

EDO Principal Correspondence Control

FROM: DUE: 07/22/04 EDO CONTROL: G20040443  
DOC DT: 06/30/04  
FINAL REPLY:

Senator Patrick J. Leahy

TO:

Madden, OCA

FOR SIGNATURE OF : \*\* GRN \*\* CRC NO: 04-0406

Reyes, EDO

DESC:

ROUTING:

Vermont Yankee (Arnold Gundersen/Paul Blanch)

Reyes  
Norry  
Virgilio  
Kane  
Collins  
Dean  
Burns/Cyr  
Miller, RI  
Rathbun, OCA

DATE: 07/06/04

ASSIGNED TO: CONTACT:

NRR

Dyer

SPECIAL INSTRUCTIONS OR REMARKS:

Add Commission on for concurrence. Commission to  
review response prior to dispatch.

Template: SECY-017

E-KIDS: SECY-01

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

*Date Printed: Jul 02, 2004 17:01*

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PAPER NUMBER: LTR-04-0406                      LOGGING DATE: 07/01/2004  
ACTION OFFICE: EDO  
  
AUTHOR: ~~REP~~ Patrick Leahy  
AFFILIATION: SEN  
ADDRESSEE: Tom Madden  
SUBJECT: Concerns Vermont Yankee  
  
ACTION: Signature of EDO  
DISTRIBUTION: RF, OCA to Ack  
  
LETTER DATE: 06/21/2004  
ACKNOWLEDGED: No  
SPECIAL HANDLING: Commission to review response prior to dispatch  
NOTES:  
FILE LOCATION: ADAMS  
DATE DUE: 07/26/2004                      DATE SIGNED:

EDO --G20040443

PATRICK J. LEAHY  
VERMONTUnited States Senate  
WASHINGTON, DC 20510COMMITTEES:  
AGRICULTURE, NUTRITION,  
AND FORESTRY  
APPROPRIATIONS  
JUDICIARY

TO: Tom Madden  
OF: \_\_\_\_\_  
FROM: Susanne Fleck  
OF: \_\_\_\_\_

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

## PAGES (INCLUDING COVER SHEET)

Here is the letter the delegation  
received from Arnie Sunderson  
re Paul Blanch. Would like to  
talk with the team that  
briefed the PSB about the  
safety concerns raised here.

JUN. 28. 2004 10:54AM

LEAHY MONTPELIER

NO. 805

P. 2

Personal letter from

Arnie Gundersen, 139 Killarney Drive Burlington, VT 05401 - 802-865-9955

Paul Blanch, 135 Hyde Road, West Hartford, CT 06117 - 860-236-0326

June 28, 2004

Dear Chairman Dworkin, Senator Jeffords, Senator Leahy, and Congressman Sanders,

We are writing to you as two independent nuclear experts not affiliated with any group or organization. Each one of us has more than 30-years of experience in the nuclear power industry, and individually each of us is an internationally acknowledged expert and advocate for the safe operation of nuclear power reactors. As an expert witness retained by the New England Coalition, Arnie Gundersen has spent more than 1100 hours reviewing and assessing critical safety issues at Vermont Yankee in response to its petition to increase its power output by more than 20 percent. Paul Blanch, who began working as an expert witness in this review process in December, has spent more than 300 hours reviewing Safety Analysis Reports (SAR), technical specifications, compliance issues, and NRC regulations as they relate to the uprate of power at Vermont Yankee.

Together we have spent more than 1400 hours reviewing sensitive documents, critical safety criteria, and the technical and engineering calculations for Entergy's requested uprate of this 32-year-old nuclear power plant. We have also evaluated Vermont Yankee's compliance with current regulations as well as its design criterion at the current operating level of 100 percent power and compared those benchmarks to the technical and safety specifications required by the expanded power uprate to 120 percent that Entergy is requesting. At 32-years-old, Vermont Yankee is the oldest plant to ever request an uprate of this magnitude. And, by its original engineering design and fabrication, Vermont Yankee is due to be retired when it reaches age 40 in the year 2012.

