

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ALL OPERATING BOILING WATER)	
REACTOR LICENSEES WITH MARK I)	
AND MARK II CONTAINMENTS)	Docket Nos. EA-12-050 & EA-12-051
)	
AND)	
)	
ALL POWER REACTOR LICENSEES)	
AND HOLDERS OF CONSTRUCTION)	
PERMITS IN ACTIVE OR DEFERRED)	April 27, 2012
STATUS)	
)	
(Fukushima-Related Orders Modifying)	
Licenses))	

**JOINT ANSWER OPPOSING HEARING REQUESTS REGARDING SUFFICIENCY OF
ORDER EA-12-050 MODIFYING LICENSES WITH REGARD TO HARDENED VENTS**

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I. INTRODUCTION

On April 2 and April 3, 2012, Pilgrim Watch and Beyond Nuclear (“Petitioners”) collectively filed three hearing requests (“Requests”) regarding the alleged “insufficiency” of Order EA-12-050, issued on March 12, 2012, to impose requirements on licensees regarding reliable hardened containment vents.¹ Pilgrim Watch filed the first request on April 2, 2012, and

¹ EA-12-050, In the Matter of All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments; Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Effective Immediately), 77 Fed. Reg. 16,098 (Mar. 19, 2012) (“EA-12-050” or “Order”). EA-12-050 is a civil “enforcement” order issued pursuant to 10 C.F.R. § 2.202 that includes limited opportunities for persons “adversely affected” by the Order to request a hearing. *Id.* at 16,100-101.

filed a supplement to the request on the same day.² This was followed by Beyond Nuclear’s April 3, 2012 request to “co-petition.”³

Licensees identified in Attachment 1 (“Licensees”)⁴ timely file this Joint Answer in opposition to the Requests, pursuant to 10 C.F.R. § 2.309(h)(1). As demonstrated below, the Board should deny the Requests because the Petitioners have not satisfied the standing requirements in 10 C.F.R. § 2.309(d), the Requests do not propose a contention satisfying the admissibility requirements in 10 C.F.R. § 2.309(f)(1), and the Requests suffer from numerous other pleading deficiencies.

Most significantly, the Requests directly run afoul of long-standing Commission case law, rooted in sound judicial precedent, which precludes intervention in enforcement proceedings if petitioners seek to impose requirements that are more stringent than those in the underlying enforcement order.⁵ In *Bellotti*, the U.S. Court of Appeals for the District of Columbia Circuit held that intervention in enforcement proceedings will be denied if an enforcement order would require additional or better safety measures.⁶ Similarly, the Commission has explained that “[t]he only issue in an NRC enforcement proceeding is whether the order should be sustained. Boards are not to consider whether such orders need

² Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Apr. 2, 2012) (“Pilgrim Watch Request”); Pilgrim Watch Request for Leave to Supplement Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Apr. 2, 2012).

³ Beyond Nuclear Pleading to Co-Petition in the Matter of Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Apr. 3, 2012) (“Beyond Nuclear Request”).

⁴ The “Licensees” are Exelon Generation Company, LLC, Nebraska Public Power District, Nine Mile Point Nuclear Station, LLC, PSEG Nuclear, LLC, and Tennessee Valley Authority. A table of the companies and the respective nuclear facilities that hold the licenses is provided as Attachment 1.

⁵ See *Bellotti v. NRC*, 725 F.2d 1380, 1381-83 (D.C. Cir. 1983); *Alaska Dep’t of Transp. & Pub. Facilities* (Confirmatory Order Modifying License), CLI-04-26, 60 NRC 399, 404-06 (“ADOT”), *reconsideration denied*, CLI-04-38, 60 NRC 652 (2004).

⁶ *Bellotti*, 725 F.2d at 1383.

strengthening.”⁷ Because the Requests argue only that EA-12-050 should be supplemented to include more stringent requirements (*e.g.*, filters, rupture discs), rather than whether the Order should be sustained, the Petitioners have failed to demonstrate standing and the Requests are outside the scope of this proceeding.

The Requests also are outside the scope of this proceeding for an independent reason: they are fundamentally based on National Environmental Policy Act (“NEPA”) arguments, which do not apply to enforcement proceedings such as this one. Additionally, the Beyond Nuclear Request was filed late and improperly attempts to adopt Pilgrim Watch’s proposed contentions.

