

October 3, 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO PILGRIM WATCH & CO-
PETITIONERS' REQUEST FOR HEARING

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), the Staff of the Nuclear Regulatory Commission (Staff) hereby responds to the request for hearing filed by Pilgrim Watch and co-petitioners Beyond Nuclear, Pilgrim Coalition, Pilgrim Legislative Advisory Committee, Cape Downwinders, Cape Downwinders Cooperative, Massachusetts Downwinders, and Citizens Awareness Network (Petitioners).¹ Petitioners seek a hearing on a recent request submitted by Entergy Nuclear Operations, Inc. (Entergy or Licensee) for an "extension of time to comply with NRC Order 13-109, Order to Modify Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions," at the Pilgrim Nuclear Power Station (PNPS or Pilgrim).² As discussed below, the Petitioners' request should be denied because

¹ Pilgrim Watch & Co-Petitioners' Request for Hearing Regarding Entergy's Request for Extension to Comply with NRC Order EA-13-109, Section IV Requirements Regarding Phase 1 and Phase 2 Severe Accident Capable Vents for Pilgrim Nuclear Power Station, (September 7, 2016) (NRC Agency Documents Access and Management (ADAMS) Accession No. ML16251A500) (Petition).

² Letter from John A. Dent, Jr., Entergy, to NRC, Request for Extension to Comply with NRC Order 13-109, Order to Modify Licenses with Regard to Reliable Hardened Containment Vents Capable of

Petitioners are not entitled to a hearing under the Atomic Energy Act or the NRC's regulations for such a request. Additionally, Petitioners have not established standing for a hearing, nor have Petitioners submitted an admissible contention. Therefore, the Commission should deny Petitioners' hearing request.

BACKGROUND

I. Hardened Vent Orders

On March 12, 2012, as part of its response to lessons learned from the March 2011 Fukushima Dai-ichi accident, the NRC issued immediately effective Order EA-12-050, requiring installation of reliable hardened containment venting systems in boiling-water reactors (BWRs) with Mark I and Mark II containment designs.³ In taking this action, the Commission determined that reliable hardened venting capability to assist in strategies to prevent core damage was necessary to provide reasonable assurance of adequate protection of public health and safety.⁴

On June 6, 2013, after further consideration of questions related to the use of venting systems during severe accidents, the NRC issued a second immediately effective order, EA-13-109, to the same licensees that received EA-12-050.⁵ Order EA-13-109 rescinded the requirements of EA-12-050 and imposed new requirements to (1) provide a reliable hardened containment venting system (HCVS) to assist in preventing core damage (fulfilling the purpose of EA-12-050) and (2) ensure that containment venting functions will be available during severe

Operation Under Severe Accident Conditions, (June 24, 2016) (ADAMS Accession No. ML16187A325) (June 24 Request or Entergy's Request).

³ *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), EA-12-050 (March 12, 2012) (EA-12-050). PNPS is a BWR with a Mark I containment. See *id.*, Attachment 1 at 5.

⁴ *Id.* at 6-7. The Commission noted that hardened vents have been in place in Mark I containments in U.S. plants for many years, but they were widely variable in terms of reliability. *Id.* at 4.

⁵ *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), EA-13-109 (June 6, 2013) (Order or EA-13-109).

accident conditions.⁶ The Commission determined that the requirement to provide additional capability of the venting systems to function in severe accident conditions was a cost-justified substantial safety improvement.⁷

The upgrades required under EA-13-109 are to be implemented in two phases, with Phase 1 requiring installation of a severe-accident capable, reliable hardened venting system in the containment wetwell.⁸ Licensees must comply with the Phase 1 requirements described in Attachment 2 to EA-13-109 by “no later than startup from the second refueling outage that begins after June 30, 2014, or June 30, 2018, whichever comes first.”⁹ Order EA-13-109 also requires licensees to provide overall integrated plans describing their approaches for complying with each phase of the Order, as well as status reports describing their progress in implementing the requirements.¹⁰

Section IV of EA-13-109 contains a provision allowing the Director of the Office of Nuclear Reactor Regulation (NRR) to “relax or rescind any of the above conditions [referring to the requirements listed in Sections IV.A through IV.D of the Order] upon demonstration by the licensee of good cause.”¹¹ Order EA-13-109 also offered an opportunity to request a hearing on the issue of whether the order should be sustained, but no hearing requests were received.¹²

⁶ EA-13-109 at 3-4, 10-11, Attachment 2. Order EA-13-109 considered severe accident conditions to “include the elevated temperatures, pressures, radiation levels, and combustible gas concentrations . . . associated with accidents involving extensive core damage....” *Id.* at 3-4.

⁷ *Id.* at 7.

⁸ *Id.* at 9. Phase 2 of EA-13-109 involves installation of a reliable, severe accident capable venting system in the containment drywell or development of a reliable venting strategy that would make it unlikely that venting from the drywell would be needed during severe accident conditions. *Id.* Because the licensee intends to shut down Pilgrim in June 2019, Phase 2 is not applicable.

⁹ *Id.* at 11.

¹⁰ *Id.* at 13. The overall integrated plan for Phase 1 was due by June 30, 2014, with status reports at 6-month intervals following submittal of the Phase 1 integrated plan. *Id.*

¹¹ EA-13-109 at 13.

¹² Order EA-12-050 contained similar relaxation and hearing opportunity provisions. Pilgrim Watch and Beyond Nuclear requested a hearing on Order EA-12-050, the original hardened vents order, but their requests were denied as outside the scope of the proceeding. *All Operating Boiling Water Reactor*

II. Entergy's Implementation of EA-13-109 at Pilgrim

On November 14, 2013, the NRC Staff issued JLD-ISG-2013-02, the interim staff guidance (ISG) on implementation of Phase 1 of EA-13-109.¹³ The ISG endorsed, with exceptions and clarifications, industry guidance document Nuclear Energy Institute (NEI) 13-02, "Industry Guidance for Compliance with Order EA-13-109."¹⁴ On June 30, 2014, Entergy submitted to the NRC its overall integrated plan for achieving compliance with Phase I of EA-13-109.¹⁵ In the Pilgrim OIP, Entergy indicated that "[c]ompliance will be attained for [PNPS] with no known deviations to the guidelines in JLD-ISG-2013-02 and NEI 13-02 for each phase" and that Phase 1 compliance was "[c]urrently scheduled for Spring 2017."¹⁶ The Pilgrim OIP also stated that if deviations were identified at a later date, they would be communicated in a future status update after being identified.¹⁷

Licensees with Mark I & Mark II Containments: Order Modifying Licenses With Regard to Reliable Hardened Containment Vents (Effective Immediately) All Power Reactor Licensees & Holders of Constr. Permits in Active or Deferred Status: Order Modifying Licenses with Regard To Reliable Spent Fuel Pool Instrumentation (Effective Immediately), LBP-12-04, 76 NRC 1 (2012), aff'd CLI-13-2, 77 NRC 39 (2013).

