

***Paul M. Blanch***  
***Energy Consultant***

October 19, 2004

To: Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Attention: Rulemakings and Adjudication Staff  
Washington, D.C. 20555-0001  
[hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Cc: Alex S. Karlin, Chairman  
Atomic Safety and Licensing Board,  
U.S. Nuclear Regulatory Commission, Mail Stop T-3 F23  
Washington, D.C. 20555-0001.

[ask2@nrc.gov](mailto:ask2@nrc.gov)

Dear Secretary X and Chairman Karlin,

DOCKETED  
USNRC

October 19, 2004 (2:22PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket No. 50-271-OLA

**Subject: Response NRC News Release dated October 12, 2004**

On October 12, 2004, the NRC issued a press release entitled:

“ASLB TO HEAR ORAL ARGUMENTS ON PETITIONS SEEKING HEARINGS ON  
PROPOSED VERMONT YANKEE POWER UPRATE.”<sup>1</sup>

As part of this NRC ASLB hearing process, the general public was notified that:

1. the general public will not be heard at this time
2. such statements may be heard in the future [emphasis added]

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<sup>1</sup> While statements from the general public will not be heard at this time, such statements may be heard in the future. However, any interested individual may file a written statement setting forth his or her position on the issues in this proceeding. These statements may be submitted at any time by mail, e-mail or fax. Statements should be mailed to: The Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudication Staff, with a copy to Alex S. Karlin, Chairman of the ASLB panel at: Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Mail Stop T-3 F23, Washington, D.C. 20555-0001. E-mailed statements should be sent to the Office of the Secretary at [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov), with a copy to the panel Chairman at [ask2@nrc.gov](mailto:ask2@nrc.gov).

**As a long-time nuclear safety advocate with 36-years of nuclear industry experience, this is my statement to the Atomic Safety and Licensing Board (ASLB) regarding Vermont Yankee's lack of compliance with its GDC and the NRC's violation of The Atomic Energy Act of 1954, as amended.**

**I request that the ASLB take three actions:**

- 1. Address, review, and assure the general public that Vermont Yankee is in compliance with its GDC, which is mandated by The Atomic Energy Act of 1954, as amended, in order to assure "adequate protection" as the standard of safety on which NRC regulation is based.**
- 2. Refer Mr. Gundersen's and my 2.206 petition back to the Office of Nuclear Reactor Regulation for the due process hearing to which we are entitled.**
- 3. Fulfill the ASLB's statutory obligation to review and incorporate public and expert witness statements into its safety and licensing analysis and final public recommendations.**

### **SUMMARY**

**"Adequate protection" was established by The Atomic Energy Act of 1954, as amended, as the standard of safety upon which NRC regulations are based. The Atomic Energy Act clarified that "adequate protection is presumptively assured by compliance with NRC requirements". Furthermore, according to the NRC<sup>2</sup> the August 27, 1997 NRC Staff Requirements Memorandum (SRM) stated that "compliance simply means meeting applicable regulatory requirements". The August 27, 1997 SRM qualified its position, by stating that in "the case for any proposed license amendment, the NRC staff review determines if the proposed changes would be in compliance with the applicable regulatory requirements". And, finally, "if the NRC review determines that the proposed changes would be in compliance with the applicable regulatory requirements, there is reasonable assurance that the proposed change is safe."**

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<sup>2</sup> Provided by the NRC under FOIA PA-2004-0362 as part of the draft response to Mr. William Sherman's letter to the NRC dated December 8, 2003

**There is no assurance and no record that Vermont Yankee is presently in compliance with NRC regulations.**

Without demonstration by the NRC of regulatory compliance there is no assurance that “adequate protection” is being provided to the general public. To meet the requirements of The Atomic Energy Act of 1954 as amended by complying with the NRC’s promulgated regulations, and give “adequate protection” to the general public as mandated by law, the NRC must demonstrate that Vermont Yankee is in compliance with its General Design Criteria (GDC) and other regulations which are the very foundation by which Vermont Yankee received its license to operate and generate electricity in the State of Vermont.

Over and over again, we have requested that the NRC prove to the general public that Vermont Yankee is in compliance with its GDC and thereby assure the citizens of Vermont and its neighboring states that “adequate protection” is guaranteed as is mandated by law.

