

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Paul B. Abramson
Dr. Richard F. Cole

In the Matter of:

ENTERGY NUCLEAR GENERATION
COMPANY AND ENTERGY NUCLEAR
OPERATIONS, INC.
(Pilgrim Nuclear Power Station)

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

February 22, 2011

ORDER

**(Addressing Joint Motion, Motion in Limine, Proposed Findings of Fact and Conclusions
of Law/Concluding Statements of Position, and Argument to be held March 9, 2011)**

On February 16, 2011, parties Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Entergy), the NRC Staff, and Pilgrim Watch filed a Joint Motion¹ requesting that we “resolve with no oral evidentiary hearing, based solely on the parties’ submitted prefiled testimony and exhibits (including Dr. Egan’s January 30, 2011 statement),” the following threshold issue of Contention 3:

Whether the meteorological modeling in the Pilgrim SAMA analysis is adequate and reasonable to satisfy NEPA, and whether accounting for the meteorological patterns and issues of concern to Pilgrim Watch could, on its own, credibly alter the Pilgrim SAMA analysis conclusions on which SAMAs are cost-beneficial to implement.²

The parties request that we:

accept into the record the prefiled testimony of the parties on the meteorological modeling issues, including the January 30 declaration of Dr. Bruce Egan

¹ Joint Motion Requesting Resolution of Contention 3 Meteorological Issues on Written Submissions (Feb. 16, 2011).

² *Id.* at 1-2.

submitted by Pilgrim Watch, and the pre-filed exhibits of the parties subject to ruling on Entergy's Motion In Limine.³

Further, if we adopt the parties' proposed procedure, the parties would not submit any questions as permitted at 10 C.F.R. § 2.1208(a)(3),⁴ but are willing to file proposed findings of fact and conclusions of law or concluding statements of position in accordance with a schedule set by the Board.⁵

On February 18, 2011, the Board held a telephone conference with the parties, at which the following matters were addressed:

- (1) The Board verbally granted the Joint Motion, for good cause shown;
- (2) The Board verbally granted the Motion in Limine to the extent of excluding *as evidence* "Pilgrim Watch SAMA Remand Pre-Filed Testimony" (Jan. 3, 2011), stating that this document will not be considered as evidence but rather as argument in the nature of a Statement of Position. The Board will admit all of the exhibits of Pilgrim Watch and the other parties into the record, but shall in its deliberations accord each of them only the weight to which they are entitled, based on the extent to which they are "relevant, material, and reliable" pursuant to 10 C.F.R. § 2.337(a) and persuasive on the above-stated threshold issue. A list of these exhibits is attached hereto as Appendix A.
- (3) The Board requested the parties to file proposed findings of fact and conclusions of law, supporting each relevant proposed finding by referencing specific parts of the submitted evidence, and otherwise referencing parts of the evidence that they would like the Board

³ *Id.* at 2 (citing Entergy's Motion in Limine to Exclude from Evidence Pilgrim Watch's SAMA Remand Pre-Filed Testimony and Exhibits (Jan. 13, 2011)).

⁴ *Id.*

⁵ *Id.* at 3.

to particularly focus on regarding the above-stated threshold issue. The Board set a deadline of March 4, 2011, for the filing of these documents.

- (4) On March 9, 2011, the Board will conduct oral argument on Pilgrim Watch's new contentions, in the form of inquiries by the Board relating to whether the contentions meet relevant regulatory criteria, including relevant provisions of 10 C.F.R. §§ 2.309, 2.326. The Board will also hear arguments in the nature of closing arguments on the threshold issue of Contention 3, consisting primarily of Board questions relating to the parties' proposed findings of fact and conclusions of law. Each party shall be permitted to make short closing arguments, which will be limited to 10 minutes per party.
- (5) To expedite the management of this proceeding, any party that wishes to do so may have its witnesses present and available at the oral argument to answer any Board questions seeking clarification of any part of the evidence. If after the March 9 session the Board wishes to ask any further questions, these shall be accomplished through written questions, as provided at 10 C.F.R. § 2.1208(b).

The preceding actions are hereby ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 22, 2011⁶

⁶ Copies of this Order were filed with the agency's EIE system for service to the parties on this date.

