 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 January 20, 2011,<sup>1</sup> 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 for a host of reasons: (1) it neither addresses nor meets the standards for reopening a closed record to litigate a new contention;<sup>2</sup> (2) it is untimely and does not meet the standards applicable to a late-filed contention; and (3) it fails to meet the standards for an admissible contention because it is vague, unsupported, impermissibly challenges NRC rules, fails to demonstrate a genuine dispute with the application, and makes a number of claims beyond the scope of this proceeding.

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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 (Jan. 20, 2011) (“PW Request”).

<sup>2</sup> The attached Declaration of Vincent Fallacara and Roger B. Rucker in Support of Entergy’s Answer Opposing Pilgrim Watch’s Request for Hearing on a New Contention (Feb. 14, 2011) (“Entergy Decl.”) demonstrates that there is no genuine issue of material fact in dispute. See 10 C.F.R. § 2.710(a),

The Commission looks with disfavor on new contentions filed after the initial deadline,<sup>3</sup> which in this case passed in May 2006 – over four years ago. As the Commission has repeatedly stressed, if intervenors could add new contentions after the initial deadline at their convenience, there would simply be no end to NRC licensing proceedings. AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009). 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, the enhancements to the AMP for non-EQ inaccessible cable that Entergy has made<sup>4</sup> in response to the NRC’s recent revision to the Generic Aging Lessons Learned (“GALL”) Report<sup>5</sup> do not make Pilgrim Watch’s contention timely. Commission precedent directly on point holds that enhancements to a program cannot be considered “new” information to support a new contention, because if the enhanced program is purportedly inadequate, then the previous unenhanced program must also have been inadequate and therefore should have been challenged at the outset.<sup>6</sup> Consequently, the recent revision to the AMP fails to provide good cause for this late filing. In addition, at this late juncture, other factors related to late contentions 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.

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

<sup>4</sup> 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.

<sup>5</sup> 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”).

<sup>6</sup> Oyster Creek, CLI-09-7, 69 N.R.C. at 273-74.

Moreover, the contention fails to meet the admissibility standards. The contention itself is vague and inadequately supported, and in multiple instances, Pilgrim Watch's claims are beyond the scope of this proceeding.

## II. BACKGROUND

### A. STATEMENT OF CASE

This proceeding involves the application submitted by Entergy in January 2006 seeking renewal of the operating license for Pilgrim ("Application").<sup>7</sup> On May 25, 2006, Pilgrim Watch filed an intervention petition seeking the admission of five contentions, but none challenging the aging management program in the Application addressing inaccessible cable.<sup>8</sup> 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").<sup>9</sup>

The NRC Staff reviewed the Application and issued the final environmental impact statement in July 2007<sup>10</sup> and the final safety evaluation report ("SER") in November 2007.<sup>11</sup> Following summary disposition of Contention 3,<sup>12</sup> the Board held a hearing on Contention 1 and

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<sup>7</sup> See 71 Fed. Reg. 15,222 (Mar. 27, 2006).

<sup>8</sup> Request for Hearing and Petition to Intervene by Pilgrim Watch (May 25, 2006) ("Petition to Intervene").

<sup>9</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 349 (2006).

<sup>10</sup> NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station (July 2007).

<sup>11</sup> NUREG-1891, Safety Evaluation Report Related to the License Renewal of Pilgrim Nuclear Power Station (Nov. 2007).

<sup>12</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-07-13, 66 N.R.C. 131 (2007).

then closed the evidentiary record on that contention.<sup>13</sup> It then issued a decision resolving that remaining contention in Entergy's favor and terminating the proceeding.<sup>14</sup>

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.<sup>15</sup> The Commission therefore remanded Contention 3, "as limited by [its] ruling," to the Board for hearing.<sup>16</sup> 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.<sup>17</sup>

In December 2010, after having delayed a hearing on the remanded issues for months, Pilgrim Watch announced that it would not submit any new evidence on the remanded issues.<sup>18</sup> Instead, Pilgrim Watch filed first a request for hearing on a new SAMA contention,<sup>19</sup> and then, nearly five years after the availability of the Application and more than three years after the NRC Staff's issuance of the final SER, a request for a hearing on an entirely new contention challenging the sufficiency of the AMP for non-EQ inaccessible cable.<sup>20</sup> Pilgrim Watch claimed that its new contention on non-EQ inaccessible cable was timely based on the issuance of NRC Information Notice 2010-26, Submerged Electrical Cables (Dec. 2, 2010) ("IN 2010-26").

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<sup>13</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 4.

<sup>14</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-08-22, 68 N.R.C. 590, 610 (2008).

<sup>15</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. \_\_\_, slip op. at 14, 18 (Mar. 26, 2010).

<sup>16</sup> Id. at 3.

<sup>17</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-14, 71 N.R.C. \_\_\_, slip op. at 3, 39 (June 17, 2010).

<sup>18</sup> Pilgrim Watch Memorandum Regarding SAMA Remand Hearing (Dec. 2, 2010).

<sup>19</sup> Pilgrim Watch Request for Hearing on New Contention (Nov. 29, 2010).

<sup>20</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 (Dec. 13, 2010) ("PW Dec. 13, 2010 Request").

Following receipt of answers opposing this new contention,<sup>21</sup> Pilgrim Watch filed a reply impermissibly seeking to amend its new contention and also announcing that it would be filing yet another new contention challenging the AMP for non-EQ inaccessible cable.<sup>22</sup> Pilgrim Watch then filed its current Request on January 20, 2011. Pilgrim Watch argues that its new contention is timely based on the issuance of GALL Rev. 2 and the enhancements to this AMP that Entergy made in the LRA Supplement in response to GALL Rev. 2. PW Request at 53-54. Entergy now answers this most recent Request and contention.

B. 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,<sup>23</sup> 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 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

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<sup>21</sup> Entergy Answer Opposing Pilgrim Watch Request for Hearing on a New Contention (Jan. 7, 2011) (“Entergy Jan. 7 Answer”); NRC Staff’s Answer in Opposition to Pilgrim Watch Request for Hearing on New Contention (Jan. 7, 2011) (“NRC Staff Jan. 7 Answer”).

<sup>22</sup> Pilgrim Watch Reply to Entergy’s and NRC Staff’s Answers Opposing Pilgrim Watch Request for Hearing on New Contention (Jan. 14, 2011). Entergy moved to strike the portions of this reply impermissibly seeking to amend the contention. 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 (Jan. 24, 2011).

<sup>23</sup> 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).

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 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) ("CLI-10-17"). As stated by the Commission in Vermont Yankee:

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).<sup>24</sup>

#### C. 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 submitted 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 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").<sup>25</sup>

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<sup>24</sup> Referencing a program described in the GALL Report does not insulate a program from being challenged at hearing. Id. at 47.

<sup>25</sup> 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.

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.<sup>26</sup>

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<sup>27</sup> 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

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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 describe an acceptable program for managing the aging effects 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.

<sup>26</sup> A separate program, in Section XI.E2 of the GALL Rev. 1, 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.

<sup>27</sup> 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 Rev. 1 at VI.A-1. Pilgrim does not have any inaccessible, high voltage cable subject to aging management review.

