

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 12849

DOCKETED 01/11/07

COMMISSIONERS:

SERVED 01/11/07

Dale E. Klein, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter B. Lyons

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

CLI-07-02

MEMORANDUM AND ORDER

_____ Before the Commission is an appeal of LBP-06-23¹ filed by Intervenor Pilgrim Watch. In LBP-06-03, the Atomic Safety and Licensing Board granted Pilgrim Watch's hearing request, and admitted for hearing two of Pilgrim Watch's five contentions. In its appeal, Pilgrim Watch asks the Commission to "order the admission of Pilgrim Watch's contention 4," one of three Pilgrim Watch contentions that the Board rejected as inadmissible for hearing.² Both Entergy Nuclear Operations, Inc. and the NRC Staff oppose the appeal. For the reasons outlined below, we deny Pilgrim Watch's appeal.

Pilgrim Watch submits its appeal pursuant to 10 C.F.R. § 2.311, the NRC's rule allowing appeals of Presiding Officer or Board rulings on requests for hearing and petitions to intervene.

¹ 64 NRC ____ (Oct. 16, 2006)(slip op.).

² Pilgrim Watch Brief on Appeal of LBP-06-23 (Oct. 31, 2006) at 16. Another petitioner for a hearing, the Massachusetts Attorney General, has appealed LBP-06-23. We will address the Attorney General's appeal in a separate decision.

The rule permits appeals as right in three circumstances only: (1) where a petitioner challenges an order “denying” a petition to intervene and/or request for hearing; (2) where a party other than a petitioner challenges an order granting a petition to intervene, claiming that the petition should have been “wholly denied”; and (3) where a party claims that an order selecting a hearing procedure “was in clear contravention” of applicable Commission hearing selection criteria.³

“No other appeals from rulings on requests for hearings are allowed.”⁴

In short, our rules permit appeals of rejected contentions only where a petitioner “claims that the Board wrongly rejected all contentions.”⁵ Here, however, the Board *admitted* Pilgrim Watch as a party to this license renewal proceeding, admitting two of its contentions. Pilgrim Watch therefore will have the opportunity to appeal the Board’s rejection of Contention 4 following the Board’s merits decision in this proceeding. Section 2.311 does not provide for interlocutory appeals by an admitted intervenor, and the Commission generally “disfavor[s] interlocutory, piecemeal appeals.”⁶

In exceptional instances, the Commission may in its discretion grant a petition for interlocutory review, where a party demonstrates that a ruling threatens it “with immediate and serious irreparable impact” or “[a]ffects the basic structure of the proceeding in a pervasive or unusual matter.”⁷ Here, Pilgrim Watch makes neither claim. Moreover, “[c]laims that a board

³ See 10 C.F.R. § 2.311(b)-(d).

⁴ See 10 C.F.R. § 2.311(a).

⁵ See *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC at ___, slip op. at 8; see also *Exelon Generating Co., L.L.C.* (Early Site Permit for the Clinton ESP Site), CLI-04-31, 60 NRC 461, 468 (2004); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-11, 59 NRC 203, 208 (2004).

⁶ See *Clinton*, 60 NRC at 466.

⁷ See 10 C.F.R. § 2.341(f)(2).

has wrongly rejected a contention . . . are commonplace” and cannot without more “be said to affect a proceeding’s ‘basic structure’”⁸

For the reasons provided in this decision, we *deny* Pilgrim Watch’s appeal of LBP-06-23.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 11th day of January 2007.

⁸ See *Clinton*, 60 NRC at 467.