

# Maine Yankee

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May 31, 2005

MN-05-030 RA-05-032

UNITED STATES NUCLEAR REGULATORY COMMISSION

Attention: Document Control Desk

Washington, DC 20555

Subject: Request for Exemption from 10 CFR 50.75(f)(1)

Gentlemen:

Maine Yankee will shortly complete decommissioning of its reactor facility. From that point forward, Maine Yankee will be a spent fuel storage facility with a stand-alone ISFSI.

Until the Department of Energy meets its spent fuel disposal obligations, or an alternative solution can be found, Maine Yankee requests an exemption from the periodic decommissioning funding reporting requirements of 10CFR50.75(f)(1) to be consistent with the requirements of a 10CFR72 specific licensee. The other ISFSI decommissioning financial assurance provisions of 10CFR50.75 applicable to a 10CFR72 specific licensee will remain in effect.

## Background

### 1. Regulatory

In 1988, NRC amended its regulations by adding 10CFR50.75, in part, to provide assurance of the availability of funds for decommissioning. Similar provisions were added for ISFSI licensees in 10CFR72.18.

In the statements of consideration<sup>1</sup> associated with the rulemaking, NRC made several points relevant to Maine Yankee's exemption request:

- The amended regulations apply to ISFSIs
- Decommissioning activities do not include fuel storage/removal, and
- Reuse of a facility for other nuclear purposes is not considered decommissioning.

At that time, neither 10CFR50.75 nor 10CFR72.18 contained periodic decommissioning funding reporting requirements.

In 1998, NRC amended<sup>2</sup> its financial assurance regulations, in part, to require power reactor licensees to report periodically on the status of their decommissioning funds. Specifically, this reporting requirement was added through 10CFR50.75(f)(1), requiring a yearly or bi-yearly report depending on the facility's proximity to decommissioning. The periodic reporting

<sup>1</sup> 58 FR 24018, June 27, 1988

<sup>2</sup> 63 FR 50480, September 22, 1998

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requirements were specific for reactor (i.e., 10CFR50) licensees – similar requirements were not implemented for 10CFR72 specific licensees and do not exist today.

## 2. Maine Yankee

Maine Yankee expects to terminate its 10CFR50 license for its reactor facility this summer. The remaining ISFSI facility will operate under 10CFR50 and 10CFR72 general licenses.

ISFSI operation is not decommissioning – rather it represents a different nuclear reuse (spent fuel dry cask storage) of the reduced 10CFR50 license. Spent fuel storage at the ISFSI is expected to continue for a number of years until the DOE meets its obligations to remove the fuel or alternative storage means are available to support fuel removal from the site.

Decommissioning of the ISFSI will commence upon fuel removal from the facility. Financial assurance of ISFSI decommissioning/site restoration funding is provided through use of an external sinking fund whose funding is derived from a 2005 Federal Energy Regulatory Commission settlement agreement. The agreement provides for collection of funds from ratepayers adequate to operate the ISFSI through 2023 and complete its decommissioning.

Overall funding set aside for ISFSI decommissioning/site restoration (in 2004 dollars) is \$7,300,000 consisting of \$1,800,000 for work in 2022 and \$5,500,000 to complete the effort in 2023. Of this amount, only approximately \$1,500,000 is for decommissioning activities governed by NRC regulation (e.g., license termination plan update, final status surveys). The bulk of the funds are for site restoration (e.g., demolition of the operations building, fuel storage pads and berm surrounding the ISFSI, etc.).

Since 10CFR50.75(f)(1) went into effect, Maine Yankee has been providing yearly reactor decommissioning funding reports to the NRC, most recently in 2005<sup>4</sup>.

### Exemption Request

As a 10CFR50, 10CFR72 general licensee, the provisions of 10CFR50.75(f)(1) will continue to apply to Maine Yankee upon completion of reactor decommissioning. For the reasons stated below, Maine Yankee requests exemption from these periodic decommissioning funding reporting requirements during the (about to commence) period of stand-alone ISFSI operation.

