

March 19, 2003

Ann M. Young, Chair
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Thomas D. Murphy
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

In the Matter of
MAINE YANKEE ATOMIC POWER COMPANY
(Maine Yankee Atomic Power Station)
Docket Nos. 50-309-OM; 72-30-OM
ASLBP No. 03-806-01-OM

Dear Administrative Judges:

Attached for your review and approval is a proposed Nondisclosure Affidavit, which is jointly filed by the State of Maine (State), Maine Yankee Atomic Power Company (Licensee), and the NRC staff (Staff). The State, Licensee, and Staff intend for the Atomic Safety and Licensing Board (Board) to treat the proposed affidavit as the completion of the "Joint Motion of State of Maine, Maine Yankee Atomic Power Company and NRC Staff for Adoption of Proposed Memorandum and Order (Protective Order and Procedures for Handling of Safeguards Information)," dated March 14, 2003. The affidavit is presented as proposed Appendix A to the memorandum and order.

I have been authorized by counsel for the State and the Licensee to file the proposed affidavit on their behalf, as well as the Staff's behalf. As with the proposed memorandum and order, the proposed affidavit was coordinated with both the NRC's Office of Administration, Division of Facilities Safety, Security Branch (contact: Cynthia G. Harbaugh) and the Office of Nuclear Security and Incident Response, Division of Nuclear Security, Information Security Section (contacts: Bernard W. Stapleton and A. Lynn Silvious).

Sincerely,

/RA/
Stephen H. Lewis
Counsel for NRC Staff

Attachment: Nondisclosure Affidavit

cc w/Att: Service list.

APPENDIX A

Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
MAINE YANKEE)	Docket Nos. 50-309-OM; 72-30-OM
ATOMIC POWER COMPANY)	
)	ASLBP No. 03-806-01-OM
(Maine Yankee Atomic Power Station))	

NONDISCLOSURE AFFIDAVIT

I, _____, being duly sworn, state:

1. As used in this nondisclosure affidavit,

(a) "Safeguards Information" ("SGI") is (i) Attachment 2 to the NRC's ICM Order (as defined below and hereafter referred to as "Attachment 2"), (ii) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which deals with or describes details of Attachment 2, and (iii) any other information meeting the definition of SGI in 10 C.F.R. § 73.2.

(b) An "authorized person" is a person who has an established "need to know," as defined in 10 C.F.R. § 73.2, the SGI, and is: (i) an employee, consultant or contractor of the U.S. Nuclear Regulatory Commission (NRC or Commission) entitled to access to SGI; (ii) a person who, at the invitation of the Atomic Safety and Licensing Board (Board), has both executed a copy of this affidavit and been approved by the Board; (iii) a person employed by or on behalf of the Maine Yankee Atomic Power Company (Licensee) and authorized by it in accordance with NRC regulations to have access to SGI; or (iv) a person authorized in accordance with NRC regulations to have access to SGI as a designated representative of the Governor of Maine or as a member of state or local law enforcement

authority in Maine responsible for responding to requests for assistance during safeguards emergencies.

(c) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

(d) "Attachment 2" means Attachment 2 (protected as SGI) to the Order Modifying Licenses (Immediately Effective), issued by the NRC on October 16, 2002, in the matter of "All 10 C.F.R. Part 50 Licensees Who Currently Store or Have Near Term Plans to Store Spent Fuel in an ISFSI Under the General License Provisions of 10 C.F.R. Part 72."¹

2. I have read the March ___, 2003, Board Memorandum and Order (Protective Order and Procedures for Handling of Safeguards Information) issued in this proceeding and will comply in all respects with its terms and conditions regarding the SGI produced in connection therewith. I will protect SGI in accordance with the terms of this affidavit.

3. I will not disclose SGI to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will protect documents containing SGI in written or recorded form (including any portions of transcripts of *in camera* hearings, filed testimony or any other documents that contain such information), so that

¹ Published in the Federal Register at 67 Fed.Reg. 65150 (October 23, 2002), without Attachment 2.

the SGI contained therein remains at all times under the control of an authorized person and is not disclosed to anyone else.

4. I will not reproduce or copy any SGI by any means without the express approval or direction of the Board or the Commission, except to the extent necessary to make required service on the Licensing Board, the Office of the Secretary, or other party authorized under the Memorandum and Order to receive such service. I understand that I may take notes concerning such SGI, subject, however, to the terms of this affidavit and the Board's March __, 2003, Memorandum and Order. So long as I possess SGI, I will continue to take these precautions until further order of the Board or the Commission and for so long as the information remains SGI,

5. I will protect and hold in confidence any data, notes, or copies of SGI and all other papers that contain any SGI by means of the following:

(a) I will use SGI only at a facility provided for use by designated counsel, experts, or staff in (i) a designated office of the Maine Nuclear Safety Advisor in Augusta, Maine; (ii) a designated office at the Maine Yankee Nuclear Power Plant; (iii) an office of the NRC in Rockville, Maryland; or (iv) an office provided by Lead Counsel for Licensee or the State in Washington, D.C. Any such facility is to be located in a controlled access building that is either attended around the clock or locked at night.

