

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 06/04/08  
SERVED 06/04/08

Before Administrative Judges:

Ann Marshall Young, Chair  
Dr. Paul B. Abramson  
Dr. Richard F. Cole

In the Matter of:

ENTERGY NUCLEAR GENERATION  
COMPANY AND ENTERGY NUCLEAR  
OPERATIONS, INC.  
(Pilgrim Nuclear Power Station)

Docket No. 50-293-LR

ASLBP No. 06-848-02-LR

June 4, 2008

MEMORANDUM and ORDER  
(Ruling on Pilgrim Watch Motions Regarding Testimony and Proposed Additional Evidence  
Relating to Pilgrim Watch Contention 1)

Among several matters currently pending in this proceeding, which involves the license renewal application of Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc., for its Pilgrim Nuclear Power Station, and, *inter alia*, Intervenor Pilgrim Watch's challenge to certain aging management issues relating to the application, are two Pilgrim Watch motions concerning the evidence already presented, and proposed to be added to the evidentiary record, regarding its Contention 1,<sup>1</sup> the hearing on which was held April 10, 2008. In the first of these, filed May 15, 2008, and entitled "Pilgrim Watch Motion to Strike Incorrect and Misleading Testimony from the Record," the Intervenor asserts that certain testimony put forward by the Applicant relating to the cured-in-place liners in the salt service water (SSW) underground discharge pipes, as well as certain testimony put forward by Entergy and the NRC Staff regarding cathodic protection of pipes and stray current interference, should be stricken

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<sup>1</sup> Pilgrim Watch Motion to Strike Incorrect and Misleading Testimony from the Record (May 15, 2008) [hereinafter PW Motion to Strike Testimony]; Pilgrim Watch Motion to Include as Part of the Record Exhibits Attached to Pilgrim Watch Motion to Strike Incorrect and Misleading Testimony From the Record of May 15, 2008 (May 27, 2008) [hereinafter PW Motion to Include Exhibits].

because the testimony in question is “either inaccurate, incomplete or gave a misleading impression.”<sup>2</sup> Attached to this motion are several exhibits that assertedly provide correct information on the disputed subject matter.

In the second motion, filed May 27, 2008, Pilgrim Watch seeks to have added to the evidentiary record the same exhibits attached to the first motion.<sup>3</sup> Also on May 27, Entergy and the NRC Staff filed responses to Pilgrim Watch’s first motion.<sup>4</sup> On May 28, 2008, the Licensing Board issued an Order stating that it would consider the motions herein at issue to be ready for consideration and ruling on June 3, 2008, and setting June 2, 2008, as the deadline for all parties to file any responses to the May 27 filings.<sup>5</sup> On June 2, Pilgrim Watch and Entergy submitted filings in accordance with the Board’s directive.<sup>6</sup>

In its first motion, Pilgrim Watch requests in the alternative that the Board reopen the hearing on Contention 1,<sup>7</sup> and we indeed find it appropriate to analyze the issues raised by Pilgrim Watch in its motions under the requirements of 10 C.F.R. § 2.326, regarding motions to reopen. We note in taking this approach that we have not prior to this date formally closed the

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<sup>2</sup> PW Motion to Strike Testimony at 1

<sup>3</sup> PW Motion to Include Exhibits at 1.

<sup>4</sup> Entergy’s Answer Opposing Pilgrim Watch’s Motion to Strike and Request to Reopen the Hearing (May 27, 2008) [hereinafter Entergy Response]; NRC Staff Response in Opposition to (1) Pilgrim Watch Motion to Strike Testimony and (2) Motion to Include as Part of the Record Exhibits Attached to Pilgrim Watch Motion to Strike Testimony (May 27, 2008) [hereinafter NRC Response].

<sup>5</sup> Licensing Board Order (Setting Relevant Deadlines) at 1 (May 28, 2008) (unpublished).

<sup>6</sup> Pilgrim Watch Reply to Entergy’s Answer Opposing Pilgrim Watch’s Motion to Strike and Request to Reopen the Hearing and NRC Staff’s and NRC Staff Response to (1) Pilgrim Watch Motion to Strike Testimony and (2) Motion to Include as Part of the Record Exhibits Attached to Pilgrim Watch Motion to Strike Testimony (June 2, 2008) [hereinafter PW Reply]; Entergy’s Answer Opposing Pilgrim Watch’s Motion to Include Certain Exhibits in the Record (June 2, 2008) [hereinafter Entergy Answer].