APPENDIX A - LIST OF ADMITTED EXHIBITS**JOINT EXHIBIT**

JNT000001 NUREG/CR-6853, "Comparison of Average Transport and Dispersion Among a Gaussian, a Two-Dimensional, and a Three-Dimensional Model" (Oct. 2004)

ENTERGY EXHIBITS:

ENT000001 Jan. 3, 2011, Testimony of Dr. Kevin R. O'Kula and Dr. Steven R. Hanna on Meteorological Matters Pertaining to Pilgrim Watch Contention 3.

ENT000002 Dec. 2010 Declaration of Kevin R. O'Kula In Support Of Entergy's Pre-Filed Testimony ON Pilgrim Watch Contention 3 and Resume of Kevin R. O'Kula.

ENT000003 Dec. 2010 Declaration of Steven R. Hanna In Support Of Entergy's Pre-Filed Testimony ON Pilgrim Watch Contention 3 and Resume of Steven R. Hanna.

ENT000004 Dec. 2010 Analysis of Annual Wind Roses and Precipitation within about 50 Miles of the Pilgrim Nuclear Power Station, and Use of CALMET to Calculate the Annual Distribution of Trajectories from the Pilgrim Station

ENT000005 2006 License Renewal Application Environmental Report, Section 4.21.

ENT000006 2006 License Renewal Application Environmental Report, Attachment E.

ENT000007 2006 LRA Amendment 4, Response to Request for Additional Information Regarding SAMAs, Entergy Letter to NRC Dated July 5, 2006.

ENT000008 2006 LRA Amendment 7, Response to Request for Additional Information Regarding SAMAs, Attachment D, Entergy Letter to NRC Dated August 30, 2006.

ENT000009 2006 LRA Amendment 9, Response to Request for Additional Information Regarding SAMAs, Attachment E, Entergy Letter to NRC Dated October 6, 2006.

ENT000010 2006 LRA Amendment 10, Response to Request for Additional Information Regarding SAMAs, Attachment C, Entergy Letter to NRC Dated December 12, 2006.

ENT000011 Jan. 2011 Exposure Index Analysis Using MACCS2 and CALMET: Sensitivity Study Supporting the Pilgrim Station SAMA Analysis, Revision 1.

ENT000012 Jan. 3, 2011 Testimony of Dr. Kevin R. O'Kula on Source Term Used in the Pilgrim Nuclear Power Station Severe Accident Mitigation Alternatives (SAMA) Analysis

ENT000013 Rebuttal Testimony of Dr. Kevin R. O'Kula and Dr. Steven R. Hanna on Meteorological matters Pertaining to Pilgrim Watch Contention 3

ENT000014 Rebuttal Testimony of Dr. Kevin R. O'Kula and Dr. Steven R. Hanna on Source Term Used in the Pilgrim Nuclear Power Station SAMA Analysis

PILGRIM WATCH EXHIBITS:

PWA00001 Declaration Of Bruce A. Egan In Support Pilgrim Watch's Response Opposing Entergy's Motion For Summary Disposition Of Pilgrim Watch Contention 3

PWA00002 Declaration Of Dr. Jan Beyea In Support Pilgrim Watch's Response Opposing Entergy's Motion For Summary Disposition Of Pilgrim Watch Contention 3; and Excerpts From Report To The Massachusetts Attorney General On The Potential Consequences Of A Spent-Fuel-Pool Fire At The Pilgrim Or Vermont Yankee Nuclear Plant

PWA00003 Declaration Of David I. Chanin In Support Pilgrim Watch's Response Opposing Entergy's Motion For Summary Disposition Of Pilgrim Watch Contention 3

PWA00004 MACCS2 Support Forum, David I Chanin; Development Of MACCS2: Lessons Learned, David I. Chanin

PWA00005 Declaration Of Richard Rothstein In Support Pilgrim Watch's Response Opposing Entergy's Motion For Summary Disposition Of Pilgrim Watch Contention 3

PWA00006 Angevine, Modeling Of The Coastal Boundary Layer And Pollutant Transport In New England

PWA00007 Affidavit Of Joseph A. Jones and Dr. Nathan Bixler Concerning Entergy's Motion For Summary Disposition Of Pilgrim Watch Contention 3, excerpts Dr. Bixler

PWA00008 Economic Consequences Of A Rad/Nuc Attack: Cleanup Standards Significantly Affect Cost, Barbara Reichmuth, Steve Short, Tom Wood, Fred Rutz, Debbie Swartz, Pacific Northwest National Laboratory, 2005

PWA00009 Survey Of Costs Arising From Potential Radionuclide Scattering Events, Robert Luna, Sandia National Laboratories, WM2008 Conference, February 24-28, 2008, Phoenix AZ

PWA00010 Jennifer E. Thorp, The Eastern Massachusetts Sea Breeze Study

PWA00011 Spengler and Keeler, Feasibility Of Exposure Assessment For The Pilgrim Nuclear Power Plant

PWA00012 Dr. Edwin Lyman, A Critique Of The Radiological Consequence Assessment Conducted In Support Of The Indian Point Severe Accident Mitigation Alternatives Analysis

PWA00013 Revised Chapter 4, Meteorological Monitoring, Of Guide DOE/EH-0173T

PWA00014 Kamiar Jamali, Use Of Risk Measures In Design And Licensing Of Future Reactors

PWA00015 Revisiting Goiana -1987 Radiological Accident in Goiania, Brazil

PWA00016 NUREG/CR-6853 Comparison of Average Transport and Dispersion Among a Gaussian, a Two-Dimensional, and a Three-Dimensional Model

PWA00017 Nathan Bixler, Proceedings of the Fourth International MACCS Users Group Meeting

PWA00018 Nathan Bixler, NRC Staff's Response in Opposition to State of New York's Motion for Partial Summary Disposition of NYS Contention 16/16A

PWA00019 NRC, Stephen La Vie "What's In The Black Box" - Dispersion

PWA00020 NUREG/CR-6572, Rev.1 BNL-Nurag-52534-R1 – Kalinin PRA, Procedure Guides For Probabilistic Risk Assessment

PWA00021 DOE-EH-4.2.1.4-MACCS2-Code Guidance, MACCS2 Computer Code Application Guidance For Documented Safety Analysis

PWA00022 Jan. 30, 2011 Declaration of Bruce A. Egan, Sc.D., CCM, in Support of Pilgrim Watch's Response Opposing Entergy's Initial Statement of Position on Pilgrim Watch Contention 3

PWA00023 Jan. 30, 2011 Statement by Bruce A. Egan, Sc.D., CCM

NRC STAFF EXHIBITS:

NRC000001 Applicant's Environmental Report, Attachment E, "Severe Accident Mitigation Alternatives Analysis" (2006) (ADAMS Accession No. ML060830611)

NRC000002 NUREG-1437, Supplement 29, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Pilgrim Nuclear Power Station – Final Report" (July 2007)

NRC000003 Request for Hearing and Petition to Intervene (May 25, 2006) (ADAMS Accession No. ML061630125)

NRC000004 Entergy's Answer to the Request for Hearing and Petition to Intervene (June 26, 2006) (ADAMS Accession No. ML061840216)

NRC000005 NRC Staff's Response to Request for Hearing and Petition to Intervene (June 19, 2006) (ADAMS Accession No. ML061710086)

NRC000006 WSMS-TR-07-0005, Revision 1, "Radiological Dispersion and Consequence Analysis Supporting Pilgrim Nuclear Station Severe Accident Mitigation Alternative Analysis" (May 2007)

NRC000007 Declaration of Bruce A. Egan, Sc.D., CCM, In Support Of Pilgrim Watch's Response Opposing Entergy's Motion For Summary Disposition Of Pilgrim Watch Contention 3 (June 20, 2007)

NRC000008 NUREG/CR-6613, "Code Manual for MACCS2: Volume 1, User's Guide" (May 1998) (ADAMS Accession No. ML063550020)

NRC000009 NUREG/CR-4691, "MELCOR Accident Consequence Code System (MACCS)," Vol. 2 (1986) (ADAMS Accession No. ML063560409)

NRC000010 Jennifer E. Thorp, "The Eastern Massachusetts Sea Breeze Study," (May 2009) (unpublished)

NRC000011 Statement of Qualifications for Dr. Bixler

NRC000012 Statement of Qualifications for Dr. Ghosh

NRC000013 Statement of Qualifications for Mr. Ramsdell

NRC000014 Bixler and Ghosh Initial Testimony

NRC000015 Ramsdell Initial Testimony

NRC000016 Ghosh Rebuttal Testimony

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR GENERATION CO.)
AND)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-293-LR
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(Pilgrim Nuclear Power Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Addressing Joint Motion, Motion in Limine, Proposed Findings of Fact and Conclusions of Law/Concluding Statements of Position, and Argument to be Held March 9, 2011) have been served upon the following persons by Electronic Information Exchange (EIE) and by electronic mail as indicated by an asterisk*.

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[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of February 2011