Based on regulatory history it is clear that the financial assurance provisions of 10CFR50.75 apply to stand-alone ISFSIs. It is equally as clear that the periodic decommissioning funding provisions of 10CFR50.75(f)(1) were not intended to apply to stand-alone ISFSIs since such a provision was not deemed necessary to include in 10CFR72 for specific licensees. Although the

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<sup>3</sup> The FERC settlement agreement includes provisions for an updated ratemaking case should ISFSI funding be necessary beyond 2023.

<sup>4</sup> Maine Yankee letter to NRC, MN-05-014, dated March 30, 2005, "Decommissioning Funding Status Report – 10 CFR 50.75(f)"

record is silent as to why ISFSI specific licensees were not required to implement periodic decommissioning funding reporting, the extremely large cost difference between reactor decommissioning and ISFSI decommissioning suggests an answer. The cost for that portion of ISFSI decommissioning controlled by NRC regulations is on the order of \$1,000,000 compared to hundreds of millions of dollars for a reactor. Provided the other financial assurance requirements of 10CFR50.75 remain in place, periodic reporting for such small decommissioning amounts is unwarranted regulatory burden. Maine Yankee has complied and will continue to comply with the other financial assurance requirements of 10CFR50.75 until termination of the ISFSI 10CFR50 license.

### Exemption Basis

By 10CFR50.12, the Commission is authorized to grant exemptions to 10CFR50 regulations to any interested party provided such exemptions are "authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security".

Elimination of periodic ISFSI decommissioning funding reporting requirements represents the status quo for 10CFR72 specific licensees. Consequently, exemption to the reporting requirements is authorized by law and constitutes no risk to public health and safety nor the common defense and security.

To grant exemptions in accord with 10CFR50.12, the Commission must also find that special circumstances exist. Special circumstances are present in support of the Maine Yankee exemption request. Specifically:

- (i) Utilizing either a general or specific ISFSI license is an acceptable approach to operating a stand-alone ISFSI under NRC regulations. However, application of 10CFR50.75(f)(1) to stand-alone ISFSI general licensees is in conflict with its lack of application to ISFSI specific licensees.
- (ii) Periodic decommissioning funding reporting for relatively small ISFSI decommissioning costs achieves no additional guarantee of adequate decommissioning funding compared to compliance with the other funding assurance requirements of 10CFR50.75. Therefore, application of 10CFR50.75(f)(1) to stand-alone ISFSI general licensees is not necessary to achieve the underlying purpose of 10CFR50.75.
- (iii) All reporting requirements carry an underlying cost burden particularly for stand-alone ISFSIs whose organization sizes are minimal and necessitate costly outside consultants to prepare the periodic decommissioning funding reports. Compared to similarly situated stand-alone ISFSI specific licensees who bear no such costs, application of 10CFR50.75(f)(1) to ISFSI general licensees results in reporting costs significantly in excess of ISFSI specific licensees.

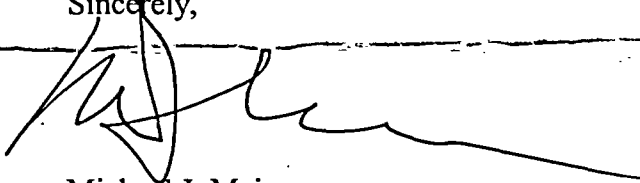
U. S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Page 4

- (iv) ISFSI storage and decommissioning costs for Maine Yankee are not borne by Maine Yankee's owners, rather they are collected from individual ratepayers. Eliminating reporting requirements such as those associated with 10CFR50.75(f)(1) results in lower ratepayer costs in the public interest.

Based on the above, the Commission should grant Maine Yankee an exemption to 10CFR50.75(f)(1).

We would appreciate your timely review and approval by September 30, 2005.

Sincerely,



Michael J. Meisner  
Vice President and Chief Nuclear Officer

cc: Dr. R. R. Bellamy, NRC Region I  
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