

October 4, 2005

Mr. David Lochbaum
Union of Concerned Scientists
1707 H Street, NW
Suite 600
Washington, DC 20006-3919

Dear Mr. Lochbaum:

I am following up on my January 17, 2005, response to your letter dated August 30, 2004. In your letter, you referred to a petition filed under Section 2.206 of Title 10 of the *Code of Federal Regulations* by Mr. Paul Blanch and Mr. Arnold Gundersen (the petitioners) related to the compliance of Vermont Yankee Nuclear Power Station (Vermont Yankee) with the General Design Criteria. You commented that the Nuclear Regulatory Commission's (NRC's) letter to the petitioners dated August 20, 2004, did not answer the compliance question raised in the petition. In my letter of January 17, 2005, I stated that concerns expressed by the petitioners would be addressed as part of our review of the petition, and that I would follow up with you when our review was complete.

The final Director's Decision on the petition was issued on August 16, 2005, and can be accessed from the Agencywide Documents Access and Management System Public Electronic Reading Room on the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> by entering Accession No. ML052170206. As our review is now complete, I am taking this opportunity to respond to the questions you asked in your letter (see enclosure).

Please feel free to contact Mr. Richard Ennis, the NRC's project manager for Vermont Yankee, at 301-415-1420, if you have any questions.

Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Enclosure: As stated

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Accession No.: ML052410152

*Concurrence via email

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DATED: October 4, 2005

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Questions from Mr. David Lochbaum's Letter Dated August 30, 2004
Concerning Vermont Yankee Compliance with the General Design Criteria (GDC)

Question 1

Is the NRC [Nuclear Regulatory Commission] aware of any publicly available docketed material, other than Appendix F to the Vermont Yankee Updated Final Safety Analysis Report [UFSAR], where exceptions to, and/or deviations from the draft GDC are detailed?

The NRC staff performed a limited search of publicly-available documents in the Agencywide Documents Access and Management System (ADAMS) main library and the ADAMS legacy library and did not locate any documents that explicitly detailed exceptions to, or deviations from, the draft General Design Criteria (GDC). Due to the timeframe that Vermont Yankee was licensed, much of the correspondence for the docket exists on microfiche that is available in the NRC's Public Document Room (PDR). Based on discussions with the PDR staff, an extensive effort may be required to locate the documents of interest due to limited electronic search capability for those records.

Please note that, as discussed in the NRC's Director's Decision dated August 16, 2005 (ADAMS Accession No. ML052170206), Entergy has committed to revise the Vermont Yankee UFSAR to include a cross-reference from the draft GDC to the various sections within the UFSAR that contain information demonstrating conformance with the applicable draft GDC and where the final GDC contained in Appendix A to 10 CFR Part 50 may have been invoked in the licensing basis. The UFSAR update is expected to be issued within six months after completion of the fall 2005 refueling outage.

Question 2

If so, what are the publicly available docketed materials?

See the answer to question 1.

Question 3

If not, is it the NRC's regulatory position that, absent docketed exceptions and/or deviations, Vermont Yankee must conform to every single aspect and nuance of the draft GDC?

As stated in the Director's Decision dated August 16, 2005:

The GDC are referenced in 10 CFR 50.34(a), which specifies information to be submitted for a construction permit. The NRC evaluated each plant against the draft GDC or final GDC as applicable during initial licensing. A prerequisite to the issuance of the operating license was the finding that the facility will operate in conformity with the rules and regulations of the Commission and will not endanger the health and safety of the public. The safety review process, by which changes to a plant and its operating procedures subsequent to initial licensing are evaluated per the criteria of 10 CFR 50.59, provides an adequate basis for concluding that the plant continues to

Enclosure

meet the licensing bases. This philosophy was established when the Commission decided not to apply Appendix A (the final GDC) to plants with construction permits issued prior to May 21, 1971. In a Staff Requirements Memorandum dated September 18, 1992, the Commission approved the option of not applying the final GDC to these plants and not requiring such plants to seek exemptions from the GDC. The Commission noted that the regulatory standard for such plants is plant-specific and is documented in the license, the licensing safety evaluation report, and the FSAR. As stated in SECY-92-223, "Existing regulatory processes are sufficiently broad and rigorous to ensure that plants continue to be safe and to comply with the intent of the GDC."

Consistent with this direction, whenever a change to the licensing or design basis is requested for Vermont Yankee, the NRC review process ensures that changes are reviewed against the relevant design and licensing bases to provide reasonable assurance that the plant continues to meet the intent of the draft GDC. In this way, the NRC maintains assurance that the public is adequately protected.

The NRC has not compiled, and does not require the licensee to compile, a complete list of a plant's current conformance to the draft GDC. The design and licensing bases for any plant reside in many documents. These documents are either submitted to the NRC as part of the formal docket or are available at the plant for review by NRC inspectors.

In summary, Vermont Yankee must comply with its design and licensing bases which reside in many documents, some of which may not have been docketed. The absence of docketed exceptions and/or deviations does not mean that the facility must conform to every single aspect and nuance of the draft GDC. The safety review process, by which changes to a plant and its operating procedures subsequent to initial licensing are evaluated per the criteria of 10 CFR 50.59, provides an adequate basis for concluding that the plant continues to meet the licensing bases.