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August 28, 2013
OMY-13-056

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

Maine Yankee Atomic Power Company
Maine Yankee Independent Spent Fuel Storage Installation
NRC License No. DPR-36 (NRC Docket Nos. 50-309 and 72-30)

Subject: Request to Rescind Confirmatory Order dated June 4, 2012

On June 4, 2012, the Nuclear Regulatory Commission (NRC) issued a Confirmatory Order (Reference (a)) to Maine Yankee Atomic Power Company (MY). The Confirmatory Order requires negation actions to be taken by MY to address the NRC's requirements under 10 CFR 50.38 regarding foreign ownership, control, or domination (FOCD). On July 15, 2013, the NRC issued an exemption to MY with respect to the FOCD requirements of 10 CFR 50.38 (Reference (b)). Accordingly, MY herein requests that the NRC rescind the Confirmatory Order dated June 4, 2012 (Reference (a)).

Background

FOCD issues related to several of the sponsor companies of MY arose in connection with the NRC's review of a proposed indirect license transfer and a threshold determination related to the merger (now completed) of two of MY's domestic sponsor companies, Northeast Utilities and NSTAR. In the course of that review, the NRC staff raised questions regarding the ultimate foreign ownership of some of MY's other sponsor companies. MY disputed the assertion that these owners raised FOCD concerns within the scope of 10 CFR 50.38 because, among other reasons, the MY site and ISFSI are not production or utilization facilities. In addition, to the extent the NRC disagreed, on May 16, 2011, MY submitted a request for an exemption (Reference (c)) from the requirements of 10 CFR 50.38, in light of the fact that the site of the former Maine Yankee Atomic Power Station is decommissioned, and that the present NRC license authorizes only possession of spent fuel at an Independent Spent Fuel Storage Installation (ISFSI). That exemption has now been granted by the NRC as discussed above.

During the period in which the exemption request was under NRC staff review, and as described in the correspondence to the NRC of December 21, 2011 (Reference (d)), MY separately applied for a Facility Clearance under 10 CFR 95, to support access by individuals with personal clearances, on a need-to-know basis, to certain classified information associated with security

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requirements for ISFSIs located at former reactor sites. MY specifically committed to implement Negation Action Plans (NAPs) to avoid any Foreign Ownership, Control, or Influence (FOCI) under 10 CFR 95 related to control of classified information. The NAPs were implemented by a Board of Directors resolution on December 14, 2011. The NAPs were subsequently amended, and this version was submitted to the NRC on April 24, 2012 (Reference (e)).

On January 27, 2012, the NRC issued a Notice of Violation (NOV) to MY, citing a violation of 10 CFR 50.38 for the prior failure to implement FOCD negation actions related to the MY sponsor companies ultimately owned by foreign interests. On February 23, 2012, MY responded to the NOV (Reference (g)). MY disputed the NOV, and described actions taken to address NRC's concerns, including both the 10 CFR 95 FOCI NAPs that had been previously implemented as described in Reference (d) and the exemption request that had been submitted in Reference (c).

By a letter dated August 9, 2012, the NRC subsequently denied MY's dispute with respect to the NOV, upholding the violation and stating that the licensee remained subject to 10 CFR 50.38 notwithstanding that the NRC license does not authorize MY to operate an electric power producing facility (Reference (h)). On June 4, 2012, the NRC issued the referenced Confirmatory Order, citing 10 CFR 50.38 and compelling negation actions based on the NAP previously submitted by MY (Reference (a)).

Basis for Rescission

MY requests that the Confirmatory Order be rescinded for the following reasons:

A. The Confirmatory Order Has No Regulatory Basis

The Confirmatory Order was specifically issued by the NRC to implement the FOCD prohibition in Section 103d of the Atomic Energy Act (AEA) and the requirements of 10 CFR 50.38. Now that the NRC has issued the exemption from 10 CFR 50.38, there is no longer a legal basis for the Confirmatory Order. Indeed, the exemption that the NRC granted to MY from 10 CFR 50.38 would be a nullity if the Confirmatory Order was not rescinded.¹

¹ In issuing the exemption from 10 CFR 50.38, the NRC also specifically recognized that the statutory FOCD prohibition in AEA Section 103d does not apply to MY's circumstances. To the extent the NRC believes that the Confirmatory Order must remain in place simply due to the NOV, MY disagrees. FOCD negation actions are no longer needed to comply with a regulation for which an exemption has been granted. However, in the alternative, the NOV could be rescinded as well as the Confirmatory Orders, in order to give effect to the exemption that has been granted.

