

August 17, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO PILGRIM WATCH REQUEST FOR
LEAVE TO SUPPLEMENT PILGRIM WATCH REQUEST FOR HEARING ON
A NEW CONTENTION REGARDING THE INADEQUACY OF
THE ENVIRONMENTAL REPORT, POST FUKUSHIMA FILED JUNE 1, 2011

INTRODUCTION

The staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby opposes Pilgrim Watch's August 8, 2011 Request for Leave to Supplement Pilgrim Watch Request for Hearing on a New Contention Regarding the Inadequacy of the Environmental Report, Post Fukushima Filed June 1, 2011 ("Request to Supplement").¹ The Request to Supplement relates to a contention that is currently pending before this Atomic Safety and Licensing Board ("ASLB" or

¹ Pilgrim Watch Request for Leave to Supplement Pilgrim Watch Request for Hearing on a New Contention Regarding the Inadequacy of the Environmental Report, Post Fukushima filed June 1, 2011 (Aug. 8, 2011) (Agencywide Document Access and Management System ("ADAMS") Accession No. ML11220A327) ("Request to Supplement"). That same day, Pilgrim Watch also filed a Request for Leave to Supplement Pilgrim Watch Request for Hearing on the Inadequacy of Entergy's Aging Management Program of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station, filed on December 10, 2010 and January 20, 2011 (Aug. 8, 2011) (ADAMS Accession No. ML11220A326). This other request related to two pending contentions on inaccessible cables filed by Pilgrim Watch. 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); and 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, 2011) (ADAMS Accession No. ML103500400). On August 11, 2011, the Board issued an order denying admission of the contentions on inaccessible cables. Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on Certain New Contentions) (Aug. 11, 2011) (ADAMS Accession No. ML11220A327). That Order found that the request to supplement the inaccessible cable contentions had "no bearing" on the Board's ruling. *Id.* at 10 n. 61.

“Board”).² For the reasons discussed below, the Board should deny the request. Under the Commission’s regulations, the request does not constitute a proper Board notification because it attempts to argue the merits of the pending contention. As a result, the Board should only consider the supplementary information if the request meets the Commission’s standards for filing amended contentions. But, the request does not address, let alone meet, those requirements. Thus, the Board should deny Pilgrim Watch’s Request to Supplement.

ARGUMENT

Pilgrim Watch claims that it filed the request to “inform the Board” of “new, significant and material information.” Request to Supplement Post-Fukushima Contention at 1. Parties have an “obligation to keep the Licensing Board . . . informed of relevant and material new information.” *Sacramental Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-5, 37 NRC 168, 170 (1993). However, in ruling on contention admissibility, the Board may generally only consider the hearing request, 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.

The Request to Supplement constitutes an attempt to further argue the merits of the pending contention because it selectively quotes from the recently published “Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (Jul. 12, 2011) (ADAMS Accession No. ML111861807) (“Task Force Report”). Had the request simply informed the

² Pilgrim Watch Request for Hearing on a New Contention Regarding Inadequacy of Environmental Report, Post Fukushima (Jun. 1, 2011) (ADAMS Accession No. ML111530448).

Board that the NRC had published the Task Force Report, the request may have been a proper Board notification. Instead, the request contains an appendix that lists a series of quotations from the Task Force Report that appear to support the pending contention.³ See Request to Supplement at 2-5. But, these quotations ignore those portions of the Task Force Report that undermine the admissibility of the pending contention. *Id.* For example, the report finds, “continued operation and continued licensing activities do not pose an imminent risk to public health and safety.” Task Force Report at vii. But, the Request to Supplement does not contain this or similar quotations. By highlighting the portions of the Task Force Report that may support admissibility of the pending contention while ignoring those portions that suggest the Board should deny the contention, Pilgrim Watch effectively produces additional argumentation. Thus, the Request to Supplement the record does not constitute an appropriate Board notification. 10 C.F.R. § 2.309(h)(3).

Because Pilgrim Watch’s request to supplement is an improper notification, the Board should only consider it if the request meets the requirements for filing an amended contention. Pilgrim Watch’s description of the Request to Supplement as a “Request for Leave to Supplement Pilgrim Watch Request for Hearing” suggests that it is actually an attempt to amend the underlying contention. Request to Supplement, at 1. But, the Request to Supplement does not meet the Commission’s standards for filing amended contentions.

The Commission has stated: “New bases for a contention cannot be introduced in a reply brief, or at any other time after the date the original contentions are due, unless the

³ The purpose of the request is somewhat unclear; it only asks the Board for leave to file “this supplement to the record,” without ever specifying what “this supplement” is. Request to Supplement, at 1. Nonetheless, the request asks that the information “submitted to inform the Board in a timely manner, be included in the record.” Request to Supplement at 1. Because the appendix is the only information “submitted” in conjunction with Request to Supplement, the Staff believes that Pilgrim Watch is asking the Board to include the appendix, as opposed to the entire Task Force Report, in the record.

petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2).” *Nuclear Management Company, LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006). In addition, amended contentions must also “satisfy the usual contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1).” *Shaw Areva Mox Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65 (2009). To meet the requirements of 2.309(f)(1), a petitioner must produce “a detailed, fact-based showing that a genuine and material dispute of law or fact exists.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-14, 55 NRC 278, 289 (2002). Allowing petitioners to amend their pleadings without filing an amended contention under § 2.309 “would unfairly deprive other participants of an opportunity to rebut the new claims.” *Palisades*, CLI-06-17, 63 NRC at 732.

Pilgrim Watch’s request to supplement the pending contentions does not meet these requirements. The request does not mention the Commission’s standards in 10 C.F.R. §§ 2.309(c) and 2.309(f)(2) for amending a contention, let alone discuss how the request meets those standards.⁴ Request to Supplement at 1-2. Moreover, the request does not indicate how it relates to the pending contentions, much less demonstrate that it will meet the basic standards for contention admissibility under § 2.309(f)(1). *Id.* Consequently, the Request to Supplement plainly does not meet the Commission’s standards for amending a contention. As a result, the Board should not consider it in ruling on the admissibility of the underlying contention.

⁴ In contrast, the Staff notes that the Commonwealth of Massachusetts addressed all of these factors in its Motion to Supplement Bases to Commonwealth Contention to Address NRC Task Force Report on Lessons Learned from the Radiological Accident at Fukushima, at 7-12 (Aug. 11, 2011) (ADAMS Accession No. ML11223A284).

CONCLUSION

For the reasons set forth above, the Board should deny the request to supplement the pending contention. The request contains additional arguments for admitting a pending contention, and therefore is not a proper Board notification. In addition, the request does not meet the Commission's standards for amending existing contentions. Therefore, the Board should not further consider the information contained therein.

Respectfully submitted,

/Signed Electronically By/

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Dated at Rockville, Maryland
this 17th Day of August, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of the for "NRC Staff's Response to Pilgrim Watch Request for Leave to Supplement Pilgrim Watch Request for Hearing on a New Contention Regarding the Inadequacy of the Environmental Report, Post Fukushima Filed June 1, 2011" have been served upon the following by the Electronic Information Exchange, this 17th day of August, 2011:

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