

October 15, 2004

The Honorable John F. Kerry
United States Senator
One Bowdoin Square
Tenth Floor
Boston, MA 02114

Dear Senator Kerry:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC or the Commission) to your letter dated August 19, 2004, by which you forwarded a letter from the Select Board of the Town of Gill, Massachusetts (the Board) dated August 11, 2004. In its letter, the Board sought your assistance in the filing of a formal intervention by Massachusetts Attorney General Thomas Reilly in regard to the proposed power uprate at the Vermont Yankee Nuclear Power Station (Vermont Yankee). The Board also sought your support in requesting an extension of the filing deadline for an intervention.

On July 1, 2004, the NRC published a notice in the *Federal Register* (69 FR 39976) regarding an application submitted by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Entergy or the licensee), for a 20-percent power uprate of Vermont Yankee. This notice provided a 60-day period for the public to request a hearing. The period ended on August 30, 2004. The NRC received separate requests from the Governor of the State of Vermont and Vermont's congressional delegation to extend the period to request a hearing. By order dated August 18, 2004, the Commission denied the extension requests. A copy of that Order is enclosed.

The NRC received timely hearing requests from the Vermont Department of Public Service and the New England Coalition. These requests have been referred to the Atomic Safety and Licensing Board Panel. The Board will meet with the licensee, the Vermont Department of Public Service, the New England Coalition, and the NRC staff on October 21, 2004, in Brattleboro, Vermont. The Board will hear oral argument from the participants on such issues as standing, admissibility of contentions, and other preliminary issues that may assist the Board in deciding such matters.

I have enclosed a response to issues raised in the Board's letter to you. I have also enclosed a copy of a response that we sent directly to the Board in reply to a recent letter sent to the NRC.

Sincerely,

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosures: 1. Order Denying Extension Request
 2. Response to Issues Raised by the Select Board, Town of Gill
 3. Letter to the Town of Gill dated September 17, 2004

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RESPONSE TO ISSUES RAISED BY
THE SELECT BOARD, TOWN OF GILL, MASSACHUSETTS
RE: VERMONT YANKEE NUCLEAR POWER STATION

(1) Age of Vermont Yankee Nuclear Power Station (Vermont Yankee)

Board issue: The Select Board of the Town of Gill, Massachusetts (the Board), stated its belief that Vermont Yankee is not a suitable candidate for a 20-percent increase in power because Vermont Yankee is 33 years old and has operated longer than any other plant in New England.

NRC response: Consistent with NRC regulations, the licensee for Vermont Yankee was granted a 40-year operating license in 1972. The NRC requires licensees to test and monitor the condition of safety equipment and to keep that equipment in reliable operating condition. The NRC also requires licensees to correct design deficiencies that could impact plant safety. Over the years, the licensee has replaced certain equipment and overhauled other plant equipment. Where appropriate, the licensee has also upgraded equipment or installed new equipment to replace or supplement original systems.

(2) Containment overpressure

Board issue: The proposed power uprate for Vermont Yankee credits increased pressure in containment following an accident to ensure that emergency core cooling and containment heat removal system pumps will have adequate net positive suction head (NPSH) to function properly. The Board stated that “NRC’s own guidelines explicitly recommend against relying on elevated pressure in the containment.”

NRC response: The NRC's guidance regarding whether it is acceptable to credit containment accident pressure (also known as “containment overpressure”) has evolved over the years. The current guidance is contained in Regulatory Guide (RG) 1.82, Revision 3, “Water Sources for Long-Term Recirculation Cooling Following a Loss-Of-Coolant Accident,” dated November 2003. As discussed in RG 1.82, Regulatory Position C.1.3.1.2 (for pressurized water reactors) and Regulatory Position C.2.1.1.2 (for boiling water reactors), under certain circumstances, credit for containment accident pressure may be allowed. The NRC will allow this credit to be taken only if there is reasonable assurance that safety will be maintained.

(3) Assessment criteria

Board issue: The Board stated that the assessment process underway has not identified the criteria against which the plant is to be assessed.

NRC response: This concern relates to the engineering inspection that was recently performed at Vermont Yankee. As is the case for any inspection, potential findings are assessed against the plant-specific design and licensing basis. The design and licensing basis, for any plant, is located in many documents (e.g., calculations, drawings, Final Safety Analysis Reports, Technical Specifications, operating licenses, Orders, Quality Assurance programs, emergency plans, security plans, etc.). These documents are available at the plant for review by the NRC's inspectors.

(4) Compliance with current standards

Board issue: With respect to the proposed power uprate, the Board stated that Vermont Yankee has not demonstrated compliance with today's standards.

NRC response: The NRC frequently updates the regulations as a result of improvements to technology and based on operating experience. When requirements are changed, the NRC applies a rigorous evaluation standard (see 10 CFR 50.109, the "backfitting" rule) to determine if the safety benefit of the new requirements justifies imposing the changes on existing licenses. Therefore, there may be certain requirements in our regulations that the NRC has determined do not apply to Vermont Yankee. The NRC will not approve the Vermont Yankee uprate application unless we conclude that the facility can operate safely at uprated conditions and that the licensee has demonstrated that the facility meets applicable requirements.

(5) Independent observers

Board issue: The Board states that "the NRC is excluding independent observers from the review process."

NRC response: This concern relates to the engineering inspection that was recently performed at Vermont Yankee. The Vermont Yankee inspection, which was part of a pilot program, was an independent review, with an independent team leader, three NRC inspectors, and three contract inspectors. The team leader was from the NRC headquarters office which is currently responsible for the overall engineering pilot program effort. He has extensive experience leading engineering team inspections and no previous involvement or inspection experience at Vermont Yankee. The three contractors have diverse backgrounds (in electrical engineering, mechanical engineering, and in instrumentation) and have not been employed by Vermont Yankee or its owner, Entergy, for the last 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 with the State of Vermont, there was also an observer from the State of Vermont. The NRC does not permit members of the public to participate in our inspections for a variety of reasons, including radiological and industrial safety concerns. As is our normal practice, we will document the results of this inspection in a report that will be publicly available. In addition, for this Vermont Yankee engineering inspection, we plan to conduct an exit meeting that will be open to the public. The meeting will provide the public an additional opportunity to understand the inspection scope and our inspection findings. Members of the public will be able to ask questions of the NRC inspection team at that time.

(6) Recent events

Board issue: The Board referred to a series of recent events at Vermont Yankee, including the discovery of cracks in a key component, the misplacement of nuclear fuel, a transformer fire, and problems with the emergency notification system. The Board stated that these events bring into question the effectiveness of current plant operation and management and further undermine public confidence in the safety of the facility.

NRC response: In each event mentioned, the NRC confirmed that the licensee took prompt corrective action and performed thorough investigations. The NRC inspects facility operations

on an on-going basis and semi-annually determines if the cumulative results of our performance assessments indicate that additional regulatory oversight is required. Our most recent cumulative review of inspection findings and performance indicators concluded that Vermont Yankee did not require additional NRC oversight. The inspection findings from our inspections of these events are being finalized and will be included in our next semi-annual assessment.

Additional information on the specific events mentioned and the status of the NRC staff's review of the requested uprate can be found on the NRC's Web page for Vermont Yankee at <http://www.nrc.gov/reactors/plant-specific-items/vermont-yankee-issues.html>. Additional information on the NRC Reactor Oversight Process and NRC assessment results for Vermont Yankee can be found at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html>.