

February 23, 2012

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

|  |   |                        |
|--|---|------------------------|
| 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)        | ) |                        |

**ENERGY’S MOTION TO STRIKE PILGRIM WATCH’S REPLY**

Pursuant to 10 C.F.R. § 2.323(a), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (collectively “Entergy”) move to strike Pilgrim Watch’s February 13, 2012 Reply.<sup>1</sup> Pilgrim Watch’s Reply impermissibly raises new claims for the first time on appeal, and also exceeds the page limit. Pilgrim Watch’s disregard for the Commission’s procedures should not be countenanced.

**I. BACKGROUND**

On January 11, 2012, the Licensing Board issued LBP-12-01,<sup>2</sup> in which a majority of the Board denied Pilgrim Watch’s last remaining request for hearing on a new contention related to the Fukushima Daiichi accident in the Pilgrim license renewal proceeding. On January 26, 2012, Pilgrim Watch petitioned for review of the Board majority’s decision, “[p]ursuant to 10 C.F.R. § 2.341.”<sup>3</sup> On February 6, 2012, Entergy and the NRC Staff filed their respective oppositions to Pilgrim Watch’s Petition, complying with the 25-page-limitation set forth in Section

---

<sup>1</sup> Pilgrim Watch’s Reply to Entergy’s and NRC Staff’s Answers to Pilgrim Watch’s Petition for Review of LBP-12-01 (Feb. 13, 2012) (“Reply”).

<sup>2</sup> Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-12-01, 74 N.R.C. \_\_\_, slip op. (Jan. 11, 2012) (“LBP-12-01”). Administrative Judge Ann Marshall Young dissented in a separate statement (“Dissent”).

<sup>3</sup> Pilgrim Watch’s Petition for Review of Memorandum and Order (Denying Pilgrim Watch’s Request for Hearing on a New Contention Relating to Fukushima Accident) LBP-12-01 January 11, 2012 (Jan. 26, 2012) (“Petition”) at 1.

2.341(b)(3).<sup>4</sup> On February 13, 2012, Pilgrim Watch filed its 10-page-reply, stating that the Reply was “[i]n accordance with § 2.323(c).” Reply at 1.

## **II. PILGRIM WATCH IMPERMISSIBLY SEEKS TO RAISE NEW ISSUES FOR THE FIRST TIME ON APPEAL**

The Commission has long held that an issue raised for the first time on appeal will not be entertained.<sup>5</sup> Here, Pilgrim Watch’s Reply asserts for the first time (and with no support) that, even assuming Entergy’s data concerning the atmospheric radiological releases from Fukushima is accurate, it “is months old” and that “[e]ven today nobody . . . knows exactly how much radioactive contamination was, and continues to be released.” Reply at 8 (emphasis omitted). Before the Board, Entergy’s experts attested that (among other things) the Pilgrim severe accident mitigation alternatives (“SAMA”) analysis accounted for atmospheric radiological release far greater than the atmospheric and aqueous radiological releases that occurred at Fukushima for the three damaged reactors combined.<sup>6</sup> Neither Pilgrim Watch nor its expert challenged this attestation. Indeed, all Pilgrim Watch stated in response was that “[o]ne would have to still believe in Santa Claus to agree” with Entergy’s experts.<sup>7</sup> Accordingly, Pilgrim Watch’s attempt to challenge the data addressed by Entergy should not be entertained.

---

<sup>4</sup> Entergy’s Answer Opposing Pilgrim Watch’s Petition for Review of LBP-12-01 (Feb. 6, 2012); NRC Staff’s Answer to Pilgrim Watch’s Petition for Review of Memorandum and Order (Denying Pilgrim Watch’s Request for Hearing on a New Contention Relating to Fukushima Accident) (Feb. 6, 2012).

<sup>5</sup> See, e.g., Hydro Resources, Inc. (2929 Coors Road Suite 101, Albuquerque, NM 87120), CLI-00-08, 51 N.R.C. 227, 243 (2000) (intervenor must raise an issue before the licensing board or it will be precluded from supplementing the record before the Commission); Hydro Resources, Inc. (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 N.R.C. 417, 421 (2006).

<sup>6</sup> See, e.g., Declaration of Mr. Joseph R. Lynch and Dr. Kevin R. O’Kula In Support of Entergy’s Answer Opposing Pilgrim Watch Request for Hearing On a New Contention Regarding Inadequacy of Environmental Report, Post-Fukushima (Dec. 13, 2011) at ¶¶ 40-64.

