UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Docket # 50-293-LR

Entergy Corporation

Pilgrim Nuclear Power Station

License Renewal Application July 18, 2011

PILGRIM WATCH REPLY TO ENTERGY'S MOTION TO STRIKE PORTIONS OF PILGRIM WATCH REPLY TO ENTERGY AND THE NRC STAFF ANSWERS OPPOSING PILGRIM WATCH'S REQUEST FOR HEARING ON a NEW CONTENTION (O7.15.11)

Pilgrim Watch opposes *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* filed by Entergy July 15, 2011.

Entergy's Motion seeks to strike two items from PW's reply to Entergy's 461 page Answer to Pilgrim Watch Request for Hearing on a New Contention Regarding Inadequacy of Environmental Report, Post Fukushima.

On June 1, 2011 Pilgrim Watch filed a new contention that:

> Based on new and significant information from Fukushima, the Environmental Report is inadequate post Fukushima Daiichi. Entergy's SAMA analysis ignores new and significant issues raised by Fukushima regarding the probability of both containment failure, and subsequent larger off-site consequences due to failure of the direct torus vent (DTV) to operate.

On June 27, 2011 Entergy filed a 461 answer, opposing PW's new contention.

PW's 46 page reply to Entergy's answer was filed on July 5, 2011.

Entergy now seeks to strike two portions of PW's response (See Entergy's Motion to Strike Portions of Pilgrim Watch Reply to Entergy and NRC Staff Answers Opposing Pilgrim Watch Request for Hearing on a New Contention, hereinafter "Entergy's Motion.")

The two items that Entergy wants to strike are the statements at pp. 28-29 of PW's Reply that there is a need to increase the Pilgrim baseline core damage frequency (CDF) estimate, and the statement at page 29 that Entergy's SAMA analysis does not model radioactive releases beyond 24 hours. It's worth nothing that these two pages of PW's Reply are simply a very grief response to 461 pages of Entergy's opposition to PW's contention.

In its Motion, Entergy incorrectly asserts that PW's response does not satisfy the standards of 10 C.F.R. §2.309(c) and (f)(2) and that PW seeks to "add [] new bases to the contention as initially proffered.

10 CFR 2.309 (c) and (f)(2).

Entergy's Motion complains that PW's Reply impermissibly seeks to supplement Pilgrim Watch's Request by adding two new bases to the contention as initially proffered without any attempt to satisfy the late-filing criteria of 10 CFR 2.309 (c) and (f)(2). PW does not understand Entergy's reliance on (f)(2); PW's Reply did not seek either to amend the contention it filed on June 1, 2011, or to add a new contention.

As for 10 CFR 2.309 (c), although PW's Reply did not specifically refer to it, it is clear that PW fully met the three pertinent requirements of the rule that Entergy cites:

(i) The information upon which the two items were based was not previously available.

The Massachusetts Attorney General filed its analysis of the CDF that PW referenced in its Reply June 2, 2011; <u>after</u> PW filed its Motion June 1, 2011. The on-going reports from

Fukushima show continued releases from Fukushima that require the capability to model releases beyond 24 hours in order to gauge offsite consequences. In its recent report, *Enhancing Reactor Safety in the 21st Century*[1], the NRC Task force was clear that "adequate protection" requires consideration of "new safety information ... and operating experience" and that "[a]s new information and new analytical techniques are developed," what is required to provide "reasonable assurance" must be reviewed, evaluated, and changed .., as necessary." (p. 18). This cannot be done if, as Entergy apparently proposes, material new information is not provided to this Board.

(ii) The two items are materially different from information previously available.

The Massachusetts Attorney General's June 2, 2011 filing showed that of the twelve core-damage accidents at nuclear reactors, five occurred at reactors with pressure-suppression containments and involved substantial fuel melting (TMI, Chernobyl, and Fukushima Units 1-3). The occurrence of five core-damage events over a worldwide experience base of 14,500 reactor years (RY) can be translated to a CDF of 3.4E-04 per RY (1 event per 2,900 RY). This value is an order of magnitude higher than the baseline CDF estimate of 3.2E-05 per RY (1 event per 31,000 RY) that the Pilgrim licensee developed using PRA techniques. One can reasonably find that the licensee has under-estimated the baseline CDF of the Pilgrim plant by an order of magnitude. Such a finding is supported by a technical literature describing the limitations of PRA techniques.[2]

Similarly, the new information regarding on-going releases at Fukushima demonstrated that accidents in reactors designed like Pilgrim can be on-going, extending to days, weeks, and months. However the computer code used by Entergy in its SAMA analysis did not model releases beyond 24 hours.[3] Therefore the offsite consequences and costs necessarily were significantly minimized.

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[1] Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights From The Fukushima Dai-Ichi Accident, U.S. NRC, July 12, 2011

[2] New and Significant Information from the Fukushima Daiichi Accident in the Context of Future Operation of the Pilgrim Nuclear Power Station, Dr. Gordon Thompson, June 1, 2011, pg. 16-17, filed June 2, 2011.

[3] Pilgrim Watch Request for Hearing on Post-Fukushima SAMA Contention, May 12, 2011

(iii) The information was provided in a timely manner.

The new information became available after PW's new contention was filed, and was presented in a timely manner.

As permitted by the NRC rules, and indeed as essential if the Board is properly to rule on this and PW's other pending contentions, the NRC Task Force and Pilgrim Watch both expect that new and significant information will continue to become available, and PW will continue to provide new and significant information pertinent to the multiple and intertwined Requests for Hearing involved in this adjudication process.

Legal cases Referenced- Not Applicable

The legal cases that Entergy uses in an attempt to buttress their argument (Motion, pg., 2) are not pertinent because they deal with contentions that were insufficient as filed. Pilgrim Watch's Request as filed was not insufficient.

Conclusion

Entergy's Motion to Strike is really nothing more than an attempt to prevent PW from responding to new points raised in Entergy's over 400 page Answer, and to keep pertinent new information out of this proceeding. The motion should be denied.

Pilgrim Watch recognizes, as Entergy made clear in its 461 page Answer and Motion to Strike that the contentions filed by parties in this case providing new and significant information are interwoven and in substance may be best addressed by the Board together. Pilgrim Watch will continue to ask the Board's leave in a timely fashion to accept new and significant material information as it develops to supplement pending contentions and to show interconnections, as appropriate.

PW trusts that NRC and the Board agree with the NRC Task Force conclusions that "the NRC's safety approach is incomplete without a strong program for dealing with the unexpected, including severe accidents." (Ibid., pg., 20)

Respectfully Submitted,

Signed Electronically

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