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P.O. Box 88
Peaks Island, ME 04108
August 14, 1996

Hon. Shirley Jackson
Chairwoman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Madame Chairwoman:

I am writing in reference to my previous requests that the Commission address questions raised in my July 15 and previous letters in which I sought information pertaining to the Commission's position with respect to Maine Yankee's noncompliance with Small Break Loss of Coolant Accident (SBLOCA) requirements and related questions. In these letters I have sought, in particular, the Commission's position with respect to the regulatory basis for the January 3, 1996 Order that allowed Maine Yankee to operate in circumstances where the plant did not comply with SBLOCA requirements specified in TMI Action Plan Items II.K.30 and II.K.3.31.

Doubts as to whether there exists a valid regulatory foundation for the January 3 Order are enhanced by the fact that the staff's professed vehicle, 10 CFR 50.46(a)(2), was not cited in a publicly available document until several months after issuance of the Order. The belated citation of 10 CFR 50.46(a)(2), in an April 26, 1996 letter to Mr. Charles Hewett, leads to the inference that this provision was not in the minds of the Order's authors at the time the Order was issued, rather 50.46(a)(2) was invoked only in response to questions raised in a letter to you from Mr. Hewett, who is Chief Operating Officer, State of Maine.

On August 13, I received from Mr. Russell an August 12, 1996 letter that states: "In summary, the January 3, 1996, limit on power operation at Maine Yankee is explicitly authorized by 10 CFR 50.46(a)(2)." I do not dispute that 10 CFR 50.46(a)(2) authorizes the NRC to impose the limitation on the power level at which Maine Yankee operates. Mr. Russell's statement, however, does not address my point, reiterated in several letters, that the NRC has waived compliance with TMI Action Items II.K.3.30 and II.K.3.31 without, as far as I know, having performed an analysis (A) that was conducted after the coming into effect of requirements of these TMI Action Items and (B) that shows that the 90% restriction alleviates the need to comply with II.K.3.30 and II.K.3.31. In other words, it appears that the NRC staff has not performed an analysis that shows that the 90% power restriction compensates for the safety uncertainties resulting from noncompliance with II.K.3.30 and II.K.3.31.

In his August 12 letter, Mr. Russell referred to my June 27 letter in which I made a "request that the Commission's attorneys analyze this matter to determine whether 10 CFR 50.46(a)(2) does in fact provide a basis for allowing Maine Yankee to operate notwithstanding noncompliance with the TMI Action Plan Items." Mr. Russell also stated: "The NRC staff evaluation of the issues raised in your

letter has been coordinated with the Office of the General Counsel." Please note that Mr. Russell did not state that the NRC attorneys had analyzed the matter. Instead, Mr. Russell said that his August 12 letter had been "coordinated with the Office of the General Counsel." Coordination may or may not signify concurrence with the Staff position. In fact, a reasonable inference from Mr. Russell's letter is (A) that the Office of the General Counsel (OGC) did not perform the analysis I requested and (B) that the OGC either (1) did not render an opinion on the substance of the Staff position or (2) did not agree with that position.

Accordingly, I would appreciate your informing me as to whether the Office of the NRC General Counsel does in fact concur with the staff's position. If so, does concurrence of the Office of the General Counsel mean that a Commission majority concurs with this position?

I again urge that the Commission itself address the issue and state its position thereon.

Thank you for your attention to this matter.

Sincerely,

Henry R. Myers

cc: Senator Cohen
Senator Snowe
Senator Lieberman
Senator Biden
Congressman Dingell
Congressman Markey