<sup>7</sup> Pilgrim Watch Reply to Entergy’s and the NRC Staff’s Answer to Pilgrim Watch Request for Hearing on A New Contention Regarding Inadequacy of Environmental Report, Post Fukushima – Aqueous Discharges (Dec. 20, 2011) at 35.

### **III. THE REPLY EXCEEDS THE COMMISSION'S PAGE LIMITATION**

The Commission should also strike Pilgrim Watch's Reply because it runs afoul of the Commission's requirements governing page limitations for petitions for review of licensing board decisions. The Commission's page limit requirements are intended "to hold all parties to the same number of pages of argument."<sup>8</sup> Pilgrim Watch, however, has filed a reply that exceeds the prescribed page limit for a reply under Section 2.341(b).

Under Section 2.341, replies are limited to five (5) pages. 10 C.F.R. § 2.341(b)(3). Here, Pilgrim Watch's Reply is ten (10) pages long, five (5) pages over the limit. Pilgrim Watch made no attempt to seek leave to exceed the page limit, or to provide any reason for doing so.

Instead, Pilgrim Watch states that its Reply is filed "in accordance with" 10 C.F.R. § 2.323(c). That provision governs answers to motions, not replies relating to petitions for review. Obviously, 10 C.F.R. § 2.323(c) does not override the 5-page limit on replies in 10 C.F.R. 2.341(b)(3). In fact, Section 2.323(c) does not even permit replies.

### **IV. CONCLUSION**

For the foregoing reasons, the Reply should be struck from the record.

### **CERTIFICATION**

As required by 10 C.F.R. § 2.323(b), Counsel for Entergy certifies that he consulted with the NRC Staff and Pilgrim Watch and made a sincere effort to resolve the issues raised in this motion. The efforts to resolve the issues raised in this Motion have been unsuccessful.

---

<sup>8</sup> Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 N.R.C. 370, 393 (2001) (citing Hydro Resources Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 N.R.C. 31, 46 (2001)).

Respectfully Submitted,

/signed electronically by David R. Lewis/

---

David R. Lewis  
Paul A. Gaukler  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
Tel. (202) 663-8000  
E-mail: david.lewis@pillsburylaw.com  
Counsel for Entergy

Dated: February 23, 2012

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

|  |   |                        |
|--|---|------------------------|
| 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)        | ) |                        |

CERTIFICATE OF SERVICE

I hereby certify that copies of Entergy's Motion to Strike Pilgrim Watch's Reply, dated February 23, 2012, were provided to the Electronic Information Exchange for service on the individuals below, this 23rd day of February, 2012.

Secretary  
Att'n: Rulemakings and Adjudications Staff  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
OCAEmail@nrc.gov

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

Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Dr. Richard F. Cole  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Richard.Cole@nrc.gov

Administrative Judge  
Dr. Paul B. Abramson  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Paul.Abramson@nrc.gov

Susan L. Uttal, Esq.  
Maxwell C. Smith, Esq.  
Brian Harris, Esq.  
Beth Mizuno, Esq.  
Lauren Woodall, Esq.  
Office of the General Counsel  
Mail Stop O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Susan.Uttal@nrc.gov; Maxwell.Smith@nrc.gov;  
brian.harris@nrc.gov; beth.mizuno@nrc.gov;  
Lauren.Woodall@nrc.gov

Ms. Mary Lampert  
148 Washington Street  
Duxbury, MA 02332  
mary.lampert@comcast.net

Mr. Mark D. Sylvia  
Town Manager  
Town of Plymouth  
11 Lincoln St.  
Plymouth, MA 02360  
msylvia@townhall.plymouth.ma.us

Chief Kevin M. Nord  
Fire Chief and Director, Duxbury Emergency  
Management Agency  
688 Tremont Street  
P.O. Box 2824  
Duxbury, MA 02331  
nord@town.duxbury.ma.us

Matthew Brock, Assistant Attorney General  
Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Martha.Coakley@state.ma.us  
Matthew.Brock@state.ma.us

Sheila Slocum Hollis, Esq.  
Duane Morris LLP  
505 9th Street, NW  
Suite 1000  
Washington, DC 20006  
sshollis@duanemorris.com

Richard R. MacDonald  
Town Manager  
878 Tremont Street  
Duxbury, MA 02332  
macdonald@town.duxbury.ma.us

Hillary Cain, Esq.  
Law Clerk,  
Atomic Safety and Licensing Board Panel  
Mail Stop T3-E2a  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Hillary.Cain@nrc.gov

/signed electronically by David R. Lewis/

---

David R. Lewis