

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:

Docket Nos. 50-293-LT and 72-1044-LT

Entergy Nuclear Operations, Inc,  
Entergy Nuclear Generation Company,  
Holtec International, and  
Holtec Decommissioning International, LLC  
Pilgrim Nuclear Power Station

**Pilgrim Watch’s Reply to Applicants’ Answer Opposing Pilgrim Watch’s Motion to Supplement its Motion to Intervene and Request for Hearing (May 6, 2019)**

On April 16, 2009, Pilgrim Watch filed a motion to supplement (“PW Motion to Supplement”) its pending Motion to Intervene and Request for Hearing (“PW’s Motion to Intervene”) with new and significant information.<sup>1</sup>

Subpart C of the NRC’s Rules of Practice includes two sections, 2.309 and 2.323, that involve motions. There is a clear line of distinction between the two. Section 2.323 is the “all motions rule,” and encompasses “any motion except § 2.309 motions for new or amended contentions filed after the deadline.” (10 C.F.R. § 2.323(a)). “[M]otions for leave to file new or amended contentions” are the subject of Section 2.309(c).

Although Pilgrim Watch’s Motion to Supplement did not seek to file a new contention or to amend either of the two contentions set forth in PW’s Motion to Intervene, Applicants’

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<sup>1</sup> The new information is relevant to this Board’s decision whether to admit Pilgrim Watch’s contentions for hearing. At any hearing it will be relevant to whether Entergy’s and Holtec’s License Transfer Application should be approved.

Answer says that Applicants “are treating” Pilgrim’s Motion to Supplement “as a motion for leave to file an amended contention pursuant to 10.C.F.R. §2.309(c).” Applicant’s Answer, p. 2.

Pilgrim Watch does not know for what reasons Applicants chose to do so. In the second paragraph of their Answer, Applicants correctly recognized that “Pilgrim Watch seeks to supplement its original petition with additional information made public on April 16, 2019” (Applicants Answer, p. 1). In the sentence immediately following their statement that “Applicants are treating the filing as a motion for leave to file an amended contention,” Applicants said, again correctly, that “Pilgrim Watch has not provided any amended contention in the Motion; it does not appear that it is modifying its contentions beyond their initial bounds, but rather seeking to add this information as bases to support its initial contentions.” (Applicants Answer, p. 2)

Pilgrim Watch’s Motion to Supplement was not filed pursuant to any particular section of 10 C.F.R. Applicants’ Answer cites both 10 C.F.R. § 2.309 and 10 C.F.R. 2.333 (Applicants’ Answer, p. 2), but it nowhere suggests the Pilgrim Watch’s motion does not satisfy the requirements of 10 C.F.R. § 2.323. Rather, Applicants say “a Motion to Supplement” ...is not contemplated under the Commission’s procedural regulations,” ignoring that this Board’s decisions are replete with instances involving motions to supplement.

This reply will address Applicants’ incorrect (and irrelevant if PW’s Motion to Supplement is treated as a §2.323 motion) argument that Pilgrim Watch’s motion does not meet the requirements of §2.309(c). See Applicants’ Answer, pp 2-10.

Briefly, Applicants appear to make three arguments, both of which presume, contrary to fact, that Pilgrim Watch's Motion to Supplement does seek to amend its present contentions or to add new ones, and thus is subject to the requirements of §2.309(c).

Their first argument is that Pilgrim Watch's Motion to Supplement was not timely. (See Applicants' Answer, pp. 3-7) The short answer is that Entergy did not make public either the sale of Indian Point's three reactors to Holtec, or that Holtec would decommission all three, until April 16, 2019, ten days before Pilgrim Watch filed its Motion to Supplement. Under §2.323, "All motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises." This Board has held that a motion to for a new or amended contention is timely if it is filed within thirty (30) days of the discovery of the basis for that motion. (See Pilgrim Watch Motion to Supplement, pp, 3-4)

Applicants' second assertion, that the April 16<sup>th</sup> announcement is not "materially different from information previously available" (Applicants' Answer, p. 4), is not correct. The three web sites Applicants list in footnote 5 on page 4 of Applicants' Answer refer only to Pilgrim, Oyster Creek and Palisades. In its Request for Additional Information, the NRC Staff was clearly concerned that HDI would be "responsible for conducting licensed activities at two sites simultaneously (Pilgrim and Oyster Creek)" (RAI, ML19096A349). The Staff apparently was not aware of potential simultaneous decommissioning of any other reactors. Why should Pilgrim Watch have been? The web sites say nothing about the three Indian Point reactors. All they say about Palisades decommissioning is that "a timeline for the decommissioning of Palisades will be developed closer to its [planned 2022] shutdown."

