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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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MEETING OF

PETITION REVIEW BOARD

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THURSDAY

AUGUST 26, 2004

+ + + + +

DOCKET NO. 50-271

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The meeting met via teleconference, Rick
Ennis presiding.

P R O C E E D I N G S

1
2 MR. ENNIS: Paul Blanche (phonetic) and
3 Arnie Gunderson (phonetic) are you on the line yet?

4 MR. GUNDERSON: Yes, we are.

5 MR. ENNIS: Are both of you in the same
6 location?

7 MR. GUNDERSON: No.

8 MR. ENNIS: Okay. Who from Entergy is on
9 the line?

10 MS. DeFLUCUS: You have Rhonda DeFlucus
11 from Vermont Yankee.

12 MR. ELMERS: John Elmers (phonetic) from
13 the White Plains office.

14 (Inaudible.)

15 MR. ENNIS: Paul and Arnie do you have
16 everybody you need?

17 MR. GUNDERSON: Paul and Arnie only need
18 Paul and Arnie.

19 MR. BLANCHE: We are the participants.
20 There might be other people listening.

21 MR. ENNIS: Okay. Entergy, is everybody
22 on the line that you're expecting?

23 MS. DeFLUCUS: Yes, thank you.

24 MR. ENNIS: Okay, I guess at this point
25 we'll get started. My name is Rick Ennis (phonetic).

1 I'm the Project Manager at NRC Headquarters in
2 Rockville, Maryland, for Vermont Yankee.

3 Today I'm acting as the Petition Manager
4 since Donna Skay, the Petition Manager for this
5 specific 2.206 petition is out of the office.

6 At this point, I'd like to turn it over to
7 Jim Lyons (phonetic), who is the Petition Review Board
8 Chairman.

9 (Inaudible.)

10 MR. LYONS: I'm Jim Lyons. I'm the Deputy
11 Director of the Division of Licensing Project
12 Management in the Office of NRR.

13 MR. WALKER: Chavone Walker (phonetic),
14 just sitting in.

15 (Inaudible.)

16 MR. BURKE: Gary Burke (phonetic), Project
17 Director, NRR.

18 MR. PETTIS: Bob Pettis (phonetic), Plant
19 Support Branch.

20 MR. HOLDEN: Cornelius Holden (phonetic),
21 Project Director, NRR.

22 MR. ROLAND: Bill Roland (phonetic),
23 Project Director, NRR, power up rate process only.

24 MR. ENNIS: NRC in Region I?

25 MR. ANDERSON: It's Cliff Anderson

1 (phonetic), Branch Chief, Branch 5, with
2 responsibility for Vermont.

3 MR. SHAND: Leo Shand (phonetic), NRC
4 Region I, Public Affairs.

5 MR. ZELLIS: Ed Zellis (phonetic), NRC,
6 Region I, Branch 5.

7 MR. ENNIS: Once more, Entergy, could you
8 list everybody that's there?

9 MS. DeFLUCUS: Entergy, Rhonda DeFlucus at
10 Vermont Yankee.

11 MR. McCULLOUGH: Travis McCullough
12 (phonetic), in Pipeline.

13 MR. ELMERS: Chad Elmers (phonetic), White
14 Plains.

15 MR. ENNIS: Okay. And Paul and Arnold?

16 MR. GUNDERSON: Right. I'm on.

17 MR. BLANCHE: And Paul is here.

18 MR. ENNIS: Okay. Are there any other
19 interested parties that are on beside either Entergy,
20 the NRC, or the petitioners?

21 MR. ROCKBAUM: Dave Rockbaum (phonetic)
22 with the Union of Concerned Scientists.

23 MR. BLOCK: Jonathan Block (phonetic),
24 attorney for a number of the different organizations
25 that might be involved here.

1 MR. ALEXANDER: Peter Alexander (phonetic)
2 with New England Coalition.

3 MR. WEI: Orlick Wei (phonetic), just a
4 private party.

5 MS. LAURI: Carolyn Lauri (phonetic) from
6 the Battleboro Reformer (phonetic).

7 MS. SMALL: Susan Small (phonetic) here
8 from the Rutland Herald (phonetic).

9 MR. SHADOWS: Ren Shadows (phonetic) with
10 the New England Coalition.

11 MR. ENNIS: Anyone else?

12 (No response.)

