



ATLANTIC STATES
LEGAL FOUNDATION, INC.

July 26, 1990

Chair Kenneth Carr
Commissioner Kenneth Rogers
Commissioner Forrest Remick
Commissioner James Curtiss
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In Regard to Nine Mile Point Unit 1

Dear Chair Carr and Commissioners:

I have your response to my letter of May 14, 1990. Your letter, and the staff response enclosed raises as many questions as it answers. My clients, an unincorporated association of Central New Yorkers called Retire Nine Mile 1, understand that the Commission would not be considering restart without first fully evaluating the health and safety implications of that restart and the questions to which we have demanded answers must have been considered as part of your health and safety evaluation.

1. The Staff Response to Question 3 which asked whether the NRC will require Niagara Mohawk to measure the thickness of the entire torus before permitting restart contains the following assertion:

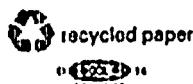
However, because of uncertainties in the rate of future corrosion, the licensee has committed to the NRC to perform wall thickness measurements at least every six months?

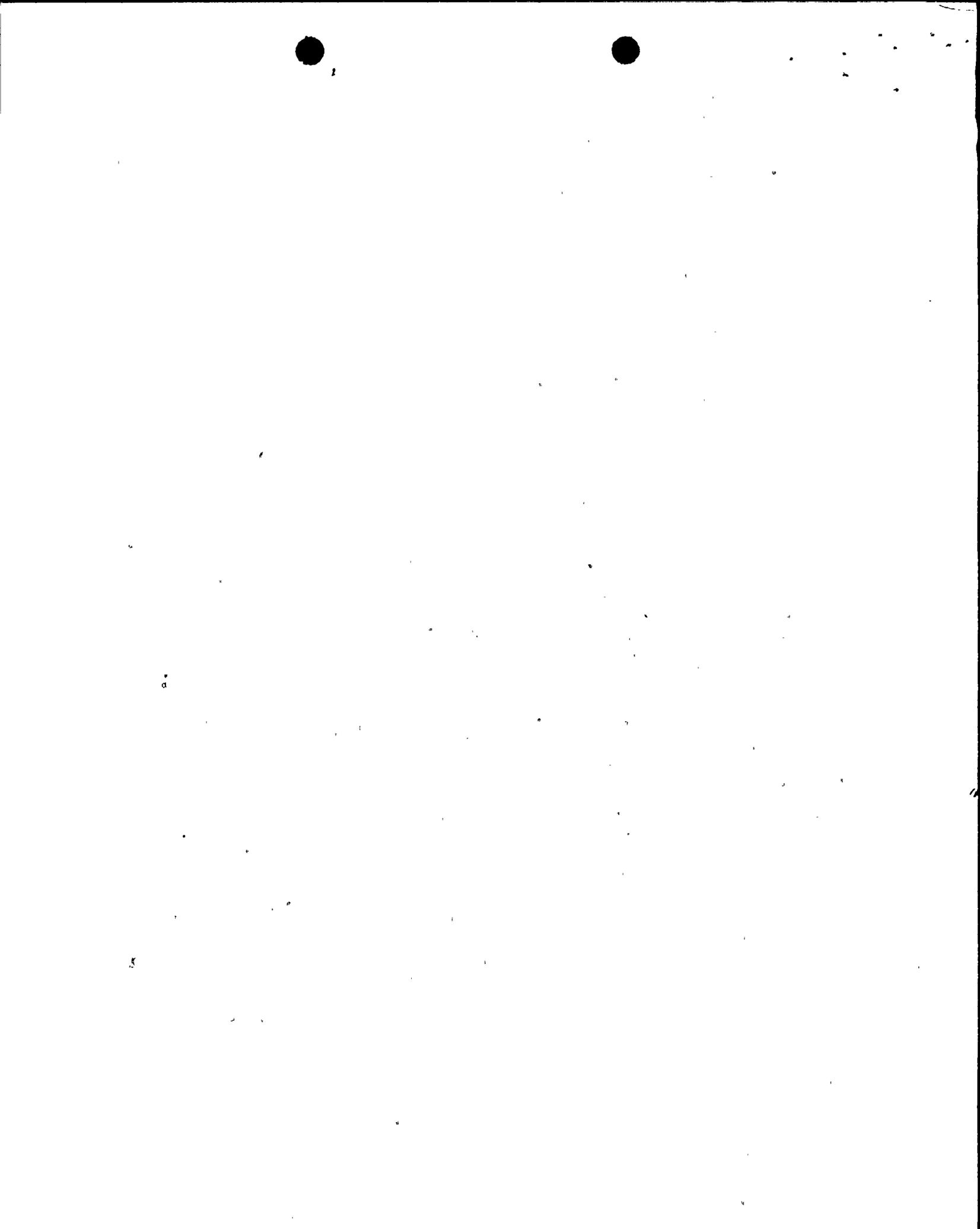
Niagara Mohawk, in their letter to the NRC of November 22, 1989 contends that, "sufficient wall thickness remains to provide at least one additional operating cycle at Nine Mile Point Unit 1 before corrective actions must be taken." Can thickness measurements be made while the plant is in operation or is the NRC going to require Niagara Mohawk to shut down Nine Mile Point Unit 1 every six months during the operating cycle?

