

January 9, 2012

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Entergy Nuclear Generation Company and)	Docket No. 50-293-LR
Entergy Nuclear Operations, Inc.)	ASLBP No. 06-848-02-LR
)	
(Pilgrim Nuclear Power Station))	
)	

**ENTERGY’S ANSWER SUPPORTING NRC STAFF’S
MOTION TO STRIKE PORTIONS OF PILGRIM WATCH’S REPLY**

Pursuant to 10 C.F.R. § 2.323(c), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively “Entergy”) hereby answer in support of the NRC Staff’s Motion to Strike Portions of Pilgrim Watch’s Reply (Dec. 29, 2011) (“Motion”). The Motion seeks to strike from the record certain statements contained in the 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) (“Reply”).¹ Entergy agrees with the NRC Staff that the statements identified in the Motion contain mischaracterizations relevant to this proceeding, Motion at 1, and that the Board should strike those mischaracterizations from the record or otherwise not consider them in ruling on the underlying contention.

In particular, Entergy respectfully submits that there simply cannot be any question that the Commission’s reopening standards apply to Pilgrim Watch’s multiple requests for hearing on

¹ Pilgrim Watch filed its response to the NRC Staff’s Motion on January 3, 2012. Pilgrim Watch Reply to the NRC Staff’s Motion to Strike Portions of Pilgrim Watch Reply (Jan. 3, 2012) (“PW Reply”).

new contentions submitted since 2008. On June 4, 2008, the Board closed the evidentiary record in the proceeding because it had completed the hearing on the only admitted contention then pending before it.² On October 30, 2008, the Board issued its “Initial Decision” on the “remaining issues outstanding before it” in the Pilgrim license renewal proceeding.³ Based on, *inter alia*, “the entire evidentiary record,” the Board resolved those last remaining issues in favor of Entergy, and ordered that the “proceeding [be] terminated.” LBP-08-22, 69 N.R.C. at 610. Thus, it is clear that the evidentiary record was closed as of June 2008, and the adjudicatory proceeding before the Board was terminated in October 2008.⁴

The Commission’s remand of a narrow portion of Contention 3 for hearing did not reopen the evidentiary record as to all matters. As the NRC Staff correctly points out (Motion at 3), the Commission’s remand for hearing of a narrow issue concerning Pilgrim Watch Contention 3 did not issue until March 2010, nearly two years after the Board closed the evidentiary record.⁵ The Commission “remand[ed] the contention to the Board for hearing, as limited by [its] ruling.” CLI-10-11, 71 N.R.C. at 287 (emphasis added). *See also id.*, 71 N.R.C. at 290 (“we . . . remand[] Contention 3, as limited by today’s ruling, to the Board for hearing”) (emphasis added). Three months later, the Commission “deni[ed] review of all other Board

² Memorandum and Order (Ruling on Pilgrim Watch Motions Regarding Testimony and Proposed Additional Evidence Relating to Pilgrim Watch Contention 1) (June 4, 2008) at 4.

³ Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-08-22, 68 N.R.C. 590, 593 (2008).

⁴ Pilgrim Watch repeatedly fails to distinguish between the closing of the evidentiary record and the overall hearing process and related administrative record. Just because the hearing process remains open and ongoing – which it will until the Commission issues its ultimate decision on review – does not mean that the evidentiary record remains open. The Commission clearly explained this fact in Pilgrim, CLI-08-9, 67 N.R.C. 353, 355-56 (2008) (which Pilgrim Watch erroneously cites at CLI-08-02 in its Reply, PW Reply at 2-3). There, the Commission stated that “the administrative record (and the hearing process) remains open” after the closing of the evidentiary record, and specifically noted that “the Board’s initial decision, any petition for review thereof, and the Commission’s ultimate decision on review are all docketed and included in the administrative record following the closing of the Board’s evidentiary record.” Pilgrim, CLI-08-9, 37 N.R.C. at 355-56 (emphasis added). This proceeding has followed the general procedural course anticipated by the Commission in CLI-08-9.

⁵ Pilgrim, CLI-10-11, 71 N.R.C. 287 (2010).

decisions Pilgrim Watch challenge[d]” stemming from its intervention petition.⁶ Consequently, although the Commission remand meant that the Board would receive evidence and hold a hearing on that narrow portion of Contention 3, the remand did not reopen the evidentiary record as to all matters. The remand was expressly limited by the Commission. The rest of the evidentiary record otherwise remained closed, and the Board appropriately applied the Commission’s reopening standards to Pilgrim Watch’s belated hearing requests.⁷

For these reasons, and those reasons expressed in the NRC Staff’s Motion, Entergy supports the Motion and requests that the mischaracterizations of this proceeding in Pilgrim Watch’s Reply identified in the NRC Staff’s Motion be struck from the record or otherwise not considered in ruling on the underlying contention.

Respectfully submitted,

/signed electronically by Paul A. Gaukler/

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Counsel for Entergy

⁶ Pilgrim, CLI-10-14, 71 N.R.C. 449, 453 (2010).

⁷ Pilgrim Watch continues to misinterpret the Commission’s discussion of the reopening standards in its Vermont Yankee decision. See PW Reply at 3-4. In Vermont Yankee, the Commission clearly stated that, “during the pendency of [a] remand” to the Board, long after the evidentiary record had been closed but before the proceeding had been closed, the intervenors could “submit a motion to reopen the record pursuant to 10 C.F.R. § 2.326, should they seek to address any genuinely new issues related to the license renewal application that previously could not have been raised.” Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 N.R.C. 1, 10 n.37 (2010) (emphasis in original). The procedural circumstances in Vermont Yankee are essentially identical to those in this proceeding: during the limited remand of a portion of Pilgrim Watch Contention 3, the evidentiary record was long closed, but the proceeding remained open. Consistent with Vermont Yankee, the Board applied the Commission’s stringent standards for reopening the record in Section 2.326 to Pilgrim Watch’s (and the Commonwealth of Massachusetts’) requests for hearing on new contentions.

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CERTIFICATE OF SERVICE

I hereby certify that copies of Entergy's Answer Supporting NRC Staff's Motion to Strike Portions of Pilgrim Watch's Reply, dated January 9, 2012, were provided to the Electronic Information Exchange for service on the individuals below, this 9th day of January, 2012.

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