13 MR. ENNIS: Okay, at this point I'd like
14 to turn it over to Jim Lyons.

15 MR. LYONS: Thank you, Rick.

16 The subject of this conference call is a
17 10 CFR 2.206 petition submitted by Mr. Paul Blanche
18 and Mr. Arnold Gunderson dated July 29th, 2004
19 pertaining to the Vermont Yankee Nuclear Power
20 Station.

21 Petitioners have requested that the NRC
22 take enforcement action against Entergy, the licensee
23 for Vermont Yankee.

24 Specifically the petitioners requested
25 that the NRC issue a demand for information requiring

1 Energy to provide information that clearly and
2 unambiguously describes how Vermont Yankee complies
3 with the general design criteria in 10 CFR 50,
4 Appendix A, and I'll refer to the general design
5 criteria from now on as just GDC, it just makes it a
6 lot easier, or the draft GDC as published in the
7 Atomic Energy Commission in 1967.

8 The petition indicated that this
9 information was essential to the NRC's review of the
10 proposed Vermont Yankee power up rate and the NRC's
11 engineering inspection at Vermont Yankee. Both of
12 these efforts are presently in progress.

13 The NRC issued a letter to the petitioners
14 that the NRC will not treat this request under 10 CFR
15 2.206 process because these issues can be addressed
16 through the ongoing licensing proceeding for the
17 proposed power up rate.

18 This decision was based on the guidance in
19 the NRC Management Directive 8.11 review process for
20 10 CFR 2.206 petitions and it's found in the Handbook,
21 Part 3, in Sections 2.1.a.iii.

22 In addition, as discussed in our letter to
23 the petitioners, it's clear that Vermont Yankee was
24 licensed to the draft GDC published by the Atomic
25 Energy Commission in 1967.

1 With respect to the Vermont Yankee power
2 up rate license amendment request, the licensee has
3 provided the information the NRC needs with respect to
4 which GDC is applied to each of the specific technical
5 review areas covered by the NRC review.

6 With respect to the engineering inspection
7 that is currently being performed, there are methods
8 available to the inspection team to obtain additional
9 information regarding the plant design and licensing
10 basis if we need it.

11 Therefore, that renders a demand for
12 information unnecessary.

13 This teleconference is being held in
14 response to a request from the petitioners to address
15 the Petition Review Board. The purpose of this call
16 is to allow the petitioners to provide any additional
17 or clarifying information that could effect the NRC's
18 decision not to treat this request under the 10 CFR
19 2.206 process.

20 This is also an opportunity for the NRC
21 staff and the licensee to ask any clarifying
22 questions.

23 The purpose of this teleconference is not
24 to debate the merits of the NRC's decision.

25 Following this phone call, the Petition

1 Review Board will meet to discuss the comments
2 provided during this call. A letter will be sent to
3 the petitioners documenting our review and
4 dispositioning their comments.

5 The teleconference is being transcribed so
6 it will help if anyone making a statement first state
7 their name clearly. The transcript will be made
8 publically available.

9 Only the petitioners, the licensee, and
10 the NRC may participate during this call. Other
11 interested parties are invited to listen in, however
12 they may not provide any comments or questions.

13 We request that the petitioners keep their
14 remarks to about 30 minutes. And so at point, I'd
15 like to turn it over to Mr. Blanche and Mr. Gunderson.

16 MR. BLANCHE: I'm going to -- at this
17 point, I'm going to let Arnie start off. And then I'm
18 going to pick up. And then Arnie will summarize at
19 the end.

20 MR. GUNDERSON: Okay. Thank you.

21 This is Arnie Gunderson calling. The
22 issue is not which GDC applies, whether it's the draft
23 70 or the final 64. It really doesn't matter to us
24 and we understand that the draft GDCs do apply. So
25 that's really not on the table. And I think all

1 parties are in agreement on that.