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 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,<sup>28</sup> committed to implement a program for "Non-EQ Inaccessible Medium-Voltage Cable" that is consistent with Section XI.E3 of GALL Rev. 1. The Application, at App. B, § B.1.21,<sup>29</sup> 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

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<sup>28</sup> 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.

<sup>29</sup> See also Application, App. A, § A.2.1.23, providing a description of this program to be included in the UFSAR Supplement.

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 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)<sup>30</sup> (referenced in the PW Request at 6, 7 n.6, 8, 30-32, 36, 39, 45-52; and the Affidavit of Paul M. Blanch (Jan. 19, 2010 (“Blanch Affidavit”) at ¶¶ 30, 41, 42, 46); EPRI Report 1020804, Plant Support Engineering: Aging Management Program Development Guidance for AC and DC Low-Voltage Power Cable Systems for Nuclear Power Plants (June 2010) (“EPRI Report 1020804”)<sup>31</sup> (referenced in the PW Request at 19 and n.12, 35-37)<sup>32</sup>; and the NRC Staff’s issuance of Draft Regulatory Guide DG-1240, Condition Monitoring Program for Electric Cables in Nuclear Power Plants (June 2010).<sup>33</sup>

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, which was 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).<sup>34</sup> GALL Rev. 2 at XI.E3-2. The NRC also increased the recommended minimum frequency of the manhole inspections and cable insulation testing. Id.

On January 7, 2011, Entergy submitted a supplement to the Pilgrim LRA addressing certain changes in the NRC’s recommendations, including the changed recommendations in Section XI.E3 of GALL Rev. 2. LRA Supplement at 8-10. The LRA Supplement explains that, consistent with GALL Rev. 2, Entergy is enhancing its AMP for non-EQ inaccessible medium-

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<sup>30</sup> ADAMS Accession No. ML100540050.

<sup>31</sup> ADAMS Accession No. ML102210457.

<sup>32</sup> Mr. Blanch generally references “EPRI studies” several times in his affidavit (see Blanch Affidavit at ¶¶ 29, 33, 45, 46), but does not specifically quote or otherwise discuss the contents of EPRI Report 1020804.

<sup>33</sup> ADAMS Accession No. ML100760364.

<sup>34</sup> 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.

voltage cables to include low-voltage (400 V to 2 kV) cables, increasing the minimum 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 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. These tests are identified and discussed in NUREG/CR-7000. NUREG/CR-7000 at 3-4 to 3-10. 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 trending and evaluation of inspection results. LRA Supplement at 8-9.

D. APPLICABLE LEGAL STANDARDS

The NRC does not look with favor on amended or new contentions filed after the initial filing. Millstone, CLI-04-36, 60 N.R.C. at 638. As the Commission has repeatedly stressed,

[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.

Oyster Creek, CLI-09-7, 69 N.R.C. at 271-72 (citations omitted).

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;
- 2) The motion must address a significant safety or environmental 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). 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) (emphasis added). 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). As discussed later, Pilgrim Watch has not met any of these standards and requirements.

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)).

Moreover, where as here a motion to reopen relates to a contention not previously in controversy among the parties, it must also satisfy the requirements for nontimely contentions in § 2.309(c). 10 C.F.R. § 2.326(d).<sup>35</sup> Section 2.309(c) 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.

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<sup>35</sup> See also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 125 (2009); Oyster Creek, CLI-08-28, 68 N.R.C. at 668.

10 C.F.R. § 2.309(c)(1).

In keeping with the Commission's disfavor of contentions after the initial filing, these factors are "stringent." Oyster Creek, CLI-09-7, 69 N.R.C. at 260, citing Florida Power & Light Co. (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. 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); Millstone, CLI-09-05, 69 N.R.C. at 125. Indeed, 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-93-04, 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 at 4 (footnote omitted). As discussed later, Pilgrim Watch has not shown good cause for its filing, and a balance of the lateness factors weighs against admitting this late-filed contention.

Finally, any new contention must also satisfy the standards for admissibility in 10 C.F.R. § 2.309(f)(1). These standards too are to be enforced rigorously. "If any one . . . is not met, a contention must be rejected." Arizona Public Service Co. (Palo Verde Nuclear Generating

Station, Unit Nos. 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); USEC, Inc. (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) (“These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements.” (footnotes omitted)). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Palo Verde, CLI-91-12, 34 N.R.C. at 155; Oyster Creek, CLI-09-7, 69 N.R.C. at 260 (the contention admissibility rules “require the petitioner (not the board) to supply all of the required elements for a valid intervention petition” (emphasis added) (footnote omitted)). As discussed below, Pilgrim Watch also fails to meet these requirements.

### **III. PILGRIM WATCH’S REQUEST SHOULD BE DENIED**

#### **A. PILGRIM WATCH FAILS TO MEET THE STANDARDS FOR A MOTION TO REOPEN IN 10 C.F.R. § 2.326**

Pilgrim Watch’s Request clearly fails to satisfy the standards for reopening a closed record in 10 C.F.R. § 2.326. It is not supported by an affidavit that meets the requirements in 10 C.F.R. § 2.326(b), and it fails to meet all of the requirements in 10 C.F.R. § 2.326(a)(i)-(iii). Each of these failures by itself demands a denial of the PW Request.

##### **1. Mr. Blanch’s Affidavit Fails to Address the Standards for Reopening**

The Blanch Affidavit 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 “[e]ach of the criteria” in Section 2.326(a) and provide “a specific explanation of why [each] has been met.” Mr. Blanch’s Affidavit does not even mention the relevant criteria, let alone provide a specific explanation of why each has been met. 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).

Pilgrim Watch attempts to avoid this obligation by arguing that the standards for reopening do not apply because the record has been closed only with respect to Contention 1 (PW Request at 58-59), but this argument is incorrect. The standards for reopening apply not only when a party is seeking to introduce new evidence on a previously admitted contention after the evidentiary record is closed, but also when a party is seeking to introduce a new contention after the record has been closed. See 10 C.F.R. § 2.326(d). Pilgrim Watch’s position would render 10 C.F.R. § 2.326(d) meaningless.

Similarly, there is no merit to Pilgrim Watch’s assertion that the record on remand is now “open until and unless the Board and the Commission close it with respect to everything involved in this proceeding.” PW Request at 59 (emphasis added). While the Commission has remanded certain explicitly limited SAMA issues in Contention 3 to the Board for hearing, the Commission has certainly not reopened the record “with respect to everything involved in this proceeding.” Nor does a remand after the close of the evidentiary record have such effect. Indeed, in the Vermont Yankee license renewal proceeding, where the Commission recently remanded a contention to the Licensing Board, the Commission made it clear that, if an intervenor were to seek to raise a new contention unrelated to the remanded issues, it must address and satisfy the standards for reopening in 10 C.F.R. § 2.326. Vermont Yankee, CLI-10-17 at 10 n.37. Because Pilgrim Watch has chosen not to do so, its Request must be denied.<sup>36</sup>

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<sup>36</sup> Pilgrim Watch also asserts that, even if the record has been closed, the Board has a “duty to reopen ‘sua sponte... when it becomes aware . . . of a significant unresolved safety issue . . .” PW Request at 59-60 (citing NRC Staff Practice and Procedure Digest). However, the holdings from the cases summarized in the NRC Staff Practice and Procedure Digest have been superseded by Commission regulation. NRC licensing boards do not have the authority to raise issues sua sponte absent the Commission’s “approv[al] of an examination of and decision on the matter upon its referral by the” Board. 10 C.F.R. § 2.340(a).