<sup>7</sup> PW Motion to Strike Testimony at 1.

record with regard to Contention 1. However, while there might theoretically be valid grounds to keep a record open after a hearing (based, for example, on matters arising at the hearing such that parties are specifically permitted to submit additional evidence after the hearing), and while there is also currently pending in this matter a “Motion Requesting the Record Be Held Open,”<sup>8</sup> the former has not occurred with regard to Contention 1 in this proceeding, and the latter relates not to Contention 1 but effectively to a newly submitted contention with regard to which the parties are submitting arguments separate and apart from the issues presented in the motions at issue herein. Moreover, we note that the Commission has recently indicated that the record (at least with regard to Contention 1) should not be held open based on a “stay [of] the close of the hearing[ ]” issued by the U.S. Court of Appeals for the First Circuit,<sup>9</sup> and should in fact be closed.<sup>10</sup> We note further that, prior to the Commission’s issuance of CLI-08-09, we had already effectively closed the record with regard to Contention 1, absent “the need for further findings . . . based on the current stay or related activities.”<sup>11</sup> In light of these circumstances, as well as the nature of the First Circuit’s decision and its subject matter, we consider that the record with regard to Contention 1 is effectively closed, and to the extent necessary we here and now

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<sup>8</sup> Pilgrim Watch Motion Requesting the Record Be Held Open So That the Board May Address a New and Significant Issue [method to Calculate Cumulative Usage Factors (CUF)] Sua Sponte and Provide Pilgrim Watch and Opportunity for Hearing (Apr. 9, 2008).

<sup>9</sup> *Commonwealth of Massachusetts v. United States*, 522 F.3d 115, 130 (1st Cir. 2008).

<sup>10</sup> Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-08-09, 65 NRC \_\_, \_\_ (slip op. at 5) (May 16, 2008).

<sup>11</sup> Licensing Board Order (Setting Deadlines for Provisional Proposed Finding and Conclusion on Contention 1, and for Pleadings Related to Pilgrim Watch’s Recent Motion Regarding CUFs) at 3 (May 12, 2008) (unpublished).

formally so close it, such that Pilgrim Watch's request that we treat its motions as a request to reopen the record with regard to Contention 1 is the proper course to follow at this time.<sup>12</sup>

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<sup>12</sup> We would not in any event strike any testimony from the record, as there are no legal grounds to take such action. The appropriate way for a party to address testimony that it believes is incorrect, incomplete or misleading is not to ask that the testimony be stricken, but to seek to pose questions to bring out the true situation or to have its own witness(es) provide information to correct any perceived inadequacies in the record. The Licensing Board provided ample leeway for this to occur at the hearing, *see, e.g.*, Official Transcript (Tr.) at 602-04, 661, 663, 706, 740, 748, 772-77, 789, 841, 846, 865, but Pilgrim Watch did not take advantage of this opportunity at the hearing to raise the matters asserted in its current motions, or even to raise the possible need to do so after the hearing, instead presenting its current arguments only after more than a month had passed since the hearing. Nor should our holding the record open at the conclusion of the hearing of April 10, 2008, have been construed to allow further evidence to be added to the record that is completely unrelated to the First Circuit's decision.

