

August 20, 2004

Paul M. Blanch
135 Hyde Road
West Hartford, CT 06117

Arnold Gundersen
139 Killarney Drive
Burlington, VT 05401

Dear Messrs. Blanch and Gundersen:

Your petition dated July 29, 2004, and addressed to the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC or Commission) has been referred to the Office of Nuclear Reactor Regulation pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations. You requested that the NRC issue a Demand for Information requiring Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Entergy or the licensee) to provide information that clearly and unambiguously describes how Vermont Yankee Nuclear Power Station (Vermont Yankee) complies with the General Design Criteria (GDC) specified in 10 CFR 50 Appendix A, or the draft GDC published by the Atomic Energy Commission (AEC) in 1967. As the basis for your request, you state that this information is essential for two NRC regulatory activities at Vermont Yankee: (1) the NRC's review of Entergy's application for an extended power uprate, and (2) the NRC's engineering assessment. You state that until the design bases are clearly identified, any inspection or assessment is meaningless. Our Petition Review Board has completed its review of your submittal as discussed in the following paragraphs.

Based on information available in the Updated Final Safety Analysis Report (UFSAR), and letters submitted to the NRC by the licensee, the NRC staff asserts that the design bases of Vermont Yankee are clear and unambiguous. Correspondence between the licensee and the NRC clearly indicate that Vermont Yankee is licensed to the draft GDC published in 1967.

The apparent confusion regarding the design bases arises from wording in Appendix F to the UFSAR. The purpose of Appendix F was to document how Vermont Yankee conformed to the proposed GDC published by the AEC in July of 1967. Vermont Yankee was issued a construction permit in December 1967. In 1971, the AEC published the final version of the GDC as Appendix A to 10 CFR Part 50. In approving the final GDC, the Commission stressed that they were not new requirements, but were promulgated to more clearly articulate the licensing requirements and practice in effect at that time. In 1982, the licensee for Vermont Yankee submitted an update of the UFSAR to the NRC, including revisions to Appendix F. The purpose of the 1982 revision of Appendix F to the UFSAR was to document how the design and construction of Vermont Yankee met the intent of the final GDC, since NRC guidance was not clear at the time regarding treatment for plants with construction permits issued prior to issuance of the final GDC. In a subsequent letter dated September 28, 1999, the licensee clarified that Vermont Yankee was explicitly licensed to the requirements of the draft GDC. This letter was prompted by a Commission decision in 1992 that staff will not apply the final GDC to plants with construction permits issued prior to May 21, 1971. With the

clarification by the Commission that pre-GDC plants, such as Vermont Yankee, do not need exemptions to the final GDC, the licensee stated that it intended to reinstate the original version of the UFSAR. As stated in UFSAR Appendix F, the information in this appendix is retained for historical significance and should not be considered current design configuration. The information in Appendix F was developed during the construction phase of the facility. Changes have been made to the facility over time and, in some instances, the NRC has imposed new regulations on Vermont Yankee based on the substantial increase in safety that would be provided. Information regarding current design configuration is found elsewhere in the UFSAR and in other design basis information.

More recently, the licensee has provided information to assist the staff in understanding the requirements applicable to Vermont Yankee related to the proposed power uprate. Entergy's letter dated October 1, 2003, provides a matrix between the draft GDC and the final GDC in Appendix A to 10 CFR 50. In addition, in Attachment 4 to their January 31, 2004, letter, Entergy provided a revised safety evaluation template for extended power uprate reviews that replaces the GDC in RS-001 with Vermont Yankee design criteria based on the current licensing basis. Therefore, the staff does not see a need for, or benefit in, requesting the licensee to submit additional information demonstrating how it meets the draft GDC.

For the purposes of performing the inspection, the design basis of Vermont Yankee, as described above, is the design basis that will be used by the engineering inspection team as it evaluates Vermont Yankee. It is also important to note that there are methods available to the inspection team for obtaining additional information regarding the licensing basis for specific components or systems that it is evaluating, rendering a Demand for Information unnecessary.

Notwithstanding the position discussed in this response, I remind you that the application for an extended power uprate provides the public with an opportunity to request a hearing on any issues relevant to the uprate. The time period during which a hearing may be requested will be open until August 30, 2004. Because the staff's review of the uprate is ongoing, the appropriate venue for debating issues such as these is the hearing process. For this reason, the staff will not treat this request under the 10 CFR 2.206 process because these issues can be addressed through the ongoing licensing proceeding (See Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," Handbook Part III, Section (C)(1)(a)(iii)). However, in accordance with 10 CFR 2.1205(1)(2), if a petition to intervene and request a hearing in a licensing proceeding does not satisfy the legal requirements for a hearing or intervention, the Atomic Safety and Licensing Board Panel or the Presiding Officer may refer the request to the 10 CFR 2.206 process, in which case, we would accept it for review under 10 CFR 2.206.

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

clarification by the Commission that pre-GDC plants, such as Vermont Yankee, do not need exemptions to the final GDC, the licensee stated that it intended to reinstate the original version of the UFSAR. As stated in UFSAR Appendix F, the information in this appendix is retained for historical significance and should not be considered current design configuration. The information in Appendix F was developed during the construction phase of the facility. Changes have been made to the facility over time and, in some instances, the NRC has imposed new regulations on Vermont Yankee based on the substantial increase in safety that would be provided. Information regarding current design configuration is found elsewhere in the UFSAR and in other design basis information.

More recently, the licensee has provided information to assist the staff in understanding the requirements applicable to Vermont Yankee related to the proposed power uprate. Entergy's letter dated October 1, 2003, provides a matrix between the draft GDC and the final GDC in Appendix A to 10 CFR 50. In addition, in Attachment 4 to their January 31, 2004, letter, Entergy provided a revised safety evaluation template for extended power uprate reviews that replaces the GDC in RS-001 with Vermont Yankee design criteria based on the current licensing basis. Therefore, the staff does not see a need for, or benefit in, requesting the licensee to submit additional information demonstrating how it meets the draft GDC.