## 2. The Request is Not Timely

Neither Pilgrim Watch nor Mr. Blanch demonstrate that the Request is timely. Mr. Blanch's Affidavit does not even address the issue. Pilgrim Watch claims that its contention is based on new information in the NRC Staff's recent revision to the GALL Report and Entergy's LRA Supplement (PW Request at 53-54), but these documents merely enhance the AMP described in the original application and thus provide no basis for the new contention. Commission precedent holds that enhancements to a program cannot be considered "new" information for the purposes of supporting a new contention. Oyster Creek, CLI-09-7, 69 N.R.C. at 273-74. This is because, if the enhanced program is inadequate, then, "as a matter of law and logic," the unenhanced program in the prior version of the LRA "was *a fortiori* inadequate." Id. at 274. Consequently, Pilgrim Watch had an obligation to raise its challenge to the sufficiency of the AMP for non-EQ inaccessible cables in its original intervention petition. It did not. Moreover, in Oyster Creek, the Commission expressed agreement with the policy concern that "conferring an automatic right to file a new contention whenever an applicant improves an existing program might have 'the perverse effect of discouraging applicants from enhancing safety, health, and environmental programs on a voluntary basis.'" Id. Here, GALL Rev. 2 and Entergy's LRA Supplement present only enhancements, increasing the minimum frequency of testing cables and inspecting manholes and expanding the scope of the program to include inaccessible low-voltage cable.

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).

As 10 C.F.R. § 2.309(f)(2) indicates, it is not enough just to point to new information; rather that section requires identification of new information “upon which the . . . new contention is based.” Here, it is clear that Pilgrim Watch’s contention is not “based” on these enhancements but rather on its concern that no program of inspections and testing is sufficient (i.e., the expansion of the program to include low voltage cable and the increases in the minimum inspection and testing frequency do not support any claimed insufficiency that could not have been raised earlier).

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.” Duke Power Co. (Catawba Nuclear Station,

Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1043 (1983).<sup>37</sup> Here, Pilgrim Watch has previously acknowledged that contentions challenging similar AMPs were raised in the Indian Point license renewal proceeding<sup>38</sup> more than three years ago. PW Dec. 13, 2010 Request at 2, 6. A number of Pilgrim Watch's assertions in its January 20, 2011 pleading are taken nearly verbatim from those contentions. Compare New York Petition at 92-94 (¶¶ 1-10) with PW Request at 9 (¶¶ 8-10). 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 19, 2010.<sup>39</sup> Compare PW Request at 7-8 (¶¶ 1, 3) with PW 2.206 Petition at 2 (¶¶ 1, 3); PW Request at 8-9 (¶¶ 6-7) with PW 2.206 Petition at 2 (¶¶ 2, 4); PW Request at 17-19 (¶¶ 27-31) with PW 2.206 Petition at 4-6 (¶¶ 11-13). Obviously, Pilgrim Watch could have raised these claims earlier.

Although Pilgrim Watch's argument on timeliness refers only to GALL Rev. 2 and the LRA Supplement (see PW Request at 53-54), its Request still contains references to IN 2010-26 as "new information." PW Request at 1 n.1, 12. To the extent that Pilgrim Watch may still be relying on IN 2010-26 to support the timeliness of its contention, its characterization of IN 2010-26 as new information is equally specious. 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

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<sup>37</sup> See also Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 N.R.C. 13, 21 (1986) (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.). 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).

<sup>38</sup> 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").

<sup>39</sup> 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").

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.<sup>40</sup>

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) (footnote omitted). “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).

### 3. No Demonstration of the Existence of a Significant Safety Issue

Neither Pilgrim Watch nor Mr. Blanch demonstrate the existence of a significant safety issue, let alone an “exceptionally grave” issue required for untimely motions to reopen. 10 C.F.R. § 2.326(a). 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). Similarly insufficient is Mr. Blanch’s opinion that the alleged absence of recognized testing methods “may result in common mode failures, increasing the probability and possibly challenging” reactor systems, shutdown capability, and consequence mitigation. Blanch Affidavit at ¶50 (emphases added). Commission precedent explicitly holds

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<sup>40</sup> For a more complete discussion showing that IN 2010-26 does not contain new information, see Entergy Jan. 7 Answer at 16-20.

that “bare assertions and speculation . . . do not supply the requisite support” to satisfy the Section 2.326 standards. Oyster Creek, CLI-09-7, 69 N.R.C. at 287 (citing CLI-08-28, 68 N.R.C. at 674). Further, as discussed in the attached Declaration from Messrs. Vincent Fallacara and Roger B. Rucker, NUREG/CR-7000 (which Mr. Blanch states is “the most comprehensive study on cable degradation”)<sup>41</sup> identifies effective testing methods that are consistent with the AMP, and industry research has concluded that the potential for common mode failures is unlikely. Entergy Decl. at ¶¶ 11, 59-60 & Ex. D. Moreover, while safety-related equipment is obviously important, Pilgrim Watch and Mr. Blanch ignore the fact that the Pilgrim AMPs are based on, and consistent with, recommendations in the GALL Report, which the Commission has held constitutes reasonable assurance that the targeted aging effect will be adequately managed during the renewal period. Oyster Creek, CLI-08-23, 68 N.R.C. at 468; Vermont Yankee, CLI-10-17 at 44. Thus, no significant or grave safety issue is raised here.

#### 4. No Materially Different Result Would Be Likely

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). Mr. Blanch not only makes no mention of this criterion – contrary to 10 C.F.R. § 2.326(b), which requires that a supporting affidavit include a specific explanation of why it has been met – but also provides no information anywhere in his Affidavit from which any argument on this criterion could be gleaned.

Pilgrim Watch’s Request is equally deficient. Pilgrim Watch asserts that it is not required to prove its case or provide factual support “of the quality as that is necessary to withstand a summary disposition motion,” PW Request at 5, and that it cannot show that a

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<sup>41</sup> Blanch Affidavit at ¶42.

materially different result would be likely because “the new contention does not involve any prior result.” PW Request at 59. 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. Rather, “longstanding agency practice hold[s] that a party seeking to reopen a closed record to introduce a new issue . . . must back its claim with enough evidence to withstand summary disposition when measured against its opponents contravening evidence.” Private Fuel Storage (Independent Spent Fuel Storage Installation), CLI-05-12, 61 N.R.C. 345, 348 (2005), citing Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 A.E.C. 520, 523-24 (1973). This means that “no reopening of the evidentiary hearing will be required if the [documents] submitted in response to the motion demonstrate that there is no genuine unresolved issue of fact.” Id. at 350 (quoting Vermont Yankee, ALAB-138, 6 A.E.C. at 523-24).