¹³ JLD-ISG-2013-02, Revision 0, *Compliance with Order EA-13-109, Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation under Severe Accident Conditions*, (November 14, 2013) (ADAMS Accession No. ML13304B836). The ISG "provides one acceptable approach for satisfying" the requirements of Order EA-13-109, but states that licensees may propose other methods for satisfying the requirements. *Id.* at 1.

¹⁴ *Id.* at 1. NEI 13-02, Revision 0, was issued on November 7, 2013, and is available in ADAMS (Accession No. ML13316A853). NEI 13-02 also indicates that it provides one acceptable approach for compliance and licensees may propose other approaches. NEI 13-02, Rev. 0 at 1.

¹⁵ Letter from John A. Dent, Jr., Entergy, to NRC, Entergy's Phase 1 Overall Integrated Plan in Response to June 6, 2013, Commission Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions (Order Number EA-13-109), (June 30, 2014) (ADAMS Accession No. ML14188B731) (Pilgrim OIP).

¹⁶ *Id.*, Attachment at 4.

¹⁷ *Id.*

III. Entergy's Request for Extension to Comply with EA-13-109

On November 10, 2015, Entergy notified the NRC that it intends to permanently cease power operations at PNPS “no later than June 1, 2019.”¹⁸ Subsequently, on June 24, 2016, Entergy submitted a letter to the NRC requesting that the NRC “grant an extension to comply with the requirements in Section IV of NRC Order EA-13-109 concerning implementation of the Phase 1 (wetwell vent) and Phase 2 (drywell vent) at Pilgrim until December 31, 2019.”¹⁹ Entergy also indicated that it intends to submit a “request for relief from NRC Order EA-13-109 no later than December 31, 2019 based upon the permanent shutdown condition of the plant at that time.”²⁰ Entergy stated that its June 24 Request is based on one approved by the NRC for the Oyster Creek Nuclear Generating Station (Oyster Creek).²¹

Although Entergy describes its June 24 Request as an extension of time to comply with EA-13-109, Entergy is not proposing to completely delay implementation of the Order. Rather, Entergy states that the current design of its wetwell venting system, including modifications made in 2014, “meets the requirements of EA-13-109” with three exceptions in the areas of radiation monitoring, dedicated 24-hour power for HCVS valves, and operation, testing, inspection and maintenance.²² According to Entergy, the actions proposed in the June 24

¹⁸ Letter from John Venotsa, Entergy, to NRC, Notification of Permanent Cessation of Power Operations, (Nov. 10, 2015) (ADAMS Accession No. ML15328A053).

¹⁹ June 24 Request at 2. In support of its request, Entergy provided both a summary and a “Detailed Explanation” of how its proposed approach addresses each criterion in EA-13-109. *Id.*, Attachments 1 and 2. Entergy also provided responses to anticipated NRC Staff requests for additional information (RAIs), based on the Staff RAIs for a similar extension request made for the Oyster Creek Nuclear Generating Station. *Id.*, Attachment 3. Many of the RAI and RAI responses in Attachment 3 address differences between the industry guidance in NEI 13-02 and the “actual, physical configuration and/or capabilities of the containment venting system which will be in operation during the requested period of extension,” and descriptions of compensatory measures “which will be utilized to achieve equivalent or similar capabilities as required by the order and described in the guidance.” See *id.* at 4, 6, 8, 10, 11, 12, 13.

²⁰ June 24 Request at 2.

²¹ *Id.*, Attachment 1 at 1.

²² See *id.*, Attachment 1 at 2 and Attachment 2 at 5, 6, 7. The three exceptions relate to requirements 1.2.9, 1.2.6, and 1.2.13, respectively, in EA-13-109. See EA-13-109, Attachment 2 at 2-3.

Request will either satisfy the requirements of EA-13-109 or provide “an acceptable approach that is reasonable, considering the planned short term facility operation through 2019.”²³ For the first two exceptions, Entergy has proposed different approaches to meeting the requirements of the Order.²⁴ For the third exception, Entergy seeks relaxation of the requirement, stating that the abbreviated operating timeframe (one cycle after the Spring 2017 refueling outage) does not require development of detailed plans for HCVS testing and inspection as required by the Order.²⁵ Entergy’s Request is currently under review by the NRC Staff.

On September 7, 2016, Petitioners filed their request for a hearing challenging Entergy’s June 24 Request.²⁶

LEGAL STANDARDS

I. AEA § 189a. Requirement for Hearing Opportunity

Section 189a. of the Atomic Energy Act of 1954, as amended (AEA), states that “[i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding”²⁷ The Supreme Court has stated that the section 189a. hearing requirement was “tailored to the scope of proceedings authorized under the licensing Subchapter.”²⁸ Therefore, “the only ‘right’ to an opportunity for a hearing under section

²³June 24 Request, Attachment 1 at 2, 3.

²⁴ *Id.*, Attachment 1 at 2, Attachment 2 at 5, 6.

²⁵ *Id.*, Attachment 1 at 2, Attachment 2 at 7.

²⁶ According to Petitioners, Entergy’s June 24 Request was not placed in ADAMS until July 13, 2016, and their hearing request was timely filed within 60 days of that date. See Petition at 1-2, 27. According to the record in ADAMS, the June 24 Request was added to ADAMS on July 5, 2016.

²⁷ Atomic Energy Act of 1954, as amended, § 189a.(1)(A), 42 U.S.C. § 2239(a)(1)(A).

²⁸ *Florida Power & Light v. Lorion*, 470 U.S. 729, 739 (1985).

