Maine Yankee Atomic Power Company
321 Old Ferry Rpad
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The Yankee Companies

Yankee Atomic Electric Company
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May 16, 2011
CY-11-015

Express Mail Overnight Delivery

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Reference:

(a) License No. DPR-36 (Docket No. 50-309, 72-30) (Maine Yankee)
(b) License No. DPR-61 (Docket No. 50-213, 72-39) (Connecticut Yankee)
(c) License No. DPR-3 (Docket No. 50-029, 72-31) (Yankee Atomic)
(d) 10 C.F.R. Section 50.80
(e) 10 C.F.R. Section 50.12
(f) TAC Nos. L24496, L24497 and L24498

Re: Response to Second Request for Additional Information for Application for NRC Consent to Indirect License Transfer/Threshold Determination — Merger of Northeast Utilities and NSTAR

Dear Sir or Madam:

Maine Yankee Atomic Power Company ("Maine Yankee"), Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), and Yankee Atomic Electric Company ("Yankee Atomic") (each a "Yankee Company," and together, "the Yankee Companies"), hereby respond to the Nuclear Regulatory Commission ("NRC") Second Request for Additional Information for Application for NRC Consent to Indirect License Transfer/Threshold Determination (TAC Nos. L24496, L24497, L24498) ("RAI 2") provided to the Yankee Companies on April 21, 2011.

On December 6, 2010, the Yankee Companies, acting on behalf of Northeast Utilities ("NU") and NSTAR, had notified the NRC of the pending merger of NU and NSTAR. NU and NSTAR are currently indirect minority co-owners of each of the Yankee Companies. Post-merger, the combined NU would be an indirect minority co-owner of Maine Yankee (24.0%) and an indirect majority co-owner of Connecticut Yankee (63.0%) and Yankee Atomic (52.5%). Accordingly, the Yankee Companies requested NRC approval of the merger in accordance with 10 C.F.R. 50.80 with respect to Connecticut Yankee and Yankee Atomic. For Maine Yankee, no transfer of control is involved in the merger and the Yankee Companies concluded that no NRC transfer approval is required. The Yankee Companies requested the required NRC approvals for

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Connecticut Yankee and Yankee Atomic (and any NRC Staff threshold determination for Maine Yankee) by April 1, 2011, to support the planned merger schedule.

On March 16, 2011, the Yankee Companies submitted additional information on the ownership and organization of the Yankee Companies to respond to a first NRC Request for Additional Information dated February 28, 2011. The response specifically identified the indirect minority co-owners for each of the Yankee Companies that are foreign, discussed membership of the Board of Directors of each Yankee Company, and included the corporate by-laws for Maine Yankee.

However, neither NU nor NSTAR is a foreign entity. Accordingly, the planned merger does not change the foreign participation in any of the Yankee Companies.

The NRC's RAI 2 seeks additional information that the NRC maintains is required to complete its detailed review of the December 6, 2010, license transfer application. RAI 2 specifically requests that the Yankee Companies "submit a negation action plan for each of the licensees which negates the foreign ownership, control, or domination" of the Yankee Companies. Alternatively, RAI 2 requests that the Yankee Companies "take action to remove the foreign ownership, control, or domination."

RAI 2 addresses a current regulatory compliance issue created, in the NRC Staff's view, by certain of the licensees' shareholders (not NU or NSTAR) which are ultimately owned by foreign entities. The owners, their foreign parents, and their ownership shares in the licensees are shown below:

- *Maine Yankee:* Central Maine Power Co. (38% - Iberdrola S.A.), New England Power Co. (24% - National Grid plc); Bangor Hydro-Electric and Maine Public Service Co. (12% - Emera Inc.)

- *Connecticut Yankee:* New England Power Co. (19.5% - National Grid plc); Central Maine Power Co. (6.0% - Iberdrola S.A.)

- *Yankee Atomic:* New England Power Co. (34.5% - National Grid plc), Central Maine Power Co. (9.5% - Iberdrola S.A.)

RAI 2 also notes:

- Shareholders with ultimate foreign parent companies have the power to appoint members to the Board of Directors of each of the NRC licensees.

- The Maine Yankee shareholders, including several foreign entities, may also exercise control via the unanimous consent required to amend the sections of the Maine Yankee by-laws concerning the Maine Yankee Director appointment and voting authority.