Here, the attached Declaration demonstrates that there is no genuine issue of material fact in dispute. In particular, this Declaration shows that:

- The Application committed to an AMP for Non-EQ Inaccessible Medium-Voltage Cable that is consistent with Rev. 1 of the GALL Report, taking no exceptions. Entergy Decl. at ¶¶ 6-7.
- The NRC Staff reviewed this AMP and found it acceptable. Id. at ¶ 8.
- In response to GALL Rev. 2, Entergy has enhanced this AMP so that it now includes low-voltage (400 V to 2 kV) power cable, and has increased the minimum frequency of manhole inspections and cable insulation testing. Id. at ¶ 10.

- The purpose of this AMP for non-EQ inaccessible cable is to minimize cable exposure to significant moisture that might cause failure of low- and medium-voltage cable not subject to the environmental qualification requirements of 10 C.F.R. § 50.49 (which Entergy refers to as “non-EQ” cable), and to test the cable insulation for cables potentially exposed to significant moisture. Id. at ¶ 5.
- Cable with voltages below 400 V are not included in the AMP for non-EQ inaccessible cable because the operating experience across all operating units has not indicated any significant frequency of water-induced failure. This reflects the fact that degradation of cable insulation is generally a function of both the voltage and the presence of water (i.e., the voltage level contributes to the degradation). Id. at ¶ 26.
- High-voltage (>35 kV) power cables and connections are not included in the aging management program recommended by Section XI.E3 of the GALL Report for non-EQ inaccessible cable because they have unique, specialized constructions and must be evaluated on an application specific basis. PNPS does not have any inaccessible, high-voltage cable subject to aging management review. Id. at ¶ 27.
- There are no inaccessible cable splices at Pilgrim. The Pilgrim AMP described in LRA App. B § B.1.34 manages the effects of aging on cable splices. Id. at ¶ 13.
- The AMP for non-EQ inaccessible cable requires periodic actions to minimize exposure of cable significant moisture, such as inspecting for water collection in cable manholes containing in-scope cables, and draining water as needed. These inspections will occur at least once every year, with more frequent inspections performed if necessary based on trending and evaluation of inspection results. Id. at ¶ 10. For example, with respect to

the only two manholes that are near the water table, Entergy conducts these inspections bi-weekly. Id. at ¶¶ 23, 37.

- The AMP for non-EQ inaccessible cable requires testing at least every six years to provide an indication of the condition of the cable insulation, and the results will be evaluated to determine the need for increasing the test frequency. Id. at ¶ 10.
- Multiple proven tests exist for determining the degradation of cable insulation from different aging mechanisms. The types of tests specified in Section XI.E3 of the GALL Report and in the revised Pilgrim AMP for non-EQ inaccessible cable are all identified in NUREG/CR-7000 as tests that have the ability to indicate the condition of cable insulation. Id. at ¶¶ 11, 13, 15.
- The tests identified in the AMP for detecting cable insulation degradation include: dielectric loss (dissipation factor/power factor); insulation resistance and polarization index; AC voltage withstand; partial discharge; step voltage; time domain reflectometry; and line resonance analysis. Id. at ¶¶ 10-11.
- The manhole inspections and cable insulation tests required under Pilgrim’s AMP are consistent with recommendations for such inspections and tests developed by the Electric Power Research Institute (“EPRI”). Id. at ¶ 17.
- While there is no regulatory requirement for baseline inspections, the initial testing of the non-EQ medium- and low-voltage inaccessible cable will provide baseline results. All in-scope medium-voltage cable will be tested before the period of extended operation, and all in-scope, inaccessible low-voltage cable will be tested within the first six years of extended operation. Id. at ¶¶ 28-29.

- Corrosion is not an aging effect applicable to cable insulation because cable insulation is non-metallic and therefore not subject to corrosion. Id. at ¶ 31.
- There is no regulatory requirement to perform a hydrological survey of the Pilgrim site for license renewal purposes. Nevertheless, Pilgrim performed such a survey in 2007 as part of the industry’s groundwater protection initiative. The survey confirms that Pilgrim cables are installed above the groundwater table. Id. at ¶¶ 35-36.
- The Pilgrim site grade elevation is 23 feet above mean sea level and above the 100 year flood level. Pilgrim has not been subject to flooding. Groundwater flows into Cape Cod Bay; sea water does not flow in the reverse direction. Groundwater at Pilgrim does not have high corrosive salt concentrations. Rainwater does not have high corrosive salt concentrations. The average pH results from tests on water collected from storm drains and manholes is essentially neutral and does not indicate the presence of any contaminants that might adversely impact cable insulation. Id. at ¶ 50.
- Pilgrim’s inaccessible cables are located in a “mild environment” as defined in the NRC rules and, therefore, the environmental qualification requirements of 10 C.F.R. § 50.49 do not apply to them. Id. at ¶¶ 39-41.
- For electrical equipment located in mild environments, such as Pilgrim’s non-EQ inaccessible cables, compliance with the provisions of GDC 4 are generally achieved and demonstrated by proper incorporation of all relevant environmental conditions into the design process, including the equipment specification. Id. at ¶ 42. Pilgrim’s inaccessible cables were procured for installation in wet locations. Id. at ¶ 43. Test results of samples taken from underground, 4 kV Pilgrim medium-voltage cable over 30 years old showed no evidence of premature aging or degradation. Id. at ¶ 29.

- The commercial industry standards cited by Mr. Blanch (e.g., National Electrical Manufacturers Association (“NEMA”), National Electric Code (“NEC”)), do not apply to underground power cables installed at Pilgrim. Id. at ¶¶ 44-47.
- Pilgrim does not use “inside wiring not intended to get wet,” i.e., there is no NM-B cable in use as underground cable. Id. at ¶¶ 48-49.
- Cable failures will not result in common mode failures because the likelihood of simultaneous cable insulation failure is extremely low in light of the long time period required to make a cable susceptible to voltage surges that can lead to cable failure, and the fact that voltage surges are random. Id. at ¶¶ 59-60.

The remaining allegations made by Pilgrim Watch or Mr. Blanch are immaterial or otherwise beyond the scope of this proceeding.

B. 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 Calvert Cliffs, CLI-06-21, 64 N.R.C. at 33. "Late petitioners properly have a substantial burden in justifying their tardiness." Nuclear Fuel Services, CLI-75-4, 1 N.R.C. at 275.

Commission case law places most importance on whether the petitioner has demonstrated sufficient good cause for the untimely filing.<sup>42</sup> "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. Millstone, CLI-09-5, 69 N.R.C. at 125-26, citing Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 N.R.C. 1, 6 (2008).

For the same reasons why the contention is not timely under sections 2.326(a)(1) and 2.309(f)(2), Pilgrim Watch has failed to demonstrate good cause for its very late-filed contention. The issuance of LRA Supplement, which enhanced the previous AMP, is not sufficient grounds to submit a late contention because Pilgrim Watch could have challenged the sufficiency of the

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<sup>42</sup> Watts Bar, CLI-10-12 at 4; Private Fuel Storage, CLI-00-02, 51 N.R.C. at 79.

Pilgrim AMP for non-EQ inaccessible cable since the outset of this proceeding. Therefore, if the program is insufficient now, it must also have been insufficient prior to the revisions. Pilgrim Watch should have raised its allegations long ago.

