(10.f)

September 26, 1996

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C.

Commissioner McGaffigan,

Thank you again for the opportunity to meet with you, and your staff, to discuss my interest in and qualification for the position of technical assistant in your office. I enjoyed discussing the several issues you inquired about, and tried to respond to your questions as completely as possible; but I realized in thinking back over those discussions that I had failed to come to closure in my comments on some of the topics that we discussed. I think the following supplemental comments should be offered for the sake of clarity and completeness.

With regard to ACRS, I commented on how the Committee's principal review activity, makeup, and relationship with the NRC staff have evolved over the years since I first worked on the ACRS staff after coming to Washington in the early 1970's. It needs to be said also that, with all the change seen in that time, there is an important constant: the independent perspective that the Committee brings to issues can still be useful to the Commission in its decisionmaking on complex and controversial safety issues. I think it is important to preserve that function and the independence that is needed in fulfilling ACRS' role. My perception is that there has been a tendency over the years in small and subtle ways to erode ACRS' independence somewhat.

In responding to your question about important issues facing NRC in the future, the discussion turned elsewhere before I had a chance to talk about the use of PRA in regulatory decisionmaking. I think that is one of the most significant issues facing us. Our movement in the direction of risk-informed regulation is the right direction to be heading, I think. We ought to be using the best integrated analyses available as the foundation for safety issue decisionmaking where possible. The situation at Millstone may hold important lessons in charting our future course in that direction. A discomforting aspect of that situation is that the utility involved has been among the recognized industry leaders in applying PRA. It seems to me to be very important for us to try to understand whether a misapplication of the insights gained from the PRA work done by that licensee (e.g., with regard to the risk *in*significance of certain aspects of plant design and operation) might have played a role in a decrease in emphasis on compliance with existing deterministic legal requirements (e.g., technical specification) and contributed to the development of the situation currently of such concern.

In conjunction with the movement toward risk-informed regulation, increasing emphasis is being given to the formulation of regulatory requirements in a "performance-based" format. In this area, it is not quite so clear to me that

we are heading in the right direction. My uneasiness in this area is based on first-hand extensive experience in dealing with an issue referred to as the "Important to Safety" issue, which was mentioned briefly in our discussions. That longstanding issue has its origins in the promulgation by NRC, twenty-five years or so ago, of the General Design Criteria, which represent in many ways the archetype of the performance-based rule genre. Not having yet dealt definitively with that troublesome issue, I fear there are important lessons that have gone unlearned regarding potential pitfalls associated with the implementation of performance-based regulatory requirements, which increases the likelihood that past mistakes will be repeated. As an example, it appears to me that fundamental differences between the licensees' and the NRC technical staff's understanding of the legal status of the "voluntary" commitments extracted from licensees to satisfy the very generally worded GDC may be a major (unrecognized) component of the 50.59 problem that we are currently grappling with.

The most perplexing question you raised was regarding existing NRC mechanisms or programs to reduce or eliminate unnecessary or marginal regulatory requirements. I noted (from direct experience in connection with the 1992 Special Review of NRC Regulations) the practical difficulty in justifying allocation of significant agency resources to matters which, by definition, have only marginal safety importance and corresponding low priority on the safety dominated NRC agenda. What was left unsaid may seem obvious; but I think it needs saying to complete that discussion: if there is to be any substantial sustained effort by the NRC staff in that area, a policy decision must be made to devote the necessary resources to the task. The nature of that decision is such that the Commission (or perhaps the Congress) will undoubtedly have to take the lead.

As a final point, with regard to the proposed 50.54(f) letter on availability and adequacy of design bases information now before the Commission, I hope that my candid comments to you on that particular matter were not considered intemperate or contentious. In nearly thirteen years as a CRGR staff member, this item is the first on which I have stated formally strong differing views regarding the outcome of CRGR's deliberations and recommendations to the EDO on an item. It was somewhat awkward for me, therefore, when you broached the subject; and, truthfully, there was a temptation to sidestep your question in that interview context. But proper regulatory action in this matter is of great importance, I believe; so candor in expressing my best judgement on the adequacy of the proposed action, when asked, seemed to me to override any considerations of personal comfort or convenience. We should vigorously pursue whatever additional design information is needed to fully understand the safety significance of changes being made to the licensing bases for operating reactors; but, in doing so, we should follow carefully the policies and procedures that have been established and approved by the Commission for addressing any backfit type considerations involved. There have been licensee complaints (and other indications) for some time that informal backfitting has been occurring in connection with the ongoing assessment of the 50.59 process and the handling of design bases information issues that have arisen in that context. The tone and specific language of the proposed generic letter, and the manner in which it was muscled through the internal review process recently, lend credence to the claims that we are not carefully following our own internal procedures in addressing the legitimate safety issues and concerns involved. Commission policy has been that generic correspondence to licensees cannot be used to impose new requirements, and should not be worded so as to leave doubt or ambiguity in a readers mind on that point. The proposed letter does not measure up to what has been established

as the norm in that regard, i.e., REQUEST the detailed information sought from licensees; REQUIRE the licensees to respond whether or not they will provide the specific information requested (and, if not, describe and justify a proposed alternative course of action). The proposed letter also tends to cast the entire design bases adequacy and availability issue as purely a compliance matter; but it appears that a significant component of the problem with deficient existing design bases may stem not just from licensees failing to maintain their documented design bases, as is suggested by the wording of the proposed letter, but rather from what are now perceived as significant omissions or inadequacies in the design bases information submitted by licensees in FSARS (pursuant to 10 CFR 50.2, 50.34, 50.35, etc.) in support of initial licensing, which was formally accepted at that time by the agency as adequate to satisfy the regulations. This does not diminish legitimate concerns regarding the potential safety implications of recently recognized design bases information deficiencies; but it does cast into a different light the question of whether the proposed action can/should be characterized and treated as purely a matter of compliance. These aspects of the proposed letter need further careful thought and significantly improved treatment to avoid the appearance of lack of thoroughness and/or candor in NRC's treatment of this important issue.

Again, I appreciate very much the opportunity to have met with you and discuss these matters; and I would enjoy working with you, and the members of your staff I met last week, if your decision regarding me is a favorable one. If there is any other information or additional discussion I can provide on any of these topics, I would be happy to do so.

Cordially yours,

/s/

James H. Conran