2. Also in the Staff Response to Question 3, the staff

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asserts that February, 1990 measurements "did not indicate a significant change from the August, 1989 measurements."

Attached to the August, 1989 measurements is a six page handwritten report by MPR associates which is denominated Appendix B to the August, 1989 measurements. On page 4 of this report there is a notation that a positive corrosion rate measurement was "not used in determining the mean or standard deviation."

Since a positive corrosion rate is physically impossible, reliance on the company's measurements is misplaced.

The February, 1990 measurements, which Staff contends "do not indicate a significant change from the August, 1989 measurements", are not available for examination in the Public Document Room.

3. During the May 14, 1990 Briefing on the status of Niagara Mohawk's progress toward restart, Commissioner Curtiss asked Mr. Burkhardt at page 74 of the transcript:

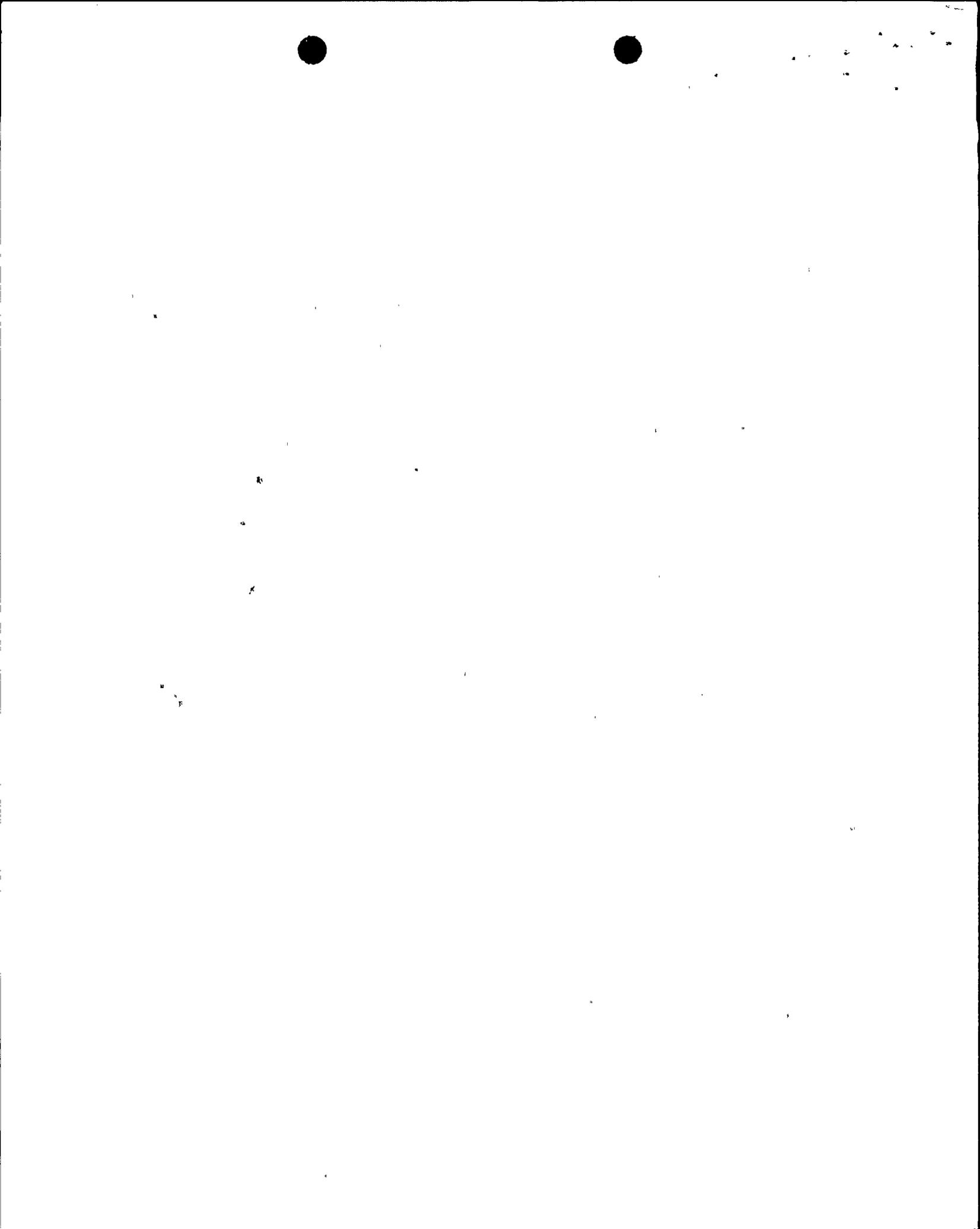
How extensive is the monitoring that you're actually doing?