189 exists for those actions that are identified in section 189.”²⁹ Orders issued under 10 C.F.R. § 2.202 alter the requirements of a license and therefore fall under the terms of section 189a. of the AEA.³⁰

However, the Commission has the authority to define the scope of proceedings held under § 189a., including proceedings on enforcement orders. The Commission has limited the scope of such proceedings to one issue: whether the order should be sustained.³¹ In *Bellotti v. U.S. Nuclear Regulatory Commission*, the D.C. Circuit upheld the Commission’s limited scope in proceedings involving orders,³² holding that the Commission has discretion to limit the scope of proceedings under § 189a. The court stated that:

To read the statute very broadly so that any proceeding necessarily implicates all issues that might be raised concerning the facility in question would deluge the Commission with intervenors and expand many proceedings into virtually interminable, free-ranging investigations.... [T]he Commission's substantive discretion to decide what is important enough to merit examination would be subverted by a procedural provision requiring the Commission to consider any issue any intervenor might raise. Such a reading of the statute is plainly untenable and cannot be what Congress intended.³³

²⁹ *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 (1994).

³⁰ *All Operating Boiling Water Reactor Licensees with Mark I & Mark II Containments: Order Modifying Licenses With Regard to Reliable Hardened Containment Vents (Effective Immediately) All Power Reactor Licensees & Holders of Constr. Permits in Active or Deferred Status: Order Modifying Licenses with Regard To Reliable Spent Fuel Pool Instrumentation (Effective Immediately)*, CLI-13-2, 77 NRC 39, 44 (2013) (All Operating Boiling Water Reactor Licensees).

³¹ *Id.* at 44; *Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 54 (2010). This limitation was first articulated in *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 & 2), where the Commission limited the scope of proceedings on an enforcement order issued under 10 C.F.R. § 2.202 issue to whether the facts as stated in the order were true and whether the remedy selected was supported by those facts. CLI-80-10, 11 NRC 438, 441 (1980). In explaining its reasoning for limiting proceedings to these narrow issues, the Commission found that public health and safety is best served by focusing the Commission’s resources on inspections and related work, not legal proceedings, and that this consideration called for a policy encouraging licensees to consent to orders, rather than contest them. *Id.* Such a “policy would be thwarted,” the Commission stated, if “licensees which consented to enforcement actions were routinely subjected to formal proceedings possibly leading to more severe or different enforcement actions.” *Id.*

³² *Bellotti v. U.S. Nuclear Regulatory Commission*, 725 F.2d. 1380, 1381 (D.C. Cir. 1983) *aff’g Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44 (1982).

³³ *Id.*

Therefore, § 189a. permits an opportunity for hearing on an order, however, that opportunity is limited to the question of whether the order should be sustained.

II. Standing

In order for a hearing request to be granted, an organization must demonstrate that it has standing to intervene in the proceeding and submit at least one admissible contention.³⁴

The Commission's regulations in 10 C.F.R. § 2.309(d)(1) provide that to establish standing, a request for hearing or petition to intervene must state:

- (i) The name, address and telephone number of the petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

The Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right.³⁵ Thus, to establish judicial standing, the burden rests on the petitioner³⁶ to show (1) a distinct harm that constitutes an injury-in-fact; (2) that the injury can be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.³⁷

When an organization requests a hearing, it must demonstrate either organizational or representational standing. To demonstrate organizational standing, the petitioner must show an

³⁴ 10 C.F.R. § 2.309(a).

³⁵ See *Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

³⁶ See, e.g., *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012).

³⁷ See *Calvert Cliffs 3*, CLI-09-20, 70 NRC at 915 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993) (internal quotations omitted)); see also *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988) (outlining traditional judicial standing test).

“injury-in-fact” to the interests of the organization itself.³⁸ Where an organization seeks to establish representational standing, it must demonstrate that at least one of its members would be affected by the proceeding and identify any such members by name and address. Also, the organization must show that the identified members would have standing to intervene in their own right, and that these members have authorized the organization to request a hearing on their behalf.³⁹ In addition, the interests that the representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the required relief must require an individual member to participate in the organization's legal action.⁴⁰

The Commission and licensing boards have normally allowed petitioners to satisfy standing requirements in construction permit and operating license proceedings for power reactors by demonstrating that they reside, or otherwise have frequent contacts, within 50 miles of the subject facility.⁴¹ In non-reactor licensing cases, the Commission decides on a case-by-case basis whether the proximity presumption should apply, taking into account any “obvious potential for offsite [radiological] consequences,” as well as “the nature of the proposed action and the significance of the radioactive source.”⁴²

³⁸ *Energysolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 621 (2011).

³⁹ See *Fermi*, CLI-10-3, 71 NRC at 51-52; see also *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI- 94-12, 40 NRC 64, 72 (1994) (citing *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-400 (1979)) (“An organization seeking representational standing on behalf of its members may meet the ‘injury-in-fact’ requirement by demonstrating that at least one of its members, who has authorized the organization to represent his or her interest, will be injured by the possible outcome of the proceeding”).

⁴⁰ *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007).

⁴¹ *Calvert Cliffs 3*, CLI-09-20, 70 NRC at 915-16.

⁴² *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007) (citing *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005)); see *Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation) LBP-09-20, 70 NRC 565, 577-78 (2009), *aff'd* CLI-10-3, 71 NRC 49 (2010) (declining to adopt a proximity presumption where petitioners failed to show how a Commission order modifying an ISFSI license created any potential for offsite consequences).

Where a Commission order modifying a license (or licenses) is at issue, an organization cannot establish standing by merely arguing that the Commission should impose a stricter penalty on the licensee, because—absent a particularized showing—the organization is not injured by the purported lesser penalty. The Commission has reasoned that “allowing NRC hearings on claims for stronger enforcement remedies risks ‘turning focused regulatory proceedings into amorphous public extravaganzas.’”⁴³

III. Contention Admissibility

Even when a petitioner demonstrates that it has standing to intervene in a proceeding, it cannot be admitted as a party unless it has proffered at least one contention that is admissible under the requirements of 10 C.F.R. § 2.309(f). A proposed contention is admissible under 10 C.F.R. § 2.309(f) only if it:

- (i) Provide[s] a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide[s] a brief explanation of the basis for the contention;
- (iii) Demonstrate[s] that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate[s] that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide[s] a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
- (vi) . . . provide[s] sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application. . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as

⁴³ *State of Alaska Dep’t. of Transp. and Pub. Facilities (Confirmatory Order Modifying License)*, CLI-04-26, 60 NRC 399, 404-05 (2004) (*ADOT*) (citing *Bellotti*, 725 F. 2d at 1382).

required by law, the identification of each failure and the supporting reasons for the petitioner's belief.⁴⁴

The contention admissibility requirements of 10 C.F.R. § 2.309(f) "are designed to ensure that only focused, well supported issues are admitted for hearing."⁴⁵ The Commission has stated that contentions "must be set forth with particularity and must meet all six contention admissibility factors."⁴⁶ The Commission "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."⁴⁷ The "contention admissibility 'requirements are deliberately strict, and [the Commission] will reject any contention that does not satisfy the requirements.'"⁴⁸ Attempting to satisfy these requirements by "[m]ere 'notice pleading' does not suffice."⁴⁹ The "contention pleading rules require a detailed, fact-based showing that a genuine and material dispute of law or fact exists."⁵⁰ A failure to meet any of the criteria in 10 C.F.R. § 2.309(f) renders a contention inadmissible.⁵¹

⁴⁴ 10 C.F.R. § 2.309(f)(1).

