

January 27, 2012

EA-2011-271

Mr. Wayne Norton
Chief Nuclear Officer
Maine Yankee Atomic Power Company
321 Old Ferry Road
Wiscasset, ME 04578-4922

SUBJECT: MAINE YANKEE ATOMIC POWER COMPANY, MAINE YANKEE ATOMIC
POWER STATION – NOTICE OF VIOLATION EA-2011-271 (TAC NO. L24538)

Dear Mr. Norton:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC or Commission) staff's (staff's) review related to the indirect license transfer that will result from a proposed merger of Northeast Utilities (NU) and NSTAR. By application dated December 6, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103490133), as supplemented March 16, 2011 (ML110770022), May 16, 2011 (ML11139A088), June 8, 2011 (ML11166A124), August 16, 2011 (ML11235A723), August 24, 2011 (ML11243A087), and August 25, 2011 (ML112490526), Maine Yankee Atomic Power Company (MYAPC or licensee) requested a threshold determination that the proposed merger between NU and NSTAR does not involve any direct or indirect transfer of control of License No. DPR-36 for the Maine Yankee Atomic Power Station (MYAPS), and thus, does not require NRC consent.

As part of the threshold review, the staff reviewed compliance with foreign ownership, control or domination (FOCD) requirements in 10 CFR 50.38. As stated, 10 CFR 50.38 requires that "any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license." As MYAPS is currently licensed under 10 CFR Part 50, the provisions of 10 CFR 50.38 apply.

During the staff's review, an apparent violation of the requirements in 10 CFR 50.38 was identified. A series of incremental ownership changes has resulted in MYAPC being owned, controlled, or dominated by three foreign corporations – Iberdrola, based in Spain; National Grid, based in the United Kingdom; and Emera, based in Canada. Although NRC consent or approval was not required for those cases where the specific ownership changes did not constitute a transfer of control that would necessitate a license transfer, compliance with 10 CFR 50.38 was still required.

Based on the totality of circumstances, the staff has determined that the existing ownership of MYAPC is contrary to the requirements of 10 CFR 50.38. Specifically, MYAPC's is ultimately owned, in part, by foreign entities, and MYAPC is governed by a board of directors whose members are appointed, in part, by companies that are also ultimately controlled by foreign

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

On April 20, 2011 (ML111101402), the staff requested additional information (RAI) from MYAPC. The letter stated, "the NRC staff knows and has reason to believe that the [licensee is] owned, controlled, or dominated by foreign corporations" (i.e., MYAPC is not meeting the requirements of 10 CFR 50.38). The letter also requested MYAPC to submit a negation action plan to negate the FOCD (using the methods identified in the Final Standard Review Plan on Foreign Ownership, Control, or Domination (64 FR 52355; September 28, 1999)), or take action to remove the FOCD, to restore compliance with 10 CFR 50.38.

Your May 16, 2011, response to the RAI (ML11139A088) acknowledged the foreign ownership and stated that establishing a negation action plan would result in undue hardship to the licensee and shareholders. In lieu of submitting a negation action plan and restoring compliance with NRC regulations, you requested an exemption from the FOCD requirements in 10 CFR 50.38, in your May 16, 2011, letter. The NRC is reviewing this exemption request separately and you will be informed of the results of this review under separate correspondence.

Based on our review of the information in your May 16, 2011, letter and the information you submitted during the license transfer review, the NRC has determined that a Severity Level IV violation of the requirements in 10 CFR 50.38 has occurred. The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

The violation is cited in the enclosed Notice of Violation (Notice). The violation is being cited in the Notice because it was identified by the NRC.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC review of your response to the Notice will also determine whether further enforcement action is necessary to ensure timely compliance with regulatory requirements.

The staff acknowledges receipt of your December 21, 2011, letter (ML11364A053), which provided additional information on FOCD matters and included a negation action plan that outlined certain foreign ownership negation and exclusion measures. You stated that resolutions implementing the plan were adopted by MYAPC on December 14, 2011. In your response to the Notice, you may reference this correspondence and should provide additional details on the actions you have taken to implement the negation measures, including all documents relevant to implementation of the negation action plan (e.g., executed copies of the board resolutions signed by the board of directors, signed copies of the certifications, and/or updates to your by-laws, as referenced in your letter).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room or ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, sensitive, or safeguards information, so that it can be made available to the public without redaction.

W. Norton

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If you have any questions, please contact me at (301) 492-3297, or John Goshen of my staff, at (301) 492-3325.

Sincerely,

/RA/

Michael D. Waters, Chief
Licensing Branch
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

Docket Nos.: 50-309, 72-30

License No.: DPR-36

TAC No.: L24538

Enclosure: Notice of Violation

cc: Maine Yankee Atomic Power Station
Service List

W. Norton

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Maine Yankee Atomic Power Station Service List

cc:

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