

August 17, 2004

The Honorable Judd Gregg  
United States Senator  
125 North Main Street  
Concord, New Hampshire 03301

Dear Senator Gregg:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter dated June 9, 2004, in which you forwarded a letter from Mr. Charles Butterfield dated May 22, 2004. In his letter, Mr. Butterfield sought your assistance in three matters concerning the power uprate application filed by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., for the Vermont Yankee Nuclear Power Station. He requested that there be a public component to the NRC engineering team inspection, that you urge the NRC to exercise its discretion in favor of formal hearings, and that the NRC include an analysis of all deviations and exemptions that Vermont Yankee has from current nuclear safety standards.

The first request concerns the engineering team inspection that will be performed at Vermont Yankee beginning the week of August 9, 2004. Mr. Butterfield requested that one or more public observers be part of the team and that the observers report directly to your office. The Vermont Yankee inspection will be independent of recent regulatory oversight of Vermont Yankee and will consist of a team leader, three inspectors, and three contractors. The team leader will be from NRC Headquarters. He has extensive experience leading engineering team inspections; no previous involvement or inspection experience at Vermont Yankee; and, in his permanent NRC position, does not report to those responsible for Vermont Yankee oversight. The three contractors have diverse backgrounds in electrical, mechanical, and instrumentation system design; have not been employed by Vermont Yankee or its owner, Entergy; and have not performed contract work for Vermont Yankee or Entergy in the last two years or inspected Vermont Yankee for the NRC within the past two years. The other NRC inspection team members have not been involved in engineering inspections at Vermont Yankee during the past two years. In accordance with our Memorandum of Understanding, the State of Vermont will have an observer present. The NRC does not permit members of the public to participate in inspections for a variety of reasons including radiological, security, and industrial safety concerns. As is normal practice, the NRC staff will document the results of this inspection in a report that will be publicly available. In addition, for this Vermont Yankee engineering inspection, the staff plans to conduct an exit meeting near Vermont Yankee that will be open for public observation to provide the public an additional opportunity to understand the inspection scope and the inspection findings.

The second request concerns the recent changes to Title 10 of the *Code of Federal Regulations* (10 CFR Part 2) governing public access to formal licensing hearings. Mr. Butterfield is concerned that, under the new rules, "the NRC may curtail or eliminate discovery, cross examination, and all other adjudicatory tests of truth." On January 14, 2004, the NRC adopted new rules in 10 CFR Part 2 which govern the conduct of its adjudications.

The Commission's purpose in adopting the new Part 2 rules is to reduce the duration, cost, and burden of hearings to all parties, while enhancing public participation in NRC proceedings.

Under the new Part 2 of 10 CFR, most hearings, such as any that might be conducted in regard to reactor license amendment proceedings such as that for the Vermont Yankee power uprate, would be conducted under the less formal procedures of 10 CFR Part 2, Subpart L. A significant portion of the NRC's proceedings in the last 10 years has been conducted under less formal procedures. Subpart L requires each party to disclose to all other parties a broad range of information and material relevant to the contested issues in the hearing and represents an improvement over the process of discovery under the old Part 2. Every party in a Subpart L hearing has a right to present relevant and material testimony. Finally, although parties do not have an automatic right to conduct cross-examination under Subpart L, parties may request permission to use cross-examination, and the presiding officer may grant the request if he or she determines that it is "necessary to ensure the development of an adequate record for decision." In summary, the Commission believes that the adjudicatory procedures in 10 CFR Part 2 will ensure that hearings are fair and produce adequate records that support decisions made by the NRC.

Mr. Butterfield notes that design criteria, safety standards, and regulations have evolved since Vermont Yankee began operating in 1972 and asks that the NRC analyze and certify what effects, if any, deviations from current standards at Vermont Yankee have on the risk to the public. When the NRC updates its regulations as a result of improvements in technology and knowledge gained from operational experience, NRC conducts an evaluation to determine if the safety benefit of the new requirement is one which should be imposed on existing licensees. For example, at the time the construction permit for Vermont Yankee was issued, the final General Design Criteria (GDC) had not been issued and, therefore, the application was evaluated on a plant-specific basis and determined to be acceptable from the standpoint of public health and safety. When the Commission subsequently adopted the final GDC, it stressed that they were not new requirements, but were promulgated to articulate more clearly the licensing requirements and practices in effect at that time. The Commission also determined that imposing the final GDC on plants (such as Vermont Yankee) which had received their construction permits or operating licenses before May 21, 1971, when the final GDC were issued, would provide little or no safety benefit. All exemptions from NRC regulations that have been approved for Vermont Yankee were evaluated at the time they were requested and determined to be permissible based on their acceptably low effect on plant safety, following specific criteria in the regulations for evaluating requests by a licensee to design or operate a plant in a way that is different from the regulations. The NRC will not approve such an exemption if it presents at undue risk to the public health and safety.

I hope this letter satisfactorily addresses the concerns of your constituent.

Sincerely,

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Nils J. Diaz