⁴⁵ *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 138 (2015).

⁴⁶ *Id.*

⁴⁷ Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (Final Rule).

⁴⁸ *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 & 3), CLI-10-9, 71 NRC 245, 253 (2010) (quoting *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006)).

⁴⁹ *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (quoting *Exelon Generating Co., L.L.C.* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005)).

⁵⁰ *Duke Energy Corp.*, (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 289 (2002).

⁵¹ *N. States Power Co.* (Prairie Island Nuclear Generating Plant Indep. Spent Fuel Storage Installation), LBP-12-24, 76 NRC 503, 509 (2012).

DISCUSSION

I. Petitioners' hearing request should be denied because there is no opportunity for hearing

Petitioners assert that Entergy's June 24 Request is "in reality" a license amendment request.⁵² Therefore, according to Petitioners, Entergy must submit a license amendment request in accordance with NRC regulations, and an opportunity for a hearing must be offered.⁵³ Petitioners fail to acknowledge that Entergy is requesting relaxation of certain conditions of EA-13-109, as permitted by the relaxation provision in Section IV of the Order. That provision allows the NRC to "relax or rescind any condition of the Order upon demonstration by the Licensee of good cause."⁵⁴ Thus, Entergy is following the process for requesting relaxation of the Order as expressly provided in the Order.

The Commission has discretion to exercise its authority via licensing, orders, or rulemaking.⁵⁵ Following the Fukushima accident, the Commission chose to exercise its authority by issuing orders with respect to the capability of hardened vents during a severe accident. As with most orders, the ability to seek relaxation of the Order's provisions is incorporated as a term of the Order itself. Therefore, should the Commission approve Entergy's Request, it would be doing so under its authority to issue the Order initially.

It is well established that the Commission has the legal authority to limit the scope of a proceeding. The Commission has, in its discretion, limited the scope of legal proceedings on orders, including EA-13-109, to the issue of "whether the order should be sustained."⁵⁶

⁵² Petition at 15.

⁵³ See Petition at 16-17.

⁵⁴ EA-13-109 at 13. Additionally, the Order specifically contemplates that licensees may propose alternatives for providing severe accident venting capability by "requesting relaxation in accordance with Section IV of [the] Order." EA-13-109 at 8-9.

⁵⁵ AEA § 161b., i., and o.; 42 U.S.C. § 2201(b), (i), and (o).

⁵⁶ *All Operating Boiling Water Reactor Licensees*, CLI-13-2, 77 NRC at 44.

Therefore, while the Order does allow licensees to seek relaxation, for the salient legal and policy reasons articulated in *Marble Hill* and *Bellotti*, the Commission does not afford an opportunity to request a hearing on such requests.⁵⁷

Order EA-13-109, the Staff's ISG, and NEI 13-02 all contemplate that licensees might propose different approaches to meeting the requirements of the Order. In its answer to the Order, Entergy indicated that its future responses "may include requests for schedule relief as warranted by subsequent NRC requirements or implementing guidance or the results of engineering analyses not yet performed," and that such requests "would be submitted in accordance with the relaxation provision in Section IV of the Order."⁵⁸ The relaxation provision in an order is a mechanism that provides regulatory flexibility, allowing the Commission to "tailor its . . . requirements [in an Order] to the peculiar needs of individual licensees if necessary. . . ." ⁵⁹ This is particularly important in orders such as EA-13-109 that apply to numerous licensees and plants, which may differ in design and licensing bases. Relaxation provisions also encourage licensees not to challenge the issuance of Commission orders so that the Commission can more quickly respond to safety issues and focus its resources on inspections and related work, rather than the conduct of legal proceedings.⁶⁰ The Commission

⁵⁷ In *All Operating Boiling Water Reactor Licensees*, the Commission (citing *Marble Hill*) identified several advantages to the limited scope of proceedings on orders. *Id.* (citing *Marble Hill*, CLI-80-10, 11 NRC at 441). These include "allow[ing] safety improvements to be put in place quickly, without the delay of litigation over whether additional measures are also warranted," and the greater incentive for licensees to negotiate the terms of orders without fear of exposure "to formal litigation over additional terms or requirements that third-party petitioners would like to see imposed." *Id.* In *Bellotti*, the D.C. Circuit noted that this limited scope was based on a Commission policy of "directing agency resources toward the inspection rather than the adjudication process," and that the policy through which the Commission has implemented this allocation of resources "serves its purpose well." 725 F.2d. at 1382.

⁵⁸ Letter from John A. Dent, Jr., Entergy, to NRC, Entergy's Answer to the June 6, 2013 Commission Order Modifying License With Regard To Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions (Order Number EA-13-109), (June 26, 2013) (ADAMS Accession No. ML13183A063).

⁵⁹ *All Power Reactor Licensees & Research Reactor Licensees Who Transport Spent Nuclear Fuel*, CLI-05-6, 61 NRC 37, 41 (2005).