Because it has failed to demonstrate good cause, Pilgrim Watch must make a “compelling” showing with respect to the other factors. Comanche Peak, CLI-93-4, 37 N.R.C. at 165. 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, at 4 (footnote omitted).

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, 246-47 (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. Moreover, this proceeding itself is entering its sixth year, notwithstanding the Commission’s goal to complete

such proceedings in two and one half years.<sup>43</sup> Clearly, starting another hearing to litigate a new contention at this very late hour would delay issuance of the renewed license by months, if not longer.

Concerning the eighth factor, it cannot be reasonably expected that Pilgrim Watch will assist in developing a sound record. Pilgrim Watch's claimed ability to contribute to a sound record (PW Request at 58)<sup>44</sup> is belied by the lack of quality and substance of the PW Request and supporting Affidavit. Pilgrim Watch's and Mr. Blanch's repeated claims that the NRC, EPRI, and Brookhaven have concluded that no "proven method" exists to detect cable insulation degradation belie any ability to contribute to this proceeding. NUREG/CR-70000 and EPRI Reports 1020804 and 1020805 describe and endorse the cable condition monitoring techniques provided in GALL Rev. 2 and in Entergy's AMP for non-EQ inaccessible cable. Entergy Decl. at ¶¶ 11, 13, 17. It is also belied by Mr. Blanch's apparent unawareness of the contents of the GL 2007-01 Summary Report, which summarized licensees' responses to GL 2007-01. Mr. Blanch's speculation that the cables failures described therein may be the "tip of the iceberg" (Blanch Affidavit at ¶ 46) because many of the cables may not be normally energized is flatly contradicted by explicit statements in the GL 2007-01 Summary Report that, of the cable failures for which licensees indicated whether the cable was normally energized, 93% of the failures

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<sup>43</sup> 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.

<sup>44</sup> In addressing its ability to contribute to a sound record, Pilgrim Watch asserts that intends principally to rely upon government documents and testimony from Paul Blanch. PW Request at 58. "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 10-11 (footnote omitted); see also Braidwood, CLI-86-8, 23 N.R.C. at 246. Because Pilgrim Watch does not present any summary of the proposed testimony, Entergy assumes that any testimony would be essentially the same as the claims in Mr. Blanch's Affidavit.

were on normally energized cables. Entergy Decl. at ¶ 53. It is belied by Mr. Blanch’s assertion that NEMA makes up the “independent experts for electrical standards including the National Electric Code [(“NEC”)],” Blanch Affidavit at ¶ 22, when, in fact, the NEC is produced by the National Fire Protection Association. Entergy Decl. at ¶ 46. It is also belied by Mr. Blanch’s assertion that NEMA and NEC design standards apply to underground cable installed at nuclear power plants when they do not. Entergy Decl. at ¶ 45-47. Moreover, Mr. Blanch’s Affidavit does not identify any special expertise with cable monitoring programs at commercial nuclear power reactors.

Further, Pilgrim Watch’s conduct in prosecuting the remanded SAMA contention is illustrative of the lack of contribution that can be expected. Despite having been given more than eight months to prepare its testimony on the remanded contention, on December 2, 2010, Pilgrim Watch filed a memorandum explaining that it will not submit expert testimony in support of Contention 3 because doing so would be a “fool’s errand” and “a waste of limited resources.” Pilgrim Watch Memorandum Regarding SAMA Remand Hearing (Dec. 2, 2010) at 3.

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).

C. 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.

Many of the issues raised in the Request are immaterial to, and beyond the scope of, this proceeding. The contention itself is unduly vague. And the Request otherwise fails to raise a genuine dispute on any material issue.

1. 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 compliance with the CLB for the plant, not the adequacy of the AMP in the Application, and is therefore outside the scope of this proceeding and immaterial to the findings the NRC must make. 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 Nuclear 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.").

Much of Pilgrim Watch's current Request and Mr. Blanch's Affidavit are now devoted to an argument that the requirements of 10 C.F.R. § 50.49 apply to Pilgrim's inaccessible low- and medium-voltage cables because the outdoor environmental is allegedly harsh. Blanch Affidavit at ¶¶ 26, 37-40, 52-54; PW Request at 9-11 (¶¶ 11-16). This claim alleges that the current plant design does not meet NRC requirements, and thus raises a design issue and challenge to the CLB that are beyond the scope of the license renewal rules. These claims are also outside the scope of

this proceeding because they are impermissible challenges to the NRC regulations. The NRC rules provide a specific definition of “mild environment” and explicitly provide that electric equipment in such an environment is not within the scope of 10 C.F.R. § 50.49. See 10 C.F.R. § 50.49(c). A mild environment is defined as an environment that would at no time be significantly more severe than the environment that would occur during normal plant operations, including operational occurrences. Id. Pilgrim Watch’s claim that non-EQ cable must be qualified under 10 C.F.R. § 50.49 because it may be exposed to weather or other normally occurring conditions is inconsistent with, and therefore an impermissible challenge to, these rules.

Absent a petition for a waiver of the rule, the 10 C.F.R. § 50.49 requirements cannot be challenged in this proceeding. 10 C.F.R. § 2.335(b). Pilgrim Watch has not petitioned for such a waiver, nor has it demonstrated that any “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule . . . would not serve the purposes for which the rule or regulation was adopted.” Id. Consequently, Pilgrim Watch’s and Mr. Blanch’s claims regarding 10 C.F.R. § 50.49 are impermissible.

Pilgrim Watch’s claims that non-EQ cables violate GDC 4 (see PW Request at 10 ¶¶ 12-13) are similarly beyond the scope of this proceeding. Compliance with GDC 4 is a design issue concerning Pilgrim’s CLB and therefore outside the scope of this proceeding. Moreover, there is no basis for Pilgrim Watch’s assertion. For electrical equipment located in mild environments, compliance with the provisions of 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. Here, Pilgrim’s in-scope inaccessible cables were procured to accommodate wet locations.

Energy Decl. at ¶ 43. Thus, this assertion is outside the scope of this proceeding and otherwise has no basis.

Pilgrim Watch also asserts (without any support) that “Pilgrim has a history of submerged and/or wetted cables” (PW Request at 8); “[t]here is no basis upon which anyone can assume that most inaccessible electrical cables at [Pilgrim] have not been exposed to significant moisture over the past 40 years since initial construction in the 1960’s” (PW Request at 17); and “[t]here is no basis for assuming that none of these cables were likely damaged during their installation at Pilgrim, meaning scrapes and other damage likely occurred in the surface of the insulation and possibly deeper” (PW Request at 22, footnote omitted). Elsewhere, Pilgrim Watch references the potential for other installation related damage. See PW Request at 13-14, 19(¶ 30), 21-22 (¶¶ 37-38). 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 the same vein, Pilgrim Watch asserts that the NRC has “utterly failed to take the critical next step in any aging/failed component management program: failed or failing cables must be replaced or otherwise updated to bring the cables into compliance with NRC Regulations” (PW Request at 15); the NRC has “not required PNPS to take any action” to address submergence of inaccessible cables (PW Request at 12); and the NRC has not ordered any corrective action (PW Request at 14-15). 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.<sup>45</sup>

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<sup>45</sup> Furthermore, like all AMPs, the non-EQ inaccessible cable AMP is subject to the License Renewal Application Appendix B corrective action program, LRA App. B § B.0.3, PNPS Corrective Actions, Confirmation Process, and Administrative Controls (“Appendix B CAP”). Any deficiencies found in the AMP inspections would fall into this corrective action program.