As we have previously expressed, we remain enormously concerned that the proposed uprate at Vermont Yankee is creating a plant that is significantly less safe and noticeably less reliable than it is now.

Put in its simplest terms, we are convinced that the proposed uprate will make Vermont Yankee significantly less safe than it is today, and we are also convinced that the NRC has turned a deaf ear on the irrefutable facts that support this powerful statement. As we have independently and jointly reviewed events at the NRC relating to licensing the Vermont Yankee power uprate, our concerns have deepened. Recent correspondence from the NRC leads us to believe that the NRC will not even review the obvious reductions in safety margins that we have identified.

Critiquing the NRC and proving that it was not properly conducting its regulatory oversight duties is not new territory for either one of us. Both of us had to separately turn to the Inspector General's Office in 1993 and in order to force the NRC to perform the job it is statutorily obligated to do by Congress.

- Subsequently, in 1993 Committee Chairman Senator John Glenn queried then NRC Chairman Ivan Selin regarding Mr. Gundersen's

nuclear safety allegations. NRC Chairman Selin responded by saying "... it is true. Everything Mr. Gundersen said was absolutely right; he performed quite a service..."

- And in 1993 Senator Joe Lieberman as Chairman of the Senate Subcommittee responsible for NRC oversight, referred to Paul Blanch as the "Henry Aaron of nuclear whistleblowers" for the role he took in coercing Connecticut's Northeast Utilities and the NRC to be in compliance with significant safety regulations and operating procedures.

Chairman Dworkin, Commissioners, and members of Vermont's Congressional Delegations, please contrast the above statements lauding our contributions to nuclear safety ethics with the following attempts by Entergy and its attorneys to discredit, intimidate, and slander us.

- On April 22, on WPTV coverage of Vermont Yankee's loss of nuclear fuel, Entergy's Rob Williams said, "Arnie Gundersen's statements are completely irresponsible. He's trying to use this as an opportunity to unnecessarily scare the public and further an agenda. Safety and security remain Entergy's top priority."
- On March 11, 2004, Entergy conducted a closed press conference for the sole purpose of slandering Mr. Blanch by stating he did not understand the regulations and that he was only "an electrical engineer, not a nuclear engineer."
- And, on September 17, 2003, Entergy's own attorneys attempted to impeach Mr. Gundersen's sworn testimony in front of the Public Service Board by presenting him with evidence that they had refused to provide during the legitimate discovery process. May we remind you that in response to this attempt to manipulate the legal system, on October 7, the Vermont Public Service Board imposed monetary sanctions in the amount of \$51,000 upon Entergy for, "failure to provide timely and complete discovery"?

We have given significantly of our expertise and time, not for any personal gain as Entergy has alleged, for no one in their right mind would take this type of public abuse and do hours of volunteer work for some sort of perverse public recognition. Mr. Gundersen is a current Vermont resident and a high school math and physics teacher committed to Vermont's youth, while Mr. Blanch is a former Vermont resident who graduated from high school in Vermont, enlisted in the Navy and served in the Navy reserves in Vermont. And, while Mr. Blanch is a Connecticut resident, his siblings and nieces and nephews continue to reside here in Vermont. Our efforts to bring these critical safety issues forward arise from our sincere apprehension for the Vermonters who depend upon Vermont Yankee for a reliable source of electricity and our genuine concern for the safety of all Vermonters in what we believe will be an increased risk of a significant nuclear power plant accident.

In our in-depth review of Vermont Yankee's proposed uprate, there are at least three specific areas where Vermont Yankee's safety margins will be significantly reduced.

The technical terms for these three criteria are defense in depth, protection against single failures and the independence of the three barriers preventing the release of radioactive material in the event of an accident. All of these criteria are specified within 10 CFR 50 and the NRC's interpretations of these requirements are provided within various Regulatory Guides, NRC Generic Letters and other generic communication<sup>1</sup> issued by the NRC.