2 We have received a rejection letter
3 already and it's really broken into two parts. And
4 I'll address mainly one and Paul the other.

5 It is -- you suggest that we have the
6 right and the opportunity to file as part of the
7 hearing process on the up rate, which is open for
8 another week approximately. It's our position that
9 the compliance with the GDCs applies to the plant as
10 it exists today.

11 And it's exacerbated by the up rate but,
12 in fact, the issues don't go away with an up rate. We
13 simply, after a review of voluminous information,
14 cannot determine whether or not Vermont Yankee is in
15 compliance with the draft general design criteria.

16 So it's a problem now, which is
17 exacerbated by the 400,000 extra horsepower that the
18 plant will be cranking out. But it's clearly a
19 problem of the existing license.

20 So we will not be availing ourselves of
21 the hearing process.

22 On top of that, the hearing process for
23 individuals is costly and incredibly burdensome. And
24 to the best of my knowledge, there's been no
25 individual who has ever successfully intervened in the

1 hearing process. So that, you know, neither Paul nor
2 I will be filing as interveners in the -- before
3 August 30th on this matter.

4 And again our position is pretty clear
5 that the general design criteria are vague, ambiguous
6 -- the compliance with the general design criteria are
7 vague and ambiguous right now. And are just
8 exacerbated by the up rate.

9 This is -- we really requested something
10 that I consider to be quite simple. And basically if
11 the NRC's right and that Vermont Yankee has clearly
12 and unambiguously addressed all the 70 of the draft
13 general design criteria, it should be simple for all
14 parties to clarify this situation.

15 You know a 15-minute letter from the NRC
16 to Vermont Yankee saying do you or do you not meet the
17 70 design criteria that applied when the plant was
18 built. And if Vermont Yankee, in fact, does have it,
19 a simple letter back saying yes we do and here's proof
20 that we meet the 70 draft design criteria or we take
21 exemption to certain ones for certain issues.

22 The best example we have of a plant, a
23 pre-GDC plant doing just that is Prairie Island.
24 Prairie Island has a very good matrix of what the GDCs
25 were -- what the draft GDCs were and their compliance.

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1 And we just can't find anything similar to that on the
2 docket.

3 So, again, I'm going to hand it over to
4 Paul now to talk about the -- whether or not we view
5 the information as clear and unambiguous. But we
6 certainly saw this as a simple request and certainly
7 not something that should have taken all of the man
8 hours that have already been put in.

9 And if Vermont Yankee in fact did meet the
10 general design criteria, it would be simple for
11 Vermont to verify that as well.

12 And, you know, I'm sorry this is becoming
13 a monstrous issue but, in fact, it's a simple question
14 with a simple solution.

15 Okay, I'm going to turn it over to Paul
16 now who is going to talk about clear and unambiguous.

17 MR. BLANCHE: Yes, okay. This is Paul
18 Blanche. And I'm going to be talking about a little
19 more than clear and unambiguous.

20 But just to clarify what Arnie just stated
21 as far as the response, what we are really looking for
22 is how does the plant comply with the 70 GDC and how
23 does it deviate? Or does it deviate from any of the
24 general design criteria, and especially General Design
25 Criteria 41, which deals with the net positive suction

1 head.

2 The NRC rejected our petition by stating
3 compliance with the GDCs is clear and unambiguous.
4 We, both Arnie and I, contend that this is an
5 inaccurate statement. Therefore, there is no basis
6 for the rejection. And we are requesting that you
7 substantiate this statement.

8 All we are requesting is that the NRC
9 identify to us where compliance and deviations from
10 the GDCs are addressed within the licensing basis.

11 So far the NRC has refused to provide us
12 with this vital information and has sent us around in
13 circles all leading to dead ends.

14 How I got into this, I initially
15 identified problems with compliance with draft GDC 41
16 and Safety Guide 1 dealing with the net positive
17 suction head. I've searched through the entire FSAR,
18 2,229 pages, and could not locate where this was
19 addressed.

20 I asked Mr. Ennis where I could find
21 compliance with the general design criteria. Mr.
22 Ennis, in an e-mail, told me that compliance is
23 addressed in Appendix F to the UFSAR.

24 Appendix F, when you read it carefully,
25 states that "design conformance statements to the

1 current facility design has not be evaluated." And
2 also that it's only in there for historic purposes.
3 Appendix F has no meaning whatsoever.

4 Both Arnie and I submitted the 2.206 as
5 the only means of obtaining this vital information.
6 Last week or the week before, I received a phone call
7 from Rick Ennis stating that the petition was going to
8 be rejected.

9 Mr. Ennis also stated to me that Donna
10 Skay had offered us an opportunity to participate in
11 a Petition Review Board and that we declined this
12 invite. I do not recall ever having a conversation
13 with Ms. Skay.

14 So 2.206 Petition impacts the present
15 compliance with the regulation and is not necessarily
16 impacted by the EPU or extended power up rate.
17 However, the extended power up rate should not be
18 considered until the NRC and the public are made aware
19 of Vermont Yankee's regulatory compliance.

20 The NRC rejected our petition by stating
21 that compliance with the GDCs is clear and
22 unambiguous. I contend that this is an inaccurate
23 statement. Therefore, there is no basis for the
24 rejection. And I'm requesting that you substantiate
25 this statement.

1 All we are requesting that the NRC
2 identify to us where compliance and deviations from
3 the general design criteria are addressed. So far,
4 the NRC has refused to provide us with this vital
5 information.

6 I've reviewed the entire FSAR and I
7 believe it to be Revision 18, the latest proposed
8 revision, and only found discussions related to two of
9 the GDCs. And these discussions related to the final
10 GDCs and not the draft even though the final is
11 supposedly not applicable to the present design.

12 I have copied the FSAR electronically and
13 I am reasonably sure of the results of my search. I
14 have reviewed many other FSARs, including the Prairie
15 Island, the Millstone, and many others, and find that
16 each and every one of them that I've reviewed contain
17 a section addressing compliance and deviations from
18 the GDCs and regulatory compliance.

19 We formally request the NRC grant our
20 petition and if rejected, provide us with accurate
21 information as to where the regulatory compliance is
22 addressed.

23 Unless Vermont Yankee can clearly
24 demonstrate compliance with the most basic safety
25 criteria, there is little assurance that the residents

1 around Vermont Yankee are protected by anything more
2 than the intentionally misleading NRC's statements
3 provided to us.

4 I firmly believe that the NRC has a
5 statutory responsibility to provide assurance to the
6 public that Vermont Yankee is in compliance with all
7 regulations. And by rejecting this petition, it is
8 failing to fulfil this vital responsibility.

9 If you believe compliance with the GDCs is
10 clear and unambiguous, I would like you now to provide
11 me an example of where I could locate where compliance
12 with GDC, for example, GDC 45, 47, and 48 could be
13 located. I am not able to locate it in any of the
14 searches of ATOMS (phonetic) or any of the other
15 documents that I have.

16 And we just need some clear and
17 unambiguous answers to our questions. And that's all
18 I have to say right now.

19 MR. GUNDERSON: This is Arnie Gunderson
20 again.

21 I think the one last item that needs to be
22 mentioned is that in the text of your rejection
23 letter, you pin your hopes on Appendix 4, Attachment
24 4 to the January 23rd letter from Vermont Yankee. And
25 it's got a BDY number and I'm on Acrobat now trying to

1 find it.

2 But on January 31st, Attachment 4, Vermont
3 Yankee re-filed for the up rate. And they put -- they
4 gave you -- it's called Attachment 4. And there's an
5 Insert 1, which is the BWR Template Safety Evaluation.
6 And they modified the BWR Template Safety Evaluation
7 to address not the GDC but the draft GDC. And that's
8 all well and good.

9 However, what that attachment is is an NRC
10 document which has been fed back to the NRC with a
11 different GDC number in it. There is no statement on
12 the record that states that Vermont Yankee meets that
13 GDC.

14 So what's happening in Attachment 4 is
15 that -- to the January 31st letter, is that Vermont
16 Yankee has fed back to the NRC the NRC's very own
17 document. And is expecting now for the NRC to pour
18 holy water on an NRC document.

