

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**Before the Commission**

In the Matters 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)

Docket No. EA-12-050  
ASLBP No. 12-918-01-EA-BD01

All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status: Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (Effective Immediately)

Docket No. EA-12-051  
ASLBP No. 12-918-01-EA-BD01

ANSWER OF ENTERGY NUCLEAR OPERATING COMPANY  
AND ENTERGY NUCLEAR OPERATIONS, INC. IN OPPOSITION TO  
PILGRIM WATCH'S PETITION FOR REVIEW

Pursuant to 10 C.F.R. § 2.341(b)(3) (2012), Entergy Nuclear Operating Company and Entergy Nuclear Operations, Inc. (together, "Entergy") file this answer in opposition to *Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Petitions for Hearing)*, LBP-12-14, July 10, 2012, filed in the above-captioned dockets on July 20, 2012 ("Petition"). Pilgrim Watch attacks the Atomic Safety and Licensing Board's ("Board") July 10, 2012 decision ("Decision")<sup>1</sup> rejecting Pilgrim Watch's challenges to two enforcement orders<sup>2</sup> providing for

<sup>1</sup> Atomic Safety and Licensing Board Memorandum and Order (Denying Petitions for Hearing), Docket Nos. EA-12-050, EA-12-051 (ASLBP No. 12-918-01-EA-BD01) (July 10, 2012).

<sup>2</sup> 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), Docket No. EA-12-050 (Mar. 12, 2012) (ADAMS ML12054A694) ("Hardened Vent Order"); All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status: Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (Effective Immediately), Docket No. EA-12-051 (Mar. 12, 2012) (ADAMS ML12054A679) ("Spent Fuel Pool Order") (together, "Enforcement Orders").

added safety measures following the NRC Staff's analysis of the Fukushima Daiichi nuclear incident that occurred in March 2011. The Enforcement Orders pertain to hardened venting systems and spent fuel pool instrumentation.

Entergy submits that the Decision comports fully with established case law recognizing the Commission's authority to limit the scope of a hearing associated with such Enforcement Orders to the single question of whether the orders should be sustained. The Board correctly found that Pilgrim Watch's challenge to the Enforcement Orders must be rejected because, throughout this proceeding, Pilgrim Watch has sought to establish not that the Enforcement Orders should not be sustained, but that additional safety measures above and beyond what the orders require should also be imposed. Because that challenge is beyond the scope of the proceeding the Commission ordered, the Commission should deny the Petition and affirm the Board's Decision.

## **I. OPPOSITION**

### **A. The Bellotti Case and Its Progeny Required the Board to Reject Pilgrim Watch's Challenge**

The Board's decision to reject Pilgrim Watch's challenge to the Enforcement Orders was a routine application of the Commission's long-recognized authority to limit third-party challenges to an NRC enforcement order to the issue of whether or not the order should be sustained.<sup>3</sup> Pilgrim Watch seeks instead to argue that the Enforcement Orders at issue here are insufficient and that the Commission should require more. The Board correctly rejected Pilgrim Watch's effort.

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<sup>3</sup> See *Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983), *aff'g sub nom.*, *Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982).

As the Board recognized in its Decision, the D.C. Circuit in *Bellotti* plainly holds that the Commission has the statutory authority to limit the scope of its hearings.<sup>4</sup> *Bellotti* further confirms that the Commission acts reasonably – and well within the confines of the Atomic Energy Act – when it narrows the scope of a hearing involving an enforcement order to the sole issue of whether the order should be sustained.<sup>5</sup> Here, the Enforcement Orders expressly provide that any hearing concerning them will be limited to consideration of a single issue: “whether this Order should be sustained.”<sup>6</sup> In order to obtain a hearing, a challenger must demonstrate that the orders at issue should not be sustained because they diminish public safety,<sup>7</sup> which cannot be accomplished by asserting that the orders should do more than they do.<sup>8</sup>

The Pilgrim Watch challenge goes far beyond what the Commission established as the scope for any hearing. Its contentions assert that the Enforcement Orders are “insufficient” – not because of what they require, but because of what they “lack.”<sup>9</sup> Specifically, Pilgrim Watch wants the Commission order addressing hardened vents to *also require* filtered direct torus vents

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<sup>4</sup> *Id.* at 1381 (stating, “The first question, then, is whether petitioner or the Commission has authority to define the scope of the proceeding. We have no doubt that, as a general matter, such authority must reside in the Commission”).

<sup>5</sup> *Id.* at 1382 (holding that exactly such a limitation was not arbitrary and, indeed, consistent with Commission goals of directing agency resources toward regulatory and inspection efforts rather than adjudication).

<sup>6</sup> Hardened Vent Order at 9; Spent Fuel Pool Order at 11.

<sup>7</sup> *See* 725 F.2d at 1383; *Alaska Dep’t of Transp. and Pub. Facilities* (Confirmatory Order Modifying License), CLI-04-26, 60 NRC 399, 405 (2004) (*ADOT*); *In the Matter of Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), LBP-09-20, 70 NRC 565 (2009) (the Board reasoned, “the Commission’s order is intended to *reduce* the possibility of a terrorist attack at the Fermi site; thus, rescinding the order will not likely redress Petitioners’ injuries. In fact, it will more likely aggravate those injuries, or at least maintain the status quo. Because Petitioners fail to explain why they will be better off in the absence of the Commission’s order, Petitioners have failed to demonstrate that a hearing will redress their injury.”).

<sup>8</sup> *ADOT*, 60 NRC at 405 (“The Board recognized that Contention 1 in reality seeks additional measures as a substitute for those imposed by the Staff; thus, the Board properly rejected it under the *Bellotti* doctrine.”).

<sup>9</sup> Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents, Docket No. EA-12-050 at 3 (filed Apr. 2, 2012); Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent Reliable Spent Fuel Pool Instrumentation, Docket No. EA-12-051 at 1 (Apr. 2, 2012).

that rely on passively-activated actuation mechanisms, such as a rupture disc.<sup>10</sup> Similarly, Pilgrim Watch wants the Commission order on spent fuel pool instrumentation measures to *also require* spent fuel pools with a low-density, open-frame design and dry cask storage for fuel that was removed from the reactor core more than five years ago.<sup>11</sup> Those requests plainly go beyond the scope of the Enforcement Orders.

The Pilgrim Watch arguments directly parallel those in *Maine Yankee Atomic Power Company*, where, pursuant to the *Bellotti* doctrine, the NRC denied challenges to a post-September 11th security order that, like the Enforcement Orders at issue here, applied new requirements to a class of licensees.<sup>12</sup> The Board rejected a challenge by the State of Maine that sought a hearing on the basis that the new security measures did not go far enough. As here and in *Bellotti*, the Commission in *Maine Yankee* had limited any hearing on the order at issue to whether the order should be sustained. The Board concluded that Maine did not oppose the substance of the order, but rather sought “additional agency action.”<sup>13</sup> The Board denied the hearing request, concluding that Maine sought to litigate concerns beyond the scope of the order, and the Commission affirmed, noting that “*Bellotti* . . . holds that NRC hearing petitioners may not seek additional measures going beyond the terms of the enforcement order triggering the hearing request.”<sup>14</sup>

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<sup>10</sup> Petition at 10; Pilgrim Watch Reply to Answers to Pilgrim Watch Requests for Hearing, Docket Nos. EA-12-050, EA-12-051, at 3-5 (May 4, 2012); Pilgrim Watch Hearing Request in EA-12-050 at 3.

<sup>11</sup> Petition at 10, 11; Pilgrim Watch Reply to Answers to Pilgrim Watch Requests for Hearing at 5, Pilgrim Watch Hearing Request in EA-12-051 at 1.

<sup>12</sup> *Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station), LBP-03-26, 58 NRC 396 (2003).

<sup>13</sup> *Id.* at 401.

<sup>14</sup> *Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station), CLI-04-5, 59 NRC 52, 58 (2004).

**B. The Efforts of Pilgrim Watch to Recast Its Arguments to Avoid *Bellotti* Are Unavailing.**

Only late in the briefing on its request for a hearing, during oral argument, and in its Petition did Pilgrim Watch recognize the seriousness of the infirmity from which its arguments suffer. Even if they had been timely raised, which they were not,<sup>15</sup> each of its efforts to avoid the effect of the *Bellotti* rule falls short.

