

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

January 14, 2012

Pilgrim Watch Reply to Entergy's Answer Opposing Pilgrim Watch's Motion to File a Reply to Entergy's and NRC Staff's Answers

INTRODUCTION

Persuant to 10 C.F.R. 2.323(c), Pilgrim Watch respectfully requests leave to reply to Entergy's Answer Opposing Pilgrim Watch's Motion to File a Reply to Entergy's and NRC Staff's Answers. Pilgrim Watch makes this request because it could not have reasonably anticipated the arguments made by Entergy in opposing Pilgrim Watch's motion.

A. A Separate Request for Leave to Reply

First, Pilgrim Watch could not have anticipated Entergy's argument that 10 C.F.R. § 2.323(c) requires a party "separately [to] request leave to file a reply" and cannot "combine[] its leave request with a proposed reply." (Entergy Answer, 2) That is not what 10 C.F.R. § 2.323(c) says. To be sure, 10 C.F.R. § 2.323(c) says that a "moving party has no right to reply, except as permitted;" but contrary to Entergy's assertion is has no "explicit requirement that permission be obtained before any reply can be filed." (Id.,)

The first paragraph of the Pilgrim Watch reply to which Entergy objects specifically requested leave pursuant to 10 C.F.R. § 2.323(c):

Persuant to 10 C.F.R. 2.323(c), Pilgrim Watch respectfully requests leave to file a response to Entergy's and NRC Staff's Answers to *Pilgrim Watch Request to Supplement Petition for Review of Memorandum and Order (Denying Pilgrim's Watch's Request for Hearing on Certain New Contentions, ASLBP NO/ 06-848-02-LR, August 11, 2011* (Filed August 26, 2011) and *Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Pilgrim Watch's Requests for Hearing on New Contentions Relating to Fukushima Accident) September 8, 2011* (Filed September 23, 2011). Pilgrim Watch makes this request because it could not have reasonably anticipated the arguments of Entergy and Staff.

Pilgrim Watch has consistently followed this procedure throughout this proceeding, as a review of the docket clearly shows. Pilgrim Watch could hardly have anticipated an argument that Entergy has never made.

The applicable rule does not require advance separate permission, as shown by Entergy's failure ever to even make this argument before.

B. The Relevance of the Markey Report

Second, Pilgrim Watch could not have anticipated Entergy's argument that "the Markey Report is not relevant or material information" because it does not mention Pilgrim SAMA, NEPA or the Commission's NEPA obligations." (Entergy Answer, 2). What Entergy would obviously like the Commission to overlook is that evidence showing that the Board and the Commission have not met their NEPA obligations is relevant to a contention that they have not done so, whether or not that evidence specifically identifies that contention or the parties to it.

PW agrees that the documents the Markey Report cites may well not be "'new' to the Commission" (Entergy Answer, 2, fn 4), but that has nothing to do with whether they are important and highly relevant evidence should be made part of the record in this proceeding.

As Pilgrim Watch said in its Reply that Entergy would like to the Commission to ignore, “Markey’s report is relevant and material to Pilgrim Watch’s Petition for Review because it provided documented information on the status of NRC’s look at the new and significant information raised by Pilgrim Watch that NRC is required to take before Pilgrim’s licensing decision is made.¹ *Marsh v Oregon Natural Resources Council*, 490 U.S. 360, 385 (1989) Pilgrim Watch’s Petition for Review showed that a major reason that the Board’s decision was erroneous was because the Board failed to take a “hard look at the proffered evidence” and the Markey report indicates that the Commission has not completed its “hard look,” either.”

Entergy's argument that the Markey Report does not contain “new” information because it is based on copies of Commission documents (including voting records, reports, emails, correspondence, memoranda, phone or meeting minutes or other materials) related to the events of Fukushima or the NRC’s response thereto prepared or obtained by any Commissioner or member of any Commissioner’s staff (Entergy, footnote 4, partially citing PW’s footnote 2) fails for one simple reason. Congressman Markey obtained these documents only after making a specific Congressional request for them, and they became generally available only in Markey’s report.²

¹ Congressman Markey’s report is based on copies of all documents (including voting records, reports, emails, correspondence, memoranda, phone or meeting minutes or other materials) related to the events of Fukushima or the NRC’s response thereto prepared or obtained by any Commissioner or member of any Commissioner’s staff Markey’s review of these materials indicated that: Four NRC Commissioners attempted to delay and otherwise impede the creation of the NRC Near-Term Task Force on Fukushima; and conspired, with each other and with senior NRC staff, to delay the release of and alter the NRC Near-Term Task Force report on Fukushima. Further, the other NRC Commissioners attempted to slow down or otherwise impede the adoption of the safety recommendations made by the NRC Near-Term Task Force on Fukushima.

² “In late October 2011, Congressman Markey sent a letter to the Nuclear Regulatory Commission (NRC) requesting copies of all documents (including voting records, reports, emails, correspondence, memoranda, phone or meeting minutes or other materials) related to the events of Fukushima or the NRC’s response thereto prepared or obtained by any Commissioner or member of any Commissioner’s staff.” Report, pg.,3

For the foregoing reasons the Commission should permit Pilgrim Watch's replies to Entergy's meritless filing.

Respectfully submitted,

(Signed Electronically)

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