19 There's no statement in Attachment 4 to
20 the January 31st letter which states that Vermont
21 Yankee complies with the GDC. And, in fact, again, if
22 you go back to the appendix in the UFSAR, they state
23 that the GDCs have not been evaluated. I needed to
24 close the loop on that.

25 MR. BLANCHE: Yes, and I want to just add

1 one more comment. What Entergy is doing, or Vermont
2 Yankee is doing, is they want the NRC to state that
3 they are in compliance with the GDCs without them ever
4 stating that they are in compliance.

5 And I'd like to hear from Entergy and the
6 NRC as to the statements with respect to compliance
7 with the general design criteria.

8 MR. GUNDERSON: So Insert 1 and Insert 2
9 are an NRC template safety evaluation. And what
10 Entergy has done as been to revise an NRC template and
11 put different GDCs in to reflect the draft versus the
12 final.

13 And, again, it really doesn't matter to
14 either Paul or I which GDC is in there. The fact of
15 the matter is that we can find nothing in the UFSAR or
16 in the January 31st letter which says that they comply
17 with the 70 general design criteria.

18 And, again, if you go to a perfect example
19 of one that we feel works is Prairie Island, which
20 specifically in their UFSAR, they specifically say
21 they comply. And when they don't comply, they note
22 what the exception is.

23 There is nothing on this entire docket
24 which allows us -- you know we're not exactly lay
25 people here guys -- to review it to see if the plant

1 meets the draft GDCs. And, in fact, when we do review
2 what is on the docket, we come to exactly the opposite
3 conclusion.

4 That, in fact -- and I'll use Vermont
5 Yankee's last few words here as I'm pretty much done,
6 in the UFSAR, Vermont Yankee says -- and we had this
7 in the text of our letter, too, which surprises us
8 that you guys would say it's clear and unambiguous
9 when Vermont Yankee is telling you, "the applicability
10 of historic design criteria conformance statements to
11 the current facility design has not been evaluated."

12 Vermont Yankee has not evaluated its
13 existing design -- forget the up rate -- its existing
14 design to see if it meets the GDCs. And yet you are
15 allowing them to leverage that onto the up rate, which
16 is certainly going to exacerbate any problems which
17 may have occurred earlier.

18 MR. BLANCHE: And again this is Paul
19 Blanche. I don't have the verbatim words but
20 somewhere in Appendix F it states that compliance with
21 the general design criteria is addressed in the body
22 of the UFSAR. I was unable to locate anywhere in that
23 document where compliance with other than two new GDCs
24 is even addressed.

25 MR. GUNDERSON: And again, it's

1 fascinating. Even the ones that Vermont Yankee does
2 address, they don't compare to the old draft GDCs but
3 therein discussing how they comply with the new GDCs.

4 So in the two examples we've been able to
5 find where Vermont Yankee addresses compliance with
6 GDCs, they talk about the new GDCs. In all of the
7 other -- we have 2,200 pages in the computer and we
8 searched for the GDCs. And we cannot find, you know,
9 I guess 68 of the 70 GDCs being specifically addressed
10 to see if they meet them.

11 MR. BLANCHE: The only GDCs that are
12 addressed in the body are Criteria 19, which is
13 control room habitability, and General Design Criteria
14 12, and I'm not sure what that is. But that's all
15 I've been able to find.

16 MR. GUNDERSON: I really have nothing to
17 summarize. You know we've got -- I think our petition
18 was pretty clear. And I think we've certainly been
19 able to expand on that by speaking to you guys for
20 about 20 minutes.

21 But, again, just to summarize, it's a
22 simple problem. It's a letter from the NRC. It takes
23 15 minutes to write. Do you guys comply with the
24 GDCs? Yes? No? Tell us where.

25 And given that the NRC feels that it's

1 clear and unambiguous that Vermont Yankee does comply,
2 it should be a 15-minute letter back from Vermont
3 Yankee saying yes we comply with the 70 general design
4 criteria.