Applicants' third argument appears to be that "Pilgrim Watch's proposal to amend its contentions with supplemental information also falls short of the Commission's contention admissibility requirements in 10 C.F.R §2.309(f)(1)," and that "10 C.F.R §2.309(f)(4 )" <sup>2</sup> requires that a "new or amended contention ... must also meet the applicable contention admissibility requirements." (Applicants' Answer, p. 7)

There are at least three fundamental problems with this argument.

First, 10 C.F.R §2.309(c)(1) is not applicable. It is directed to "Hearing requests, intervention petitions, and motions for leave to file new or amended contentions." Pilgrim Watch's Motion to Supplement is *not* a hearing request, an intervention petition, or a motion for leave to file a new or amended contention. Rather, the Pilgrim Watch Motion to Supplement seeks only to add new and additional information that is relevant to contentions 1 and 2 of Pilgrim Watch's pending Motion to Intervene, and those contentions remain unchanged.

Second, 10 C.F.R §2.309(c)(4) similarly does not apply here. It also is only concerned with a "new or amended contention." Applicants admit (Applicants' Answer, p.2, italics added)

*"Pilgrim Watch has not provided any amended contention in the Motion; it does not appear that it is modifying its contentions beyond their initial bounds, but rather seeking to add this information as bases to support its initial contentions."*

Third, Applicants' apparent position that a motion "seeking to add this information as bases to support [*Pilgrim Watch's*] initial contentions" must include not only the new information but also all of the "alleged facts or expert opinions that support the petitioner's position, together with references to the specific sources and documents on which the petitioner

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<sup>2</sup> It appears that that Applicants' intended to cite 2.308(c)(1) and (4) rather than 2.309(f)(1) and (4).

intends to rely,” ( Applicants’ Answer, p. 10) makes no sense. Pilgrim Watch’s Motion to Intervene included relevant facts of which Pilgrim Watch then knew. The Motion to Supplement simply attached the new April 16, 2019 Indian Point announcement and identified how this announcement was relevant to the unchanged contentions already set forth in Pilgrim Watch’s Motion to Intervene.

Finally, this portion of Applicants’ Answer essentially repeats the same arguments that Applicants made in opposing Pilgrim Watch’s Motion to Intervene, adding that “on its face, the NRC’s Staff RAI raises no question regarding the sufficiency of the decommissioning funding assurance for Pilgrim” (Applicants’ Answer, p. 8), and Applicants’ assertion that their response to the RAI shows that HDI does have all the staff it needs.

Pilgrim Watch does not agree with the latter, but it seems clear that whether HDI, a Holtec LLC subsidiary, has insufficient personnel, and that as a result , HDI will not have the resources required to deal with environmental impacts that would place the public health, safety, and the environment at risk, whether decommissioning will be less efficient; and whether it will cost more money are disputes that must await and be resolved at a hearing. As for Applicants’ statement that the NRC Staff’s RAI directed to whether a Holtec subsidiary, HDI, has the essential personnel “raises no question regarding the sufficiency of the decommissioning funding assurance for Pilgrim,” we do not find that surprising. In the context of Staff review, staffing and costs are different subjects.

## Conclusion

For the reasons stated above and in PW's Motion to Intervene and Motion to Supplement, the Board should grant Pilgrim Watch's request to add the new and significant information set forth in Holtec's and Entergy's April 16 announcement to the record before the Board.

Date: May 6, 2019

Signed (electronically) by

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**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

**In the Matter of Docket No. 50-293 & 72-1044 LT**  
**Entergy Corporation**  
**Pilgrim Nuclear Power Station**  
**License Transfer Agreement Application**

**CERTIFICATION OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that copies of Pilgrim Watch's Reply to Applicants' Answer Opposing Pilgrim Watch's Motion to Supplement its Motion to Intervene and Request for Hearing have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding, on May 6, 2019.

Date: May 6, 2019

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