B. The Confirmatory Order Has No Safety or Security Basis

As the NRC recognized in the safety evaluation related to the exemption (Reference (b)), there are no public health and safety or security concerns that compel that the Confirmatory Order remains in effect. The underlying purpose of the FOCD prohibition is to prevent foreign control over production and utilization facilities (the prohibition applies only to such facilities). The Maine Yankee ISFSI is not a production or utilization facility, and the risks addressed in the statute and regulation are not present for the MY site. Moreover, the ownership structure of MY assures that control of the ISFSI remains with the licensee; no one foreign company holds a controlling interest in MY. In accordance with NRC regulations, MY also implements an access authorization program and a program to control access to security information.²

C. The Negation Action Plans Should Be Managed in Accordance with 10 CFR 95

As noted above, MY adopted the NAP to support the 10 CFR 95 Facility Clearance, by mitigating any potential for FOCD as addressed in that part of the NRC's regulations. In contrast, the Confirmatory Order was not based on 10 CFR 95, did not cite 10 CFR 95, is not compelled by any regulation under that part, and should not be retained on that basis.

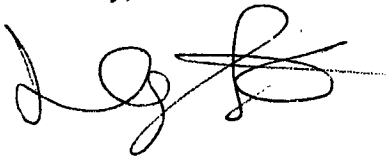
To date, MY has not amended any aspect of the NAP. Once the Confirmatory Order is rescinded, the NAPs will be controlled in accordance with 10 CFR 95 regulations (e.g., 10 CFR 95.17(a)(1); 95.18; and 95.19). There is no reason that the Facility Clearance for MY should be handled out of this normal NRC regulatory process.

Conclusion

For all of the above reasons, MY requests that the Confirmatory Order be rescinded. MY will maintain negation actions necessary to address any FOCD issues related to the Facility Clearance in accordance with the 10 CFR 95 process.

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

Sincerely,



Wayne Norton
Chief Nuclear Officer of Maine Yankee Atomic Power Company

² No specific health and safety or security risks were cited in the Confirmatory Order. The Order, by its terms, was issued only "to meet the statutory requirements of Section 103d of the AEA and 10 CFR 50.38."

References:

- a) Letter from C. Haney (NRC) to W. Norton (MY), "Confirmatory Order (Effective Immediately) (TAC No. L24538)," dated June 4, 2012 (IMY-12-079)
- b) Letter from M. D. Lombard (NRC) to W. Norton (MY), "Request for Exemption from 10 CFR 50.38 Requirements for Maine Yankee Atomic Power Company, Connecticut Yankee Atomic Power Company, and Yankee Atomic Electric Company (TAC Nos. L24538, L24565, L24566)," dated July 15, 2013
- c) Letter from W. Norton (MY) to Document Control Desk (NRC), "Response to Second Request for Additional Information for Application to Indirect License Transfer/Threshold Determination – Merger of Northeast Utilities and NSTAR," dated May 16, 2011 (OMY-11-022)
- d) Letter from W. Norton (MY) to Document Control Desk (NRC), "Foreign Ownership Negotiation Action Plan and Decommissioning Funding Assurance," dated December 21, 2011 (OMY-11-173)
- e) Letter from W. Norton (MY) to Document Control Desk (NRC), "Submittal of Corrected Negotiation Action Plan," dated April 24, 2012 (OMY-12-030)
- f) Letter from M. D. Waters (NRC) to W. Norton (MY), "Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station – Notice of Violation EA-2011-271 (TAC No. L24538)," dated January 27, 2012 (IMY-12-012)
- g) Letter from W. Norton (MY) to Document Control Desk (NRC), "Reply to Notice of Violation; EA-2011-271," dated February 23, 2012 (OMY-12-011)
- h) Letter from D. W. Weaver (NRC) to W. Norton (MY), "Response to Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station – Disputed Notice of Violation 05000309 (TAC L24538)," dated August 9, 2012 (IMY-12-129)

cc: W. M. Dean, NRC Region I Administrator
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