

August 16, 2005

Mr. Paul Blanch
135 Hyde Road
West Hartford, CT 06117

Mr. Arnold Gundersen
376 Appletree Point Road
Burlington, VT 05401

Dear Messrs. Blanch and Gundersen:

This letter responds to the petition you filed with Mr. Luis Reyes, Executive Director for Operations at the Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on July 29, 2004, as supplemented on December 8, 2004. In your petition you requested that the NRC issue a Demand for Information requiring Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Entergy or the licensee) to provide information that clearly and unambiguously describes how Vermont Yankee Nuclear Power Station (Vermont Yankee) complies with the General Design Criteria (GDC) specified in 10 CFR Part 50 Appendix A, or the draft GDC published by the Atomic Energy Commission in 1967. Your petition stated that this information is essential for two NRC regulatory activities at Vermont Yankee: (1) the NRC's review of Entergy's application for an extended power uprate (EPU), and (2) the NRC's engineering assessment.

In a letter to you dated August 20, 2004, the NRC stated that the staff would not treat this request under the 10 CFR 2.206 process because the issues could be addressed through the ongoing licensing proceeding related to the application for an EPU. The period during which a hearing could be requested closed on August 30, 2004. The staff noted that, in accordance with 10 CFR 2.1205(1)(2), if a petition to intervene and request a hearing in a licensing proceeding does not satisfy the legal requirements for a hearing or intervention, the Atomic Safety and Licensing Board Panel (ASLBP) or the Presiding Officer may refer the request to the 10 CFR 2.206 process, in which case, the NRC may accept it for review under 10 CFR 2.206. In response to your request for immediate action due to the imminent performance of the Engineering Team Inspection in August 2004, the letter stated that other methods are available to the inspectors to obtain design basis information, rendering a Demand for Information unnecessary for the purposes of the inspection.

By teleconference on August 26, 2004, you discussed the petition with the NRC's Petition Review Board. This teleconference was transcribed and the transcript was treated as a supplement to the petition.

On August 30, 2004, the New England Coalition filed a request for a hearing related to the proposed Vermont Yankee EPU. Among the contentions submitted was a contention that the licensee had failed to maintain adequate documentation to determine design basis conformance. This contention, for which Mr. Blanch provided a supporting statement, was similar to the concern raised in your 10 CFR 2.206 petition. By order dated November 22,

2004, the ASLBP declined to admit this contention for hearing. The NRC staff subsequently decided to accept the petition for review pursuant to 10 CFR 2.206, as discussed in the NRC's letter to you dated January 17, 2005.

In your letter to Chairman Diaz dated December 8, 2004, you raised concerns about Vermont Yankee's conformance with its design basis and compliance with applicable NRC regulations. In an e-mail dated December 9, 2004, from Mr. Blanch to Mr. Richard Ennis, the NRC's Project Manager for Vermont Yankee, Mr. Blanch requested that the December 8, 2004, letter be treated as a supplement to the petition. My letter to you dated December 29, 2004, stated that the NRC would respond to the issues in your letter related to the design basis at Vermont Yankee in conjunction with the response to your petition.

By letter dated May 13, 2005, the NRC staff requested Entergy to provide information related to the petition. Entergy responded by letter dated June 14, 2005, and the information provided was considered by the staff in its evaluation of the petition.

The NRC staff sent a copy of the proposed Director's Decision to you and to the licensee for comment by letters dated May 17, 2005. The staff did not receive any comments on the proposed Director's Decision.

The final Director's Decision addresses several issues related to the Vermont Yankee design and licensing basis including: (1) whether the licensee's designation of Appendix F of the Updated Final Safety Analysis Report (UFSAR) as "historical information" meets the intent of 10 CFR 50.71(e) regarding maintenance of design basis information and (2) whether a compilation of Vermont Yankee's current design conformance to the draft GDCs is necessary for licensing reviews and inspections.

With respect to the first issue, the NRC staff concluded that the designation of UFSAR Appendix F as historical information is consistent with the applicable industry guidance, and would meet the intent of 10 CFR 50.71(e) regarding maintenance of design basis information, if the relevant information, consistent with the definition of "design bases" in 10 CFR 50.2, is contained in other portions of the UFSAR that are updated to reflect current plant design. Following the licensee's next update of the UFSAR to add the cross references discussed in Section II.A of the Director's Decision, the NRC staff will evaluate if any enforcement action is warranted.

With respect to the second issue, the NRC staff concluded that the NRC licensing review process provides reasonable assurance that the plant continues to meet the intent of the draft GDC and adequate protection of public health and safety is assured. The NRC also concluded that it did not need a compilation of Vermont Yankee's current conformance to the draft GDC to review the application for an EPU or to conduct the Engineering Team Inspection (inspection was completed in September 2004). Consequently, the NRC denies the request to issue a Demand for Information to the licensee.

A copy of the Director's Decision (DD-05-02) will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time. The documents cited in the enclosed decision are available at the Commission's Public Document Room, at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

I have also enclosed a copy of the notice of "Issuance of Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication.

Please feel free to contact Mr. Richard Ennis, Petition Manager, at 301-415-1420 to discuss any questions related to this petition.

Sincerely,

/RA/

R. William Borchardt, Acting Director
Office of Nuclear Reactor Regulation

Docket No. 50-271

Enclosures: 1. Director's Decision 05-02
2. *Federal Register* Notice

cc w/encls: See next page

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Dated: August 16, 2005

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