For these many reasons, the Requests should be rejected in their entirety and this enforcement proceeding before the Board should be terminated.

II. BACKGROUND

Following the events at the Fukushima Dai-ichi nuclear power plant site after the March 11, 2011 earthquake and subsequent tsunami, the NRC took various actions, including establishment of the Near-Term Task Force.⁸ Based on its post-Fukushima activities, the NRC concluded that additional requirements, such as those found in EA-12-050, should be imposed on licensees.⁹ The new requirements related to EA-12-050 “provide greater mitigation capability consistent with the overall defense-in-depth philosophy, and therefore greater assurance that the challenges posed by severe external events to power reactors do not pose an undue risk to public health and safety.”¹⁰

⁷ *ADOT*, CLI-04-26, 60 NRC at 404.

⁸ *See* EA-12-050, 77 Fed. Reg. at 16,099.

⁹ *Id.*

¹⁰ *Id.* at 16,100.

The NRC issued EA-12-050 to licensees on March 12, 2012, to impose additional requirements for reliable hardened vent systems at boiling water reactor facilities with Mark I and Mark II containments:

Boiling-Water Reactor (BWR) Mark I and Mark II containments shall have a reliable hardened vent to remove decay heat and maintain control of containment pressure within acceptable limits following events that result in the loss of active containment heat removal capability or prolonged Station Blackout (SBO). The hardened vent system shall be accessible and operable under a range of plant conditions, including a prolonged SBO and inadequate containment cooling.¹¹

The Order states: “If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.”¹² The Order further states: “If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is *adversely affected* by this Order and shall address the criteria set forth in 10 CFR 2.309(d).”¹³

As stated above, the Petitioners filed their Requests on April 2 and April 3, 2012. These Requests include two proposed contentions. Proposed Contention 1 states:

Based on new and significant information from Fukushima, the Order Modifying Licenses With Regard To Reliable Hardened Containment Vents issued March 12, 2012 (EA-12-050) is insufficient to protect public health, safety and property because it lacks a requirement for licensees to install filters in the direct torus vents (DTV).¹⁴

Proposed Contention 2 states:

Based on new and significant information from Fukushima, the Order Modifying Licenses With Regard To Reliable Hardened Containment Vents issued March 12, 2012 (EA-12-050) is insufficient to protect public health, safety and property because it

¹¹ *Id.* at 16,104.

¹² *Id.* at 16,101.

¹³ *Id.* at 16,102 (emphasis added).

¹⁴ Pilgrim Watch Request at 3.

does not require the hardened DTV to be passively actuated by means of a rupture disc, so that neither water nor electrical supply is needed and operator intervention is not necessary to actuate the system.¹⁵

The NRC's Office of the Secretary referred the Requests to the Atomic Safety and Licensing Board Panel ("ASLB") on April 10, 2012.¹⁶ The Board was established on April 18, 2012 to consider the Requests.¹⁷

III. LEGAL STANDARDS

The NRC regulations specify that a hearing request will be granted only if the petitioner has standing under 10 C.F.R. § 2.309(d), and has proposed at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f).¹⁸ Each of these standards as it pertains to EA-12-050 is summarized below.

A. Petitioner Standing

EA-12-050 requires a petitioner to address the criteria set forth in 10 C.F.R. § 2.309(d).¹⁹ Section 2.309(d), in turn, requires a petitioner to provide specified information to support a claim of standing. To demonstrate standing, a petitioner must show: (1) an injury in fact that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.²⁰ These three criteria are commonly referred to as injury-in-fact, causation, and redressability, respectively.

¹⁵ *Id.*

¹⁶ Memorandum from A. Vietti-Cook, NRC Sec'y, to E. Hawken, ASLB, Referring the Request for Hearing of Pilgrim Watch and Request to Participate as a Co-Petitioner of Beyond Nuclear with Respect to the Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (EA-12-050) (Apr. 10, 2012).

¹⁷ Establishment of Atomic Safety and Licensing Board, Docket Nos. EA-12-050, EA-12-051, ASLB No. 12-918-01-EA-BD-01 (Apr. 18, 2012).

