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

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

Dear Madame Chairwoman:

I am writing in reference to your October 18, 1996 letter that discussed questions I raised in several letters addressed to you, including letters dated August 10 and August 14. I respectfully take issue with specific items in your October 18 letter which, in my view, does not address a critical element of this matter: the fact that the NRC staff appears to have allowed Maine Yankee to operate at 2440 MWt without having followed procedures for allowing the plant to operate when it does not comply with significant safety regulations, in this case requirements specified in TMI Action Plan Items II.K.3.30 and II.K.3.31.

The original question concerned the staff's basis for allowing Maine Yankee to operate notwithstanding noncompliance with Small Break Loss of Coolant Accident (SBLOCA) requirements and related questions. In previous letters I 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.

Your October 18 letter states: "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 5, including the authority specified in 10 CFR 50.46(a)(2)." Since I am aware of no documents indicating that the Commission has considered the January 3 Order (or its underlying rationale), I would appreciate your providing documents indicating the manner in which Commission support of the action of the Director of NRR was discussed and/or expressed: e.g. documents including memoranda, meeting records, etc.

Please note that a previous request for information with respect to staff reliance upon 10 CFR 50.46(a)(2) sought documents indicating the dates on which this provision was first brought into the discussion. The staff produced no document indicating that the staff considered use of 10 CFR 50.46(a)(2) prior to late April 1996, nearly four months after issuance of the January 3 Order. The belated reference to 10 CFR 50.46(a)(2) leads to the following questions:

When the Director of NRR explained to you the basis for the

January 3 Order (prior to issuance of that Order), did he explain the use of 10 CFR 50.46(a)(2) as a foundation for that Order?

When were the other Commissioners informed of the use of 10 CFR 50.46(a)(2) and its belated invocation?

Your October 18 letter, in noting the use of 10 CFR 50.46(a)(2), does not indicate the nature of any analysis demonstrating, pursuant to 10 CFR 50.46(a)(2), that the reduced risk resulting from the 90% restriction compensates for the increased risk resulting from noncompliance with II.K.3.30 and II.K.3.31. I have noted previously the seeming misapplication of 10 CFR 50.46(a)(2).

In particular, 10 CFR 50.46(a)(2) contains language that allows the Director of Nuclear Reactor Regulation to impose restrictions on reactor operation if it is found that evaluations of Emergency Core Cooling System (ECCS) cooling performance are not consistent with other provisions of 10 CFR 50.46. In its belated application of 10 CFR 50.46(a)(2) to Maine Yankee, the staff has cited the 2'40 MWt limitation as the 10 CFR 50.46(a)(2) restriction. The staff, however, in its reference to 10 CFR 50.46(a)(2), failed to note that ongoing noncompliance with II.K.3.30 and II.K.3.31 resulted in a level of safety less than the level that would exist were there compliance with these provisions. At this time, as far as I know, there exists no analysis (performed under the constraints arising from the post-TMI findings that led to II.K.3.30 and II.K.3.31, e.g. the findings that large-break loss-of-coolant accident analyses did not necessarily bound credible design-basis accidents) that demonstrates whether the total effect of the Order (as belatedly interpreted) is or is not a restriction as envisioned by the Commission when it promulgated 10 CFR 50.46(a)(2); i.e. it has not been established whether the 90% limitation (clearly a restriction) along with the decision to allow operations without have performed analyses required by II.K.3.30 and II.K.3.31 (clearly a relaxation) constitute a net restriction or a net relaxation of regulatory requirements.

Questions remain. What analysis undertaken under the constraints arising from the post-TMI findings that large-break loss-of-coolant accident analyses did not necessarily bound credible design-basis accidents has been conducted to demonstrate that (A) the 90% restriction in conjunction with (B) operations being allowed without compliance with the provisions of II.K.3.30 and II.K.3.31 together constitute a net restriction pursuant to 10 CFR 50.46(a)(2)? And if the staff is indeed relying on the analysis cited in your October 18 letter, what is the regulatory basis for the NRC staff to use a mode of analysis (e.g. a mode that assumes the large-break LOCA to be the bounding event) when the TMI accident showed such reliance provided a false sense of security? Simply put, TMI demonstrated that small-break LOCA's could lead to consequences as dire as those resulting from large-breaks, and that prevention of such consequences required, among other things, analyses such as those specified in II.K.3.30 and II.K.3.31; it is unfortunate, therefore, that the NRC staff seems

intent upon conducting business as though TMI had not happened and that the important lessons learned therefrom did not exist.

Again, with respect to the staff's belated invocation of 10 CFR 50.46(a)(2), your October 18 letter states: "The staff was satisfied that Maine Yankee would be operated safely at the reduced power level, in accordance with 10 CFR 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." How could the staff be satisfied that Maine Yankee could be operated safely at the reduced power level, in accordance with 10 CFR 50.46(a)(2), when all the available evidence indicates the staff did not even consider 10 CFR 50.46(a)(2) until nearly four months after issuance of the January 3 Order?

Your October 18 letter states that "... the licensee's approved large-break loss-of-coolant accident analysis bounded credible design-basis accidents." It appears that this statement contradicts the NRC rationale for the imposition of the requirements of TMI Action Items II.K.3.30 and II.K.3.31. My understanding is that these requirements were imposed because one of the lessons of the TMI accident was that large-break loss-of-coolant accident analyses did not necessarily bound credible design-basis accidents. If this is the case, how can it be that the reduction of Maine Yankee's power level to 2440 MWt means that the plant is sufficiently safe at this level? What analysis has the NRC staff done to develop a position regarding the power level at which the large-break analyses bounds credible design-basis accidents, thereby making the requirements of II.K.3.30 and II.K.3.31 superfluous.

Overall, I note that neither your October 18 letter nor your October 7 letter to Mr. Frizzle states that you believe Maine Yankee is in substantial compliance with NRC regulations. Instead, you suggest in your October 18 letter that operation of Maine Yankee at 2440 MWt is "consistent with the public health and safety" and in your October 7 letter you stated: "Overall performance at Maine Yankee was considered adequate for operation." The Commission's inability to state that Maine Yankee is in substantial compliance with regulations seems to contradict the following paragraph from your October 17 statement to NRC staff:

> I want to address a few remarks toward our expectations of licensee performance and the emphasis of our own regulatory oversight. I see a real danger in being ensnared by false distinctions between safety and compliance in our regulatory program. In fact, the concepts are bound tightly to each other. A licensee's compliance with our regulations and license conditions is fundamental to our confidence in the safety of licensed activities. As I have said any number of times, if there are requirements on the books that do not have to do with safety, we should remove them through the well-established processes to make such changes. <u>It is untenable as a regulatory agency to imply that regulatory requirements can be ignored</u>. I recognize that, as an agency with limited resources and staff, we must

make informed choices in applying our resources to the most safety significant activities or challenges requiring our oversight. This drives the importance of a risk-informed approach to regulation. By focusing our resources on those significant issues and maintaining high expectations for licensees' adherence to existing requirements (until and unless they change), we will strengthen the quality of our oversight and public confidence in it. We will enhance consistency and objectivity in our evaluation and enforcement, and thereby help to ensure fairness to all. [Emphasis added.]

Also, as I have indicated previously, it is now apparent that the safety issues at Maine Yankee are greater than those arising from the original RELAP5YA allegations. That is, degradation in safety, vis-a-vis the level implicit in full compliance with Commission regulations, exceeds the degradation resulting from noncompliance with TMI Action Items II.K.30 and II.K.3.31. Matters brought to light in 1996 by the Integrated Safety Assessment Team, by the NRC Inspector General, and by Maine Yankee's review of its working environment indicate that prior to the 1996 findings, the probability of a severe accident could well have been substantially in excess of that implicit in compliance with regulations. Moreover, the existence of problems of the type identified this year (some of which have not been fully corrected) means there is a significant likelihood of there being as-yet undiscovered hardware and procedural safety deficiencies. The significance of this year's findings is enhanced by allegations made by one former NRC Maine Yankee Project Manager and the recent placing on administrative leave of another such Project Manager.

In light of the totality of matters that have surfaced at Maine Yankee in 1996, I again urge that the Commission address directly the question of whether at Maine Yankee the level of compliance with regulatory requirements has diminished to the point where protection of the public safety cannot be assured in the manner required by the Atomic Energy Act.

Thank you for your attention to this matter.

Sincerely,

Henry R. Myers

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