

June 30, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO PILGRIM WATCH MEMORANDUM – SUBMERGED CABLES

INTRODUCTION

The staff of the U.S. Nuclear Regulatory Commission (“Staff”) hereby responds to the Pilgrim Watch Memorandum – Submerged Cables (“Memorandum”) filed on June 23, 2011.¹ For the reasons set forth below, this communication to the Atomic Safety and Licensing Board (“Board”) should not be considered to the extent it argues the merits of Pilgrim Watch’s pending requests for a hearing on a new contention on submerged cables.²

DISCUSSION

Under NRC practice, parties have an “obligation to keep the Licensing Board . . . informed of relevant and material new information.” *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-5, 37 NRC 168, 170 (1993). Nonetheless, in ruling on contention admissibility, the Board may generally only consider the hearing request,

¹ Pilgrim Watch Memorandum - Submerged Cables (June 23, 2011) (Agencywide Document Access and Management System (“ADAMS”) Accession No. ML111741447).

² 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) (ADAMS Accession No. ML103500400); 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) (ADAMS Accession No. ML110200267) (amended version).

any answers, and any replies to those answers. The regulations specifically provide, “No other written answers or replies will be entertained.” 10 C.F.R. § 2.309(h)(3). Consequently, parties should inform the Board of any material, new information, but parties may not use the notification as an opportunity to reargue contention admissibility. Otherwise, the filing would constitute an unauthorized pleading under 10 C.F.R. § 2.309(h)(3).³ Likewise, in previous decisions, the Commission has declined to consider communications arguing the merits of a pending petition for review.⁴

Pilgrim Watch’s Memorandum goes beyond the acceptable limits of a Board notification. The Memorandum reproduces an article and emphasizes the portions of the article that relate to the new submerged cables contention. Memorandum at 2. The Memorandum explicitly states that the article “serves to support” Pilgrim Watch’s hearing requests on submerged cables. Memorandum at 3. Therefore, to the extent that the Memorandum provides additional argument, the Board should disregard it. To the extent the Memorandum informs the Board of material, new information, the Board may consider it.

Moreover, even if the Board considers the arguments in the Memorandum, they do not provide sufficient support for Pilgrim Watch’s new contention on submerged cables. The portions of the article highlighted in the Memorandum only contains quotes from a member of the public and an NRC staff member that suggest the NRC should further evaluate submerged

³ If Pilgrim Watch wishes to provide additional support for the hearing requests, it may always file an amended petition under 10 C.F.R. § 2.309(c), (f)(2).

⁴ See *AmerGen Energy Co. LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 284 1-1.277(2 009) (stating that a letter to the Commission was not a part of the record when the intervenor filed the letter while a petition for review was pending before the Commission and the letter contained additional argument); *AmerGen Energy Co. LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 676 n.74 (2008) (same).

cables. Memorandum at 2. Presumably, Pilgrim Watch submitted this Memorandum to establish the significance of its proposed contention on submerged cables.

While Pilgrim Watch must show that this issue is significant to reopen the record in this case,⁵ the Memorandum does not make that showing. The Commission has observed, “The burden of satisfying the reopening requirements is a heavy one.” *AmerGen Energy Co., LLC*. (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 (2009). To show that a safety issue’s significance justifies reopening the record, a petitioner “must establish either that uncorrected ... errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant’s capability of being operated safely.” *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-940, 32 NRC 225, 243 (1990). Moreover, the evidence in support of such a claim must be “strong enough, in the light of any opposing filings, to avoid summary disposition.” *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005).

The quotes in the Memorandum only indicate that the NRC should further study submerged cables; they do not state, or even imply, that Pilgrim or other existing plants cannot operate safely. Moreover, such cursory, unsworn statements, by individuals who have not demonstrated their expertise, could not withstand a motion for summary disposition. Therefore, even if the Board considered Pilgrim Watch’s arguments, they would not provide a sufficient reason to reopen the record in this case.

⁵ NRC Staff’s Answer in Opposition to Pilgrim Watch Request for Hearing on New Contention, at 5-8 (Jan. 7, 2011) (ADAMs Accession No. ML110070837).

CONCLUSION

For the reasons set forth above, the Board should disregard Pilgrim Watch's attempts to argue the merits of the proceeding through the Memorandum.

Respectfully submitted,

/RA/

Maxwell C. Smith
Counsel for NRC Staff

Dated at Rockville, Maryland
this 30th Day of June, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC Staff's Response to Pilgrim Watch Memorandum – Submerged Cables" have been served upon the following by the Electronic Information Exchange, this 30th day of June, 2011:

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