The Yankee Companies discussed this issue with the NRC Staff by telecon on April 26, 2011. The Yankee Companies discussed the basis for their position that the pre-existing foreign ownership issue identified in RAI 2 has no nexus to the December 6, 2011, license transfer

application for Connecticut Yankee and Yankee Atomic. Nor does it have any nexus to a conclusion that the NU-NSTAR merger does not invoke 10 C.F.R. 50.80 for Maine Yankee and that no NRC approval for that license is required. Accordingly, the regulatory issue identified in RAI 2 should be addressed in an appropriate process not linked to the merger matter. Enclosure 1 hereto provides the Yankee Companies' detailed basis for this position in response to RAI 2.

Further, the Maine Yankee, Connecticut Yankee, and Yankee Atomic facilities are not nuclear power plants. Each of the nuclear generating units formerly located at those sites has been permanently shut down, dismantled, and decommissioned. Presently, the only licensed activities at those sites are possession of a reduced site and storage of spent fuel and Greater-than-Class C waste at a dry cask storage facility (*i.e.*, an independent spent fuel storage installation or "ISFSI"). The activities subject to NRC jurisdiction, therefore, do not fall within statutory restrictions on foreign ownership, control, or domination. To the extent the NRC licenses for the three sites issued under 10 C.F.R. Part 50 fall within the regulatory provisions of 10 C.F.R. 50.38, the Yankee Companies request an exemption from those provisions.

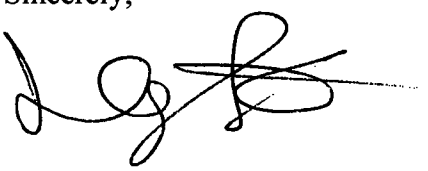
Application of the restrictions in 10 C.F.R. 50.38 under the present circumstances is not necessary to achieve the underlying purpose of the rule and would result in undue hardship to the licensees and the shareholders. An exemption will not present any undue risk to public health and safety and would be consistent with common defense and security. Enclosure 2 provides the detailed basis for the exemptions requested.

This exemption request allows the NRC and the Yankee Companies to address the issues identified in RAI 2 in an appropriate regulatory process, disconnected from the pending merger of NU and NSTAR, again both U.S. corporations. To the extent the NRC believes some other ongoing regulatory compliance process is more appropriate, such as enforcement discretion, the Yankee Companies are willing to consider such an alternative to resolve this issue.

This communication contains no new or revised regulatory commitments.

If you have questions or require additional information, please contact me or Joe Fay at (207) 350-0300.

Sincerely,



Wayne Norton
CEO and President of Yankee Atomic and Connecticut Yankee
Chief Nuclear Officer of Maine Yankee

Enclosure 1: Response to RAI 2
Enclosure 2: Request for Exemption

ENCLOSURE 1

RESPONSE TO APRIL 21, 2011 SECOND REQUEST FOR ADDITIONAL INFORMATION RELATED TO APPLICATION FOR NRC CONSENT/THRESHOLD DETERMINATION FOR INDIRECT LICENSE TRANSFER RELATED TO MERGER OF NORTHEAST UTILITIES AND NSTAR

RESPONSE TO APRIL 21, 2011 SECOND REQUEST FOR ADDITIONAL INFORMATION RELATED TO APPLICATION FOR NRC CONSENT/THRESHOLD DETERMINATION FOR INDIRECT LICENSE TRANSFER RELATED TO MERGER OF NORTHEAST UTILITIES AND NSTAR

Pending License Transfer Application: By letter dated December 6, 2010, Maine Yankee, Connecticut Yankee, and Yankee Atomic notified the NRC on behalf of two of its owners — Northeast Utilities (NU) and NSTAR — of the pending merger of NU and NSTAR. The Yankee Companies requested approval of an indirect transfer of the NRC licenses to the extent necessary. Specifically, NU and NSTAR are presently indirect minority co-owners of each of the Yankee Companies. Both NU and NSTAR are U.S. companies. The merger would result in a combined NU which would hold 24.0%, 63.0%, and 52.5% interests in Maine Yankee, Connecticut Yankee, and Yankee Atomic respectively. The combined NU would be a U.S. company.

The December 6, 2010 letter stated that, consistent with precedent, NRC approval of the merger for Maine Yankee is not necessary because there is no transfer of control of the Maine Yankee license, either direct or indirect, that would result from the merger. Neither NU nor NSTAR presently hold a controlling interest in Maine Yankee. Likewise, the combined post-merger NU, with a 24.0% total interest, will not hold a controlling interest in the licensee. Because there is no transfer of control that would occur for Maine Yankee, no NRC approval under 10 C.F.R. 50.80 is required. At most, consistent with NRC practice, the Yankee Companies expect that the NRC Staff would conduct a threshold review and determine that no approval is required in connection with Maine Yankee.