First, Pilgrim Watch argues that *Bellotti* establishes an unqualified right to a hearing in matters concerning the public health and safety.<sup>16</sup> In support of this contention, Pilgrim Watch attributes the following sentence to *Bellotti*: “Where the public health and safety are concerned, the right to a hearing is absolute.”<sup>17</sup> Entergy can find no such statement in *Bellotti*. Rather, *Bellotti* provides, “[p]ublic participation is automatic with respect to all Commission actions that are potentially harmful to the public health and welfare.”<sup>18</sup> The Pilgrim Watch argument fails to give effect to the underlined text, which expressly limits the right of a hearing to cases where the NRC’s action may potentially cause harm. At no point in this proceeding did Pilgrim Watch assert that the additional safety measures required by the Enforcement Orders may cause harm. Rather, Pilgrim Watch has consistently argued that the measures do not go far enough, implicitly

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<sup>15</sup> Whether raised before the Commission in a petition for review or before the Board in a reply brief, NRC policy disfavors untimely arguments that are not first raised in a petitioner’s request for hearing. *See, e.g., South Carolina Elec. And Gas Co. and South Carolina Pub. Service Auth.* (Virgil C. Summer Nuclear Station, Units 2 and 3), Nuclear Reg. Rep. P 31624, 2010 WL 4057454, \*2 (2010) (“And the remainder of the appeal is a presentation of new arguments that could have been, but were not, presented earlier in this proceeding. In all of these respects, Petitioners have contravened our adjudicatory practice and procedure.”); *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-08-17, 68 NRC 231, at 234 (2008) (“Petitioners’ appeal raises numerous new arguments never presented as part of their hearing petition. Petitioners may not seek to skirt our contention rules by initially filing unsupported contentions, and later recasting or modifying their contentions on appeal with new arguments never raised before the Board”). *See also Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004) (“On all four of these contentions, we concur with the Board that the reply briefs constituted a late attempt to reinvigorate thinly supported contentions by presenting entirely new arguments in the reply briefs. Indeed, in some places, the reply briefs present what effectively amount to entirely new contentions.”(citations omitted)); *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 731-2 (2006).

<sup>16</sup> Petition at 3, 16.

<sup>17</sup> Petition at 3.

<sup>18</sup> *Bellotti*, 725 F2d at 1383.

conceding that the measures provide at least some level of enhanced safety.<sup>19</sup> Thus, the condition under which *Bellotti* says there would be a right to public participation is simply not present here.

Pilgrim Watch also now asserts that, in contrast to the situations in prior cases, it is arguing that the Enforcement Orders should not be sustained.<sup>20</sup> In reality, at virtually every stage of this proceeding (from its initial proffered contentions, to its oral argument, and finally to its Petition), Pilgrim Watch has criticized the Enforcement Orders for not going far enough. It has not urged the Board and the Commission to reject the measures required under the Enforcement Orders, but rather to also adopt additional safety measures concerning hardened vents and spent fuel pool modifications. Even in the section of the Petition where Pilgrim Watch concedes that the lone issue is whether the orders should be sustained, it continues to argue that the safety measures contained in the Enforcement Orders do not go far enough to meet Pilgrim Watch's view of what is sufficient to protect public health and safety.<sup>21</sup> This is nothing more than a failed attempt at repackaging the same kinds of arguments that were made and properly rejected in *Bellotti*, *Maine Yankee*, and *ADOT*. The Board fully understood this and rejected it.<sup>22</sup>

Late in the proceedings before the Board, Pilgrim Watch also argued that the issuance of the Enforcement Orders will harm Pilgrim Watch because they could forestall other, more stringent measures that the Commission might propose in the future.<sup>23</sup> This highly speculative

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<sup>19</sup> See *supra* footnotes 9-11. See also Official Transcript of Proceedings on June 7, 2012, Docket Nos. EA-12-050, EA-12-051, at 90:13-21, 107:1-5.

<sup>20</sup> Petition at 5.

<sup>21</sup> *Id.* (quoting its May 4, 2012 answer in which it argued that “what the current orders require is not sufficient to ensure adequate protection” (citations omitted)). See also *id.* at 9-11 (describing the additional measures Pilgrim Watch advocates).

<sup>22</sup> Decision at 8 (“At oral argument, we provided Pilgrim Watch every opportunity to distinguish *Bellotti* and its progeny. Pilgrim Watch’s counsel made it crystal clear that the claim is not that the implementation of the challenged orders would reduce the existing level of safety but, rather, that safety of plant operation would be enhanced if additional measures were required.”).

<sup>23</sup> See Pilgrim Watch Reply to Answers to Pilgrim Watch Requests for Hearing at 10-11. See Petition at 14.

argument is belied by the Commission's extensive ongoing response to the Fukushima accident.<sup>24</sup> The Board was appropriately unpersuaded.

