

50-309



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

February 14, 1997

Mr. Henry R. Myers
Post Office Box 88
Peaks Island, ME 04108

Dear Mr. Myers:

Your letters of December 13, 1996, December 30, 1996, and January 13, 1997, to Chairman Jackson have been referred to me for reply.

In your December 13 and December 30, 1996, letters, you requested that interested members of the public, including Mr. Paul Blanch and Mr. David Lochbaum, be afforded an opportunity to make presentations at the Commission's meeting on Maine Yankee that was then scheduled to be held on January 9, 1997. That meeting was postponed to February 4, 1997. The Commission is interested in hearing public concerns in this matter; thus, a portion of the meeting was devoted to presentations by the following individuals: Mr. David Lochbaum, representing the Union of Concerned Scientists; Mr. William Linnell II, representing the Committee for a Safe Energy Future; Mr. Raymond Shadis, representing the Friends of the Coast Opposing Nuclear Pollution; and Mr. Dana Connors, representing the Maine Chamber and Business Alliance.

In all three of your letters, you express your views regarding the standard that should be applied in determining whether or not plant operation should be allowed to continue. Your inquiry is best answered by these quotations from prior Commission decisions:

[W]hile it is true that compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety.

Ohio Citizens for Responsible Energy, Inc.; Denial of Petition for Rulemaking, 53 Fed. Reg. 41,178 (Oct. 20, 1988), quoting Specific Exemptions; Clarification of Standards, 50 Fed. Reg. 50,764 at 50,768 (Dec. 12, 1985).

The Commission has clearly stated the standard to be applied in the event of a violation of the Commission's requirements, as follows:

The Commission agrees . . . that a violation of a regulation does not of itself result in a requirement that a license be suspended As the Atomic Energy Commission noted . . . some years ago:

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It goes without saying that a violation posing an undue risk to public health and safety will, of course result in prompt remedial action, including shutdown if necessary. In other instances, however, the Commission has a wide spectrum of remedies for dealing with violations of regulations. These include show cause proceedings and proceedings for civil monetary penalties. The choice of appropriate mechanism for correction of an assumed violation rests within the sound discretion of this agency.

Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 405-06 (1978), quoting *Petition for Shutdown of Certain Reactors*, CLI-73-31, 6 AEC 1069, 1071 (1973). These longstanding Commission rulings concerning appropriate agency actions when an operating reactor licensee fails to comply with regulations postdate, and address a different issue than, the Appeal Board's rulings about the requirements for initial issuance of an operating license (Vermont Yankee Nuclear Power Corp., (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 528 (1973)) that you discuss in your letter of January 13, 1997.

As stated above, the standard for determining whether prompt remedial action is necessary, including shutdown, is whether a violation poses an undue risk to public health and safety. This is the standard the NRC is applying to Maine Yankee.

You ask in your January 13, 1997 letter, "[w]hat does it mean to state that 'overall performance' was adequate?" You also ask whether this means that design and as-built conditions are in an acceptable state of conformance with NRC regulations. The Independent Safety Assessment Team (ISAT) report on Maine Yankee states that "Maine Yankee was in general conformance with its licensing-basis although significant items of non-conformance were identified." The statement in Chairman Jackson's letter of October 7, 1996, that "[o]verall performance at Maine Yankee was considered adequate for operation[,] as documented by the ISAT report, reflects the fact that the ISAT made no finding that continued operation of Maine Yankee posed an undue risk to public health and safety. In addition, you asked whether this means that Maine Yankee has satisfied quality assurance obligations arising from 10 C.F.R. Part 50, Appendix B. The ISAT did not perform an Appendix B inspection. The team, however, did review selected aspects of the audit and surveillance areas and concluded that "[t]he Quality Assurance Program had a generally successful record of assessing the overall quality of station activities and identifying specific areas of vulnerability before performance degraded or the vulnerabilities became the subjects of regulatory enforcement."

In your letter of December 13, 1996, you indicate that it is your understanding that the NRC is relying on an analysis that assumes the large-break loss-of-coolant accident (LBLOCA) is the bounding design basis event. You then question the regulatory basis for the NRC using such a mode of analysis when the Three Mile Island accident demonstrated that small-break

loss-of-coolant accidents (SBLOCAs) could lead to consequences as severe as those resulting from LBLOCAs. As explained to you in Chairman Jackson's letters of January 31, 1997, and October 18, 1996, and letters to you dated June 18, July 9, August 9, and December 5, 1996, the NRC did consider the potential consequences of a SBLOCA in reaching its conclusions regarding continued operation of the Maine Yankee plant.

Your letter of December 13, 1996, asks if the Director, Office of Nuclear Reactor Regulation explained to Chairman Jackson the use of 10 C.F.R. § 50.46(a)(2) as a foundation for the Order of January 3, 1996, when the Director explained to Chairman Jackson the basis for that Order. Your letter also asks when the other Commissioners were informed of this use of 10 C.F.R. § 50.46(a)(2). In a letter to you dated January 31, 1997, Chairman Jackson responded to these questions.

In your letters of December 13 and December 30, 1996, you question how the Commission is able to consider the Maine Yankee matter in the absence of a comprehensive listing of noncomplying conditions identified at Maine Yankee over the last 12 months and with the potential existing for as-yet undiscovered deficiencies. In a letter to you dated February 3, 1997, I responded to these questions.

New issues that arise at the Maine Yankee plant, such as the recent cable separation issue that was the subject of a December 18, 1996, Confirmatory Action Letter and the lack of thermal relief valves to protect heat exchangers while they are isolated, will be evaluated for their safety significance and appropriate action will be taken. The emergence of new issues does not *ipso facto* require the conclusion that the Integrated Safety Assessment was "flawed," as you suggest.

A copy of your December 30, 1996, letter, in which you question NRC staff performance and the completeness of information provided to the Commission during an October 18, 1996, meeting, will be provided to the NRC's Office of the Inspector General for whatever action the Inspector General deems appropriate.

As a final matter, in your letter of January 13, 1997, you asked whether licensing action would be required in relation to recent announcements of a pending contractual relationship between Maine Yankee Atomic Power Company and

Mr. Henry R. Myers

- 4 -

Entergy Operations. In a letter to you dated February 3, 1997, I responded to this question.

I trust this information is responsive to your concerns about the Maine Yankee plant.

Sincerely,

(Original Signed By)

John A. Zwolinski, Deputy Director
Division of Reactor Projects
Office Of Nuclear Reactor Regulation

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*See Previous Concurrence

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