**FACTS**

1. To begin with, let me reference the FOIA request PA 2004-0362 for a copy of all internal NRC communication related to the NRC’s response to Mr. William Sherman’s letter to the NRC dated December 8, 2003. I found the following reference and notation made by the NRC contained within one of the responses<sup>3</sup> to Mr. Sherman:

*“In an NRC Staff Requirements Memorandum (SRM) dated August 27, 1997, the Commission provided a discussion on safety and compliance. The SRM stated that an activity is deemed to be safe if the perceived risks are judged to be acceptable. The Atomic Energy Act of 1954, as amended, established “adequate protection” as the standard of safety on which NRC regulation is*

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<sup>3</sup> These words were removed from the NRC’s final response to Mr. Sherman dated June 27, 2004

*based. Adequate protection is presumptively assured by compliance with NRC requirements. The SRM stated that compliance simply means meeting applicable regulatory requirements. As is the case for any proposed license amendment, the NRC staff review determines if the proposed changes would be in compliance with the applicable regulatory requirements. Therefore, if the NRC review determines that the proposed changes would be in compliance with the applicable regulatory requirements, there is reasonable assurance that the proposed change is safe."*

2. In response to my notice to the NRC that Vermont Yankee was not in compliance with its General Design Criteria and therefore in violation its license, the NRC Project Manager for Vermont Yankee, Rick Ennis, asserted in an Email sent to me June 25, 2004 that Vermont Yankee's GDC was addressed in Vermont Yankee's UFSAR Appendix F. In his Email Mr. Ennis stated,

*"The VY UFSAR, Appendix F, addresses conformance to the 70 AEC General Design Criteria (proposed GDC's)."*

3. The statement by Mr. Ennis directing me to Appendix F of VY's USAR is an inaccurate and misleading statement by an NRC official as Appendix F does not address GDC compliance. And, even more troubling is the fact that GDC compliance with Vermont Yankee's is not addressed anywhere within the aforementioned UFSAR.
4. In a sincere effort to once again notify the NRC of its responsibility to assure Vermont Yankee's compliance with its GDC, Mr. Arnold Gundersen and I submitted a 10 CFR 2.206 petition on July 29, 2004 requesting that the NRC issue a Demand for Information to Vermont Yankee to demonstrate its compliance with the regulatory requirements including compliance with the GDC.
5. In his letter dated August 20, 2004, Office of Nuclear Reactor Regulation Director James Dyer neglected to properly address any of the issues

delineated in Mr. Gundersen's and my 2.206 petition and instead forwarded our 2.206 petition to the Atomic Safety and Licensing Board (ASLB) as part of its overall review of Vermont Yankee's petition to uprate. In transferring our petition to the ASLB, the NRC's Office of Nuclear Reactor Regulation Director stated,

*"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."*

6. It is plainly evident from this letter that NRC is referring Mr. Gundersen and I to the hearing process. Please note that the date of Mr. Dyer's letter falls just ten days short of the deadline for filing a Request for a Hearing. While, due to the shortness of time and resources, we were unable to meet the hearing filing deadline, I remain anxious for an opportunity to be heard and to have NRC respond to our concern in timely fashion with language that is both accurate and scrutable. And for that reason, I have provided a supporting declaration to a contention contained in New England Coalition's Request For A Hearing filed on August 30, 2004.
7. Separately I wish to draw the ASLB Panel's attention to the main thrust of the allegation Mr. Gundersen and I expressed in our 2.206 Petition: There is no assurance that Vermont Yankee is presently in compliance with NRC

**regulations and even less assurance of compliance should the uprate be approved.**

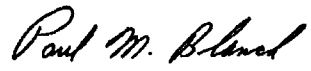
**CONCLUSION:**

**Given that Vermont Yankee is not in compliance with its GDC, I request that the ASLB address, review, and assure the public that Vermont Yankee is in compliance with its GDC, which is mandated by The Atomic Energy Act of 1954, as amended. The general public must be assured the “adequate protection” as the standard of safety it is guaranteed and upon which NRC regulation is based.**

**I also request that the ASLB refer Mr. Gundersen’s and my 2.206 petition back to the Office of Nuclear Reactor Regulation where it will receive the scrutiny, review, and due process to which it is entitled by NRC regulations. Please note the following statement sent to me by NRC’s Office of Nuclear Reactor Regulation Director Dyer:**

*“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.”*

**Finally, I request that the ASLB fulfill its statutory obligation to review and incorporate public and expert witness statements into its safety and licensing analysis and final public recommendations regarding Vermont Yankee’s petition to uprate. It is my belief that you have a moral and ethical imperative to accept all public comments and assess their technical worthiness in addition to your statutory obligation to review and incorporate public and expert witness statements into your analysis and final decision.**

A handwritten signature in cursive script that reads "Paul M. Blanch".

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