We appreciate that as a *pro se* litigant Intervenor may have been somewhat confused regarding some basic legal/procedural principles such as those discussed herein, but the Board in this proceeding has in its Orders, and through its law clerks, provided probably more than is usually provided in the way of information to clarify what would be expected of all parties, including the Intervenor, at the hearing. *See, e.g.*, Licensing Board Order (Regarding Schedule and Guidance for Proceedings) (June 14, 2006) (unpublished); Licensing Board Order (Regarding Prehearing Telephone Conference and Schedule for Proceeding) (Oct. 24, 2006) (unpublished); Licensing Board Order (Regarding Schedule for Proceeding and Related Matters) (Nov. 29, 2006) (unpublished); Licensing Board Order (Establishing Schedule for Proceeding and Addressing Related Matters) (Dec. 20, 2006) (unpublished); Licensing Board Order (Revising Schedule for Evidentiary Hearing and Responding to Pilgrim Watch's December 14 and 15 Motions) (Dec. 19, 2007) (unpublished); Licensing Board Order (Denying Pilgrim Watch's Motion for Clarification) (Jan. 11, 2008) (unpublished); Licensing Board Order (Regarding Hearing, Limited Appearance Session, and Additional Questions for Parties) (Feb. 21, 2008); Licensing Board Order (Ruling on Pending Matters and Addressing Preparation of Exhibits for Hearing) (Mar. 24, 2008) (unpublished); Licensing Board Order (Ruling on Pilgrim Watch Motion to Permit Late-Filed Exhibits) (Apr. 2, 2008) (unpublished); *see also* Email from Zachary Kahn re: Response to PW Question (Feb. 22, 2008) (attached); Email from Zachary Kahn re: Pilgrim Watch Hearing (Feb. 25, 2008) (attached); Email from Zachary Kahn re: Pilgrim Watch Hearing (Feb. 26, 2008) (attached); Email from Johanna Thibault re: Questions about Exhibits (Mar. 28, 2008) (ADAMS Accession No. ML080920558); Email from Johanna Thibault re: Question and Copies for the Board and Parties (Mar. 28, 2008) (ADAMS Accession No. ML080920556).

A party that proceeds without counsel must accept the consequences of this decision, and while we understand that this may result from a lack of resources, and that it puts a party at a distinct disadvantage, the best way to overcome this, as much as possible under the circumstances, is to read all rules, orders, and relevant documents carefully, and comply with all relevant requirements as fully as possible, in a timely manner. When a party wishes to submit additional evidence on matters already addressed in a hearing and seeks to reopen the record for this purpose, the starting point is to comply faithfully with the rule relating to reopening the record. We address the extent to which Pilgrim Watch has done this in this Memorandum and Order.

Under 10 C.F.R. § 2.326, a motion to reopen a closed record “will not be granted unless [certain] criteria are satisfied.” First, the motion “must be timely,” unless “an exceptionally grave issue” has been presented.<sup>13</sup> Second, the motion must “address a significant safety or environmental issue.”<sup>14</sup> Third, the motion “must demonstrate that a materially different result would be . . . likely had the newly proffered evidence been considered initially.”<sup>15</sup> Finally, the motion must be accompanied by affidavits meeting certain additional requirements.<sup>16</sup> These requirements have been fleshed out in various Commission adjudicatory decisions, some of which Entergy and the Staff have cited to us.<sup>17</sup>

We note at the outset that Pilgrim Watch has not accompanied its motion with any affidavits. While we are not inclined to deny a motion on a deficiency that is purely “technical” in the legal (as opposed to the scientific) sense, particularly when a party is proceeding *pro se*, Pilgrim Watch’s representative, Ms. Lampert, has shown herself quite capable of reading the rules, and we must hold her to the substantive requirements of the rule on motions to reopen. In this regard, we note that Pilgrim Watch through Ms. Lampert, has submitted material that appears to be relevant to significant safety issues, based on some level of scientific/technical expertise, such that much of it might well have been admitted had it been presented through appropriate witnesses at the hearing. However, we find that Pilgrim Watch’s motion does not meet the requirements of 10 C.F.R. § 2.326(a)(1) or (a)(3).

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<sup>13</sup> 10 C.F.R. § 2.326(a)(1).

<sup>14</sup> *Id.* at § 2.326(a)(2).

<sup>15</sup> *Id.* at § 2.326(a)(3).

<sup>16</sup> *Id.* at § 2.326(b).

<sup>17</sup> See Entergy Response at 6-8; Staff Response at 8-12.

