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P.O. Box 88  
Peaks Island, ME 04108  
September 25, 1996

Hon. Shirley Jackson  
Chairwoman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 205550-0001

Dear Madame Chairwoman:

On September 20, 1996, Mr. Jay McCloskey, United States Attorney, District of Maine, issued a statement indicating he had received a report from the NRC concerning Maine Yankee. While Mr. McCloskey's statement provides little insight into the substance of the report, it apparently contains findings of the NRC Office of Investigations with respect to its inquiry into items pertaining to Maine Yankee's noncompliance with TMI Action Plan Items II.K.3.30 and II.K.3.31.

Mr. McCloskey's public release stated that the NRC had assured him that "there are currently no outstanding safety concerns generated by conduct at Maine Yankee at its authorized power level which relate to the issues raised in the Commission's report." Contrary to such assurances from the NRC, however, there are indeed safety concerns outstanding at Maine Yankee with respect to issues presumed to be addressed by the NRC report: (A) safety degradation implicit in the NRC staff having waived compliance with requirements of TMI Action Plan Items II.K.3.30 and II.K.3.31 (see my letters to you dated September 13, September 4, August 14, etc.) and (B) competence/integrity questions resulting from the licensee's long-standing noncompliance with said Action Plan Items (see following discussion).

Since late 1995, when allegations concerning this matter came to light, NRC staff have confirmed that Maine Yankee had never complied with TMI Action Items II.K.3.30 and II.K.3.31 instituted in the aftermath of the 1979 accident. This noncompliance resulted in the NRC staff restricting the operating power level at Maine Yankee to some 90% of the level specified in the Maine Yankee Operating License.

In a May 8, 1996 report, the NRC Inspector General identified multiple instances of failures by NRC staff to assure Maine Yankee's compliance with TMI Action Item II.K.3.31. Now it appears, based on the U.S. Attorney's statement, that the NRC Office of Investigations has developed significant evidence supporting a finding that Maine Yankee employees and/or contractors committed acts that constituted criminal violations of one or more NRC regulations.

While it may be that certain Maine Yankee employees or contractors are in fact not guilty of such criminal violations, it is nevertheless a fact that the licensee failed to comply with significant NRC safety regulations over an extended period. Moreover, the licensee has denied such noncompliance as have investigators from a law firm retained by the licensee to conduct an inquiry into the matter. This licensee behavior (noncompliance with important regulations and a continuing denial of such noncompliance) whether criminal or not, leads to the inference that, at a minimum, Maine Yankee employees and/or contractors have acted with careless disregard for requirements imposed by NRC regulations.

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As far as is known, Maine Yankee employees and/or contractors responsible for these violations remain engaged in activities controlled by Commission regulations. In light of this, it is unclear how NRC officials can conclude a safety concern does not arise from Maine Yankee's employment of persons in safety-related areas when such employees were party to violations of important regulations. As far as safety is concerned, it does not matter whether these violations involved intent, ignorance and/or carelessness; the fact is that persons responsible for safety did not fulfill their obligations, and the current process seems more designed to prolong indefinitely the unpleasant undertaking of assuring that licensee personnel can be trusted to comply with Commission regulations than it does in protecting the public safety.

Assurance of public safety does not necessitate depriving persons of due process. As in the case of inquiries into alleged incompetence and/or wrongdoing by persons in positions affecting the public safety (e.g. airline pilots, military personnel, merchant ship officers, etc.), persons under investigation may be suspended with pay or assigned tasks in work areas not controlled by Federal regulations until the investigations are completed.

In sum, a lengthy time span (possibly of two or more years' duration) will be consumed in a determination of whether Maine Yankee employees and/or contractors committed criminal violations of NRC regulations. In light of the time required for the criminal process to reach completion, what actions will the Commission take to assure that persons, who may not have been guilty of criminal acts but who nevertheless have shown careless disregard for requirements imposed by Commission regulations, do not engage in activities affecting the public safety? Prior to completion of the criminal process, what administrative actions will the Commission take in response to the licensee's violation of the requirements of TMI Action Plan Items II.K.3.30 and II.K.3.31?

Thank you for your attention to this matter.

Sincerely,

*Henry R. Myers*  
Henry R. Myers

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