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 36, 46. See also Blanch Affidavit at ¶ 30. This discussion relates to in-service testing conducted under current operating licenses, and is therefore not an issue within the scope of this proceeding. Furthermore, as described in the Entergy Declaration, this argument has no basis because the in-service testing described in NUREG/CR-7000 is not the same as the condition monitoring tests specified in the GALL Report and AMP for cable insulation. Entergy Decl. at ¶ 15. Thus, Pilgrim Watch's and Mr. Blanch's claims about in-service testing are beyond scope and offer no basis to challenge the sufficiency of Entergy's AMP.

In sum, Pilgrim Watch raises a host of issues that are outside the scope of this proceeding, and therefore do not support admission of the contention.

2. The New Contention is Unduly Vague and Contains No Brief Explanation of its Basis

Pilgrim Watch's new contention is vague and inadequately supported and thus fails to meet 10 C.F.R. § 2.309(f)(1)(i), (ii), and (v). 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. Nor is there any brief explanation of the basis, as required under 10 C.F.R. § 2.309(f)(1)(ii). One is then left to comb through 60 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.

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 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)).

a) Proven Tests for Cable Insulation Degradation

Mr. Blanch and Pilgrim Watch allege that various organizations, including NRC, EPRI, and Brookhaven National Laboratory ("Brookhaven"), have concluded that no proven test exists to determine the degradation of cable insulation. Blanch Affidavit at ¶¶ 29, 32-35, 45-46; see also PW Request at 27, 35-37. These claims are belied by the same documents from those organizations on which Mr. Blanch and Pilgrim Watch rely, and therefore fail to raise a genuine dispute. 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. (North Anna Power Station, Unit 3), LBP-08-15, 68

N.R.C. 294, 334 n.207 (2008); Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 N.R.C. 61, 90 & n.30 (1996). See also LBP-96-2, 43 N.R.C. at 88-89 (rejecting a contention where the document referenced by petitioner on its face failed to establish a disputed material issue).

Pilgrim Watch fails to support its assertion that NRC and Brookhaven studies show that no proven test exists for detecting cable insulation degradation. For support, Pilgrim Watch relies on NUREG/CR-7000, which is the only study or report associated with Brookhaven identified by Pilgrim Watch. However, that Report specifically identifies multiple examples of some commonly used cable insulation condition monitoring techniques, including dielectric loss (dissipation factor/power factor); insulation resistance and polarization index; AC voltage withstand; partial discharge; step voltage; time domain reflectometry, and line resonance analysis. NUREG/CR-7000 at 3-4 to 3-10. Indeed, Pilgrim Watch's Request quotes portions of NUREG/CR-7000 that recommend use of these condition monitoring techniques. See PW Request at 47-49. 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 GALL Report Section XI.E3 AMP calls for, and many of the cable condition monitoring techniques discussed in NUREG/CR-7000 are, in fact, identified in the Pilgrim AMP for non-EQ inaccessible cable. LRA Supplement at 9. The claim that neither the NRC nor Brookhaven have identified a proven test for cable insulation degradation is expressly contradicted by NUREG/CR-7000 and Section XI.E3 of GALL Rev. 2.

Moreover, neither Mr. Blanch nor Pilgrim Watch challenge the sufficiency of the cable condition monitoring techniques discussed in that document. Neither Mr. Blanch nor Pilgrim

Watch make any attempt to discuss the specific testing methods specified in the GALL Report and Pilgrim AMP for non-EQ inaccessible cable. Thus, they fail to raise any genuine dispute on a material issue here.

Pilgrim Watch's and Mr. Blanch's reliance on EPRI studies suffers the same fatal flaw. Mr. Blanch generally references EPRI studies in his affidavit (Blanch Affidavit at ¶¶ 29, 33, 45, 46), but nowhere identifies any specific report or study, or portion of any report or study prepared by EPRI. Although Pilgrim Watch quotes from EPRI Report 1020804, PW Request at 19 n.12, the quoted portion states only that insulated cables exposed to moisture are a concern, and that the Report will provide guidance for implementing a cable condition monitoring program. The quoted portion says nothing about any purported lack of a proven cable condition monitoring method. Commission precedent requires that intervenors identify the information on which they rely with specificity. Thus, if the alleged facts are not cited with specificity, neither the Applicant nor the Commission need look any further because they are not required to sift through a voluminous reference to search for a needle that may be in a haystack. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-03, 29 N.R.C. 234, 241 (1989).

But in any event, EPRI Report 1020804 contradicts Pilgrim Watch's position and in fact discusses proven cable condition monitoring methods (as well as other means to provide assurance that inaccessible underground cables are not exposed to continued wetting):

Low-voltage ac and dc power cables subject to wet conditions should be periodically tested by insulation resistance to ground and, as practicable, phase-to-phase or other recognized tests to determine whether degradation has occurred. Results should be trended to identify significant drops (for example, a decade or more) that are not associated with conditions at the time of the test. Acceptance criteria should be developed.

To the extent practicable, manholes, vaults, and ducts should be drained, so that cables are not in or covered by long-standing water.

EPRI Report 1020804 at 6-1; see also Entergy Decl. at ¶ 17. These actions recommended by EPRI are consistent with those required under Entergy's AMP for non-EQ inaccessible cable and are not otherwise challenged by Pilgrim Watch. Accordingly, Pilgrim Watch raises no genuine dispute on any material issue here.

Similarly, Mr. Blanch references Sandia National Laboratory ("Sandia") studies three times in his Affidavit (Blanch Affidavit at ¶¶ 29, 33, 45), but never once identifies any specific report, portion of a report, finding, conclusion, or anything else from any Sandia report or study concerning cable management programs. Pilgrim Watch alleges that one portion of Sandia Report SAND96-034, Aging Management Guidelines for Commercial Nuclear Power Plants – Electrical Cable and Terminations ("SAND96-034") supports its assertion that no proven technology exists to detect cable degradation. PW Request at 35-36. But SAND96-034 predates both the GALL Report and NUREG/CR-7000 (the latter by fourteen years). As previously discussed, NUREG/CR-7000 identifies multiple methods for detecting cable insulation degradation. NUREG/CR-7000 at 3-4 to 3-10. The technical findings described in SAND96-034 were considered by both NUREG/CR-7000 and the relevant GALL programs. See, e.g., NUREG/CR-7000 at 2-14; GALL Rev. 2 at XI.E3-1. Although Mr. Blanch, in his prior Affidavit, asserted that the SAND96-034 report's fourteen-year-old conclusions have not been superseded (Affidavit of Paul M. Blanch (Jan. 14, 2011) at ¶ 44), this assertion no longer appears in his current Affidavit. Furthermore, neither of Mr. Blanch's affidavits makes any attempt to identify any specific conclusion contained in SAND96-034 that has not been superseded by NUREG/CR-7000 or the GALL Report, or to explain what, if any, finding, conclusion, statement, or inference from SAND96-034 calls into question the sufficiency of Entergy's AMP

for non-EQ inaccessible cable in light of the more recent findings contained in NUREG/CR-7000 and the GALL Report. Thus, Pilgrim Watch and Mr. Blanch fail to raise any genuine dispute on any material issue of law or fact here.

