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P.O. Box 88
Peaks Island, ME 04108
February 21, 1997

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

Dear Chairman Jackson:

I am writing in reference to a February 3, 1997 letter from Mr. Zwolinski which, according to Mr. Zwolinski, responds to my January 22, 1997 letter to you.

In my January 22 letter, I stated that in order that persons having an interest in the matter of Maine Yankee be adequately informed as to the state of the plant's compliance with Commission regulations, it was necessary that certain information be available prior to the February 4 Commission meeting on Maine Yankee. In his February 3 letter, Mr. Zwolinski states, in effect, that, in large part, the information I requested was not available and/or not relevant to the Commission's February 4 meeting.

I am writing here to take issue with much of what is stated in Mr. Zwolinski's letter and to note again that the Commission can not exercise proper oversight of the Maine Yankee matter in the absence of the kinds of information enumerated in my January 22 letter.

First, I asked for a list enumerating noncomplying conditions at Maine Yankee and regulatory requirement(s) violated as a result of each such noncomplying condition. In his February 3 response, Mr. Zwolinski indicated that the only listing of noncomplying conditions would be that which related to restart of Maine Yankee. In requesting a list enumerating noncomplying conditions at Maine Yankee and regulatory requirement(s) violated as a result of each such noncomplying condition, I was acting upon a belief that this information should be available so that persons interested in this matter, including, presumably, Commissioners, would have information necessary to understand the totality of the situation at Maine Yankee, not simply the items that need be addressed prior to restart. The staff seems to have decided on its own that the Commissioners (and other interested parties) did not need this information for an adequate understanding of the situation at Maine Yankee. I believe this decision deprived the Commission of information necessary to assess the Maine Yankee situation in toto. While it may be that the nonrestart items are each less significant than the restart items, the total assemblage of the non-restart issues might cast the overall picture in a different light than is the case when such issues are not considered; e.g. a picture derived from a large number of specific small pieces may well be quite different from a picture derived from the general description of the large pieces presented by the staff.

Second, in my January 22 letter, I requested a list of outstanding maintenance items and incomplete corrective actions and the dates on which each such maintenance item and need for corrective action was

February 21, 1997

identified. Mr. Zwolinski said that the staff did not maintain such a list but that NRC inspectors did have access to the information in this regard that was located at Maine Yankee. Again, I believe this information was and is necessary for an understanding of the overall situation at Maine Yankee. The staff's failure to have this data available did and does deprive the Commission of another category of information necessary to understand the matter.

Third, in my January 22 letter, I requested a listing of particulars with respect to which the Maine Yankee licensee has failed to demonstrate compliance with requirements based on TMI Action Plan Items II.K.3.30 and II.K.3.31. Mr. Zwolinski stated that this request related to a matter under investigation and that it would be premature to discuss this item in conjunction with the February 4 meeting. The thrust of this response is undermined by the fact that NRC staff have, presumably, discussed with Maine Yankee the reasons why Maine Yankee had failed to demonstrate compliance with requirements based on TMI Action Plan Items II.K.3.30 and II.K.3.31. It is unclear, therefore, why the particulars of this noncompliance could not be discussed at the February 4 meeting. Such discussion could have transpired without involving potentially criminal aspects of the matter that might remain under investigation.

Fourth, in my January 22 letter, I requested the Commission's position (and basis for same) with respect to whether the Maine Yankee Operating License will need to be amended should the Entergy Company assume responsibility for operating the plant. It appears from Mr. Zwolinski's February 3 letter that the Commission has not yet taken a stand on this item notwithstanding that the MYAPCo has entered into an agreement with the Entergy Corporation. The need for a Commission position on the need for a license amendment is not negated by the fact that Maine Yankee is not now operating; nonoperation notwithstanding, it is the fact that the highest level cognizant person directing actions pertaining to compliance with NRC regulations may or may not be an employee of an entity other than the entity holding the Maine Yankee Operating License.