The NRC has provided you and the residents of Vermont with verbal assurance that the Vermont Yankee power uprate will address all of these requirements. However our review of RS-001 "Review Standard for Extended Power Uprates" shows that this NRC internal review guide fails to address even these aforementioned most basic safety requirements. It is our belief that the NRC has intentionally omitted these regulations from its review criteria for the Vermont Yankee power uprate with the full knowledge that if these regulatory criteria were imposed upon Vermont Yankee (VY) it would not be economically feasible for Entergy to increase VY's power output to 120 percent. Indeed these abovementioned regulatory criterions, which have been deleted from the review process by the NRC, are statutory obligations in the NRC's promulgated regulations sanctioned by Congress. For example, while not explicitly acknowledging this change, Vermont Yankee is altering its licensing basis. In order to uprate in the manner it desires, Vermont Yankee has made no mention to the Public Service Board or interested parties that it will no longer be in compliance with Generic Letter 97-04 which prohibits taking credit for torus overpressure. This is a significant safety concern that has not been adequately reviewed by the NRC nor noticed to the Public Service Board in the ensuing accelerated review process.

NRC's Chairman Diaz has provided your offices and the offices of other elected officials assurances that the proposed uprate will be thoroughly reviewed "against its licensing basis and applicable regulations, providing the NRC with an understanding of the overall condition of the plant" to assure that the plant "does not present an undue risk to the public health and safety and special circumstances are present." While these words appear to indicate that the plant will be in compliance with all NRC regulations, a careful review indicates otherwise. In truth, Vermont Yankee will not be reviewed for compliance with current NRC safety and licensing regulations.

So, while the NRC has stated that the plant will be reviewed against its licensing basis, it has not provided any assurance that the licensing basis will be in complete compliance with all NRC regulations. Nor has Chairman Diaz publicly acknowledged that the safety margins for the proposed uprate of Vermont Yankee are lower than those currently observed at Vermont Yankee. In other words, if Vermont Yankee is permitted to add 400,000 additional horsepower to its 32-year-old plant, it will be with a significantly reduced operating safety margin.

<sup>1</sup> NRC Regulatory Guide 1.1 Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal System Pumps (Safety Guide 1) (ML003739925)

NRC Regulatory Guide 1.174 An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis

NRC Generic Letter 97-04: Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps

Moreover, while the NRC's recent letter to Entergy dated May 28, 2004 purportedly requests additional technical information from Entergy's engineers, it fails to mention or even discuss compliance with the regulations or the NRC's own interpretation of those regulations.

If the NRC is allowed to continue with its present approach, NRC officials will be able to truthfully state that the plant is in compliance with "its licensing basis and applicable regulations". However, in reality, Vermonters will have a plant that is significantly less safe as well as one that does not conform to critical safety regulations including both pre and post Three Mile Island standards. And, the NRC will never be able to assure Vermont officials and its citizens that the plant is in compliance with either the NRC's overall regulations or its own written interpretation of these regulations.

As recently as June 25, 2004, Rick Ennis, the NRC Project Manager for Vermont Yankee responded to a question as to the applicability of the General Design Criteria for Vermont Yankee with a complete public misstatement. Mr. Ennis said, "The VY UFSAR, Appendix F, addresses conformance to the 70 AEC General Design Criteria (proposed GDC's)."

Similarly, on June 16, 2004, William Sherman, Vermont's State Nuclear Engineer, said, "Appendix F of Vermont Yankee's Updated FSAR addresses conformance with the GDC."

On the surface, these two statements by authorized regulatory agents appear to indicate that the conformance to the General Design Criterion can be located in this Appendix. Additionally, these statements also indicate that any non-compliance with the General Design Criteria (GDC) would be expected to be addressed within this specific Safety Analysis Report.