Finally, for the first time in the Petition, Pilgrim Watch also attempts to distinguish *Bellotti* on the grounds that, because the hardened vents order rests on a finding that it is necessary for the adequate protection of public health and safety, Pilgrim Watch must be allowed to litigate the need for the additional safety measures it proposes.<sup>25</sup> That argument is untimely,<sup>26</sup> but it is also a smokescreen. Again, in asserting that the Enforcement Orders should not be sustained as written, Pilgrim Watch is not arguing for rejection of the safety measures the Commission has proposed, but that more is also required. This puts Pilgrim Watch squarely back within the *Bellotti* rule.

### **C. Petitioner Lacks Standing in This Proceeding**

The Board correctly concluded that *Bellotti* governs and that it therefore did not need to reach the question of whether Pilgrim Watch otherwise has standing to seek a hearing on the Enforcement Orders. Should the Commission conclude that it needs to address traditional

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<sup>24</sup> The NRC has taken numerous actions that include orders and Requests for Information to address lessons learned from Fukushima. *See, e.g.*, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (ML111861807) at 40-41 (recommending a requirement for hardened vent designs in BWR facilities with Mark I and Mark II containments) (July 12, 2011); *id.* at 46 (recommending enhancement of spent fuel pool make-up capability and instrumentation for the spent fuel pool). *See also* Memorandum from Robert J. Fretz, Senior Project Manager, Japan Lessons-Learned Project Directorate, NRC, to Robert J. Pascarelli, Chief, Japan Lessons-Learned Project Directorate, NRC (May 14, 2012) (ML12132A378) (discussing upcoming NRC public meeting to discuss implementation strategies to address the Order on Reliable Hardened Containment Vents); Memorandum from Lisa M. Regner, Senior Project Manager, Japan Lessons-Learned Project Directorate, NRC to Robert J. Pascarelli, Chief, Japan Lessons-Learned Project Directorate, NRC (Apr. 19, 2012) (ML12108A032) (discussing upcoming NRC Staff Public meeting to discuss guidance for responding to Reliable Spent Fuel Pool Instrumentation Order) Memorandum from Robert J. Fretz, Senior Project Manager, Japan Lessons-Learned Project Directorate, NRC, to Robert J. Pascarelli, Chief, Japan Lessons-Learned Project Directorate, NRC (June 28, 2012) (ML12180A009) (discussing upcoming NRC Staff public meeting to discuss testing programs and technology developments on wet and dry filtered containment venting systems). Furthermore, since issuing the Enforcement Orders, the NRC commenced two rulemakings addressing onsite emergency response capabilities and station blackouts. *See* Advance Notice of Proposed Rulemaking for Onsite Emergency Response Capabilities, RIN 3150-AJ11, 77 Fed. Reg. 23,161 (Apr. 18, 2012); Advance Notice of Proposed Rulemaking for Station Blackout, RIN 3150-AJ08, 77 Fed. Reg. 16,175 (Mar. 20, 2012).

<sup>25</sup> Petition at 7-8.

<sup>26</sup> *See supra* footnote 15.

standing requirements, the Petition must be denied on that ground as well as because Pilgrim Watch has failed to meet the Commission's standing requirements under 10 C.F.R. § 2.309(d).

The Commission applies contemporaneous judicial concepts of standing. Accordingly, a petitioner must (1) allege an "injury in fact" that is (2) "fairly traceable to the challenged action" and (3) is "likely" to be "redressed by a favorable decision."<sup>27</sup> Simply stated, because what Pilgrim Watch seeks here are additional safety measures beyond what the Enforcement Orders provide, Pilgrim Watch is not suffering an injury that is traceable to the Enforcement Orders, and thus failure to uphold the Enforcement Orders will not redress the claimed injury.

Because the Commission has limited the scope of the hearing to whether the Enforcement Orders should be sustained, the only possible decisions are to sustain or not sustain the Order. As explained in *ADOT*, an order like the Enforcement Orders "presumably enhance[s] rather than diminish[es] public safety" because it places additional safety restrictions upon licensees, and an individual "is not adversely affected by a Confirmatory Order that improves the safety situation over what it was in the absence of the order."<sup>28</sup> The mere fact that the Enforcement Orders do not advance Pilgrim Watch's position does not establish standing.<sup>29</sup>

Pilgrim Watch likewise has failed to establish that it has presumptive or representational standing. The Commission has made clear that, outside of the context of a construction permit or operating licensing proceeding, "general references to members' proximity" to a facility or a plant are not sufficient to confer standing.<sup>30</sup> In proceedings with a limited scope, such as a hearing on an order, a petitioner must show that an outcome of the proceeding itself, as distinct

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<sup>27</sup> *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994) (citations omitted).