b) Commercial Industry Standards

Mr. Blanch (and thus Pilgrim Watch) make multiple claims with respect to commercial industry requirements (e.g., NEMA and the NEC) for cable and wiring that have been submerged, or exposed to or damaged by floodwaters, namely that such cable needs to be replaced. Blanch Affidavit at ¶¶ 19-25, 37, 44; PW Request at 6, 8, 15, 20, 28-29, 33-34, 37. However, the NEMA and NEC standards simply do not apply to electrical cable of the type installed at nuclear power plants. Entergy Decl. at ¶¶ 45-47. Indeed, the scope of the NEC standards specifically exclude “[i]nstallations used by the electric utility” that are “an integral part of a generating plant.” Id. at ¶ 47 n.4. Mr. Blanch’s other references to the “Lowe’s for Pros” and “southwire.com” websites are also unavailing. Pilgrim does not employ NM-B/ROMEX cable, or other “inside wiring not intended to get wet” for its inaccessible low- and medium-voltage power cable. Entergy Decl. at ¶¶ 48-49. Thus, Mr. Blanch’s assertions with respect to commercial industry cable requirements fail to raise a genuine dispute on a material issue.

c) Sufficiency of the AMP for Non-EQ Inaccessible Cable

Pilgrim Watch makes a number of claims challenging the sufficiency of the AMP for non-EQ inaccessible cable, but an examination of these claims reveals that Pilgrim Watch has provided no support for the claims and has failed to sufficiently challenge the program as described in the Application.

Pilgrim Watch 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 21, ¶ 36. However, the NRC presentation slides to which Pilgrim Watch refers as purported support for this claim (see PW Request at 21 n.13) say nothing of the kind.

In Paragraph 46, subparagraphs i –iii, and vi, Pilgrim Watch claims the AMP for non-EQ inaccessible cable does not: (1) appropriately define “significant moisture,” PW Request ¶ 46 (i) (see also PW Request at ¶ 71); (2) provide any protection against unpredicted events, PW Request ¶ 46 (ii); (3) determine system functionality during a wetting or submergence, PW Request ¶ 46 (iii); or (4) show if a cable has been exposed to significant moisture in the past, PW Request ¶ 46 (vi) (see also PW Request at ¶ 72). Pilgrim Watch offers no support for these assertions and, indeed, no reference to Mr. Blanch’s affidavit is made for any of them. Pilgrim Watch never identifies any specific shortcoming in the definition of significant moisture, nor provides what the definition of “significant moisture” ought to be, or otherwise challenges the definition provided in GALL Rev. 2 for “significant moisture” – periodic exposures to moisture that last more than a few days. GALL Rev. 2 at XI E3-2. Pilgrim Watch never identifies or explains what “unpredicted events” might challenge cable insulation. It never explains how or why a cable insulation degradation test method ought to, or could be, used to determine the functionality of the systems for which the cable supplies power. It never explains why past exposure to significant moisture is relevant to an AMP that tests the current condition of the cable insulation. None of these assertions are adequately supported to raise a genuine dispute on any material issue.

Pilgrim Watch's claim that "[u]ndefined testing once over the next 20+ years using an unproved test system shows nothing (PW Request at ¶ 46(iv)) fails to raise a genuine dispute because, as previously discussed, the GALL Report and the AMP specifically identify types of testing which NUREG/CR-7000 indicates may be used to monitor the condition of insulation. Indeed, the only specific type of testing that Mr. Blanch discusses is in-service testing (Blanch Affidavit at ¶ 30), which is not relied upon in the AMP. Neither Pilgrim Watch nor Mr. Blanch provide any specific discussion of the testing methods that are identified in the GALL Report and AMP, such as dielectric loss (dissipation factor/power factor), AC voltage withstand, partial discharge, step voltage, time domain reflectometry, insulation resistance and polarization index, and line resonance analysis. Further, the suggestion that there testing will only occur once fails to address information in the Application, which provides that tests are to be conducted at least once every six years, and the frequency is subject to adjustment based on test results. LRA Supplement at 9.

Pilgrim Watch's assertion that there is no requirement that all low- and high- voltage cables will be tested (PW Request at ¶¶ 46(vii), 50) fails to raise a genuine dispute on a material issue. For one, Pilgrim has no high-voltage cables within the scope of license renewal. Entergy Decl. at ¶ 27. Next, the cable insulation degradation testing does now apply to low-voltage cables between 400 V and 2 kV. LRA Supplement at 9; Entergy Decl. at ¶ 25. To the extent that Pilgrim Watch contends that cables with voltage below 400 V ought to be tested, it offers no basis for such a contention. Pilgrim Watch does not identify any operating experience that would warrant such testing (indeed, it does not identify any instance where cable insulation below 400 volts has failed due to exposure to moisture), and does not identify any aging

mechanism that could cause such failure. In short, Pilgrim Watch offers no information or support or basis why any such cables ought to be tested.

Pilgrim Watch's claims that there is no mention of "what will be done if a test shows deterioration" (PW Request at ¶ 46(viii)), or what Entergy will do with cable identified as unacceptable (PW Request at ¶ 73). These claims are incorrect and impermissibly assume, without any support, that Entergy will not comply with Commission regulations. For one, the revised AMP provides that, for the manhole inspection portion of the program, water will be drained as needed. LRA Supplement a 9. These claims also ignore the License Renewal Application Appendix B corrective action program, LRA App. B § B.0.3, PNPS Corrective Actions, Confirmation Process, and Administrative Controls, which requires evaluation of conditions adverse to quality, including the assessment of necessary corrective actions. Moreover, Commission regulations require Entergy to take corrective action if any condition adverse to quality is identified. 10 C.F.R. Part 50 App. B, Criterion XVI, Corrective Action. Indeed, "[i]f a cable insulation test indicates degrading cable insulation, the condition will be addressed by the PNPS corrective action program." Entergy Decl. at ¶ 64. Pilgrim Watch's claims here implicitly assume that Entergy will not comply with Part 50 App. B Criterion XVI. Pilgrim Watch provides no evidence or support for its assumption. Without such support, the Commission will not assume that licensees will contravene its regulations. GPU Nuclear Inc., (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 207 (2000). Therefore, this claim has no basis and fails to raise a genuine dispute on a material issue.

Pilgrim Watch's assertion that the AMP's provisions for inspecting for water accumulation is insufficient (PW Request at 27 ¶ 46(v)) and "does not provide for the fact that not all inaccessible cables are capable of inspection by manholes" (PW Request at 35, ¶ 62) 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. GALL Rev. 2 acknowledges that the inspection program “is not sufficient to ensure that water is not trapped elsewhere in the raceways,” but rather is “necessary to minimize the potential for insulation degradation.” 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 potentially exposed to significant moisture. Id.; see also LRA Supplement at 9. Thus, Pilgrim Watch’s concern fails to materially challenge the program put in place to detect potential insulation degradation for that inaccessible cable.