⁶⁰ *Bellotti*, 725 F.2d. at 1382; *Marble Hill*, CLI-80-10, 11 NRC at 441; see also *ADOT*, CLI-04-26, 60 NRC at 405 ("The rationale underlying *Bellotti* is that, when a licensee agrees to make positive

retains the flexibility to tailor the Order to Pilgrim's (and other licensees') particular circumstances, or changes in circumstances, without requiring a hearing for each relaxation request.⁶¹

In addition, determining whether a particular licensee's approach complies with an order, and, similarly, determining whether a licensee has demonstrated good cause for relaxation or rescission of an order, is part of the Staff's regulatory and enforcement role. Requiring a hearing each time the Staff made such a determination would lead to the interminable hearings the Commission sought to avoid in limiting the scope of those proceedings,⁶² and would impede the regulatory process.⁶³ To the extent Petitioners believe that Pilgrim is not complying with EA-13-109, or that Pilgrim's license should be modified because of a safety issue, Petitioners may file a petition under 10 C.F.R. § 2.206 as their recourse.⁶⁴

In summary, the Commission provided licensees the ability to seek relaxation of the Order. Nothing in the Order requires Entergy to seek relaxation in the form of a license amendment request. Thus, Entergy submitted its June 24 Request in accordance with the

changes or does not contest an order requiring remedial changes, it should not be at risk of being subjected to a wide-ranging hearing and further investigation").

⁶¹ *Bellotti*, 725 F.2d. at 1381 ("To read the [AEA] very broadly so that any proceeding necessarily implicates all issues that might be raised concerning the facility in question would deluge the Commission with intervenors and expand many proceedings into virtually interminable, free-ranging investigations...and the Commission's substantive discretion to decide what is important enough to merit examination would be subverted by a procedural provision requiring the Commission to consider any issue any intervenor might raise.").

⁶² *Id.*

⁶³ Additionally, Petitioners are not in the position of intervening in an already contested proceeding on EA-13-109 in order to ensure it is upheld. See *Sequoyah Fuels Corp.*, CLI-94-12, 40 NRC at 68-71 (determining that the petitioner had standing because the petitioner sought to intervene in an already contested hearing to ensure that enforcement order would be upheld). Unlike *Sequoyah*, where the licensee sought a hearing to contest the implementation of an order, Entergy has not contested the Order. Entergy has only sought relaxation of the Order in accordance with its terms. Should the request be granted, EA-13-109 would remain in effect at Pilgrim and the relaxation could be revoked at any time.

⁶⁴ *Bellotti*, 725 F.2d at 1382; *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 NRC 154, 158 (2004).

terms of the Order. Requests for relaxation of orders are not within the scope of hearings on orders, which is squarely within the Commission's authority to determine, as discussed in *Marble Hill* and *Bellotti*. Accordingly, Petitioners are not entitled to a hearing on Entergy's June 24 Request.

II. Petitioners' hearing request should be denied because Petitioners have failed to establish standing or to submit an admissible contention

For the reasons discussed in Section I above, there is no opportunity to request a hearing on Entergy's June 24 Request. But assuming *arguendo* that Petitioners are entitled to seek a hearing, Petitioners' request should be denied because they have failed to meet the standing and contention admissibility requirements in 10 C.F.R. § 2.309(d) and (f), respectively.

A. Petitioners have failed to demonstrate standing

Petitioners consist of eight non-profit organizations with various public interest and advocacy missions related to protecting health, safety and the environment in the context of nuclear power and PNPS.⁶⁵ Petitioners state that many of these organizations have participated in NRC proceedings, including license renewal proceedings for Pilgrim and other nuclear plants, the proceeding involving the original hardened vents order, and petitions for enforcement under 10 C.F.R. § 2.206.⁶⁶ For each organization, Petitioners identify at least one member who lives within 50 miles of PNPS and state that this member is "reasonably concerned" that granting Entergy's Request would adversely affect the member's "financial interests and . . . health and safety."⁶⁷

When an organization requests a hearing, it must demonstrate either organizational or representational standing. As discussed above, to demonstrate organizational standing, an

⁶⁵ See *generally* Petition at 2-9. Pilgrim Watch states that it is acting as representative for the other seven organizations. *Id.* at 1.

⁶⁶ *Id.* at 2-9.

⁶⁷ *Id.*

organization must show an “injury-in-fact” to the interests of the organization itself.⁶⁸ Here, none of the Petitioners has alleged any injury to its organizational interests; instead, they have merely stated that their organizational missions or purposes relate to protecting health, safety and the environment in the context of nuclear energy and PNPS. Such statements are insufficient to establish organizational standing.⁶⁹ Furthermore, although Petitioners state that several of these organizations have participated in other NRC proceedings,⁷⁰ that prior participation has no bearing on their standing to challenge Entergy’s Request in this case.⁷¹

Petitioners have also failed to provide sufficient information to establish representational standing. When an organization seeks to establish representational standing, it must demonstrate that at least one of its members may be affected by the proceeding, identify any such members, show that the identified members would have standing to intervene in their own right, and demonstrate that those members have authorized the organization to request a hearing on their behalf.⁷² Although Petitioners have identified at least one member of each organization that may be affected by the proceeding, they have not shown that these members

⁶⁸ *Energysolutions, LLC*, CLI-11-3, 73 NRC at 621.

⁶⁹ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528 (1991), *aff’d in relevant part*, CLI-91-13, 34 NRC 185, 187-88 (1991) (“[A]n organization’s asserted purposes and interests, whether national or local in scope, do not, without more, establish independent organizational standing.”); *see also Palisades*, CLI-07-18, 65 NRC at 411-12 (stating that promoting “the public interest [and] environmental protection” are “broad interests shared with many others,” and that such “general environmental and policy interests” are the type the Commission “has repeatedly found insufficient for organizational standing.”).

⁷⁰ *See, e.g.*, Petition at 5-7.

⁷¹ *Nuclear Fuel Serv., Inc.*, LBP-07-16, 66 NRC 277, 300 (2007) (“[Petitioners’] arguments that it has standing because it had standing in past licensing actions involving the NFS facility or because of its participation in public statements about the recent safety issues at NFS are insufficient to meet the three-part framework the Board uses for standing inquiries.”). Pilgrim Watch also claims that, based on its prior participation in NRC proceedings, “it reasonably can be expected that [Pilgrim Watch] will meaningfully contribute to the record.” Petition at 2-3. This likewise has no bearing on the standing determination.

⁷² *Palisades*, CLI-07-18, 65 NRC at 409.

would have standing to intervene in their own right.⁷³ For the identified members of Pilgrim Watch, Pilgrim Coalition, Pilgrim Legislative Advisory Coalition, Cape Downwinders, Cape Downwinders Cooperative, Massachusetts Downwinders, and Citizens Awareness Network, the Petition asserts only that they are “reasonably concerned” that granting Entergy’s Request would adversely affect their financial interests and health and safety.⁷⁴ The two members of Beyond Nuclear assert in their written declarations that they are concerned that if the NRC grants Entergy’s Request, the continued operation of PNPS could adversely affect their lives, their families, their communities, and the environment, and that they are “particularly concerned about the undue risk an extension to comply presents for an accidental release of radiation and the potential harm that it would cause to public health and the environment.”⁷⁵ Petitioners also assert that if Entergy’s Request is granted, “it would deny Petitioners the protection a severe accident capable wetwell venting system would provide during at least the two remaining years of Pilgrim’s operations.”⁷⁶ Because none of these statements demonstrate a “concrete and particularized” injury-in-fact that would stem from granting Entergy’s Request, they are insufficient to confer representational standing for Petitioners.

Finally, Petitioners cannot rely on proximity to the plant to support standing in this case. While the Commission recognizes standing based on geographic proximity in construction permit and reactor licensing proceedings,⁷⁷ in proceedings outside that context, the Commission

⁷³ Also, Beyond Nuclear was the only organization that provided written authorization from members authorizing the organization to represent them with regard to the hearing request. Commission case law “requires an organization to submit written authorization from a member whose interests it purports to represent in order to have a ‘concrete indication’ that the member wishes to have the organization represent his interests there.” *Crow Butte Resources* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 343 (2009); see also *Palisades*, CLI-07-18, 65 NRC at 409-10. Therefore, only Pilgrim Watch and Beyond Nuclear have met this criterion for establishing representational standing.

⁷⁴ See Petition at 2, 5-9.

⁷⁵ *Id.* at 32, 33.

⁷⁶ *Id.* at 27.

⁷⁷ See *Calvert Cliffs 3*, CLI-09-20, 70 NRC at 915.

decides on a case-by-case basis whether the proximity presumption should apply, taking into account any “obvious potential for offsite [radiological] consequences,” as well as “the nature of the proposed action and the significance of the radioactive source.”⁷⁸ Here, because Petitioners are challenging a request to relax an order, the proximity presumption is not automatic, and Petitioners have not identified any “obvious potential for offsite radiological consequences” that would result from relaxation of the Order.⁷⁹ Therefore, Petitioners have not demonstrated an injury-in-fact or why they should be granted standing based solely on its proximity to the plant.

B. Petitioner’s hearing request should be denied because their contention is inadmissible.

1. Contention 1, Part 1

Contention 1, Part 1 states as follows:

Entergy’s Request should be denied on procedural grounds. It is in reality a request for a license amendment and it should follow NRC’s rules and practices for amending its license.⁸⁰

Petitioners argue that because EA-13-109 modified Pilgrim’s license to incorporate the requirements of the Order, Entergy’s Request is “in reality a request for a license amendment.”⁸¹

⁷⁸ *Big Rock Point*, CLI-07-19, 65 NRC at 426 (citing *Exelon Generation Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, CLI-05-26, 62 NRC 577, 580-81 (2005)); see also *Fermi*, LBP-09-20, 70 NRC at 577-78 (declining to adopt a proximity presumption where petitioners failed to show how a Commission order modifying an ISFSI license created any potential for offsite consequences).

⁷⁹ Entergy has stated that the current wetwell venting system at PNPS “meets the requirements of NRC Order EA-13-109” with three exceptions: (1) Pilgrim plans to use existing standby gas treatment systems (SGTS) and HCVS radiation monitors in lieu of permanently installing a radiation monitor (Order Criterion 1.2.9); (2) Pilgrim plans to use safety related station batteries to power HCVS and SGTS valve solenoids and position indications in lieu of permanently installing a dedicated HCVS power supply (Order Criterion 1.2.6); and, (3) Pilgrim will not develop detailed plans for HCVS testing and inspection (Order Criterion 1.2.13). See Entergy’s Request, Attachment 1 at 2. Petitioners have not provided factual support for the assertion that, if approved, this approach would increase the likelihood of a release of radiological material or otherwise reduce the effectiveness of the wetwell venting system. Therefore, Petitioners have not demonstrated harm.

⁸⁰ Petition at 15.

⁸¹ *Id.* The Staff’s position is that there is no opportunity for hearing for the reasons stated in Section I. For other types of agency actions that could be considered license amendments, the prospect of a future license amendment does not create a present hearing opportunity. *Pacific Gas & Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-09, ___ NRC ___, ___ (2016) (slip op. at 3) (citing *Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 338 (2015)). In addition, the Commission’s case law acknowledges that an agency action not formally

Therefore, Petitioners argue, Entergy's Request should be denied and Entergy must submit a request to amend Pilgrim's license under 10 C.F.R. § 50.90 and § 50.91, with an opportunity for hearing.⁸²

Entergy properly submitted its June 24 Request in accordance with the terms of EA-13-109. Nothing in the Order, nor elsewhere, requires Entergy to submit its request for relaxation in the form of a license amendment request. Therefore, there is no legal or factual basis for Petitioners' claim, as required by 10 C.F.R. § 2.309(f)(1)(ii). Moreover, Petitioners' claim is outside the scope of hearings on orders under *Marble Hill* and *Bellotti*.⁸³ Thus, Part 1 of the Contention does not meet the Commission's contention admissibility requirements under 10 C.F.R. § 2.309(f)(iii), and therefore, should be denied.

2. Contention 1, Part 2

Contention 1, Part 2 states as follows:

Entergy's Request should be denied because it is not timely. Entergy filed its Request June 24, 2016, years after the Order's 20 days filing requirement to notify the Commission if it is unable to comply with any of the Phase I requirements. (EA-13-109, Section IV, part C)⁸⁴

Part 2 of Petitioners' Contention is that Entergy's Request for relaxation was untimely, based on the deadlines for the notification requirements in Section IV.C.1 of EA-13-109.

Petitioners assert that "the Order required Entergy to notify the Commission within 20 days of

labeled a license amendment could constitute a *de facto* license amendment and trigger hearing rights under Atomic Energy Act section 189a. if that action "(1) granted the licensee any greater authority or (2) otherwise altered the original terms of the license." *Id.* To support a claim that a *de facto* license amendment occurred, a Staff action increasing the licensee's operating authority or changing the terms of a license must be complete or have taken effect. *Id.* (slip op. at 19). A change must have the Staff's approval before it can constitute a *de facto* license amendment, but not every Staff approval constitutes a license amendment. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328 (1996).

⁸² Petition at 15-18.

