

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

In the Matter of

Docket # 50-293-LR

Entergy Corporation

Pilgrim Nuclear Power Station

License Renewal Application

January 3, 2012

**PILGRIM WATCH REPLY TO THE NRC STAFF'S MOTION TO STRIKE  
PORTIONS OF PILGRIM WATCH REPLY**

Pilgrim Watch hereby submits this answer in opposition to NRC Staff's Motion to Strike<sup>1</sup> Portions of Pilgrim Watch's reply;<sup>2</sup> and requests that the Commission deny the Staff's Motion. The Staff's motion to strike is nothing more than an attempt to dress up an attempted reply to Pilgrim Watch's ("PW") reply in wolf's clothing; a reply to a reply is not permitted by the NRC Rules. If anything should be struck here, it is the Staff's attempted end-run around the rules.

The Staff's excuse that it could not have addressed PW's "statement" in the Staff reply that the rules allow is simply wrong. The PW "statements" to which the Staff objects said nothing that PW had not previously argued in previous filings before this Board and the Commission.<sup>3</sup> None involve any facts that the Staff did not know, or at the very least clearly

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<sup>1</sup> NRC Staff's Motion to Strike Portions of Pilgrim Watch's Reply, December 29, 2011

<sup>2</sup> Pilgrim Watch Reply to Entergy's and NRC Staff's Answers to Pilgrim Watch Request for Hearing on A New Contention Regarding Inadequacy of Environmental Report, Post Fukushima –Aqueous Discharges, Dec. 20, 2011

<sup>3</sup> **PW Argument in New Contentions Pre-Fukushima, Before the Commission:** Pilgrim Watch's Petition For Review Of Memorandum And Order (Denying Pilgrim Watch's Requests For Hearing On Certain New Contentions) ASLBP No. 06-848-02-LR, August 11, 2011 (Aug 26) Petition, pgs., 3-6; Pilgrim Watch Reply To NRC Staff's Answer To Pilgrim Watch's Request For Review-Sept 12, 2011, pgs., 1-3; Pilgrim Watch Reply To

should have known; and the Staff could easily have made all of these arguments earlier. The three PW statements about which the Staff complains are not "unreliable."

PW's statement that "Contention 1 was not the only contention pending at that time [June of 2008]" was correct. As for Contention 3, it most certainly was then pending before the Commission on PW's Petition for Review<sup>4</sup>. The fact that the Commission did not remand Contention 3 until 2010 has nothing to do with the undisputable fact that the record in this proceeding had not been closed. In CLI-08-02 (May 16, 2008) the Commission "direct[ed] the Board to close the evidentiary record on Pilgrim Watch Contention 1." The Board's June 4, 2008 order, in response to what the Commission directed, specifically closed only the record in Contention 1.

The Commission's May 16, 2008 decision equally specifically said that "the proceeding-at-large and the administrative record remain open." Neither on June 4, 2008 nor at any time since then has the Board issued an order closing the record in the proceeding. In connection with

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Entergy's Answer Opposing Pilgrim Watch's Petition For Review, Sept 12, 2011, pgs., 1-3. Before the Board: Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station, January 20, 2011, pg., 30; Pilgrim Watch Reply to Entergy's and NRC Staff's Answers Opposing Pilgrim Watch Request for Hearing on New Contention, Jan 14, 2011, pgs.,8-9; Pilgrim Watch Reply to NRC Staff's Answers Opposing Pilgrim Watch Amended Contention in its Reply to Entergy's and NRC Staff's Answers Opposing PW's January 14, 2011 Request for Hearing on New Contention (February 8, 2011) , Feb 14, 2011, pgs.,2-6; Pilgrim Watch Reply to Entergy's and NRC Staff's Answers Opposing Pilgrim Watch Request for Hearing on a New Contention, Jan 7, 2011, pgs.,5-7. **PW Argument in New Contentions Post Fukushima, Before the Commission**: Pilgrim Watch's Petition For Review Of Memorandum And Order (Denying Pilgrim Watch's Requests For Hearing On New Contentions Relating To Fukushima Accident) Sept. 8, 2011 (Sept 23, 2011), pg., 7; Pilgrim Watch Reply To NRC Staff's Answer To Pilgrim Watch's Petition For Review, Oct 11, 2011, pgs.,1-3; Pilgrim Watch Reply To Entergy's Answer To Pilgrim Watch's Petition For Review, Oct 11, 2011, pgs., 1-2; Before the Board: Pilgrim Watch Request For Hearing On A New Contention Regarding Inadequacy Of Environmental Report, Post Fukushima, June 1, 2011, pg.,30; Pilgrim Watch Reply to Entergy's and NRC Staff's Answers to Pilgrim Watch Request for Hearing on A New Contention Regarding Inadequacy of Environmental Report, Post Fukushima, July 5, 2011, pgs., 2-10; Pilgrim Watch Reply To Entergy's And NRC Staff's Answers To Pilgrim Watch Request For Hearing On Post Fukushima SAMA Contention, June 13, 2011, pgs., 2-8