Prior to the merger, neither NU nor NSTAR holds a controlling interest in either Connecticut Yankee or Yankee Atomic. However, in contrast to the situation for Maine Yankee, the post-merger combined NU would hold interests in the two Yankee Companies in excess of 50.0% (63.0% for Connecticut Yankee; 52.5% for Yankee Atomic). Accordingly, the Yankee Companies acknowledged that the merger may involve an indirect transfer in control of these two licensees and requested NRC approval in accordance with 10 C.F.R. 50.80.

By letter dated March 16, 2011, the Yankee Companies submitted a response to the NRC's first Request for Additional Information (RAI 1), addressing pre-merger and post-merger ownership information for all three of the Yankees. The RAI 1 response identified the owners with interests in all three Yankees that are presently held, through intermediate owners, by entities with foreign parents. The foreign parents and ownership shares are:

- *Maine Yankee:* Central Maine Power Co. (38% - Iberdrola S.A.), New England Power Co. (24% - National Grid plc); Bangor Hydro-Electric and Maine Public Service Co. (12% - Emera Inc.)

- *Connecticut Yankee:* New England Power Co. (19.5% - National Grid plc); Central Maine Power Co. (6.0% - Iberdrola S.A.)

- *Yankee Atomic:* New England Power Co. (34.5% - National Grid plc), Central Maine Power Co. (9.5% - Iberdrola S.A.)

Iberdrola is a corporation based in Spain. National Grid and its subsidiaries are based in England and Ireland. Emera is based in Canada.

The NU-NSTAR merger does not in any way change the foreign participation in the Yankee Companies.

RAI 2: Citing Section 103.d of the Atomic Energy Act and 10 C.F.R. 50.38, RAI 2 states that the Yankee Companies should submit a negation action plan for each of the licensees or take action to remove the foreign ownership, control, or domination that presently exists. The RAI also notes:

- Shareholders with ultimate foreign parent companies have the power to appoint members of the Board of Directors of each of the Yankees.

- The MY shareholders, including several foreign entities, may also exercise control via the unanimous consent required to amend the MY bylaws concerning director appointment and voting authority.

RAI 2 appears to require action to address these two circumstances. NRC RAI 2 requests a response by May 17, 2011.

No Nexus Between RAI 2 and the NU-NSTAR Merger: The Yankee Companies are concerned that RAI 2 implies a linkage between the outstanding Section 50.80 indirect license transfer application related to the NU-NSTAR merger and the issue of foreign ownership, control, or domination related to the licensees and their current indirect owners. This linkage has no basis in law or in the NRC regulatory process. A delay in the approval of the transfer may delay the merger (which is a significant concern to two of the Yankee Companies' owners, NU and NSTAR). The following considerations support this position:

- The foreign ownership, control, or domination issue identified in RAI 2 pre-dates the proposed merger and the license transfer request of December 6, 2010. The various foreign entities have obtained their indirect ownership interests in the Yankee Companies through prior transactions. Because each of those prior transactions involved minority interests in the licensees, no direct or direct transfer of control was involved and no NRC approval under 10 C.F.R. 50.80 was required. For example, in an NRC letter to Mr. Perry D. Robinson, dated February 24, 2000, the NRC reported the results of its threshold review of the merger of New England Electric System (the parent of New England Power, a minority owner of the Yankee Companies) and National Grid, resulting in

National Grid's non-controlling indirect interests in the Yankee Companies. The NRC determined that approval was not required.[1]

- The NRC has consistently not required a negation action plan for the foreign owners of the Yankee Companies. No negation action plan has been previously required with respect to the interests of National Grid or Iberdrola. Nor was a plan required for interests initially held by Emera. At most, such a plan was provided to the NRC in connection with a merger of the parents of Maine Public Service (MPS) and Bangor Hydro Electric Company (BHE)(a subsidiary of Emera) in August 2010. Both MPS and BHE are minority owners of Maine Yankee. The parents of the two minority co-owners were being merged into a subsidiary of Emera.

