

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
Entergy Nuclear Generation Co. and	)	
Entergy Nuclear Operations, Inc.	)	Docket No. 50-293-LR
	)	
(Pilgrim Nuclear Power Station)	)	ASLBP No. 06-848-02-LR

December 23, 2011

**Pilgrim Watch Reply to Entergy’s and NRC Staff’s Answers to Pilgrim Watch’s Petition For Review Of Memorandum And Order (Denying Commonwealth Of Massachusetts’ Request For Stay, Motion For Waiver, And Request For Hearing On A New Contention Relating To The Fukushima Accident) Nov. 28, 2011**

**INTRODUCTION**

Pilgrim Watch respectfully requests leave to file a response to Entergy’s and NRC Staff’s Answers to Pilgrim Watch’s Petition For Review Of Memorandum And Order (Denying Commonwealth Of Massachusetts’ Request For Stay, Motion For Waiver, And Request For Hearing On A New Contention Relating To The Fukushima Accident) Nov. 28, 2011.

Entergy and NRC Staff make essentially the same comments in their respective answers; for efficiency, Pilgrim Watch will reply to both in this one filing.

Contrary to Entergy’s and the NRC Staff’s arguments:

1. Pilgrim Watch has a right to appeal the denial of the Massachusetts Attorney General's contention.
2. Pilgrim Watch's Petition for Review demonstrated an error of fact and law in the Board's rulings.

### **PROCEDURAL BACKGROUND**

Pilgrim Watch is a party to these proceedings. Pilgrim Watch on December 8, 2011 sought review of aspects of the Massachusetts Decision that directly affect Pilgrim Watch.

### DISCUSSION

Entergy was correct in pointing out that "a party may act to vindicate its own rights in the proceeding; it has no standing, however, to assert the rights of others." (Entergy 1-2, citing Tennessee Valley Authority (Clinch River Breeder Reactor Plant), ALAB-345, 4 N.R.C. 212,213 (1976). Entergy somehow missed the point that Pilgrim Watch's Petition asked for review of portion of the Massachusetts Decision that directly affects Pilgrim Watch, including the Massachusetts Decision's apparent holding that the Commonwealth was required to meet a "reopening requirement" (Massachusetts Decision, 69), and more particularly:

- a. The Majority's statements that
  - i. "We originally closed these proceedings by order issued June 4, 2008" (Massachusetts Decision, 3), and
  - ii. "[T]he evidentiary record in this proceeding remains closed" (Massachusetts Decision, 71); and also

b. The Majority's attempt to use the Massachusetts Decision to retroactively support its decisions of August 11, 2011 (referred to by the Majority as the "Pre-Fukushima Order") and September 8, 2011 (referred to by the Majority as the "Post Fukushima Order", these Orders are collectively referred to as the "Pilgrim Watch Decisions) that improperly rejected Requests for Hearing filed by PW, and Requests for Review of which have for some time been pending before the Commission:

[T]he status of this proceeding was, at the time this contention [of the Commonwealth of Massachusetts] was submitted, was to address the narrow portion of Pilgrim Watch's Contention 3 remanded to us ... and address five new contentions filed by Pilgrim Watch since the remand, all of which were previously resolved or are resolved by this Order." (Massachusetts Decision 64, fn 232, underlining added)

Does Entergy or anyone else seriously believe that if the Commission upheld the ASLB's incorrect finding that the record was closed would not adversely affect Pilgrim Watch by setting a Commission precedent?

NRC Staff (at 5) erroneously claimed that "PW's challenges do not focus on legal conclusions or findings of fact and, therefore, do not meet the bases contemplated by the regulations for filing such a petition." Entergy, in fewer words, says the same: "[I]t's Petition fails to demonstrate any clear error of law in the Board's ruling." (Entergy, 2) They both are wrong because:

1. Whether the record in this proceeding is open or closed is a fact; and
2. Whether the Commonwealth here, and PW in its previously filed Requests for Hearing, was required to move to reopen under 10 CFR 2.326 is a question of law.

For the reasons set forth above, the Commission should accept Pilgrim Watch's Petition for Review of LBP-11-35 and review and reverse the Massachusetts Decision insofar as it is directed to the status of the record in this proceeding, or to the circumstances under which a Motion to Reopen is required. We have fully met the requirements of § 2.341.

Respectfully submitted,

(Signed Electronically)

Mary Lampert  
Pilgrim Watch, pro se  
148 Washington Street  
Duxbury MA 02332  
Tel 781-934-0389  
Email: [mary.lampert@comcast.net](mailto:mary.lampert@comcast.net)  
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On December 22, 2011, Pilgrim Watch notified all parties of record via email of its intent to make this filing and requested that they respond if they objected. Paul Gaukler, representing Entergy, indicated that Entergy objects. Susan Uttal, NRC, objects.