<sup>4</sup> Pilgrim Watch Brief on Appeal of LBP-07-13 Memorandum and Order (Ruling of Motion to Discuss Petitioner's Contention 3 Regarding Severe Accident Mitigation Alternatives), November 13, 2007; CLI-10-11, March 26, 2010

the Board's later decision involving Contention 3, Judge Young properly said that "the Board Majority's Initial Decision does not terminate this proceeding or constitute a final licensing decision." (Separate Statement, LBP-11-18). The Staff's concluding comments on this subject - "Thus, the Board's decision to close the record on Contention 1 necessarily closed the entire record for this proceeding" - does nothing more than repeat what the Staff has argued all along, and it continues to be wrong.

Second, the Staff objects that PW referred to the Board's decision on Contention 1 as a "Partial Initial Decision." The Staff apparently does not dispute that a "partial" initial decision is "one rendered following an evidentiary hearing on one or more contentions, but that does not dispose of the entire matter." CLI-08-02, pg 5

As PW has said before, and as the subsequent history in this proceeding amply proves, the Board decision on Contention 1 decision quite clearly did not resolve all of the issues in this proceeding. What the Staff overlooks is that Contention 3 was remanded to the Board, and that all of the new PW contentions to which the Staff objects were filed after Contention 3 had been remanded to the Board, and when the record before the Board unquestionably had not been closed.<sup>5</sup>

What the Staff has to say about *Yankee Atomic* perhaps most clearly shows that the Staff's Motion to Strike is nothing more than a prohibited reply. The Staff quotes what PW said in its reply: "[u]nlike here the 'new contention' [in *Yankee Atomic*] was essentially the same as other

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<sup>5</sup> CLI-10,11, March 26, 2011; Pilgrim Watch Request For Hearing On A New Contention, Nov 29, 2011; Pilgrim Watch filed a *Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-EQ Inaccessible Cables (Splices) at Pilgrim Station* December 13, 2010. Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Entergy's Aging Management of Non-Environmentally Qualified (EQ) Inaccessible Cables (Splices) at Pilgrim Station, January 20, 2011; Pilgrim Watch Request for Hearing on Pilgrim Watch Request for Hearing on Post Fukushima SAMA Contention, May 12, 2011; Pilgrim Watch Request for Hearing on a New Contention: Inadequacy of Environmental Report, Post-Fukushima, June 1, 2011

contentions previously decided and as to which the record was closed," but the Staff never says that this statement is wrong or "unreliable." The Staff also does not dispute PW's statement that the principle reason that the "new contention" was rejected was that it simply "rehashed old arguments." (Staff, 3) Nonetheless, the Staff says that these undisputed statements "rest[] on a misstatement of the procedural history," a supposed "misstatement" that the Staff nowhere identifies.

Rather than identifying any incorrect "applicable procedural facts" (Staff, 2) the Staff simply reargues its view of *Yankee Atomic*, relying on the Commission's statement of what NEC *could* do as support for its oft-repeated argument of what it says PW *must* do. In CLI-10-17 the Commission explicitly said "the proceeding will remain open during the pendency of the remand" (something that the Staff incorrectly denies is the case here), and that NEC and Vermont "are free to submit a motion to reopen the record." The Commission quite clearly did *not* say that a motion to reopen was required in the circumstances here in which no pertinent portion of the record has been closed.

The only "factual or procedural characterization" that the Staff has conceivably identified is whether the Commission remanded Contention 3 before the Board closed Contention 1. The Staff has long known, and the Board is fully capable of determining, the date of the remand.

What the Staff has to say about this and everything else in its Motion to Strike is simply a belated attempt to make arguments it could have made earlier, and the Staff's Motion to Strike should be denied.

Respectfully submitted,

Signed electronically

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