- To the extent one exists, the foreign ownership, control, or domination issue under 10 C.F.R. 50.38 is not created, exacerbated, or even changed by the proposed NU-NSTAR merger. The merger does not involve any foreign entities (new or existing). The merger does not change any foreign ownership shares. Foreign ownership therefore is not an issue in the scope of the NRC Staff's review of the application before the agency. It is axiomatic that the scope of any license transfer or license amendment review is limited by the scope of the approval being sought.

- To the extent RAI 2 relates to Maine Yankee, RAI 2 is not linked to a requested licensing action. For Maine Yankee there is no transfer of control, either direct or indirect due to the merger (NU and NSTAR combined will have only a non-controlling 24.0% ownership interest). Note that in the recent case of the acquisition of the parent of MPS by BHE, the NRC determined that the acquisition of the non-controlling interest did not constitute a transfer requiring NRC review. *See* NRC letter to James Connell, ISFSI Manager, Maine Yankee, dated October 26, 2010).

- Both Section 103.d/Section 104.d of the Atomic Energy Act and 10 CFR 50.38 prohibit the *issuance of a license* to specified foreign entities. The Yankee Companies have not requested the issuance of a license in connection with the merger license transfers. RAI 2 also is not linked to the pending application for this reason.

In conclusion, the Section 50.80 license transfer process is not the appropriate process for resolving any pre-existing issue for the Yankee Companies or their owners related to foreign ownership, control, or domination. To the extent the NRC believes there is an issue under 10 C.F.R. 50.38 or Section 103.d of the Atomic Energy Act, this is an ongoing compliance issue

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[1] An NRC letter to Catherine P. McCarthy, dated February 21, 2008, documents a similar threshold determination with respect to the acquisition of Energy East, a parent of Central Maine Power Company (a shareholder in the Yankee Companies) by Iberdrola.

that needs to be addressed in a different regulatory process than the 10 C.F.R. 50.80 licensing process.

Foreign Control Issues in RAI 2 Lack Basis: Section 103.d of the AEA (or Section 104.d, as the case may be for the Yankee Companies' licenses) applies to licenses for production or utilization facilities, and provides that a license for such a facility may not be issued to an entity that is foreign owned, controlled, or dominated.

Maine Yankee, Connecticut Yankee, and Yankee Atomic are not presently, by any reasonable interpretation, "utilization facilities" within the scope of Section 103.d. The three facilities/sites are not power reactors. The nuclear power plants previously at the site have been shut down, dismantled, and decommissioned. The Yankee Companies are authorized only to possess reduced scope sites and spent fuel storage installations.

Each of the three Yankee Companies presently holds an NRC license under 10 C.F.R. Part 50, but with carefully delimited authorizations. Each of the Yankee Companies is licensed only to possess the reduced site and the special nuclear, byproduct, and source material located at the site. The licensees also hold general licenses under 10 C.F.R. 72.210 to store spent nuclear fuel at the on-site ISFSI. The three sites, therefore retain licenses under 10 C.F.R Part 50 only as an historic artifact. The Part 50 and general licenses *do not authorize the possession or operation of a utilization facility within the meaning of the Atomic Energy Act.* And there is no prohibition with respect to foreign ownership, control, or domination in 10 C.F.R. Part 72.

Moreover, as should be clear from information previously submitted in response to the first RAI, no one foreign entity controls or dominates any of the three Yankees. The combined foreign interests of Iberdrola and National Grid in Connecticut Yankee and Yankee Atomic are non-controlling (< 50.0%). Thus there is no foreign control or domination that needs to be negated under the Atomic Energy Act or NRC regulations.

The combined ownership interests of the foreign parents for Maine Yankee (which, as discussed above, should not be in issue for the requested license transfers) is greater than 50%. However, foreign control would require collusion/cooperation among more than one of the three foreign parents. There is no basis in fact for making such an assumption. Moreover, Section 103.d/Section 104.d of the Atomic Energy Act prohibit control or domination of a licensee by "an alien, foreign corporation or a foreign government" (the language is singular — prohibiting control by any one foreign entity). The statute therefore does not support a conclusion that a negation action plan is required to address a cumulative foreign interest.

Governance Issues: RAI 2 observes that shareholders with ultimate foreign parent companies have power to appoint members of the Board of Directors of each of the Yankee Companies. However, the ability of the co-owners with foreign parents to appoint directors does not create foreign control of the licensees. All directors of the Yankee Companies are currently U.S. citizens. The governance provisions described in response to the first RAI assure that no one foreign entity can control a Board of Directors of a Yankee Company.