¹⁸ 10 C.F.R. § 2.309(a).

¹⁹ EA-12-050, 77 Fed. Reg. at 16,102.

²⁰ See, e.g., *ADOT*, CLI-04-26, 60 NRC at 405; *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 57 n.16 (2004) (citing *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994)).

Additionally, with respect to hearing requests related to enforcement orders, such as EA-12-050, the Commission has stated: “If the petitioner requests a remedy that is beyond the scope of the hearing, then the hearing request must be denied because redressability is an element of standing.”²¹ Moreover, if a petitioner is not adversely affected by an enforcement order, *i.e.*, there is no injury attributable to the order, then that petitioner does not have standing in the enforcement proceeding.²²

B. Contention Admissibility

Under 10 C.F.R. § 2.309(f)(1), a hearing request “must set forth with particularity the contentions sought to be raised.” Section 2.309(f)(1)(i) through (vi) identifies the six admissibility criteria for each proposed contention.²³ Criterion 3, for example, requires a petitioner to “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding.”²⁴ Failure to comply with any one of the six admissibility criteria is grounds for rejecting a new contention.²⁵ The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing.”²⁶

In enforcement proceedings, the scope of the proceeding is particularly narrow, and is closely tied to standing. The Commission has stated that “[f]or an enforcement order, the

²¹ *ADOT*, CLI-04-26, 60 NRC at 405.

²² *See id.* at 406.

²³ The criteria are: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner’s position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.

²⁴ 10 C.F.R. § 2.309(f)(1)(iii).

²⁵ *See Final Rule, Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *see also Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

²⁶ *Changes to Adjudicatory Process*, 69 Fed. Reg. at 2202.

threshold question – related to both standing and admissibility of contentions – is whether the hearing request is within the scope of the proceeding as outlined in the order,” and that the Commission’s authority to define the scope of a proceeding “includes limiting the hearing to the question whether the order should be sustained.”²⁷

IV. THE REQUESTS FOR HEARING SHOULD BE REJECTED

A. The Petitioners Do Not Have Standing

1. Under the *Bellotti* Doctrine, the Petitioners Do Not Have Standing Because They Seek to Impose More Stringent Requirements

The Petitioners’ claims of standing are contrary to long-standing principles that govern hearing requests related to enforcement orders such as EA-12-050, because the Petitioners impermissibly seek to intervene in an enforcement proceeding to impose stricter requirements than imposed by the underlying order.

In its 1983 decision in *Bellotti v. NRC*, the D.C. Circuit confirmed that the Commission has the authority under Atomic Energy Act Section 189a to define the scope of a proceeding, and that authority leads to denial of intervention in enforcement proceedings if the terms of an enforcement order would require “additional or better safety measures.”²⁸ Consistent with that principle, the Commission stated in *ADOT* that the threshold question for standing in enforcement proceedings “is whether the hearing request is within the scope of the proceeding as outlined in the order,” which “includes limiting the hearing to the question whether the order should be sustained.”²⁹ The Commission has limited the scope of the instant proceeding in just this manner.³⁰

²⁷ *ADOT*, CLI-04-26, 60 NRC at 405.

²⁸ *Bellotti*, 725 F.2d at 1381-83.

²⁹ *ADOT*, CLI-04-26, 60 NRC at 405.

³⁰ EA-12-050, 77 Fed. Reg. at 16,101 (“the issue to be considered at such hearing shall be whether this Order should be sustained”).

The Petitioners fail to demonstrate standing because their Requests seek only to impose requirements more stringent than those specified in EA-12-050. As described above, EA-12-050 imposes requirements with respect to reliable hardened vent systems.³¹ The proposed contentions claim that EA-12-050 is insufficient because it lacks an additional requirement for licensees to install filtered vents that are passively actuated by means of a rupture disc.³² In fact, the Petitioners readily concede that they are seeking to impose requirements exceeding those directed by EA-12-050 by stating that the Order “is *insufficient* to protect public health, safety and property” and the contentions address “a defect in the Order.”³³ Accordingly, such requests must be denied because they are beyond the scope of the proceeding, and therefore cannot be redressed in the proceeding nor support a claim of standing.³⁴