First, with regard to the information relating to the cured-in-place liners in the salt service water underground discharge pipes, we note that the evidence sought to be placed in the record consists of a document prepared by the contractor that placed the liners in the Pilgrim SSW pipes, apparently produced for a presentation to the “North American Society for Trenchless Technology” in March 2004.<sup>18</sup> The document describes certain “challenges” the contractor dealt with in placing the liner, and how it addressed these challenges so as to reach “favorable results” that were tested to “confirm compliance with physical property specifications.”<sup>19</sup>

Pilgrim Watch has faulted Entergy for not having provided this document as part of its disclosure obligations under 10 C.F.R. § 2.336, and claims that it contradicts certain testimony of Entergy’s experts.<sup>20</sup> However, Entergy appears to have had no role in preparing this document, and it further appears that the document was not in Entergy’s possession, such that it would have been required to disclose it under § 2.336(a)(2)(i). Had the document been in Entergy’s possession and had Entergy withheld it from disclosure, this might have been good cause to find that its submission at this point was timely. But Entergy indicates that it did a search for materials in its possession relevant to Contention 1, and that the document was not among the over 10,000 pages of materials it identified and produced;<sup>21</sup> Pilgrim Watch does not at this point effectively dispute this, and indeed it is not unreasonable that Entergy did not have the document in its possession, given that it appears to have been produced after the installation, for a different purpose than fulfilling the contractor’s responsibilities to Entergy.

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<sup>18</sup> PW Motion to Strike Testimony at 1, Exh. 1.

<sup>19</sup> *Id.* at 1, 3, 9.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> Entergy Response at 4.

In addition, Entergy cites other documents that it did disclose, some of which are attached to its Response, in which the facts discussed in the document at issue “are fully described in greater detail.”<sup>22</sup> Pilgrim Watch admits that it failed before the hearing to find among the documents Entergy provided those that describe the design, installation, repairs and testing of the liners.<sup>23</sup> Based in part on these documents, Entergy argues that the contractor document at issue is consistent with the testimony it presented for and at the hearing.<sup>24</sup>

While we do not make any rulings at this time regarding the merits of the testimony of Entergy’s experts, we do find (1) that Entergy has presented sufficient information for us to conclude that it had no responsibility to provide the document in discovery, as it did not have it in its possession in any form or manner that would have reasonably facilitated its being found; (2) that, given its 2004 date, Pilgrim Watch’s presentation of it only in 2008, over one month after the hearing on Contention 1, is not timely; (3) that in light of, among other things, information in the document itself, describing how “favorable results” were reached, the issues addressed in it do not rise to the level of being “exceptionally grave”; and (4) that, again in light of information in the document itself, Pilgrim Watch has not shown that the document would likely lead to a materially different result with regard to our ultimate findings and conclusions on Contention 1.

The other documents upon which Pilgrim Watch bases its request to reopen the record consist of a letter, resume, and some emails with respect to whether, regarding cathodic protection of pipes at a nuclear power plant, stray current is a serious problem or can be

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<sup>22</sup> *Id.*; *see id.* at 5, 8-16

<sup>23</sup> PW Reply at 12.

<sup>24</sup> *Id.* at 8-19.

minimized such that the cathodic protection should be used.<sup>25</sup> The grounds offered for providing this material at this point are essentially that Pilgrim Watch was surprised by certain testimony of a Staff expert to the effect that backfitting cathodic protection at a nuclear plant may be dangerous because of stray current corrosion,<sup>26</sup> and of an Entergy expert to the effect that if a rectifier failed this would lead the plant to go into a limiting condition of operation and shut down.<sup>27</sup> The Staff and Entergy argue that it was Pilgrim Watch and its expert who raised the issue of cathodic protection at the hearing and thus Intervenor has no reason to present the information contained in its proposed new exhibits on the subject only at this late date; that the material is thus untimely at this point; and that it would not lead to a materially different result in any case.<sup>28</sup> Entergy and Staff provide various information to counter Pilgrim Watch's arguments based on its newly-proffered evidence, and Entergy argues that Intervenor's evidence "(1) does not take into account the unique circumstances of operating cathodic protection at a nuclear power plant, and (2) ignores the fact that cathodic protection is but one of two acceptable alternatives for the license renewal aging management of buried pipes."<sup>29</sup>

Again, while we do not make any rulings herein regarding the merits of any issues relating to cathodic protection, we find that Pilgrim Watch has failed to show, by a preponderance of the material now before us, or that the greater likelihood is, (1) that the information it now provides could not have been presented earlier, or is "exceptionally grave," so as to be timely; or (2) that the information would likely lead to a materially different result in this

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<sup>25</sup> See PW Motion to Strike Testimony, Exh. 2 and Exh. 3.