ENCLOSURE 2

REQUEST FOR EXEMPTION FROM 10 C.F.R. 50.38 IN ACCORDANCE WITH 10 C.F.R. 50.12

REQUEST FOR EXEMPTION FROM 10 C.F.R. 50.38 IN ACCORDANCE WITH 10 C.F.R. 50.12

Exemption Request: The Yankee Companies have previously requested and received exemptions from certain 10 C.F.R. Part 50 requirements that are not applicable at this stage in the life cycles of the licenses. Consistent with this precedent, the Yankee Companies respectfully request an exemption in accordance with 10 C.F.R. 50.12 from any applicable requirement in 10 C.F.R. 50.38 that may presently apply.

Basis: In accordance with 10 C.F.R. 50.12(a)(1) this exemption request is authorized by law and does not require an exemption from the Atomic Energy Act. As discussed in Enclosure 1, Section 103.d/Section 104.d of the Atomic Energy Act apply only to a license being issued for a production or utilization facility. Regardless of the Part 50 designation of the possession-only licenses for the Yankee sites, the current NRC licenses do not allow possession or use of a production or utilization facility subject to Section 103.d/Section 104.d of the Act. Accordingly, Section 103.d/Section 104.d do not prohibit the exemption. This request involves only an exemption from the requirements in 10 C.F.R. 50.38, and only to the extent the NRC Staff concludes that the regulation applies in this case.

In accordance with 10 C.F.R. 50.12(a)(1), the Yankee Companies have also determined that the requested exemption will not cause any undue risk to the public health and safety or to the common defense and security, based on the following considerations:

- The two co-owners of Connecticut Yankee with foreign parents control a total of 25.5 % of the licensee. The foreign parents of the co-owners are Spanish and British entities, and therefore are not from any restricted nation.

- The two co-owners of Yankee Atomic with foreign parents control a total of 44.0 % of the licensee. The co-owners and foreign parents are the same as for Connecticut Yankee.

- The co-owners of Maine Yankee with foreign parents control a total of 74.0 % of the licensee. However, no one foreign owner controls more than 38.0% of the shares. There is no basis to conclude that the co-owners will collude in activities contrary to the public health and safety or the common defense and security of the United States.

- The United Kingdom, Spain, and Canada are all signatories to the Nuclear Non-Proliferation Treaty.

- The licenses issued to the three Yankee Companies authorize only possession of the reduced sites, the ISFSI, and the spent nuclear fuel.

- The activities at the site do not involve any Restricted Data or other sensitive nuclear technology.

- Access to safeguards and security-sensitive information is, and will remain, subject to the licensees' approved access authorization programs in compliance with NRC requirements.

- The foreign parents of the co-owners are not involved in day-to-day activities at the sites.

- Each of the owners is contractually obligated to pay its pro-rata shares of the facility operating and decommissioning costs, which at this stage are predominately related to the ISFSI. The Department of Energy remains obligated under statute and contract to take the spent nuclear fuel for disposal.

Under the current circumstances, it is not credible that the foreign ownership of individual minority co-owners of any of the three Yankee Companies would result in a safety or security issue.

The exemption requested is also consistent with 10 C.F.R. 50.12(a)(2) because Section 50.38 does not need to be applied where (as here) there is nothing inimical to public health and safety or the common defense and security in granting an exemption to allow the *status quo* with respect to the ownership of the Yankee Companies. Compliance with 10 C.F.R. 50.38 as contemplated in RAI 2 is not necessary to serve the underlying purpose of the regulation (which is to prevent foreign ownership, control, or domination of a power reactor license, to protect security of reactors, and control access to technology and sensitive information).

Compliance with 10 C.F.R. 50.38 as contemplated in RAI 2 would also result in undue hardship to the Yankee Companies, the co-owners, and the parent companies. Divestiture of interests in companies, such as the Yankee Companies, whose activities are predominantly related to possession of spent nuclear fuel, is not a practical alternative. A negation action plan, restricting the selection and activities of the Boards of Directors of the Yankee Companies is also not reasonable or necessary under the circumstances. All of the current directors are experienced with the Yankee Companies and with licensed nuclear activities. All are U.S. citizens. Many are former employees of shareholders of the Yankee Companies. It would present an unnecessary hardship, and undue expense, for the co-owners to replace existing directors with directors less experienced with the Yankee Companies and/or nuclear licensed activities.