For the purposes of performing the inspection, the design basis of Vermont Yankee, as described above, is the design basis that will be used by the engineering inspection team as it evaluates Vermont Yankee. It is also important to note that there are methods available to the inspection team for obtaining additional information regarding the licensing basis for specific components or systems that it is evaluating, rendering a Demand for Information unnecessary.

Notwithstanding the position discussed in this response, I remind you that the application for an extended power uprate provides the public with an opportunity to request a hearing on any issues relevant to the uprate. The time period during which a hearing may be requested will be open until August 30, 2004. Because the staff's review of the uprate is ongoing, the appropriate venue for debating issues such as these is the hearing process. For this reason, the staff will not treat this request under the 10 CFR 2.206 process because these issues can be addressed through the ongoing licensing proceeding (See Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," Handbook Part III, Section (C)(1)(a)(iii)). However, in accordance with 10 CFR 2.1205(1)(2), if a petition to intervene and request a hearing in a licensing proceeding does not satisfy the legal requirements for a hearing or intervention, the Atomic Safety and Licensing Board Panel or the Presiding Officer may refer the request to the 10 CFR 2.206 process, in which case, we would accept it for review under 10 CFR 2.206.

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

/RA/

J. E. Dyer, Director

Office of Nuclear Reactor Regulation

Docket No. 50-271

DISTRIBUTION: See Next Page

Package: ML042180408, Incoming: ML042120147, Accession: ML042180311

OFFICE	PDI-1/PM	PDI-2/LA	PDI-VY/SC	PDI/D	DLPM/D	NRR/D
NAME	DSkay	CRaynor	AHowe	CHolden	TMarsh	JDyer
DATE	8/16/04	8/10/04	8/16/2004	8/17/2004	8/18/2004	8/20/04

OFFICIAL RECORD COPY

DISTRIBUTION:

PUBLIC

PDI-2 R/F

LReyes

EMerchoff

WKane

CPaperiello

PNorry

WDean

SBurns

MVirgilio

JDyer, NRR

BSheron, NRR/ADPT

OGC

KCyr, OGC

JGoldberg, OGC

OPA

OCA

NRR Mail Room (EDO# G20040511)

KGrimes

LCox

AHowe

CHolden

DSkay

REnnis

CRaynor

SCollins, RI

CAnderson, RI

WRuland

JStang

SRichards

JJacobson

VBucci, OIG

Vermont Yankee Nuclear Power Station

cc:

Regional Administrator, Region I
U. S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406-1415

Mr. David R. Lewis
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037-1128

Ms. Christine S. Salembier, Commissioner
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601

Mr. Michael H. Dworkin, Chairman
Public Service Board
State of Vermont
112 State Street
Montpelier, VT 05620-2701

Chairman, Board of Selectmen
Town of Vernon
P.O. Box 116
Vernon, VT 05354-0116

Operating Experience Coordinator
Vermont Yankee Nuclear Power Station
320 Governor Hunt Road
Vernon, VT 05354

G. Dana Bisbee, Esq.
Deputy Attorney General
33 Capitol Street
Concord, NH 03301-6937

Chief, Safety Unit
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Ms. Deborah B. Katz
Box 83
Shelburne Falls, MA 01370

Ms. Carla A. White, RRPT, CHP
Radiological Health
Vermont Department of Health
P.O. Box 70, Drawer #43
108 Cherry Street
Burlington, VT 05402-0070

Mr. James M. DeVincentis
Manager, Licensing
Vermont Yankee Nuclear Power Station
P.O. Box 0500
185 Old Ferry Road
Brattleboro, VT 05302-0500

Resident Inspector
Vermont Yankee Nuclear Power Station
U. S. Nuclear Regulatory Commission
P.O. Box 176
Vernon, VT 05354

Director, Massachusetts Emergency
Management Agency
ATTN: James Muckerheide
400 Worcester Rd.
Framingham, MA 01702-5399

Jonathan M. Block, Esq.
Main Street
P.O. Box 566
Putney, VT 05346-0566

Mr. John F. McCann
Director, Nuclear Safety Assurance
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Gary J. Taylor
Chief Executive Officer
Entergy Operations
1340 Echelon Parkway
Jackson, MS 39213

Vermont Yankee Nuclear Power Station

cc:

Mr. John T. Herron
Sr. VP and Chief Operating Officer
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Danny L. Pace
Vice President, Engineering
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Brian O'Grady
Vice President, Operations Support
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Michael J. Colomb
Director of Oversight
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. John M. Fulton
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Jay K. Thayer
Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
P.O. Box 0500
185 Old Ferry Road
Brattleboro, VT 05302-0500

Mr. Kenneth L. Graesser
38832 N. Ashley Drive
Lake Villa, IL 60046

Mr. James Snizek
5486 Nithsdale Drive
Salisbury, MD 21801

Mr. Ronald Toole
1282 Valley of Lakes
Box R-10
Hazelton, PA 18202

Ms. Stacey M. Lousteau
Treasury Department
Entergy Services, Inc.
639 Loyola Avenue
New Orleans, LA 70113

Mr. Raymond Shadis
New England Coalition
Post Office Box 98
Edgecomb, ME 04556

Mr. James P. Matteau
Executive Director
Windham Regional Commission
139 Main Street, Suite 505
Brattleboro, VT 05301

Mr. William K. Sherman
Vermont Department of Public Service
112 State Street
Drawer 20
Montpelier, VT 05620-2601