

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  
)  
) ASLBP No. 06-848-02-LR  
)  
(Pilgrim Nuclear Power Station)

December 29, 2011

**Pilgrim Watch Reply to Entergy's and NRC Staff's December 22, 2011 Answers Opposing Pilgrim Watch's Request to Supplement Petitions for Review of LBP-11-20 and LBP-11-23**

**INTRODUCTION**

Persuant to 10 C.F.R. 2.323(c), Pilgrim Watch respectfully requests leave to reply to Entergy's and NRC Staff's Answers to *Pilgrim Watch Request to Supplement Petition for Review of Memorandum and Order (Denying Pilgrim's Watch's Request for Hearing on Certain New Contentions, ASLBP NO/ 06-848-02-LR, August 11, 2011* (Filed August 26, 2011) and *Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on New Contentions Relating to Fukushima Accident) September 8, 2011* (Filed September 23, 2011).<sup>1</sup>

Pilgrim Watch makes this request because it could not have reasonably anticipated that Entergy and the NRC legal Staff would argue that nothing in Congressman Markey's December

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<sup>1</sup> Pilgrim Watch here replies to both Entergy and the Staff.

9, 2011 report "provides [any] new information or data" (Staff, 2) or is "relevant and material to Pilgrim Watch's" pending requests for review (Entergy, 2).<sup>2</sup> Entergy's argument that PW "seeks to augment its pending petitions for review with supplemental (and immaterial) argument" (Entergy 2) was also unexpected, because it is factually wrong. PW simply submitted the Report and said it was relevant to the pending requests for review.

### DISCUSSION

Initially, Entergy and the Staff agree "parties to adjudicatory proceedings are obliged to keep licensing board's apprised of 'relevant and material information' in the course of the proceeding" (Entergy, 1; See also Staff, 1, fn 2). They are wrong that Pilgrim Watch did not properly meet this obligation by moving to add Congressman Markey's Report, *Regulatory Meltdown How Four Nuclear Regulatory Commissioners Conspired to Delay and Weaken Nuclear Reactor Safety in the Wake of Fukushima*, to the record in PW's pending requests.

Congressman Markey's report cites, quotes and attaches copies of essentially all NRC documents<sup>3</sup> (including voting records, reports, emails, correspondence, memoranda, phone or meeting minutes or other materials) related to the events of Fukushima or the NRC's response thereto that were prepared or obtained by any Commissioner or any member of any Commissioner's staff. Entergy and the Staff may have made a " cursory review of the Report" (Entergy, 2), but appears not to have considered any of underlying documentation.

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<sup>2</sup> 10 C.F.R. § 2.323(c) provides: "The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply."

<sup>3</sup> Congressman Markey obtained the documents from the NRC pursuant to his request under the Freedom of Information Act.

The Report and NRC documents are directly relevant to a number of issues raised by Pilgrim Watch's Petitions for Review, including the risk/benefit analysis required to determine whether additional SAMAs are required, and the NRC's obligation under NEPA to look at the new and significant information raised by Pilgrim Watch that NRC is required to take before Pilgrim's licensing decision is made. *Marsh v Oregon Natural Resources Council*, 490 U.S. 360, 385 (1989) Pilgrim Watch's Petitions for Review showed that a major reason that the Board's decision was erroneous was because the Board failed to take a "hard look at the proffered evidence;" and the Markey Report and attached documents also show that the Commission has not completed its "hard look."

The Markey Report clearly includes new and material information, i.e., evidence, that Commission should review and reverse the Board's Decision and either deny the license renewal application or remand the matters to the Board for further proceedings after the Commission has corrected the many legal and factual errors contained in the three decisions.

Pilgrim Nuclear Power Station is a sister (indeed an essentially identical twin) to the failed Fukushima reactors. What the Commission has learned, and done or not done, in response to it is directly relevant and material to Pilgrim Watch's Petitions for Review.

Respectfully submitted,

(Signed Electronically)

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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; and Susan Uttal, NRC, objects.

Respectfully submitted,

(Signed Electronically)

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