⁸³ *Bellotti*, 725 F.2d at 1381; *Marble Hill*, CLI-80-10, 11 NRC at 441.

⁸⁴ Petition at 18.

the ISG”⁸⁵ It appears, however, that Petitioners are confusing the notice requirement in Section IV.C.1 of the order with the relaxation provision at the end of Section IV. Provision IV.C.1 required licensees to respond no later than 20 days after the date of the final ISG in the following circumstances: (1) if the licensee was unable to comply with the Phase I requirements in Attachment 2 of Order EA-13-109; (2) if compliance with those requirements was unnecessary in their specific circumstances; or, (3) if compliance would cause the licensee to violate Commission regulations or the license.⁸⁶ Entergy did not submit a response under IV.C.1 and subsequently timely filed the Pilgrim OIP on June 30, 2014 demonstrating how Pilgrim intended to comply with the Order.⁸⁷ The relaxation provision in the Order states that the Director of the Office of Nuclear Reactor Regulation “may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.”⁸⁸ No time limit is specified for making such a request. Because the Order did not actually contain a time limit for seeking relaxation, there is no genuine dispute on a material issue of law or fact. Thus, Part 2 of the Contention fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

3. Contention 1, Part 3

Contention 1, Part 3 states as follows:

Entergy’s Request should be denied because granting it would deny citizens and communities the protection a reliable severe accident capable wetwell venting system would provide during the two remaining years of Pilgrim’s operations.⁸⁹

⁸⁵ *Id.* at 19.

⁸⁶ EA-13-109 at 11.

⁸⁷ *See generally* Pilgrim OIP.

⁸⁸ EA-13-109 at 13. The phrase “above conditions” refers to Sections IV.A through IV.D of the order, including Section IV.B, the schedule for implementation.

⁸⁹ Petition at 20.

Petitioners assert in Part 3 of the Contention that granting Entergy's Request essentially would make Pilgrim unsafe to operate until its planned closure in 2019.⁹⁰ Petitioners state that by granting the relaxation, "the NRC would knowingly allow Pilgrim to continue to operate for more than two years without 'reasonable assurance of adequate protection of public health and safety.'"⁹¹ This part of Petitioners' contention is inadmissible for several reasons.

First, pursuant to 10 C.F.R. § 2.309(f)(1)(v), petitioners must provide a concise statement of facts or expert opinion on which they intend to rely at a hearing. Part 3 of the Contention contains numerous assumptions regarding Entergy's motives for filing its June 24 Request and, without support, concludes that because the Order was "immediately effective," that public health and safety would be harmed unless compliance is achieved precisely in accordance with the Order.⁹² However, the Petition fails to provide any support, beyond bare assertions, for the conclusion that granting Entergy's Request would be detrimental to public health and safety. Neither mere speculation nor bare assertions alleging that a matter should be considered will suffice to allow the admission of a proffered contention.⁹³ Because Part 3 of the Contention fails to provide support for its assertions, it does not meet the requirement of 10 C.F.R § 2.309(f)(1)(v).

Second, Petitioners have failed to provide sufficient information to demonstrate a genuine dispute on a material issue of law or fact under 10 C.F.R. § 2.309(f)(1)(vi). Petitioners state that granting Entergy's Request would deprive the public of a severe accident capable wetwell vent, but do not provide any facts suggesting that Entergy's analysis in its June 24 Request is deficient, nor do Petitioners point to specific provisions in Entergy's Request to identify why they are insufficient to comply with the requirements of the Order or to demonstrate

⁹⁰ *Id.* at 21.

⁹¹ *Id.*

⁹² Petition at 20-23.

⁹³ See *Fansteel, Inc.* (Muskogee, Oklahoma), CLI-03-13, 58 NRC 195, 203 (2003).

good cause for relaxation. Entergy's Request states that "Pilgrim's plan for justification for extension of EA-13-109 provides a criterion-by-criterion explanation of how Pilgrim satisfies the Order requirements or provides an acceptable approach that is reasonable, considering the planned short term facility operation through 2019."⁹⁴ However, Petitioners do not specifically identify any deficiency in Entergy's stated methods to meet the provisions of the Order. The Petition cites liberally to EA-13-109, but fails to acknowledge that the Order contemplates that licensees may suggest alternative methods to meet its requirements.⁹⁵ The unsupported statements that approval of Entergy's Request will be detrimental to public health and safety are insufficient to establish a genuine dispute of law or fact for an admissible contention under 10 C.F.R. § 2.309(f)(1)(vi).

4. Contention 1, Part 4

Contention 1, Part 4 states as follows:

Entergy's Request should be denied because its arguments in support of its request are not valid.⁹⁶

In Part 4 of the Contention, Petitioners provide some discussion of Entergy's Request. Petitioners assert in three subparts to Part 4 that Entergy's arguments in support of granting the June 24 Request are invalid. The first subpart states generally that the FLEX Strategy identified in the June 24 Request does not meet the requirements of EA-13-109⁹⁷ and that Petitioners do

⁹⁴ June 24 Request, Attachment 1 at 3. Entergy's Request states that they will be complying with the vast majority of the Order's requirements, but have proposed alternative approaches for two requirements and are seeking relaxation of one. Petitioners have not challenged or identified any deficiency in Entergy's proposed approach and justification.

⁹⁵ See EA-13-109 at 8 (stating that "[l]icensees wishing to propose . . . alternatives may do so by requesting relaxation in accordance with Section IV of this Order."). See *also* JLD-ISG-2013-02 and NEI 13-02, the staff and industry guidance for complying with the order, which state that they provide one acceptable method for meeting the Order requirements, and that licensees may suggest alternative approaches. JLD-ISG-2013-02 at 1; NEI 13-02, Rev. 0 at 1.

⁹⁶ Petition at 23.

⁹⁷ *Id.*

not believe that the FLEX Strategy “will accomplish even what Entergy says it will.”⁹⁸ The second subpart states that NRC’s review of Oyster Creek’s relaxation request was “rubber stamped”⁹⁹ and that Pilgrim and Oyster Creek are not comparable. The third subpart states essentially that Entergy’s Request does not demonstrate compliance with the requirements of EA-13-109.¹⁰⁰

In support of its argument that Entergy’s FLEX Strategy is inadequate, Petitioners claim that the June 24 Request does not state that venting functions will be available during a severe accident.¹⁰¹ Petitioners are mistaken. Entergy’s Request describes how it intends to comply with each of the criteria in EA-13-109 and states that “[t]he Hardened Containment Vent System (HCVS) Severe Accident Capable Wetwell Vent continues to be used for the purpose of preserving and maintaining containment integrity, providing heat removal, and controlling combustible gases under all conditions.”¹⁰² Here, Petitioners fail to challenge any specific part of Entergy’s Request, and therefore, have failed to demonstrate that a genuine dispute exists on a material issue of law or fact, contrary 10 C.F.R. § 2.309(f)(1)(vi).