Fifth, in my January 22 letter, I requested the Commission's rationale for permitting Maine Yankee to operate in circumstances where neither the licensee nor cognizant NRC officials are able and willing to affirm that the plant is in substantial compliance with Commission regulations. While Maine Yankee is currently shutdown, the fact is that the Commission, without a finding of substantial compliance with regulations, permitted Maine Yankee to operate during the period between identification of significant noncomplying conditions by the Independent Safety Assessment Team and the December 1996 shutdown. I noted in my January 22 letter that the Commission's failure to address this item, raised repeatedly, serves to undermine the Commission's credibility in the community of persons having an interest in nuclear regulation. In his February 3, response, Mr. Zwolinski avoided addressing my question by ignoring the pre-December 1996 period, and by stating that "the staff must be satisfied there is reasonable assurance that the facility will be operated in a manner that poses no undue risk to public health and safety." If Mr. Zwolinski means that such satisfaction will be based on a finding of compliance with regulations, he should so state. Since he does not state this, I assume that the staff is prepared to allow Maine Yankee to operate on the basis of a lesser standard than a finding of com-

February 21, 1997

pliance with regulations.

In previous letters (e.g. letters dated December 13 and December 30, 1996 and January 13, 1997) I raised questions about the appropriateness of allowing Maine Yankee to operate in the absence of a finding of compliance with regulations. I call your attention to these previous communications. I also call your attention to the fact that I have heard NRC staff twice invoke in public an even lesser standard than a finding that the plant can be operated without posing an undue risk to public health and safety; i.e. a standard based on staff's willingness to live near the plant. Does the Commission believe that the public should reach conclusions as to the adequacy (or inadequacy) of plant safety on the basis of statements made by senior NRC staff that such staff would (or would not) be willing to live in the plant's vicinity?

In a previous letter, I stated that while I had respect for Mr. Zwolinski, I did not believe that assigning him responsibility for responding to correspondence from me, particularly with respect to the TMI Action Items II.K.3.30 and II.K.3.31, is likely to lead to a satisfactory resolution of questions that have been raised in this regard by me and others. As is the case with the particular TMI Action Items II.K.3.30 and II.K.3.31, the staff associated with Maine Yankee have an overall position to defend with respect to the Maine Yankee situation. I do not think it likely that they will respond to my questions in a manner other than which supports their previously stated positions and rationales.

I have written this series of letters because I believe that, in significant respects, the staff continues to enforce its regulations at Maine Yankee in the manner that has led to the current quagmire. I address my questions to you and your fellow Commissioners because the Commission has a responsibility to oversee the staff. I will continue to address letters to you whether or not the Commission allows the staff to continue in the course that has led, at a minimum, to the imposition of huge costs upon Maine Yankee's owners and users of its output, and at a maximum, to impose upon Maine Yankee's neighbors a risk of a radiological exposure much greater than the risk that would pertain had the plant been in substantial compliance with the Commission's regulations.

Thank you for your attention to this matter.

Sincerely,


Henry R. Myers

C.: Commissioner Kenneth Rogers
Commissioner Greta Dicus
Commissioner Nils Diaz
Commissioner Edward McGaffigan

ACTION

EDO Principal Correspondence Control

FROM:

DUE: 03/10/97

EDO CONTROL: G970130

DOC DT: 02/21/97

FINAL REPLY:

Henry R. Myers
Maine

TO:

Chairman Jackson

FOR SIGNATURE OF :

** PRI **

CRC NO: 97-0193

Zwolinski

DESC:

MAINE YANKEE

ROUTING:

Callan
Jordan
Thompson
Norry
Blaha
Miller, RI

DATE: 02/27/97

ASSIGNED TO:

CONTACT:

NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS:

Put EDO and Chairman on for concurrence.
Chairman's office to review response prior to
dispatch. (Ref. G970078)

NRR RECEIVED:

FEBRUARY 27, 1997

NRR ACTION:

DRPE:VARGA

NRR ROUTING:

COLLINS
MIRAGLIA
THADANI
ZIMMERMAN
MARTIN
TRAVERS
BOHRER

ACTION

DUE TO NRR DIRECTOR'S OFFICE

BY March 5, 1997

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-97-0193 LOGGING DATE: Feb 26 97
ACTION OFFICE: EDO
AUTHOR: HENRY MYERS
AFFILIATION: MAINE
ADDRESSEE: CHAIRMAN JACKSON
LETTER DATE: Feb 21 97 FILE CODE: ID&R 5 MAINE YANKEE
SUBJECT: MAINE YANKEE
ACTION: Direct Reply
DISTRIBUTION: CHAIRMAN
SPECIAL HANDLING: SECY TO ACK
CONSTITUENT:
NOTES: *OCM*
~~CON~~ #7437 -- CHAIRMAN TO REVIEW PRIOR TO DISPATCH
DATE DUE: Mar 12 97
SIGNATURE: . DATE SIGNED:
AFFILIATION: