

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-029, 50-213, 50-309, 72-030, 72-031, and 72-039; NRC-2013-0217]

**Maine Yankee Atomic Power Company,
Connecticut Yankee Atomic Power Company, and
The Yankee Atomic Electric Company**

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a May 16, 2011, request from Maine Yankee Atomic Power Company (Maine Yankee), Connecticut Yankee Atomic Power Company (Connecticut Yankee), and the Yankee Atomic Electric Company (Yankee Atomic) (together, “licensees” or “the Yankee Companies”) from the foreign ownership, control, or domination (FOCD) requirements.

ADDRESSES: Please refer to Docket ID **NRC-2013-0217** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0217**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Goshen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-287-9250; e-mail: john.goshen@nrc.gov.

1.0 BACKGROUND

1. Maine Yankee Atomic Power Company (Maine Yankee), Connecticut Yankee Atomic Power Company (Connecticut Yankee), and the Yankee Atomic Electric Company (Yankee Atomic) (together, "licensees" or "the Yankee Companies") hold part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) possession only licenses for the following facilities: Haddam Neck Plant (Connecticut Yankee); Maine Yankee Atomic Power Station (Maine Yankee); and, Yankee Nuclear Power Station (Yankee Atomic), (together, "the facilities"). The facilities ceased power operations between 1991 and 1997, and all have completed the decommissioning process. All reactor plant facilities have been dismantled and removed, and only the independent spent fuel storage installations (ISFSIs) remain at the stations.

2.0 REQUEST/ACTION

On May 16, 2011, the Yankee Companies submitted a request for exemption from the FOCD requirements of 10 CFR 50.38 in accordance with 10 CFR 50.12.

Pursuant to 10 CFR 50.12(a)(1), the Commission may grant exemptions from the requirements of 10 CFR part 50 which:

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.

Sections [103d.and] 104d. of the Atomic Energy Act of 1954, as amended, (AEA, the Act) state that:

No license may be issued to [an alien or] any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

Section 50.38 implements Sections 103d. and 104d. of the AEA.

In the exemption application, the licensees stated that Sections 103d. and 104d. of the AEA, apply only to a license for a production or utilization facility as defined in the AEA. The licensees stated that regardless of their 10 CFR part 50 licenses, the possession only conditions of the licenses do not allow their use as a production or utilization facility, and they are therefore not subject to Sections 103d. or 104d. of the AEA.

Due to the complete decommissioning and dismantlement of the reactor facilities, the 10 CFR part 50 licenses for operation of the stations held by the Yankees have been amended to allow for only the possession of spent nuclear fuel (SNF). Under 10 CFR 72, Subpart K, "General License for Storage of Spent Fuel at Power Reactor Sites," the Yankee Companies

are authorized to store spent fuel. Specifically, under 10 CFR 72.210, the Yankees have a general license to store spent fuel in an ISFSI at each site by virtue of their Part 50 licenses to possess nuclear power reactors.

Each Yankee company is partially indirectly owned by foreign entities. The remaining owner is a U.S. entity.

3 DISCUSSION

3.1 Exemption is Authorized by Law

The NRC staff concluded that Section 103d. of the AEA does not apply to ISFSIs. The plain language of the statute demonstrates that it applies to commercial licenses for production and utilization facilities.¹ The section, which refers to “license[s] under this section” and therefore, applies solely to licenses for production or utilization facilities, states that “[n]o license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The AEA definitions of “production facility” (Section 11.v) and “utilization facility” (Section 11.cc) do not include ISFSIs. Therefore, Section 103d. does not preclude the NRC from granting the Yankee Companies an exemption from 10 CFR 50.38.

Additionally, the Commission’s regulations at 10 CFR 50.2 defines “production facility” as a facility designed or used for the formation or processing of nuclear material, and “utilization facility” as “any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233.”

As an ISFSI is neither “capable of the production of special nuclear material” nor “capable of making use of special nuclear material,” it is neither a production facility nor a

¹ AEA §§ 101, 103.

utilization facility under the AEA. Furthermore, an ISFSI is not designed or used for the formation or processing of nuclear material and is not a nuclear reactor. Accordingly, an ISFSI is neither a production facility nor a utilization facility under 10 CFR part 50. As such, the Section 103d. prohibition on FOCD entities does not apply to an ISFSI, regardless of whether it is licensed under 10 CFR part 50 or 10 CFR part 72, and therefore does not preclude the NRC from granting the Yankee Companies an exemption from the FOCD requirements of 10 CFR 50.38.

3.2 The Exemption Presents no Undue Risk to Public Health and Safety

The staff finds the requirements of 10 CFR 50.38 are intended to prevent the FOCD of production and utilization facilities. The Yankee facilities are neither production nor utilization facilities as defined in the AEA. Additionally, since FOCD restrictions are financial ownership restrictions and are neither technical nor operational requirements, granting the exemption has no bearing on the risk to public health and safety.

3.3 The Exemption is Consistent with the Common Defense and Security

The Yankees are restricted by their licenses to storing SNF in ISFSIs approved under 10 CFR 72.214. The underlying purpose of the 10 CFR 50.38 FOCD prohibition is to prevent foreign ownership, control or domination of production and utilization facilities as defined by the AEA. The Yankee facilities are neither production nor utilization facilities as defined in the AEA. In addition, there are no FOCD restrictions placed on similarly situated 10 CFR part 72 ISFSIs with specific licenses to store SNF. Such licensees have similar security and common defense concerns, and similar considerations apply. The staff finds, therefore, that granting the exemption is consistent with the common defense and security.

3.4 Special Circumstances Evaluation

The Commission cannot grant an exemption unless special circumstances apply per 10 CFR 50.12(a)(2), and application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule per 10 CFR 50.12(a)(2)(ii).

The Yankees are restricted to by their licenses to store SNF in ISFSIs approved by 10 CFR 72.214. The underlying purpose of 10 CFR 50.38 is to implement the FOCD restrictions of Sections 103d. and 104d. of the AEA and to prevent foreign ownership, control or domination of production and utilization facilities as defined by the AEA. The Yankee Companies are not production or utilization facilities as defined in the AEA. The NRC staff determined that there are no 10 CFR 50.38 FOCD restrictions placed on 10 CFR part 72 ISFSIs with specific licenses that are similarly situated to the Yankee facilities and similar considerations apply. The NRC staff finds, therefore, that applying the 10 CFR 50.38 FOCD requirement clearly does not serve the underlying purpose of the rule, and granting the exemption is consistent with the special circumstances as defined in 10 CFR 50.12(a)(2)(ii).

3.5 Environmental Evaluation

The staff has determined that this action meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(vi)(I), "Other requirements of an administrative, managerial, or organizational nature." Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with this action, and granting the exemption, therefore, does not present an undue risk to the public health and safety.

4 CONCLUSIONS

The staff finds granting the licensee's exemption request from 10 CFR 50.38 FOCD requirements acceptable for the reasons provided in the letter from Mark Lombard to Wayne Norton dated July 15, 2013 (ADAMS Accession No. ML13086A010).

5 ADDITIONAL INFORMATION

Documents related to this action, including the application for renewal, supporting documentation, and the staff's safety evaluation are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr.resource@nrc.gov. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 13th day of September, 2013.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

John M. Goshen, P.E., Project Manager
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguard

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