(b) When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and protect all documents containing SGI (including, without limitation, any notes that I may take) in a safe or other equivalent locked "security storage container," as defined in 10 C.F.R. § 73.2. Inside a protected or controlled access area, SGI may be stored in a steel filing cabinet or map cabinet equipped with a locking bar and GSA approved combination padlock. A "controlled access area," which is defined in 10 C.F.R. § 73.2, should provide both isolation and access control. The

boundaries of the area should be of substantial construction to deter entry or exit through other than the established access control points. Access should be positively controlled by personal recognition, use of keys or card keys, or other comparable means. In many cases, corporation headquarters or other office buildings will qualify as controlled access areas provided they are attended around the clock or locked at night. SGI located in an uncontrolled area is required to be stored in a GSA approved security container (class 6 or equivalent). Other repositories, such as document vaults, or vault-type rooms, which in the judgment of the NRC provide comparable protection, may be used. For additional information and/or a determination of acceptability contact:

U.S. Nuclear Regulatory Commission
Division of Facilities and Security
Washington, D.C. 20555
Telephone 301-415-2214

(c) Any secretarial or administrative work performed at my request or under my supervision will be performed only at the above location by personnel who have executed this affidavit.

(d) If requested, necessary typing and reproduction equipment will be furnished by the provider of a facility referred to in paragraph 5(a) above. In addition, if requested, the facility provider will make available a telephone, and a facsimile machine for the receipt of nonprotected information only, it being understood that SGI shall not be discussed by telephone or communicated by facsimile transmission, e-mail, or any other electronic means.

(e) If SGI is processed on or with automated data processing, computerized word processing equipment, or a personal or laptop computer, access to such equipment shall require the use of an entry code for access to stored SGI. If use of an entry code is

not feasible, SGI may be processed on, but shall not be stored in, such equipment. Additionally, any such word processing equipment, data processing equipment, or computer that is used to process or store SGI shall be operated as stand-alone or free-standing equipment, not connected to any other such equipment by means of a Local Area Network (LAN) or Wide Area Network (WAN) or other data-sharing system, to include LAN/WAN printers. Further, if any SGI is backed up or stored on a computer hard drive or other device, that drive or device shall be removed and shall be stored in the safe or locked security storage container referred to in paragraph 5(b) above, when not in use.

(f) All mailings by me or on my behalf involving SGI shall be made from a facility referred to in paragraph 5(a) above. All such mailing shall be made in two sealed envelopes or wrappers, including (i) an outer mailing envelope bearing the intended recipient's name and address and the statement "TO BE OPENED BY ADDRESSEE ONLY," but giving no indication that the enclosure contains SGI, and (ii) an opaque inner envelope also bearing the intended recipient's name and address and marked front and back as "SAFEGUARDS INFORMATION." The envelopes must be sealed so as to indicate potential tampering.

(g) Each document that contains SGI, as defined in 10 C.F.R. § 73.2, shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information, as set forth in 10 C.F.R. § 73.21(e).

6. If I prepare documents containing SGI to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive SGI to help me prepare those documents has been approved by the Board and has executed this affidavit and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Board before I reveal any SGI to any such person.

7. I shall use SGI only for the purpose of preparation for any proceedings in this case dealing with Attachment 2, and for no other purpose.

8. I shall keep a record of all documents containing SGI in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding, I shall account to the Board or the Commission for all the documents or other materials containing SGI in my possession and deliver them as provided herein. When I have finished using the SGI they contain, but in no event later than the conclusion of this proceeding (including any related Commission or judicial appeals), I shall deliver those documents and materials for disposal or safekeeping, as may be determined to be appropriate by the Board or the Commission, to the Board or the Commission or to a person authorized to receive SGI on behalf of the Licensee or State.

9. I make this agreement with the following understanding: I will not publicly discuss or disclose any SGI that I receive by virtue of this proceeding, either now or at any time in the future so long as the information remains SGI, and will not corroborate the accuracy or inaccuracy of information obtained outside this proceeding by using SGI, or my knowledge thereof, gained through the hearing process.

10. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's March __, 2003, Memorandum and Order, which incorporates the terms of this affidavit, may result in the imposition of sanctions as the Board or the Commission may deem to be appropriate and as are authorized by law, including, but not limited to, referral of the violation to appropriate professional associations and other disciplinary authorities. I further acknowledge that any unauthorized disclosure of SGI or breach of the Memorandum and Order may be grounds for the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 2.744(e) and sections 223 and 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2273, 2282.

WHEREFORE, I do solemnly agree to protect such SGI as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

(Name)

Subscribed to and sworn before me
this ___ day of _____, 2003

Notary Public

My commission expires: _____