<sup>26</sup> PW Motion to Strike Testimony at 11, *see id.* at 8-13.

<sup>27</sup> *Id.* at 10-11.

<sup>28</sup> See Entergy Response at 6-8, 19-21; Staff Response at 11-12.

<sup>29</sup> Entergy Response at 19 ; *see id.* at 20-21 (citing Generic Aging Lessons Learned (GALL) Report (NUREG-1801) Rev.1 (2005); testimony of Entergy expert Alan Cox).



proceeding. Particularly given that it was Pilgrim Watch who raised the issue of cathodic protection at the hearing,<sup>30</sup> we find Intervenor's raising of the current information to be untimely. With regard to the gravity of the matter at issue, or the likelihood that the current information could lead to a materially different result in this proceeding, we refer back to Contention 1 as admitted, which states:

The Aging Management program [AMP] proposed in the Pilgrim Application for license renewal is inadequate with regard to aging management of buried pipes and tanks that contain radioactively contaminated water, because it does not provide for monitoring wells that would detect leakage.<sup>31</sup>

We note further that in denying summary disposition of Contention 1 in LBP-07-12, we stated that

the only issue remaining before this Licensing Board regarding Contention 1 is whether or not monitoring wells are necessary to assure that the buried pipes and tanks at issue will continue to perform their safety function during the license renewal period — or, put another way, whether Pilgrim's existing AMPs have elements that provide appropriate assurance as required under relevant NRC regulations that the buried pipes and tanks will not develop leaks so great as to cause those pipes and tanks to be unable to perform their intended safety functions.<sup>32</sup>

We understand Pilgrim Watch's argument that the lack of cathodic protection goes to the issue of the sufficiency of Pilgrim's existing AMPs.<sup>33</sup> However, our responsibility is to determine whether the Applicant has proven by a preponderance of the evidence that its AMPs are adequate as they currently exist, without monitoring wells. While the lack of other possible measures including cathodic protection might arguably play into this to a somewhat peripheral extent, what we will be focusing on in our analysis of the evidence is the effectiveness of those

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<sup>30</sup> See Tr. at 598-99, 722.

<sup>31</sup> *Pilgrim*, LBP-06-23, 64 NRC at 315.

<sup>32</sup> *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Plant), LBP-07-12, 66 NRC 113, 129 (2007).

<sup>33</sup> See PW Reply at 10.

measures that *are* part of the existing AMPs. In this context, the relevance of Pilgrim Watch's proposed evidence regarding cathodic protection falls significantly short of raising an "exceptionally grave" issue as required under 10 C.F.R. § 2.326(a)(1) to overcome the lack of timeliness of Pilgrim Watch's recent motions, or of showing the likelihood of a materially different result as required at § 2.326(a)(3).

Based on the preceding analysis, it is hereby ORDERED that Pilgrim Watch's motions herein at issue be DENIED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/  
Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

/RA/  
Dr. Paul B. Abramson  
ADMINISTRATIVE JUDGE

/RA/  
Dr. Richard F. Cole  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
June 4, 2008<sup>34</sup>

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<sup>34</sup> Copies of this Order were sent this date by Internet electronic mail transmission to all counsel and representatives for the parties.

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**From:** Zachary Kahn  
**Sent:** Friday, February 22, 2008 12:00 PM  
**To:** Andrea Silvia; Chief Kevin M. Nord; David R. Lewis; James Adler; Kimberly Sexton; Mark Sylvia; Mary Lampert; Paul A. Gaukler; Richard MacDonald; Sheila Slocum Hollis; Susan Uttal  
**Cc:** Ann Young; Hearing Docket; Karen Valloch; Paul Abramson; Richard Cole; SherVerne Cloyd; Johanna Thibault  
**Subject:** Response to PW Question

Dear Ms. Lampert:

In response to your question today regarding what the Board meant by Question 3c in its Order of February 21, 2008, I offer the following: Because any statement made in a "Statement of Position" is not itself considered to be evidence, you must, for each statement, provide ("cite") a specific reference to (a) specific page(s) or paragraph(s) of something that is evidence -- i.e., citations (references) to specific parts of expert testimony/affidavits, or other documents provided as exhibits, that the Board can look to in order to see what evidence supports each statement of position.