<sup>28</sup> *ADOT*, 60 NRC at 406 and n. 28.

<sup>29</sup> *Id.*

<sup>30</sup> *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-22, 65 NRC 525, 526 (2007); *see also Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).



from the general operation of the plant, will adversely affect the petitioner's interests or the interests of one or more of its members.<sup>31</sup> As explained above, Pilgrim Watch has failed to do that here.<sup>32</sup>

#### **D. Petitioner Fails to Plead an Admissible Contention**

The Board also concluded that it did not need to reach the question of whether Pilgrim Watch has raised an admissible contention. Should the Commission conclude that it needs to address this issue, the Pilgrim Watch request for a hearing must be denied because Pilgrim Watch has failed to propose an admissible contention under 10 C.F.R. § 2.309(f).

Among other things, for a contention to be admissible, the petition must demonstrate that the issue raised in the contention is both within the scope of the proceeding (§ 2.309(f)(1)(iii)) and material to the findings the NRC must make to support the action that is involved in the proceeding (§ 2.309(f)(1)(iv)). The discussion above showing that the issues on which Pilgrim Watch seeks a hearing are beyond the scope of the Enforcement Orders likewise establishes that Pilgrim Watch has not raised issues that are within the scope of the proceeding or material to the findings the Commission must make to sustain the orders. Thus, Pilgrim Watch has failed to raise an admissible contention.<sup>33</sup>

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<sup>31</sup> *GPU Nuclear Inc.*, 51 NRC at 213.

<sup>32</sup> The standing issue is addressed at much greater length in Entergy's Reply Briefs and Motion to Strike in this proceeding. *See* Entergy's Answer to Pilgrim Watch Requests for Hearing Regarding Insufficiency of Order Modifying Licenses With Regard to Reliable Hardened Containment Vents, Docket Nos. EA-12-050, at 9-17 (filed Apr. 27, 2012); Entergy's Answer to Pilgrim Watch Requests for Hearing Regarding Insufficiency of Order Modifying Licenses With Regard to Spent Reliable Spent Fuel Pool Instrumentation, Docket Nos. EA-12-051, at 10-17 (filed Apr. 27, 2012); Motion to Strike, Docket Nos. EA-12-050, EA-12-051, at 5 (filed May 11, 2012). Nothing in the Petition undermines the additional arguments presented there.

<sup>33</sup> This issue is addressed at much greater length in Entergy's answers to Pilgrim Watch's hearing requests in this proceeding. *See* Entergy's Answer to Pilgrim Watch Requests for Hearing Regarding Insufficiency of Order Modifying Licenses With Regard to Reliable Hardened Containment Vents, Docket Nos. EA-12-050, at 17-24 (filed Apr. 27, 2012); Entergy's Answer to Pilgrim Watch Requests for Hearing Regarding Insufficiency of Order Modifying Licenses With Regard to Spent Reliable Spent Fuel Pool Instrumentation, Docket Nos. EA-12-051, at 17-26 (filed Apr. 27, 2012). Again, the Petition says nothing to undermine the arguments made there.

## E. Section 2.206 Is Irrelevant Here

In the proceedings below, relying on *Bellotti*, NRC Staff and Entergy pointed to 10 C.F.R. § 2.206 as a potential alternative avenue for Pilgrim Watch to raise the issues it improperly seeks to litigate here, and the Board asked the Staff to make a submission regarding instances when substantive relief was granted pursuant to 10 C.F.R. § 2.206.<sup>34</sup> There was much debate, and the parties submitted several pleadings on that issue.<sup>35</sup> In the end, however, the Board unanimously agreed that section 2.206 is irrelevant to the question of whether Pilgrim Watch had a right to raise issues beyond the scope of the Enforcement Orders at issue in this proceeding.<sup>36</sup>

Pilgrim Watch nevertheless continues to insist that section 2.206 is not a meaningful alternative, as if that somehow gives it a right to raise out-of-scope issues in this proceeding. It does not. As described above and as the Board concluded, *Bellotti* and its progeny control here, and they do not hold that the Commission's authority to limit the scope of a proceeding depends on the availability of section 2.206 relief. Thus, section 2.206 is fundamentally irrelevant here.

