



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 18, 1996

50-309

Mr. Robert A. Backus
116 Lowell Street
P.O. Box 516
Manchester, New Hampshire 03105-0516

Dear Mr. Backus:

I am responding to your letter of August 14, 1996, in which you, on behalf of the Seacoast Anti-Pollution League, supported the request of Mr. Henry R. Myers, of Peaks Island, Maine, for a definitive answer on the licensing basis for the continued operation of the Maine Yankee Atomic Power Station. I am enclosing a copy of my response to Mr. Myers. I trust that it is responsive to your concerns.

Sincerely,

Shirley Ann Jackson

Enclosure: Letter to Henry R. Myers
dated October 18, 1996

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Mr. Henry Myers
P. O. Box 88
Peaks Island, Maine 04108

Dear Mr. Myers:

I am responding to your letters of August 10 and August 14, 1996, in which you questioned the regulatory basis for the January 3, 1996 NRC Order to Maine Yankee permitting operation of the plant at 90% power. The Commission recognizes that you and other citizens of Maine are concerned about interim operation of the plant pending the completion of licensee actions that would bring the plant into conformance with regulatory guidance relevant to applicable NRC regulations for operation above 2440 MWt. However, before issuing the Order, the Director of NRC's Office of Nuclear Reactor Regulation (NRR) explained to me the basis for the proposed action. I was satisfied that the proposed action was sound and that it provided the necessary assurance that operation of Maine Yankee at the reduced power level was consistent with public health and safety. The Commission supports the action of the Director of NRR in issuing the Order in accordance with his general delegated authority to issue orders to power reactor licensees in order to protect public health and safety under the provisions of 10 CFR Parts 2 and 50, including the authority specified in 10 CFR 50.46(a)(2). There has been no information that would cause the Commission to reconsider that action.

As you know, the NRC staff received allegations in December 1995 regarding the inadequacy of the small-break loss-of-coolant accident (SBLOCA) analysis and containment analysis for Maine Yankee. The Director of the Office of Nuclear Reactor Regulation issued the "Confirmatory Order Suspending Authority for and Limiting Power Operation and Containment Pressure (Effective Immediately) and Demand for Information" (Order) on January 3, 1996, on the basis of technical information collected during the NRC staff's evaluation of the allegations. The Order was issued for the explicit purpose of ensuring safe operation of Maine Yankee pending completion of the staff's evaluation of the Maine Yankee emergency core cooling systems and containment design. The Order recited as a basis for those restrictions that the Maine Yankee Atomic Power Company (the licensee) had not applied computer code RELAP5YA, as it had proposed for Cycle 15 SBLOCA analyses, in conformance with the requirements of 10 CFR 50.46, and did not satisfy TMI Action Plan Items II.K.3.30 and II.K.3.31. As explained in letters to you dated June 18, July 9, and August 9, 1996, the Order did not "waive" TMI Action Plan Items II.K.3.30 and II.K.3.31. To the contrary, the Order required the submission of a SBLOCA analysis that, if submitted and accepted, would bring the licensee into conformance with the regulatory guidance of TMI Action Plan Items II.K.3.30 and II.K.3.31 and into compliance with the requirements of 10 CFR 50.46(a)(1) for operation above 2440 MWt.

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Additionally, as explained in letters to you dated June 18, and July 9, 1996, the specific regulation that authorizes the restrictions imposed on the operation of Maine Yankee by the Order is 10 CFR 50.46(a)(2). Although not specifically referenced by the Order, that specific authority is included within the Commission's general authority cited in the Order, which was explicitly issued under the authority of Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50. (See Order, Section VII.) In your letter of August 14, 1996, you state that you "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."

With respect to your questioning the authority of the Commission to permit operation of Maine Yankee at all, the choice of an appropriate mechanism for correcting an apparent violation rests within the sound discretion of the agency, and the paramount concern in exercising that discretion is public health and safety (Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 405-406 (1978); See also Advanced Medical Systems, Inc., CLI-94-6, 39 NRC 285, 312-313 (1994)). The staff was satisfied that Maine Yankee would be operated safely at the reduced power level, in accordance with 50.46(a)(2), but did not perform an independent SBLOCA analysis because it was determined to be unnecessary with the restrictions to be imposed. Specifically, with the imposed power penalty, the licensee's approved large-break loss-of-coolant accident analysis bounded credible design-basis accidents. The Order contains an extensive discussion of the safety basis for the staff's conclusion that power operation with the imposed restrictions did not pose an undue risk to public health and safety.

Regarding your question as to the view of the Office of the General Counsel (OGC), you should be aware that OGC provided advice and counsel to the staff of the Office of Nuclear Reactor Regulation (NRR) during the development of the Order and that, in OGC's view, the Order is legally sufficient. Allowing Maine Yankee operation up to 90%, notwithstanding nonconformance with TMI items II.K.3.30 and II.K.3.31, was considered during the development of the Order.

I hope this information will help resolve your concerns about interim operation of Maine Yankee.

Sincerely,



Shirley Ann Jackson

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