If you have any further questions, please direct them to the Board and all Parties.

Thank you.

Sincerely,

Zachary S. Kahn  
Law Clerk  
Atomic Safety and Licensing Board  
United States Nuclear Regulatory Commission  
Phone: (301) 415-6754  
E-Mail: [Zachary.Kahn@nrc.gov](mailto:Zachary.Kahn@nrc.gov)

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**From:** Zachary Kahn  
**Sent:** Monday, February 25, 2008 8:56 AM  
**To:** Andrea Silvia; Chief Kevin M. Nord; David R. Lewis; James Adler; Kimberly Sexton; Mark Sylvia; Mary Lampert; Paul A. Gaukler; Richard MacDonald; Sheila Slocum Hollis; Susan Uttal  
**Cc:** Ann Young; Hearing Docket; Karen Valloch; Paul Abramson; Richard Cole; SherVerne Cloyd; Johanna Thibault  
**Subject:** Pilgrim Watch Hearing

Dear Ms. Lampert:

On further consideration, while I cannot give you legal advice and you should not consider this as such, in response to your question whether you need to provide copies of NRC documents, if there are any technical documents, or portions thereof, that you wish the Board to consider as evidence in making their decision, then you should provide copies of each document, and/or the portions thereof that you rely on, to the Board and all parties, and mark them with exhibit numbers. This is because all exhibits considered as evidence must be made part of the record in the case, so that, for example, if the case were appealed to court by any party, all the evidence would be there for the reviewing court to read. This would not include anything that any other party has already submitted as an exhibit, provided you identify the document by reference to the name of the party who submitted it as an exhibit, along with that party's exhibit number, and the page/paragraph numbers you rely on, etc. Nor would you need to provide copies of any rules or law, as long as you provide complete citations (references) to the specific sections of the law you are referencing.

Sincerely,

Zachary S. Kahn  
Law Clerk  
Atomic Safety and Licensing Board  
United States Nuclear Regulatory Commission  
Phone: (301) 415-6754  
E-Mail: [Zachary.Kahn@nrc.gov](mailto:Zachary.Kahn@nrc.gov)

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**From:** Zachary Kahn  
**Sent:** Tuesday, February 26, 2008 1:31 PM  
**To:** Mary Lampert; Andrea Silvia; Chief Kevin M. Nord; David R. Lewis; James Adler; Kimberly Sexton; Mark Sylvia; Paul A. Gaukler; Richard MacDonald; Sheila Slocum Hollis; Susan Uttal  
**Cc:** Ann Young; Hearing Docket; Johanna Thibault; Karen Valloch; Paul Abramson; Richard Cole; SherVerne Cloyd  
**Subject:** RE: Pilgrim Watch Hearing

Dear Ms. Lampert:

I think that the confusion may be that you consider your "Statement of Position" to be your "Prefiled Testimony." However, testimony on technical matters must be by experts qualified to talk about the issues addressed, but your Statement of Position is signed by you, not by your experts, so that the only actual testimony that you have submitted is that provided in the declarations of your various experts. Your Statement of Position, because it is not testimony or evidence, may not be considered as such, except to the extent that there are specific references therein to actual testimony or evidence. In order for the board to consider the matters addressed in your Statement of Position as anything other than argument on how it should interpret the actual evidence, you must make specific references to actual evidence - testimony of experts or specific documents - that supports statements made in your Statement of Position.

Therefore, after consulting with the Board, the following is recommended: Pilgrim Watch should modify its Statement of Position (i.e., the 99-page document entitled "Pilgrim Watch Presents Statements of Position, Direct Testimony . . . Under 10 CFR 2.12108") by adding a reference or footnote for each statement or assertion made. In the reference (which may be done by hand if you wish) or footnote, you should provide a precise citation (document and page number) that supports the statement or assertion in question. You have done this in some places -- for example, on page 36 you cite the Gunderson Declaration providing paragraph numbers -- but not in others. All portions of the document that you wish to have considered as evidence by the Board in making its decision should be cited in the same manner as you cite the Gunderson Declaration on Page 36, or as a footnote. If you decide to use footnotes, you may add handwritten footnote numbers in the appropriate places in the document, and then create a new document containing the actual footnotes, or, more accurately, the numbered endnotes.