Furthermore, Petitioners provide no facts or expert opinions on which they intend to rely to support the claim that Entergy’s FLEX Strategy will be ineffective. Petitioners offer only bare assertions and conclusions with respect to Entergy’s Request. Even if the Petition provided such facts, Petitioners do not explain how ineffectiveness of the FLEX Strategy affects compliance with EA-13-109, which is the subject of Entergy’s Request. Because Petitioners fail to provide sufficient information to show that a genuine dispute exists and support for the belief

⁹⁸ *Id.* at 25.

⁹⁹ *Id.* at 26.

¹⁰⁰ *Id.* at 26-27.

¹⁰¹ *Id.* at 25.

¹⁰² June 24 Request at 2.

that Entergy's FLEX Strategy is insufficient, subpart 1 of Part 4 of the Contention does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

The second subpart of Part 4 of the Contention challenges Entergy's reference to Oyster Creek's similar request for an extension. Petitioners claim that Entergy is attempting to show that because Oyster Creek's request was granted, Pilgrim's should be as well. But, according to Petitioners, the two plants "are not properly comparable."¹⁰³ Petitioners offer no further support for this statement. Petitioners also claim that the NRC "rubber stamped" Oyster Creek's request and that because nobody challenged approval of the request, "there was no consideration of any important facts or factual disputes."¹⁰⁴

Petitioners' argument fails to satisfy the requirements of 10 C.F.R. § 2.309(f) for several reasons. First, Petitioners provide no support for the assertion that the two plants are not comparable. Entergy's Request provides a detailed analysis of why Entergy believes that the strategy that Oyster Creek has chosen to employ is appropriate for Pilgrim with certain modifications.¹⁰⁵ The Petition provides no facts whatsoever to support the claim that the two plants are "not properly comparable," or that Entergy's Request is deficient as a result.¹⁰⁶ Second, Petitioners similarly provide no supporting facts for the assertion that the NRC's review of the Oyster Creek petition was inadequate. The Petition merely states without support, that the NRC "rubber stamped" its review of the Oyster Creek request "because no one opposed it."¹⁰⁷ Therefore, subpart 2 fails to satisfy the requirement of 10 C.F.R. § 2.309(f)(1)(v).

¹⁰³ Petition at 26.

¹⁰⁴ *Id.*

¹⁰⁵ See generally June 24 Request, Attachments 1-3.

¹⁰⁶ *GPU Nuclear, Jersey Central Power & Light Co. and Amergen Energy Co., LLC*, (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 203 (2000) ("the Commission will not accept issues raised in contentions that are "unsupported by alleged fact or expert opinion and documentary support" and "[g]eneral assertions or conclusions will not suffice.").

¹⁰⁷ Petition at 26.

Regardless, the NRC's review of the Oyster Creek request is not material to the findings that the Staff must make to grant Entergy's Request. To grant Entergy's Request, the Staff must evaluate whether it demonstrates good cause for the relaxation of the relevant requirements of the Order.¹⁰⁸ Neither the status of the Oyster Creek request, nor the level of interest received with respect to that request has any bearing on the Staff's review of Entergy's Request. While the approach Entergy proposes for Pilgrim is similar to that employed at Oyster Creek, Entergy's Request must demonstrate good cause for relaxing the provisions of the Order based on the specific circumstances at Pilgrim. Notwithstanding any similarities, Entergy's Request provides information specific to Pilgrim that the Staff must review to make the determination of good cause.¹⁰⁹ Therefore, subpart 2 fails to satisfy the requirement of 10 C.F.R. § 2.309(f)(1)(iv).

Finally, Petitioners' claim in subpart 3 of Part 4 of the Contention is that Entergy's Request does not demonstrate compliance with the requirements of EA-13-109.¹¹⁰ Here, Petitioners ignore the detailed justification that Entergy provided with the June 24 Request and simply make the conclusory and unsupported statement that "it is abundantly clear that nothing in Entergy's Request suggests that Pilgrim is fully capable of doing, or will do, what the Order requires."¹¹¹ Because Petitioners provide no facts or expert opinion whatsoever to support their claim, they fail to meet 10 C.F.R. § 2.309(f)(1)(v). In addition, this argument fails because there is no requirement for a request to relax the terms of an order to demonstrate compliance with the underlying order. A request for relaxation does not require a demonstration of compliance, but rather a demonstration of "good cause" to deviate from the requirements of an order.¹¹²

¹⁰⁸ EA-13-109 at 13.

¹⁰⁹ See *generally* June 24 Request, Attachment 1.

¹¹⁰ Petition at 26-27.

¹¹¹ *Id.* at 27.

¹¹² See EA-13-109 at 13.

Entergy's Request lists the EA-13-109 criteria and for each criterion, describes how Pilgrim will meet the criterion, the proposed alternatives to the specific requirement, or Entergy's justification for good cause for not meeting the requirement.¹¹³ Petitioners do not identify a single, specific portion of Entergy's supporting documents with which they take issue. In fact, the Petition fails to provide any information that supports this claim whatsoever. For these reasons, subpart 3 fails to raise a genuine dispute over a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

CONCLUSION

For the reasons stated above, the Commission should deny the Petition because Petitioners are not entitled to a hearing on Entergy's Request. In the alternative, Petitioners fail to demonstrate standing and proffer an admissible contention.

Respectfully submitted,

*/Signed (electronically) by/
Robert Carpenter*

Robert Carpenter
Matthew Ring
Marcia J. Simon
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 3rd day of October, 2016

¹¹³ See *generally* June 24 Request, Attachment 2. Entergy identified two criteria for which they propose alternative means to meet the requirements of the Order, and one criterion for which they seek for relaxation.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO PILGRIM WATCH & CO-PETITIONERS' REQUEST FOR HEARING" dated October 3, 2016 have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 3rd day of October, 2016.

/Signed (electronically) by/
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