An intervenor's right to a hearing is defined by Section 189a of the Atomic Energy Act.<sup>37</sup>

An intervenor must demonstrate some tangible harm resulting from a Commission enforcement

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<sup>34</sup> Licensing Board Memorandum and Order (Requesting Filing on Petitions under 10 C.F.R. § 2.206) (ADAMS ML12138A111) at pp. 1-2 (May 17, 2012) (unpublished); Licensing Board Memorandum and Order (Directing Staff to Amend Filing on 10 C.F.R. § 2.206) (ADAMS ML12171A364) (June 19, 2012).

<sup>35</sup> See NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R. § 2.206, Docket Nos. EA-12-050, EA-12-051 (filed June 15, 2012); NRC Staff Response to the Board Order Directing Staff to Amend Filing on 10 C.F.R. § 2.206, Docket Nos. EA-12-050, EA-12-051 (filed June 26, 2012); Pilgrim Watch Motion to Strike Staff Response, Docket Nos. EA-12-050, EA-12-051 (filed June 27, 2012); Entergy's Comments on NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R. § 2.206, Docket Nos. EA-12-050, EA-12-051 (filed July 3, 2012); Pilgrim Watch Comments on Significance of Staff Disclosures, Docket Nos. EA-12-050, EA-12-051 (filed July 3, 2012); Pilgrim Watch Motion For Leave to Reply to Entergy's Comments on NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R. § 2.206, Docket Nos. EA-12-050, EA-12-051 (filed July 10, 2012).

<sup>36</sup> Decision at 8-9, n.36; Additional Opinion of Judge Rosenthal at 1 ("It is beyond cavil that Pilgrim Watch's hearing requests are entirely foreclosed by the teachings of *Bellotti* and its progeny.")

<sup>37</sup> See *supra* footnote 32.

action to be entitled to a hearing on that action under Section 189a.<sup>38</sup> The petitioner here has failed to make the requisite showing that the Enforcement Orders do it harm, and therefore the Board properly denied Pilgrim Watch's hearing request.<sup>39</sup>

## II. CONCLUSION

For the reasons set forth above, Entergy urges the Commission to deny the Petition and affirm the July 10 Decision of the Board rejecting Pilgrim Watch's challenge to the Enforcement Orders.

Respectfully submitted,

*/Signed electronically by Mary Anne Sullivan/*  
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NUCLEAR OPERATIONS, INC.

Dated in Washington, D.C. this  
30th Day of July 2012

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<sup>38</sup> *See id.*

<sup>39</sup> Notwithstanding the irrelevance of the issue, it is important to note that Pilgrim Watch had raised some of the issues it is raising here in the Pilgrim license renewal proceeding. *See In re Entergy Corp.* (Pilgrim Nuclear Power Station, Docket No. 50-293-LR (filed May 25, 2006) (requesting hearing on environmental contentions regarding filtered venting and spent fuel pool loss and fires); Pilgrim Watch Request for Hearing on Post Fukushima SAMA Contention, *In re Entergy Corp.* (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (filed May 12, 2011); Pilgrim Watch Request for Hearing on a New Contention Regarding In adequacy of Environmental Report, Post Fukushima, *In re Entergy Corp.* (Pilgrim Nuclear Power Station), Docket No. 50-293-LR (filed June 1, 2011). Furthermore, Pilgrim Watch continues to be an active participant in the ongoing deliberations of the Commission's Near Term Task Force, which is considering at least some of the issues Pilgrim Watch wants to see addressed here. *See supra* footnote 24. Rulemaking pursuant to 10 C.F.R. § 2.802 and a petition under 10 C.F.R. § 2.206 are still further avenues for raising its issues, however unattractive Pilgrim Watch may find them. In short, Pilgrim Watch is not without opportunities to be heard.

UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I hereby certify that copies of “Answer of Entergy Nuclear Operating Company and Entergy Nuclear Operations, Inc. In Opposition to Pilgrim Watch’s Petition For Review” dated July 30, 2012, have been served upon the following persons by Electronic Information Exchange (EIE) on this 30th day of July 2012.

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