Pilgrim Watch claims that testing for cable insulation degradation once every six years and inspecting manholes one every year are “wholly insufficient” (PW Request at ¶ 52), particularly when considering its location on Cape Cod Bay and associated weather phenomena (id. at ¶¶ 55-56), and the failure to link testing frequencies to the age of the components (id. at ¶¶ 58-61). Pilgrim Watch, however, provides no support for its assertions. It ignores, and therefore fails to dispute, the fact that the Pilgrim AMP requires inspection and testing intervals to be adjusted based on operating experience. The cable insulation testing “will be conducted at least

once every six years” and “Entergy will evaluate unacceptable test results to determine the need for increasing the testing frequency.” LRA Supplement at 8-9 (emphasis added). The manhole inspections will be “conducted at least annually and trended to determine the need to revise manhole inspection frequency.” Id. at 9 (emphasis added). Indeed, two Pilgrim manholes susceptible to water collection are being inspected every two weeks. Entergy Decl. at ¶ 37. Pilgrim Watch never makes any showing of what the testing and inspection frequencies ought to be. It never suggests that the weather phenomena present at Pilgrim are any different or more severe than those considered for other plants located on the coast. Nor does it show that Pilgrim cables are subject to contaminated water.<sup>46</sup> Indeed, they are not. See Entergy Decl. at ¶ 37. Thus, there is no basis for these assertions.

In a related argument, Pilgrim Watch claims that “corrosion is not constant with time” and therefore “the entire risk management of the AMP is misplaced.” PW Request at ¶ 51. Corrosion, however, is irrelevant to the Entergy AMP for non-EQ inaccessible cable. Corrosion is not an aging effect applicable to cable insulation because cable insulation is non-metallic and therefore not subject to corrosion. Entergy Decl. at ¶ 31. Corrosion therefore provides no basis to challenge the cable insulation testing frequency. And, Pilgrim Watch provides no information that would support the claim of accelerating aging of cable insulation or the need for more frequent testing. Nor does Pilgrim Watch address or dispute the statements in GALL Rev. 2 that insulation degradation is a “slow process” making the recommended testing intervals adequate. GALL Rev. 2 at XI.E3-2. Pilgrim Watch does not challenge this information, and therefore fails to genuinely dispute it.

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<sup>46</sup> While Mr. Blanch asserts that the groundwater at Pilgrim has very high, corrosive salt concentrations (Blanch Affidavit at ¶23), he does not point to any data supporting that assertion, any personal knowledge of the groundwater characteristics at Pilgrim, or any qualifications to opine on the chemical composition of groundwater at Pilgrim.

Pilgrim Watch incorrectly claims that the AMP does not call for a baseline inspection prior to the period of extended operation to determine the condition of in-scope cables and trend that condition over time. PW Request at 31. In fact, the non-EQ inaccessible cable program provides that all medium-voltage cables will be tested prior to the period of extended operation. All low-voltage cable testing (which is an additional recommendation in the recently revised GALL Report) will be completed within the first six years of entering the period of extended operation. LRA Supplement at 9. This means that, by the end of the license renewal period, medium-voltage cables will be tested four times and low-voltage cables will be tested three times. This is consistent with the GALL Report's findings that a

6-year interval provides multiple data points during a 20-year period, which can be used to characterize the degradation rate.

GALL Rev. 2 XI. E3-2. Prioritizing the medium- and low-voltage cable testing in this manner is appropriate given the short time between issuance of GALL Rev. 2 with its expanded scope of low-voltage cables and Pilgrim's period of extended operation commencing in 2012. Entergy Decl. at ¶ 29. It is also consistent with the GALL Report's findings that insulation degradation is "a slow process" that "varies directly with operating voltage." GALL Rev. 2 at XI. E3-2 & XI. E3-3 (emphasis added). Pilgrim Watch provides no reason why low-voltage cable testing cannot occur after testing of medium-voltage cable and therefore fails to dispute it.

Pilgrim Watch asserts that a subsurface hydrological survey must be performed (PW Request at 31 and 33), but points to no regulatory requirement or any support suggesting that such a study is needed, or why the results of such a study pertains to the testing of inaccessible cables. Entergy's program does not selectively choose among non-EQ inaccessible cables based on, for example, the hydrology of the location where the cable sits. Rather, the AMP assumes that all inaccessible low- and medium- voltage cables with a license renewal intended function

are subject to wetting, thus all such cables will be tested under the AMP, regardless of whether, as Pilgrim Watch suggests, “locally adverse conditions are more severe than were anticipated when the plant was originally designed.” PW Request at 31. In any event, Pilgrim conducted a hydrological assessment in 2007 as part of a Corporate Groundwater Protection Initiative, which showed that Pilgrim cables are installed above the groundwater table. Entergy Decl. at ¶ 36.

For related reasons, Pilgrim Watch’s claim that the AMP is “silent on sampling” is irrelevant. Pilgrim Watch claims that there is no indication that the entire component, or what component, will be examined. PW Request at 35. But the manhole inspections and cable insulation testing called for in the AMP is not dependent on sampling. All manholes containing inaccessible low- and medium-voltage cables with a license renewal intended function will be inspected at least once a year, and all inaccessible low- and medium-voltage cables with a license renewal intended function will be subject to cable insulation condition monitoring at least once every six years. LRA Supplement at 8-9. No “sampling” is indicated in the AMP because all inaccessible low- and medium-voltage cables with a license renewal intended function will be tested and all manholes containing such cables inspected. Pilgrim Watch’s sampling concern raises no genuine dispute.

Likewise, Pilgrim Watch’s assertions that Entergy has failed to identify the location and extent of non-EQ inaccessible cables at Pilgrim (PW Request at 29 n.17, 33 ¶ 57, 35 ¶ 63) do 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.<sup>47</sup> Further, Pilgrim Watch provides no

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<sup>47</sup> As the GALL Report explains, “[e]lectrical cables and their required terminations (i.e., connections) are typically reviewed as a single commodity.” GALL Rev. 2 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.

explanation of why such information is relevant to the sufficiency of the AMP for non-EQ inaccessible cable.

Pilgrim Watch's assertion that there is no technical basis provided to justify differences between programs for aging management of accessible cables and inaccessible cables (PW Request at 39 ¶ 76) 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 79 of its Request that Entergy has not demonstrated that the effects of aging will be adequately managed (PW Request at 40, ¶ 79) is vague and conclusory. Entergy committed to an AMP for non-EQ inaccessible cable that is consistent with the recommendations in the GALL Report. 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 79 does not demonstrate any genuine material dispute with Entergy's Application.

Pilgrim Watch also raises multiple challenges to the NRC Staff SER (PW Request at 40-45). The Commission's rules, however, 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).

#### **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 recent revisions to the GALL Report and Entergy's AMP for non-EQ inaccessible cable 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: February 14, 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 14<sup>th</sup> day of February, 2011. In addition, a copy of this pleading was provided by email to the persons designated by an asterisk below.

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