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P.O. Box 88
Peaks Island, ME 04108
February 13, 1997

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

Dear Chairman Jackson:

I am writing in reference to your January 31, 1997 letter which addresses questions raised in my letter of October 25, 1996. The major concern expressed in my October 25 letter (and the several letters written prior and since) is that NRC staff appear to have allowed Maine Yankee to operate at 2440 MWt without having followed procedures for allowing a plant to operate when it does not comply with requirements specified in TMI Action Plan Items II.K.3.30 and II.K.3.31. In lieu of such compliance, the NRC staff accepted, as a basis for Maine Yankee operations, calculations of a kind that, in the aftermath of the TMI accident, were found to be unreliable predictors of physical parameters following a Small Break Loss of Coolant Accident (SBLOCA). Such acceptance, in my view, was and is inappropriate.

I take issue with the presentation in your January 31 letter which runs along the line expressed in previous responses to my questions on this matter. Your response seems to admit that in formulating the January 3, 1996 Order, the staff did not rely upon 10 CFR 50.46(a)(2); in fact, the staff's reliance upon this provision was first invoked (more than three months following issuance of the January 3 Order later) in an April 26, 1996 letter from Mr. Russell to Mr. Hewett, the Chief Operating Officer of the State of Maine. It now seems this is the first NRC document that cites this specific regulation as a basis for allowing Maine Yankee to operate notwithstanding the licensee's failure to comply with TMI Action Items II.K.3.30 and II.K.3.31. Since there is much in the record to show that the staff invokes in its Orders every conceivable regulation as authority for taking an action, the absence of a reference to 10 CFR 50.46(a)(2) is strong evidence that the staff did not have 10 CFR 50.46(a)(2) in mind when it issued the January 3 Order.

And, again, even if the staff does wish to rely on 10 CFR 50.46(a)(2), notwithstanding its belated invocation, the staff has not addressed the question I have raised previously with respect to the applicability of this regulatory provision. In particular, 10 CFR 50.46(a)(2) contains language that allows the Director of Nuclear Reactor Regulation to impose restrictions on reactor operations 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 2440 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

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II.K.3.30 and II.K.3.31 resulted in less assurance of safety (and perhaps less safety) than 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 January 3 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 having 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.

In your January 31, 1997 letter you refer to a licensee evaluation which found that the "SBLOCA for Maine Yankee, urder the operating conditions for Cycle 15 at 2440 MWt, continues to be less limiting than LBLOCAs." The implication is that the SBLOCA analysis pursuant to TMI Action Items II.K.3.30 and II.K.3.31 was not necessary in these circumstances. In making this implication you appear to ignore the reasons for II.K.3.30 and II.K.3.31, e.g. that the pre-TMI analysis methods were not adequate predictors of post-SBLOCA conditions. Is the NRC staff aware of analyses which show that, at reduced power levels, the calculations required pursuant to the said TMI Action Items are superfluous? Does the regulatory history of the TMI Action Items II.K.3.30 and II.K.3.31 indicate that the provisions of these TMI Action Items are superfluous for reactors operating at some level below those specified in licenses? Since Maine Yankee's authorized power level at the time of promulgation of the said Action Items was less than it was when the 90% restriction was imposed in 1996, the staff's current position comes close to being that the requirements of said TMI Action Items were superfluous at Maine Yankee at the time these requirements came into effect. (With respect to the question of whether LBLOCA analyses do indeed bound credible design-basis accidents, light might be shed on the matter by comparing the LBLOCA analysis with results of the licensee's recent calculations required pursuant to TMI Action Items II.K.3.30 and II.K.3.31.)

In previous letters, I requested documentation that might show the extent to which the January 3, 1996 Order had been discussed with the Commissioners prior to its issuance. Your January 31, 1997 letter states that there are no documents indicating Commission consideration of the January 3, 1996 Order prior to its issuance. You state that there were no documents because "the discussions between the commission and the NRC staff regarding the order were conducted orally and were not recorded." Since the matter of Maine Yankee's failure to comply with the requirements of TMI Action Items II.K.3.30 and II.K.3.31 was clearly both complex and significant (even prior to the findings of the Inspector General and Office of Investigations and the referral to the U.S. Attorney), your January 31 letter indicates that whatever discussion there might have been between the staff and Commission prior to issuance of the January 3 order was cursory in nature

and in significantly less depth than called for by the circumstances.

Your October 18, 1996 letter to me stated: "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)." How can the Commission support the action of the Director of NRR in issuing the January 3, 1996 Order, when, as the lack of documentation indicates, the Commission has conducted no significant review of this Order?

While I have great respect for Mr. Zwolinksi, I do not believe that assigning him responsibility for responding to correspondence from me, particularly with respect to the subject matter of this letter, is likely to lead to a satisfactory resolution of questions that have been raised in this regard by me and others. Staff associated with the January 3 Order and defense of same have a vested interest in their repeatedly stated rationale; they are unlikely at this time to reconsider the basis for the decision to allow Maine Yankee to operate despite noncompliance with TMI Action Items II.K.3.30 and II.K.3.31. One route to satisfactory resolution of these questions might be assignment of the issue to staff who have experience with the technical, regulatory, and legal aspects of the matter and who, at the same time, do not believe themselves under pressure to make findings supportive of past decisions and statements.

Overall, with respect to allowing Maine Yankee to operate when the licensee has not satisfied the requirements of TMI Action Items II.K.3.30 and II.K.3.31 (as is true of the Commission's failure to require an affirmation of Maine Yankee compliance with the Commission's regulations) the Commission's inattention to the details does not generate confidence that the agency is fulfilling its mandate. In effect, the Commission seems to have taken the stance that "Operations are permissible because the Commission says so." I do not believe that the Congress granted the Commission authority to act in such an arbitrary and capricious manner in enforcement of its regulations.

Thank you for your attention to this matter.

Sincerely,

Henry R. Myers

Henry R. Myers

c: Commissioner Kenneth Rogers
Commissioner Greta Dicus
Commissioner Nils Diaz
Commissioner Edward McGaffigan