

EDO Principal Correspondence Control

FROM: DUE: 05/27/04

EDO CONTROL: G20040342  
DOC DT: 03/14/04  
FINAL REPLY:

Raymond Shadis  
New England Coalition

TO:

Commission

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 04-0314

Chairman Diaz

DESC:

ROUTING:

Uprate Review Process for Vermont Yankee

Travers  
Norry  
Virgilio  
Kane  
Collins  
Dean  
Burns  
Miller, RI  
Brenner, OPA  
Cyr, OGC  
Bell, OIG

DATE: 05/17/04

ASSIGNED TO:

CONTACT:

NRR

Dyer

SPECIAL INSTRUCTIONS OR REMARKS:

Ref. G20040214.

Template: SECY-017

E-RIDS: SECY-01



# New England Coalition

VT NH ME MA RI CT NY  
POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302  
on Nuclear Pollution

May 14, 2004

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk

1-301-415-1672

This FAX of ten (10) pages, including this One is a Letter with  
Attachments intended for:

Chairman Nils J. Diaz

And

Commissioner Jeffrey S. Merrifield

Please distribute accordingly,  
And Please acknowledge receipt,  
Thank you,



Raymond Shadis  
Staff Technical Advisor  
New England Coalition  
Post Office Box 98  
Edgecomb, Maine 04556  
207-882-7801  
shadis@prexar.com

*New England Coalition on Nuclear Pollution*

VT NH ME MA RI CT NY  
POST OFFICE BOX 545, BRATTLEBORO, VERMONT 05302

March 22, 2004 / May 14, 2004 ?

The Honorable Nils J. Diaz, Chairman  
The Honorable Jeffrey S. Merrifield, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Regarding: NRC Candor and Public Confidence  
Reference: Letter – R. Shadis to Cmsrs. Diaz/Merrifield – March 22, 2004

Dear Chairman Diaz,

Dear Commissioner Merrifield,

This letter is to follow-up on a letter that I sent to you on March 22, 2004 in which I complained that NRC Staff and NRC Office of Public Affairs (OPA) had misled the staff of US Senators and the news media of Vermont with respect the nature and origin of the extended uprate review process.

In that letter, I reminded you that on March 12, 2004, during a brief conversation with me at the NRC Regulatory Information Conference, you had committed to look into my allegations.

I am saddened to have to report to you additional and more recent examples of NRC staff attempts to mislead the public through obfuscation or outright false statement.

As I explained in my letter, NRC OPA had confirmed to a Vermont news reporter Entergy's assertion that Vermont Yankee's Extended Power Uprate would receive not one, but two independent safety assessments. Entergy's statement was, to those of us familiar with the Maine Yankee ISA, a transparent attempt to confuse the public about the nature of an ISA. The Advisory Committee on Reactor Safeguards (ACRS), Entergy claimed, would do one of the "independent assessments".

While waiting for your response to my letter of March 22, I undertook to find out just how extensive an ACRS review of an EPU might be by inquiring of the number of hours ACRS devoted to each review. To that end I contacted Mindy Landau, Assistant for Communications, Office of the Executive Director of Operations, NRC, and John T. Larkins, Executive Director of the ACRS.

? March 24, 2004

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*New England Coalition on Nuclear Pollution*

VT    NH    ME    MA    RI    CT    NY  
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May 14, 2004

Ms. Landau responded that ACRS typically took 300 to 400 person hours to review an EPU. She volunteered that there was much additional prep time and administrative time not counted in the estimate. She also volunteered that Vermont Yankee, the plant about which we are concerned, had extensive design margins.

When I then asked her to break out the ACRS review time into member time and NRC support staff time and to identify those areas where she knew VY had extensive design margins, Ms. Landau responded that her previous answer was not meant to be a "definitive" answer and that the "300 to 400 hours" was expended to cover review of four plants! This obfuscation is an insult to my intelligence and an insult to the integrity of your agency. A sequentially ordered copy of the e-mail exchange is attached. On reviewing it, won't you please confirm that it would be much better to simply tell the whole truth on the first exchange? We are, by the way, pursuing ACRS billable hours records via a Freedom of Information Act request, but isn't it the hell of a way for a citizen to have to pry out a simple fact?

The second example, which I wish to bring to your attention, stems from the March 31, 2004 NRC EPU informational meeting in Vernon, Vermont.

In that meeting, Attorney Nancy Burton of Redding Ridge, Connecticut remarked on the missing fuel episode at Millstone Nuclear Generating Station.

NRC senior Resident Inspector David Pelton said that he and his fellow resident had verified Vermont Yankee's spent fuel pool (SFP) inventory and that everything was in place and everything was where Vermont Yankee said it was. Within a few weeks a boroscope examination of a special container in the SFP revealed that two segments of fuel rod were missing from their designated location.

In a 2.206 Petition Review Board Initial Meeting on May 5, 2003, I characterized Mr. Pelton's false statement as "premature."

That characterization was overly generous.

I now have in hand VYNPS/NRC Integrated Inspection Report 05000271/2004002, which on pages 16 and 17 details Mr. Pelton's inspection activities regarding Temporary Instruction (TI) 2515/154, "Spent Fuel Material Control and Accounting at Nuclear Power Plants". On page 17, the report states.

In response to the inspector's observations, on March 26, 2004, Entergy personnel looked from the refueling floor to determine if they could see the two fuel rod segments stored in the container on the bottom of the spent fuel pool. Although the Entergy personnel believed they saw some indication that the fuel rod segments were in the container, the indication was not of sufficient detail and clarity to definitively conclude that the two fuel rod segments were stored in the container. Entergy personnel also plan to perform a detailed inspection of the container using equipment that will be available during the April 2004 refueling outage.

Because additional information is needed to determine if this issue is more than minor, it is considered to be an unresolved item (URI) pending completion of Entergy's detailed inspection of the container.

Even the most obtuse observer would be obliged to conclude that Mr. Pelton's public assurances on March 31 2004, that the contents of the VY SFP were all in place and accounting validated, were a deliberate falsehood. On March 26, 2004, Pelton concluded that Entergy was not performing physical inventory in accord with its own procedures and, further, that there was some question as whether or not a container designated to hold two fuel segments actually held them.

Why would Mindy Landau and John Larkin overestimate time spent in ACRS review of uprates by a factor of four; fluff their answer with allusions to early plant design margin; only to admit theirs was not a "definitive" answer in responding to a follow-up? No one asked Mr. Pelton a direct question at the NRC Vernon public meeting. Why would he volunteer a cock-and-bull story about Entergy being in full and validated compliance with spent fuel material control and accounting when only five days earlier he had written Entergy VY up for an infraction and he knew that not to be the case? Why the earlier misleading statements about the ISA and about ACRS review?

These are all errors with a bias toward protecting the licensee while the licensee transparently, obviously works to mislead the public and mislead elected officials about the quality of its operations and the quality of NRC oversight.

I am driven to the conclusion that NRC's agency culture is woven through with self-serving protectiveness and protectiveness toward the nuclear industry to the extent that NRC personnel automatically, reflexively deflect public criticism or suspicion of licensees or agency actions.

It appears that considerations of accuracy or truth only come along later, if at all.

Shadis/ New England Coalition/ NRC Candor and Public Confidence  
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May 14, 2004

The four examples above relate to events ongoing at VY, but they are certainly not the only instances of a lack of candor from NRC personnel that I have experienced.

I, and others in the public advocacy sector, feel that agency members have lied to us repeatedly and that, generally, we can no longer trust or recommend trust of your agency's representations.

As I stated in my March 22, 2004 letter, I am certain that you expect your agency to adhere to the highest standards of candor. I trust that you will order an investigation of the allegations contained in this letter, but I beg you not to focus on the actions of your front line personnel. What I know of the individuals involved in the above allegations, tells me that they may be among the best performing employees in the NRC. Certainly an inspector other than Mr. Pelton might not have insisted on directly examining the interior of the fuel segment container at VY. I am asking rather that you examine what it is within NRC agency culture that seems to encourage so many, when confronted with public inquiry or controversy, to substitute expediency for stewardship of agency integrity and public trust.

Please let me know as soon as possible the results of your investigation of these allegations and what action you may have resolved to take as a result.

Thank you for your kind consideration,



Raymond Shadis  
New England Coalition  
Post Office Box 98  
Edgecomb, Maine 04556  
shadis@prexar.com

Cc: US Senator Patrick Leahy  
US Senator James Jeffords

Encl: E-Mail Exchange Landau and Shadis  
Partial Transcript – NRC March 31, 2004 Public Meeting – Vernon, VT.

*The following is an E-mail exchange between Raymond Shadis of the New England Coalition and Mindy Landau and John Larkins, US Nuclear Regulatory Commission. - Compiled by Raymond Shadis- April 7, 2004. Individual E-Mail copies available on request: New England Coalition, Post Office Box 98, Edgecomb, Maine 04556*

## Advisory Committee on Reactor Safeguards Review of Extended Power Uprate Applications

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- At 08:49 AM 03/18/04, Raymond Shadis wrote:

To: Mindy\_Landau  
Subject: ACRS EPU REVIEWS

Mindy Landau  
Assistant for Communications  
Office of the Executive Director for Operations  
USNRC  
Washington, DC 20555

Good Morning, Mindy Landau -

I need a written statement or a document that gives the number of person/hours, or some approximation of the number of person/hours, that the Advisory Committee on Reactor Safeguards spends in review of each Extended Power Uprate application. I would love to get a breakdown on each of the EPU plants, but I'll be glad to take what I can get: a sampling, a typical review, or an average.

As you may know, I am working on the now hotly-discussed Vermont Yankee EPU. The scope and scale of ACRS review is a much raked over topic that has recently involved Vermont's US Senators. Our need to have a clear understanding of ACRS review is immediate and pressing. Any help or direction you can give would be greatly appreciated. Please call me at the number below if there are any questions.

Thank You,  
Ray

Raymond Shadis  
New England Coalition  
Post Office Box 98  
Edgecomb, Maine 04556  
207-882-7801

- 
- At 09:55 AM, 03/19/04, Raymond Shadis wrote:

John T. Larkins, Executive Director  
Advisory Committee on Reactor Safeguards  
US Nuclear Regulatory Commission  
Washington, DC 20555

Dear John Larkins,

I have sent the inquiry copied below to Mindy Landau in the EDO's Office, but have since been advised that if anyone can give a prompt answer to our question, it is you. Would you please take a look at this at your earliest convenience?

The depth and scope of ACRS review of Extended Power Uprates has become an issue in public dialogue on a proposed 20% uprate for the Vermont Yankee Nuclear Power Plant. Although NRC staff has just accepted the application, NRC has already scheduled a public meeting, coincident with an end-of-cycle meeting, to discuss a public clamor for an independent

safety assessment (ala Maine Yankee 1996) as a prerequisite to EPU. The ACRS review of uprates has been touted as an independent safety assessment.

And who is to say it isn't?

What we need is a sense of scale. Would you please provide us with a statement outlining the scope of the ACRS review and an estimate of the number of man-hour ACRS invests in each review?

Thank you,

Ray

Raymond Shadis

New England Coalition

207-882-7801

- 
- At 11:34 AM, 03/19/04, Mindy Landau wrote:

From: "Mindy Landau" <msl@nrc.gov>  
To: "John Larkins" <JTL@nrc.gov>, <shadis@prexar.com>  
Subject: Re: Fwd: ACRS EPU REVIEWS

Ray, I forwarded your email to John Larkins also yesterday and expect to have a response to you shortly. Have a good day.

Mindy Landau  
Assistant for Communications  
Office of the Executive Director for Operations  
USNRC

- 
- At 01:05 PM 3/24/04, Mindy Landau wrote:

Ray,

In response to your question, the number of ACRS person/hours worked reviewing some typical extended power uprates ranges from about 300-450 hours. However, this does not include administrative time, overhead, time for the NRC staff review, or other charges associated with this effort. Even though we have some resource numbers for past reviews, it is hard to predict the amount of time needed to review Vermont Yankee. The review will be contingent upon specific issues associated with the design of Vermont Yankee and any open issues the staff may have with their application.

However, we would note that the Vermont Yankee plant is an older vintage plant and because of that it has extensive margin. In the past, the ACRS has spent time reviewing the generic approach to the review of power uprate amendments, including the revised standard review plan.

Further detailed information regarding ACRS reviews of power uprates should be provided via an FOIA request.

I hope this answer is helpful.

Regards,

Mindy Landau

Assistant for Communications  
Office of the Executive Director for Operations  
USNRC  
Washington, DC 20555  
msl@nrc.gov

- 
- AT 03:38 PM, 03/24/04, Raymond Shadis wrote:

Mindy,

Thank you for digging this information out, it is very helpful. I presume that John Larkin (ACRS) contributed to your answer as he has not responded to me directly. With respect to the "extensive margin" at Vermont Yankee, I'm guessing that the assumption of margin has to do with the proposition that analytical tools were less sensitive in the 60's and therefore larger engineering conservations built in based on covering the band of uncertainties. I saw a little of this in a staff presentation on EPU transcribed in ACRS meeting minutes. If that's what prompts the assertion that Vermont Yankee has extensive margin then my follow-up question is, "Dresden II is of the same vintage or a little older than VY. How was the ACRS time invested in reviewing the Dresden II EPU application affected by the plant's vintage?" That is, what was the investment (hours) in review for Dresden II EPU? Is it possible to tell how much of the review time is expended by NRC staff members who serve in support of the ACRS and how much time is actually spent in review by ACRS members? Also, how would "extensive margin" at Vermont Yankee be characterized and verified? Would this "extensive margin" be assumed for example, for heat removal, torus temperature, and the Mark I containment, or somewhere else?

One last item: Has ACRS ever initiated any physical inspection in connection with EPU review?

Thanks again. All of your help and courtesy is much appreciated.

Ray

Raymond Shadis  
New England Coalition  
207-882-7801

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- At 11:34, 03/19/04, Mindy Landau wrote:

From: "Mindy Landau" <MSL@nrc.gov>  
To: <shadis@prexar.com>  
Subject: Re: ACRS EPU REVIEWS

Ray,

I am working with John Larkins to get a response back to you and should have something by next week.

Mindy

- 
- At 05:31 PM , 03/29/04 Mindy Landau Wrote:

From: "Mindy Landau" <MSL@nrc.gov>  
To: <shadis@prexar.com>  
Subject: Re: ACRS EPU REVIEWS

New England Coalition

April 7, 2004

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Ray:

Our previous e-mail response to your inquiry was not intended to be a definitive answer about the adequacy of the VY uprate application or the staff review. After the NRC staff has completed their review, the Committee will review and consider both the uprate application and the staff evaluation.

We estimate that the ACRS and its staff spent approximately 300-400 hours on the combined Dresden 2/3 and Quad Cities 1/2 EPU review. We have no easy way to separate staff and ACRS member time, because the review of all four of these units was done at the same time.

The amount of time that the ACRS can devote to a particular power uprate would depend on the specific issues associated with that particular design and the uprate plan, along with any open issues that the staff may have with their application. The NRC staff has prepared a detailed set of power uprate review guidelines, which the ACRS has reviewed and endorsed, and many of the BWR uprates follow approaches described in General Electric topical reports, which have also been reviewed by the ACRS. We understand that the Vermont Yankee uprate is based on one of those topical reports, and that the staff will be using its review guidelines. The Committee does not perform physical inspections, but it does frequently ask the NRC staff, licensees, and the reactor vendors questions about the impact of the uprate on various plant safety margins. We cannot comment on any particular aspect of the VY uprate at this time, but you are welcome to express your opinions concerning VY uprate issues at the ACRS meetings where the uprate will be discussed.

I hope this helps...

Regards,

Mindy Landau  
Assistant for Communications  
Office of the Executive Director for Operations  
USNRC  
Washington, DC 20555  
msl@nrc.gov

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*\* Editor's note - We understand that ACRS members bill their hours to NRC. A Freedom of Information Act Request has been filed in hopes of being able to determine how many person/hours committee members (not the NRC staffers assigned as support to them) actually spend in review of any single extended power uprate application.*

NRC Public Meeting – Vernon, VT, 03 31 04 Trans. Community TV Video

Hello I am Nancy Burton and I came up here this evening with my father here from Connecticut. We came up here to support the independent safety assessment and to push for a nuclear free VT. Coming from CT we are familiar with our own Millstone where there were resident NRC inspectors during the period of time that somehow Northeast Utilities lost two spent fuel rods. I understand they are all still looking for them.... (Laughter throat clear)

We also know that Millstone has a is somewhat notorious for releasing radioactive radio isotopes into the air Well, coming up here to VT and given where we are tonight, here's my question. Since we are right across the street from an elementary school, I am assuming that the Vermont Yankee nuclear power plant doesn't release radiation into the air? Question: Is that correct? I am being facetious...

NRC ,Brian—, I know you are. Somebody else I think at the earlier meeting, tried to get release off the website. It was an earlier comment. You might not have been here then. Nuclear power plants are required on an annual basis to submit on the docket so that you can access both water borne and air borne releases. There are federal limits for those and it is something we inspect as part of the baseline.

NRC on right of table(towards back of bldg- name not known—

Dave Pelton I know you have looked at their the accountability at the spent fuel pool. Umm. Would you care to address that question here at VT?

Brian – well accountability, she mentioned the Millstone plant that did have ahhh ahhh an issue with a fuel pin that was lost. There was an intense NRC inspection on that. A lot of early on, early on shipments were made from spent fuel pools and there is an NRC inspection report that talks about probable causes on that. Other other aspects were related to the NRC did an inspection following that to do a material accountability at all pools across the nation.

David Pelton - Thanks Brian. That's right and umm to address that specific part of your question just bear with me for a second.

The, ahh

Myself and Beth my other resident inspector we did a fairly detailed review of the spent fuel pit at Vermont Yankee here

Where I look at it almost every day anyway.

And we looked through, historically, through the records from day one since they put anything into that pit and we validated that there's a record that all of the material they said is in there still is in there and we challenged them on a number of points to validate some areas that we didn't understand

...that we didn't understand how they followed their process and we challenged em on that. They took some action and indeed we did validate it

Muted at end

D. Pelton We validate (d) that we fully understand all of the inventory and that everything that they say is in there is right where it belongs.