The Petitioners also fail to demonstrate that they (or their members) are “adversely affected” by the Order. In *St. Lucie*, a licensing board summarized the status of the Commission case law on standing in enforcement proceedings as follows:

In the context of an enforcement proceeding, Commission precedent teaches that the scope of the proceeding is directly related to the issue of standing, in that an individual or organization requesting a hearing must show that the petitioner would be adversely affected by the enforcement order as it exists, rather than being adversely affected by the existing order as it might be compared to a hypothetical order that the petitioner asserts would be an improvement.³⁵

Here the Petitioners similarly and inappropriately claim that they are adversely affected by the lack of a hypothetical, more stringent order, rather than issuance of EA-12-050.

³¹ *See id.* at 16,104-105.

³² Pilgrim Watch Request at 3.

³³ *Id.* at 3, 5-6, 16 (emphasis added).

³⁴ *ADOT*, CLI-04-26, 60 NRC at 405.

³⁵ *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), LBP-08-14, 68 NRC 279, 287 (2008) (citing *ADOT*, CLI-04-26, 60 NRC at 406).

In *Maine Yankee*, the Commission evaluated, under the *Bellotti* doctrine, the standing of a petitioner challenging an enforcement order by asking three questions: (1) Would the petitioner be better off if the order were vacated? (2) Would the petitioner's concerns be alleviated if the order were vacated? and (3) Does the petitioner in reality seek additional measures beyond those set out in the disputed order?³⁶ Consistent with *Bellotti*, if the answers to the first two questions are "no" and the answer to the last question is "yes," then there is no standing.³⁷ Based on these questions, the Petitioners do not have standing to challenge EA-12-050.

Regarding the first and second questions, the Petitioners have not alleged they would be better off or that their concerns would be alleviated if EA-12-050 were vacated. In fact, the Petitioners do not request elimination of the requirements for hardened vents imposed by the Order, but rather seek additional requirements regarding filtered vents that are passively actuated by means of a rupture disc.³⁸ As noted above, the Commission has concluded that imposition of EA-12-050 will result in "greater assurance that the challenges posed by severe external events to power reactors do not pose an undue risk to public health and safety."³⁹ In addition, the Commission has stated that a "petitioner . . . simply is not adversely affected by a[n] . . . Order that improves the safety situation over what it was in the absence of the order."⁴⁰ Regarding the third question, the Petitioners clearly seek additional measures beyond those set out in EA-12-050, as explained above. For these reasons, the Petitioners fail to demonstrate standing under the Commission's test employed in *Maine Yankee*.

³⁶ *Maine Yankee*, CLI-04-5, 59 NRC at 60.

³⁷ *Id.* at 60-61.

³⁸ See Pilgrim Watch Request at 2-3.

³⁹ EA-12-050, 77 Fed. Reg. at 16,100.

⁴⁰ *ADOT*, CLI-04-26, 60 NRC at 406.

For all of these reasons, under the *Bellotti* doctrine and subsequent Commission precedent, the Petitioners have not demonstrated injury-in-fact, causation, and redressability regarding their challenges to EA-12-050, and therefore have not demonstrated standing. This result is consistent with the Commission’s conclusion that “it is unlikely that petitioners will often obtain hearings on . . . enforcement orders.”⁴¹

2. The Petitioners Fail to Demonstrate Standing for Additional, Independent Reasons

The Petitioners base their standing on the proximity of their members to the nuclear power plants to which EA-12-050 applies.⁴² The proximity presumption does not, however, control in enforcement proceedings, such as this one. As explained by the licensing board in *St. Lucie*:

Although Licensing Boards have used a proximity presumption when resolving issues of standing for cases involving reactor licensing, in a case involving an enforcement order, such as this one, the standing requirement is based on the . . . Order itself, and the petitioner must show that he will be adversely affected by the terms of the . . . Order.⁴³

Therefore, the Petitioners’ attempt to use the proximity of their members to demonstrate standing in this proceeding must be rejected.

NRC case law also requires that an organization identify the member upon whom it is relying for standing by name and address, and show, “preferably by affidavit,” that the member

⁴¹ *Id.* at 406 n.28.