5 But after a thorough review by two
6 relatively competent guys here, we can't prove that
7 the existing design, let alone the up rate, complies
8 with the general design criteria.

9 MR. BLANCHE: And this engineering
10 inspection, I don't know how meaningful that could be
11 if the NRC itself doesn't know how the plant was
12 designed, which is clear from the misinformation I've
13 been getting from the NRC.

14 So any meaningful inspection of the
15 facility would have to know what its design basis is.
16 And the general design criteria is the foundation of
17 all the regulations.

18 MR. GUNDERSON: Okay, I'm off. Paul, I
19 have nothing else to say. Do you?

20 MR. BLANCHE: No, I'd like to hear a
21 response from Entergy and the NRC.

22 MR. ENNIS: This is Rick Ennis. Does
23 Entergy have any questions or comments they would like
24 to make?

25 MR. DAVIDSON: Yes, Rick. This is Jim

1 Davidson (phonetic) at Entergy Nuclear Operations. We
2 have no comments.

3 (Inaudible.)

4 MR. GUNDERSON: So I guess now, as I
5 understood your opening -- this is Arnie Gunderson --
6 as I understood your opening remarks, I guess you will
7 respond, either reopening our 2.206 or rejecting our
8 2.206 based on this conversation?

9 PARTICIPANT: Yes, that's what we will do.

10 MR. ENNIS: This is Rick Ennis and I'd
11 like to ask a question from petitioners. How do your
12 concerns relate to specific regulatory requirements
13 for a licensee to provide information in the FSAR or
14 to provide information to the NRC with respect to a
15 license amendment request?

16 MR. BLANCHE: Okay. I believe, I could be
17 wrong, but 50.71E requires accurate information to be
18 provided in periodic updates to the FSAR, and NEI 9803
19 and Regulatory Guide 1.81.

20 MR. GUNDERSON: No, Paul, it's Regulatory
21 Guide 1.181.

22 MR. BLANCHE: Right.

23 MR. GUNDERSON: It was issued in September
24 of '99. And the objective on the top of the second
25 page of Regulatory Guide 1.81 states:

1 "The objectives of 10 CFR 50.51E are to
2 ensure that licensees maintain the information in the
3 UFSAR to reflect the current status of the facility,"
4 the current status of the facility, "and address new
5 issues as they arise so that the UFSAR can be used as
6 a reference document in safety analysis."

7 And it's our position that based on that
8 reg guide, we can't use the UFSAR as a reference
9 document in a safety analysis. And we're pretty smart
10 dudes. And it looks to us like Entergy, the existing
11 UFSAR -- forget the up rate -- the existing UFSAR as
12 well as any new issues which they're attempting to
13 install, the up rate on the plant, have not been
14 addressed in the UFSAR. So we cannot use it as a
15 reference document in safety analysis.

16 MR. BLANCHE: And I'd like to state
17 something for the record that the laughter that was
18 heard in the background did not come from myself and
19 I don't believe it came from Mr. Gunderson either.

20 MR. GUNDERSON: No, it wasn't me either.

21 MR. LEWIS: This is Steve Lewis. We
22 really didn't -- we're not influenced by any laughter
23 that was taking place. So don't be concerned about
24 that.

25 MR. BLANCHE: I just wanted to make sure

1 that we're not laughing. This is not a joking matter
2 to me.

3 MR. LEWIS: No, we're not laughing here
4 either.

5 MR. GUNDERSON: Okay, Paul, I have nothing
6 else to say. Are you clear?

7 MR. BLANCHE: I have nothing else to say.
8 NRC? Anything else?

9 MR. ENNIS: We have nothing else. Thank
10 you very much --

11 MR. BLANCHE: Are we going to get a call
12 or a letter on this?

13 MR. ENNIS: -- for the information that
14 you provided today. And the Petition Review Board
15 will consider that as we continue to deliberate.

16 MR. BLANCHE: Okay. That's all I have.
17 I thank you very much for your time.

18 MR. GUNDERSON: Thank you.

19 MR. ENNIS: Thank you.

20 (Whereupon, the foregoing matter was
21 concluded.)

22

23

24

25