Mr. Burkhardt replied:

It's very extensive, because you know the accuracy of the testing is less than the corrosion rate, so you have to get a very high sample in order to be able to average out what you have. (emphasis supplied)

We interpret this quote to mean that there is no accurate means of determining the thickness of the torus and no reliable method of predicting at what rate it is getting thinner. We note above that some measurements were discarded. The measurements which were not discarded may be no more accurate than the ones which were discarded. Good technical practice would indicate that you cannot take a series of measurements, each of which has a wide error band, average those measurements and then conclude that there is an accurate basis for predicting anything.

How does Mr. Burkhardt's assertion that "you have to get a very high sample" comport with the fact reported in the Staff Response (to Question 3) that in August, 1989 measurements were made in all 20 bays, but in February, 1990, only 4 bays were measured?



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In view of the alleged low cost of repairing the torus, (less than \$15 million Niagara Mohawk told the New York Public Service Commission) and in view of the NRC's statutory charge to pose no undue risk to the public health and safety, we continue to believe that Nine Mile Point Unit 1 should not be allowed to restart before the torus is repaired.

4. With regard to the generic letters and bulletins, we originally asked the Commissioners what specifically were the safety issues related to Nine Mile Point Unit 1 which were not resolved prior to considering restart. This, of course, is not an ordinary plant. As the Commission well knows, this plant has been out of service for 31 months, continues to be on the Commission's "Watch List", and the most recent SALP reports show enduring evidence of managerial incompetence.

While philosophically we can agree with the Commission's policy on generic letters and bulletins, the history of this company's management, together with the specific questions relating to restart call, we believe, for a different standard here. To treat the restart of Nine Mile Point Unit 1 as if it were business as usual may be such an extreme derogation of duty as to amount to an abdication of the Commission's statutory responsibilities.

Therefore, we ask you again: Which safety issues from generic letters and bulletins have not been implemented, and what is the basis at Nine Mile Point Unit 1 for saying that the health and safety of residents living in proximity to that plant has been assured.

Sincerely,

Rosemary S. Pooler

Rosemary S. Pooler
Vice President for Legal Affairs