⁴² Pilgrim Watch stated that “[m]any of its members live within the immediate neighborhood of the reactor, and others either within the 10 –mile Emergency Planning Zone or within the 50-mile ingestion pathway” and “Mary Lampert who represents PW makes her residence and place of occupation and recreation within an approximate six (6) miles of Pilgrim Nuclear Power Station.” Pilgrim Watch Request at 1-3. Similarly, Beyond Nuclear stated that it “has members who live, work and recreate within the 50-mile Emergency Planning Zone for all General Electric Mark I and Mark II Boiling Water Reactors subject to EA-12-050.” Beyond Nuclear Request at 1-2.

⁴³ *St. Lucie*, LBP-08-14, 68 NRC at 290 (citations omitted) (citing *ADOT*, CLI-04-26, 60 NRC at 406).

has authorized that organization to request a hearing on his or her behalf.⁴⁴ Although Beyond Nuclear claims to have members near all of the nuclear power plants subject to EA-12-050, they have identified none of them, much less provided the requisite authorizations.⁴⁵ Similarly, Pilgrim Watch identified only Mary Lampert, who resides near the Pilgrim plant.⁴⁶ Therefore, with the exception of Ms. Lampert, the Petitioners have identified no members for which they could claim representational standing. Ms. Lampert's standing, however, fails because it is based on the proximity presumption and for the reasons discussed in the prior section. Additionally, Pilgrim Watch has not identified the Licensees listed in Attachment 1 that submit this Joint Answer, and Ms. Lampert resides hundreds or thousands of miles away from their nuclear facilities. Finally, any claims of alleged injury have no connection to the Licensees listed in Attachment 1. For these additional reasons, the Petitioners have not demonstrated standing to participate in this proceeding.

B. The Requests Do Not Include an Admissible Contention

As discussed above, the Petitioners have not demonstrated standing. The Board should reject the Requests for that reason alone. Nonetheless, even had the Petitioners demonstrated standing, they have not submitted an admissible contention, providing an independent basis for the Board to reject the Requests.

1. The Requests Are Outside the Scope of this Proceeding Under the *Bellotti* Doctrine Because They Seek to Expand the Order

Pursuant to 10 C.F.R. § 2.309(f)(1), for a contention to be admissible, it must, among other things, demonstrate that the issue raised is within the scope of the proceeding.

⁴⁴ See *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 408-10 (2007); see also *N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Indep. Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).

⁴⁵ See Beyond Nuclear Request at 1-2.

⁴⁶ See Pilgrim Watch Request at 1-3.

The analysis of the scope of an enforcement proceeding is similar to that used to determine standing. The Commission has stated that “the threshold question – related to both standing and admissibility of contentions – is whether the hearing request is within the scope of the proceeding as outlined in the order.”⁴⁷ EA-12-050 describes the scope of this proceeding, by stating that “[i]f a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.”⁴⁸ The Petitioners concede that they are seeking requirements well beyond EA-12-050, by alleging that the Order is insufficient, and the proposed contentions address a “defect” in the Order.⁴⁹ Therefore, for the same reasons discussed in Section IV.A.1 above regarding standing, the proposed contentions also are outside the scope of this proceeding, and should be rejected for this additional reason.⁵⁰

2. The Requests Are Outside the Scope of this Enforcement Proceeding Because They Raise Impermissible NEPA Issues

The Requests state that they address “an environmental issue,” the proposed contentions “seek[] compliance with NEPA,” and “there will be an unacceptable risk to the environment” without imposing requirements for filtered vents that are passively actuated by means of a rupture disc.⁵¹

⁴⁷ *ADOT*, CLI-04-26, 60 NRC at 405.

⁴⁸ EA-12-050, 77 Fed. Reg. at 16,101.

⁴⁹ See Pilgrim Watch Request at 3, 5-6, 16.

⁵⁰ See also *Pub. Serv. Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 441 (1980) (“The scope of a hearing . . . would not include consideration of enforcement remedies beyond those already granted by the order.”); *ADOT*, CLI-04-26, 60 NRC at 404 (“The only issue in an NRC enforcement proceeding is whether the order should be sustained. Boards are not to consider whether such orders need strengthening.”). The policy justification for preventing a petitioner from seeking stricter enforcement than that sought by the NRC is that if a petitioner, rather than the Commission, were permitted to define the scope of the enforcement proceeding, it would render the proceeding “virtually interminable.” *Bellotti*, 725 F.2d at 1381. Furthermore, the Commission wishes to “encourage[] licensees to consent to, rather than contest, enforcement actions.” *Marble Hill*, CLI-80-10, 11 NRC at 441. The goal of such a policy is to avoid “a major diversion of agency resources from project inspections and engineering investigations to the conduct of hearings.” *Id.* at 441-42.

⁵¹ Pilgrim Watch Request at 2-3, 7.

Environmental issues, however, are outside the scope of this proceeding. 10 C.F.R. § 51.10(d) states: “Commission actions initiating or relating to administrative or judicial *civil* or criminal *enforcement actions or proceedings* are not subject to Section 102(2) of NEPA. These actions include issuance of . . . *orders* . . . pursuant to subpart B of part 2 of this chapter.”⁵² EA-12-050 is an order issued pursuant to 10 C.F.R. Part 2, Subpart B.⁵³ Therefore, the proposed contentions raise a NEPA issue that is outside the scope of this proceeding. The proposed contentions should be rejected for this reason as well.

C. The Requests Suffer from Other Pleading Deficiencies

In addition to the significant, fatal deficiencies discussed above with respect to standing and contention admissibility, the Requests also suffer from other pleading deficiencies.

First, Beyond Nuclear filed its Request late. EA-12-050 is dated March 12, 2012.⁵⁴ The Order states that “any other person adversely affected by this Order . . . may request a hearing on this Order, within twenty (20) days of the date of this Order.”⁵⁵ Twenty days after March 12, 2012 was April 1, 2012. Because April 1, 2012 was a Sunday, any hearing requests were due on Monday, April 2, 2012, in accordance with 10 C.F.R. § 2.306(a). The Beyond Nuclear Request is dated April 3, 2012—a day late.⁵⁶ Beyond Nuclear acknowledges that the Request was late, but claims that it should be considered timely because it was filed within 20 days of when EA-12-050 became available in the NRC’s Agencywide Documents Access and Management System (“ADAMS”), which Beyond Nuclear claims was March 14, 2012.⁵⁷ This request is without merit. The 20-day deadline in EA-12-050 is tied to the date of the Order, not to its

⁵² Emphasis added.

⁵³ EA-12-050 was issued pursuant to 10 C.F.R. § 2.202, which is located in 10 C.F.R. Part 2, Subpart B. *See* EA-12-050, 77 Fed. Reg. at 16,100.

⁵⁴ *Id.* at 16,102.

⁵⁵ *Id.* at 16,100-101.

⁵⁶ Beyond Nuclear Request at 1.

⁵⁷ *Id.* at 2-3.

availability on ADAMS.⁵⁸ For these reasons, the Beyond Nuclear Request is untimely and should be rejected.⁵⁹

Second, Beyond Nuclear's attempt to adopt Pilgrim Watch's proposed contentions should be rejected. Rather than provide its own proposed contention, Beyond Nuclear requests to "co-petition" with Pilgrim Watch.⁶⁰ Although the NRC regulations allow petitioners to co-sponsor contentions under some circumstances, the petitioners must designate a representative to act for the petitioners on the contention.⁶¹ Beyond Nuclear and Pilgrim Watch have not done this. Additionally, the Commission has stated that it "would not accept incorporation by reference of another petitioner's issues in an instance where the petitioner has not independently established compliance with our requirements for admission as a party in its own pleadings by submitting at least one admissible issue of its own."⁶² Because Beyond Nuclear has not submitted its own admissible contention, its attempts to co-petition are impermissible and should be rejected.

V. CONCLUSION

As demonstrated above, the Petitioners have not satisfied the standing requirements in 10 C.F.R. § 2.309(d), the Requests do not include a contention satisfying the admissibility requirements in 10 C.F.R. § 2.309(f)(1), and the Requests suffer from other pleading

⁵⁸ Additionally, the content of the Order had been available since the middle of February 2012, when the NRC Staff sent the orders to the Commission for approval. *See* SECY-12-0025, Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami (Feb. 17, 2012).

⁵⁹ This untimely filing is particularly egregious here, because the NRC already rejected a request from Beyond Nuclear for an extension to submit a hearing request on EA-12-050. *See* Letter from E. Leeds, NRC, to P. Gunter, Beyond Nuclear (Mar. 22, 2012) (rejecting Beyond Nuclear's March 15, 2012 extension request), *available at* ADAMS Accession No. ML12080A020.

⁶⁰ Beyond Nuclear Request at 1.

⁶¹ 10 C.F.R. § 2.309(f)(3) ("If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.").

⁶² *See Consolidated Edison Co. of New York* (Indian Point, Units 1 & 2), CLI-01-19, 54 NRC 109, 133 (2001).

deficiencies. For these reasons, the Licensees respectfully request that the Board reject the Requests in their entirety and terminate this enforcement proceeding before the Board.⁶³

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Signed (electronically) by Paul M. Bessette

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Dated in Washington, D.C.
this 27th day of April 2012

⁶³ The Petitioners are not without other potential options outside this proceeding. For example, 10 C.F.R. § 2.206 provides persons with an opportunity to petition the Commission to take action and 10 C.F.R. § 2.802 provides persons with an opportunity to petition the Commission for rulemaking. The D.C. Circuit Court and the Commission have identified Section 2.206 as a potential alternative when hearing requests under Section 2.202 are not appropriate. *See, e.g., Bellotti*, 725 F.2d at 1382; *ADOT*, CLI-04-26, 60 NRC 407 n.35. Additionally, nothing in the Order prohibits the use of rupture discs for the hardened vents, and the Order clearly states that the NRC is separately considering filtered vents. *See* EA-12-050, 77 Fed. Reg. at 16,099.

Licensees Filing the Joint Answer to the Requests
(As Identified in Attachment 1 to EA-12-050)

Licensee	Plant	Docket and License Nos.
Exelon Generation Company, LLC	<i>Dresden Nuclear Power Station</i>	Docket Nos. 50-237 and 50-249, License Nos. DPR-19 and DPR-25
Exelon Generation Company, LLC	<i>LaSalle County Station</i>	Docket Nos. 50-373 and 50-374, License Nos. NPF-11 and NPF-18
Exelon Generation Company, LLC	<i>Limerick Generating Station</i>	Docket Nos. 50-352 and 50-353, License Nos. NPF-39 and NPF-85
Exelon Generation Company, LLC	<i>Oyster Creek Nuclear Generating Station</i>	Docket No. 50-219, License No. DPR-16
Exelon Generation Company, LLC	<i>Peach Bottom Atomic Power Station</i>	Docket Nos. 50-277 and 50-278, License Nos. DPR-44 and DPR-56
Exelon Generation Company, LLC	<i>Quad Cities Nuclear Power Station</i>	Docket Nos. 50-254 and 50-265, License Nos. DPR-29 and DPR-30
Nebraska Public Power District	<i>Cooper Nuclear Station</i>	Docket No. 50-298, License No. DPR-46
Nine Mile Point Nuclear Station, LLC	<i>Nine Mile Point Nuclear Station</i>	Docket Nos. 50-220 and 50-410, License Nos. DPR-63 and NPF-69
PSEG Nuclear, LLC	<i>Hope Creek Generating Station</i>	Docket No. 50-354, License No. NPF-57
Tennessee Valley Authority	<i>Browns Ferry Nuclear Plant</i>	Docket Nos. 50-259, 50-260 and 50-296, License Nos. DPR-33, DPR-52 and DPR-68

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ALL OPERATING BOILING WATER)	
REACTOR LICENSEES WITH MARK I)	
AND MARK II CONTAINMENTS)	Docket Nos. EA-12-050 & EA-12-051
)	
AND)	
)	
ALL POWER REACTOR LICENSEES)	
AND HOLDERS OF CONSTRUCTION)	
PERMITS IN ACTIVE OR DEFERRED)	April 27, 2012
STATUS)	
)	
(Fukushima-Related Orders Modifying)	
Licenses))	

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of the “Joint Answer Opposing Hearing Requests Regarding Sufficiency of Order EA-12-050 Modifying Licenses with Regard to Hardened Vents” was filed with the Electronic Information Exchange in the above-captioned proceeding on the following recipients.

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