Please resubmit your modified 99-page "Statement of Position . . ." with, or preferably prior to, your submission of your rebuttal testimony. Provide copies to the Board and all parties, and file as you would any filing. In addition, all future filings should contain similar citations as described above.

Again, while you may not consider this as legal advice, I hope that it is helpful and clarifies the matters in question for you.

Sincerely,

Zachary S. Kahn  
Law Clerk  
Atomic Safety and Licensing Board  
United States Nuclear Regulatory Commission  
Phone: (301) 415-6754  
E-Mail: [Zachary.Kahn@nrc.gov](mailto:Zachary.Kahn@nrc.gov)

**From:** Mary Lampert [mailto:mary.lampert@comcast.net]  
**Sent:** Monday, February 25, 2008 9:09 AM  
**To:** Zachary Kahn  
**Subject:** RE: Pilgrim Watch Hearing

Zach:

Thanks.

I have asked some lawyers on how to approach this –and there is no clarity.

The majority seem to suggest that I go through the entire pre-filed testimony [100 pages] and create a running list of facts followed by a citation – running to a several hundred and make it an attachment. Will this drive everyone crazy or is that advice on the mark?

Thanks again,

Mary

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**From:** Zachary Kahn [mailto:Zachary.Kahn@nrc.gov]  
**Sent:** Monday, February 25, 2008 8:56 AM  
**To:** Andrea Silvia; Chief Kevin M. Nord; David R. Lewis; James Adler; Kimberly Sexton; Mark Sylvia; Mary Lampert; Paul A. Gaukler; Richard MacDonald; Sheila Slocum Hollis; Susan Uttal  
**Cc:** Ann Young; Hearing Docket; Karen Valloch; Paul Abramson; Richard Cole; SherVerne Cloyd; Johanna Thibault  
**Subject:** Pilgrim Watch Hearing

Dear Ms. Lampert:

On further consideration, while I cannot give you legal advice and you should not consider this as such, in response to your question whether you need to provide copies of NRC documents, if there are any technical documents, or portions thereof, that you wish the Board to consider as evidence in making their decision, then you should provide copies of each document, and/or the portions thereof that you rely on, to the Board and all parties, and mark them with exhibit numbers. This is because all exhibits considered as evidence must be made part of the record in the case, so that, for example, if the case were appealed to court by any party, all the evidence would be there for the reviewing court to read. This would not include anything that any other party has already submitted as an exhibit, provided you identify the document by reference to the name of the party who submitted it as an exhibit, along with that party's exhibit number, and the page/paragraph numbers you rely on, etc. Nor would you need to provide copies of any rules or law, as long as you provide complete citations (references) to the specific sections of the law you are referencing.

Sincerely,

Zachary S. Kahn  
Law Clerk  
Atomic Safety and Licensing Board  
United States Nuclear Regulatory Commission  
Phone: (301) 415-6754  
E-Mail: [Zachary.Kahn@nrc.gov](mailto:Zachary.Kahn@nrc.gov)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
ENTERGY NUCLEAR GENERATION CO. )  
AND )  
ENTERGY NUCLEAR OPERATIONS, INC. ) Docket No. 50-293-LR  
 )  
 )  
(Pilgrim Nuclear Power Station) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON PILGRIM WATCH MOTIONS REGARDING TESTIMONY AND PROPOSED ADDITIONAL EVIDENCE RELATING TO PILGRIM WATCH CONTENTION 1) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Ann Marshall Young, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Richard F. Cole  
Atomic Safety and Licensing Board Panel  
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Docket No. 50-293-LR  
LB MEMORANDUM AND ORDER (RULING ON PILGRIM WATCH MOTIONS REGARDING  
TESTIMONY AND PROPOSED ADDITIONAL EVIDENCE RELATING TO PILGRIM WATCH  
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Dated at Rockville, Maryland  
this 4<sup>th</sup> day of June 2008