In direct opposition to the above statements by regulatory authorities, our review of this Appendix clearly shows that conformance (and non-conformance) with today's or the 1967 draft GDC is not considered within this Appendix to the Uprate Safety Analysis Report (USAR).

What's more, a cursory review of this Appendix to the latest revision to the Vermont Yankee Uprate Final Safety Analysis Report (VY UFSAR) and the statements made before the Public Service Board, Vermont Yankee is not in adherence with critical and basic design benchmarks. By their statements, the NRC and Vermont's State Nuclear Engineer convey to Public Service Board's Commissioners, Vermont's Congressional Delegation, and the general public that the design standards are addressed in this Appendix when in actuality there are major deviations in the design with respect to the General Design Criterion.

Each of us, Arnie Gundersen and Paul Blanch, have provided sworn testimony before the Public Service Board, have responded to inquiries from the Congressional Delegations,

and have turned over documents to the Office of the Inspector General regarding the proposed power uprate at Vermont Yankee. We can not and will not continue to accept intentionally misleading words from the NRC that the plant will be reviewed "against its licensing basis and applicable regulations, providing the NRC with an understanding of the overall condition of the plant" when in truth the NRC itself has no idea as to what regulations are applicable. We believe that the Public Service Board Commissioners, the Congressional Delegation, and the general public are intentionally being misled by these erroneous statements from the NRC and by Vermont's State Nuclear Engineer.

We implore the Vermont Public Service Board and Vermont's Congressional Delegation to take whatever steps are necessary to force the NRC and Entergy to make Vermont Yankee comply with all design regulations. Our concern is real and very pressing. We will not accept intentionally misleading and deceptive statements like compliance with "its licensing basis and applicable regulations". The NRC refuses to provide information as to what are the "applicable regulations" thereby proving that they are not fulfilling their statutory duty and regulatory obligations.

Frankly, as private citizens, the NRC has turned a deaf ear toward us and toward our legitimate safety concerns. It is our hope that all of you in concert will force the NRC to comply with its statutory obligations as well as its own promulgated regulations. We believe the NRC has a public obligation to identify all "applicable regulations" along with those regulations that are not deemed to be "applicable."

To remedy these concerns, we offer our technical expertise to this Commission and Vermont's Congressional Delegation to assist you in your efforts to formulate and draft legitimate technical questions of the NRC regarding the reduced safety margins of the proposed uprate design. Statutorily you will be within your regulatory authority to demand the answer to said questions put before the NRC. And of course we would offer our assistance in the critical analysis of the NRC's answers to your technical and regulatory questions.

Our intent is to clearly identify that safety margins that have been reduced at Vermont Yankee. From the documents we have read and our review of NRC regulations, we are aware that Vermont Yankee considered and rejected minor technical changes to the plant that would regain this lost margin and protect the health and safety of all Vermonters. Entergy has chosen instead to try to license the plant at reduced safety margins rather than to invest in its safety.

Entergy and the NRC have made much ado about our personal motives. May we remind this commission that neither one of us has anything to gain in pursuing the safe operation of nuclear power reactors. However, should Entergy and the NRC once again attempt to malign us and impinge our credibility, may we remind you that Entergy will make an additional \$20 million dollars per year in profit after uprate from energy sold outside of the State of Vermont. And, should our questions and the NRC's answers become a matter of public record, the NRC itself may be forced by other states to reconsider all the previously granted extended power uprates and license extensions through the



appropriate regulatory lens. Clearly both Entergy and the NRC have substantial motives to play by their own unique set of rules.

Our motive is simple. We want Vermont to remain a safe place to live, with its image of purity and cleanliness intact, and we believe that this Commission and the Congressional Delegation share this goal. Please help us in our pursuit of a safe and reliable energy source for all Vermonters and help us to maintain the pristine Vermont environment upon which our agriculture businesses and tourism industry depend.

Sincerely,

Arnold Gunderson

Paul Blanch

*Original signed by both parties.*