

Maine Yankee

P.O. BOX 408 • WISCASSET, MAINE 04578 • (207) 882-6321

April 6, 1998
MN-98-24 GAZ-98-20

UNITED STATES NUCLEAR REGULATORY COMMISSION
Attention: Document Control Desk
Washington, D.C. 20555

References: a) License No. DPR-36 (Docket No. 50-309)
 b) Letter from MYAPCo to USNRC, dated April 3, 1998, MN-98-23

SUBJECT: Corrected Pages to APPARENT VIOLATIONS STEMMING FROM NRC OFFICE
 OF INVESTIGATIONS REPORT Nos. 1-96-025, 1-95-050, AND
 1-96-043

The enclosure are corrected pages to the response from Maine Yankee, MJM-98-028, MN-98-23.
The subject was: Response to Apparent Violations Stemming From NRC Office of Investigations
Report Nos. 1-96-025, 1-95-050, and 1-96-043.

Please remove the first two pages of the cover letter and replace page 1 of Appendix 1. The
corrections made to the three enclosed pages were typographical errors.

Sorry for any inconvenience this may have caused. Please call should you have any questions to
these instructions.

Sincerely,



George A. Zinke, Director
Nuclear Safety & Regulatory Affairs

enclosure

c: Mr. H. Miller
 Mr. James Lieberman (10 copies)

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Maine Yankee

P.O. BOX 408 • WISCASSET, MAINE 04578 • (207) 882-6321

April 03, 1998

MN-98-23 MJM-98-028

UNITED STATES NUCLEAR REGULATORY COMMISSION

Attention: Document Control Desk

Washington, D.C. 20555

References: a) License No. DPR-36 (Docket No. 50-309)
 b) USNRC Letter to MYAPCo dated December 19, 1997,
 APPARENT VIOLATIONS STEMMING FROM NRC OFFICE
 OF INVESTIGATIONS REPORT Nos. 1-96-025, 1-95-050, AND
 1-96-043

Subject: Response to APPARENT VIOLATIONS STEMMING FROM NRC
 OFFICE OF INVESTIGATIONS REPORT Nos. 1-96-025, 1-95-050,
 AND 1-96-043

Gentlemen:

This letter and the attached documents provide Maine Yankee Atomic Power Company's response to the apparent violations contained in the enclosures to Reference (b). Attachment A hereto is a table of contents. Attachment B is an executive summary. Attachment C provides Maine Yankee's detailed responses to the apparent violations. Attachment C also contains an appendix which addresses the "willfulness" standard. It is our hope that these documents, as well as the discussion in this letter, will provide you with additional insight prior to the enforcement conference. As indicated by Maine Yankee's responses to the apparent violations, Maine Yankee adopts and incorporates those portions of Duke Engineering & Services, Inc.'s Response to the Nuclear Regulatory Commission's Demand for Information, dated February 27, 1998, that are relevant to the cited apparent violations.

We are reaching the end of a long and grueling effort associated with questions and issues about Maine Yankee's application of RELAP5YA. Maine Yankee, Yankee Atomic Electric Company and NRC personnel have literally invested years in identifying, investigating and resolving these questions. It is no exaggeration to say that the careers and lives of certain individuals at Maine Yankee and Yankee Atomic have been severely affected. This is particularly troubling because it appears that the entire RELAP5YA affair could have been avoided if, at any time during a several year period, Maine Yankee had simply scheduled a meeting with NRC technical reviewers to discuss ongoing problems related to RELAP5YA analyses.

The RELAP5YA events and the related enforcement action pose so many questions requiring such detailed answers that an enforcement conference is not an adequate forum to respond. For this reason, Maine Yankee has chosen to depart from tradition and to provide this written response in advance of the enforcement conference. By doing so we hope to be able to focus attention during the enforcement conference on the following key questions and answers:

1. Was safe operation of Maine Yankee ever in doubt?

No. At all times, Maine Yankee and Yankee Atomic personnel utilized proven analytic codes and acceptable safety-based reasoning to support operation of Maine Yankee. The large break (LB) LOCA was at all times the limiting break, and the WREM LBLOCA model was clearly an acceptable tool on which to base safety decisions. Maine Yankee believes that the RELAP5YA issues as a whole constitute a situation involving technical non-compliance with regulations and lack of familiarity with NRC expectations and regulatory interpretations, rather than an infringement on safety margins.

2. Did Maine Yankee's activities with respect to RELAP5YA lead to errors and mistakes constituting regulatory violations?

Yes. Those violations are, on one hand, typical of analysis-based problems and mistakes occurring throughout the industry over an extended period of time. On the other hand, the violations are atypical of industry leaders in that they reflect a failing by Maine Yankee to stay current on evolving standards and NRC expectations. The Independent Safety Assessment team (ISAT) report was perceptive in identifying Maine Yankee's insularity as a major contributor to reduced performance standards compared to the higher performing plants in the industry. RELAP5YA is an instance where insularity and isolation enabled a mistaken but good faith belief that regulatory compliance had been achieved.

3. Were these errors and mistakes deliberate or the result of careless disregard?

Clearly not. Maine Yankee and Yankee Atomic personnel always maintained their safety focus, ensuring that NRC approved small break (SB) LOCA codes were used to confirm safe plant operation. These same personnel were convinced that prior NRC approvals, coupled with satisfactory analysis results, were synonymous with compliance with relevant regulations. This confusion with respect to regulatory interpretation and implementation, which was shared at times by NRC personnel, was not indicative of an intent or desire to circumvent NRC requirements. Extensive investigations at both Maine

APPENDIX 1

LEGAL ANALYSIS OF WILLFULNESS

The NRC's December 19, 1997 letter to MYAPCO, the synopses of the Office of Investigations (OI) reports underlying the ECCS and ADV apparent violations (Enclosures 1 and 2), and certain of the apparent violations themselves allege "willfulness" by MYAPCO personnel in connection with the apparent violations. As set forth in MYAPCO's responses to the apparent violations, MYAPCO acknowledges and agrees with certain of the cited violations. MYAPCO, however, disagrees that any of the apparent violations resulted from willful misconduct on the part of MYAPCO personnel. Set forth below is a discussion of the legal standards that must be applied when analyzing the question of willfulness. MYAPCO respectfully suggests that application of these legal principles to the relevant facts supports MYAPCO's position that none of the apparent violations arose out of willfulness on the part of MYAPCO personnel.¹

The NRC Enforcement Policy states that willfulness "embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements."² Thus, at one end of the "willfulness" spectrum are violations involving a "deliberate intent to violate or falsify."³ Deliberate misconduct is an "intentional act or omission that the person knows: (1) would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission, or (2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor or subcontractor."⁴ Thus, in order for a violation to be "deliberate," there must be intentional action or conduct and a knowledge that such action or conduct violates an NRC requirement.

At the other end of the "willfulness" spectrum are violations that result from careless disregard.

¹ It appears that, with the exception of the apparent violation pertaining to the atmospheric steam dump valve (ADV) matter (Enclosure 5), the NRC has used the term "willful" in the context of exercising its enforcement discretion to escalate any base civil penalty associated with the core violation.

² NRC Enforcement Policy IV (C), 60 Fed.Reg. 34,381, 34,385 (1995).

³ *Id.*

⁴ 10 C.F.R. §50.5. While section 50.5 is not cited by the NRC as the basis for any apparent violation, its definition of "deliberate misconduct" is instructive.