

SAFETY EVALUATION

INDIRECT TRANSFER OF CONTROL OF FACILITY OPERATING LICENSES FOR

HADDAM NECK PLANT (DPR-61)

AND YANKEE NUCLEAR POWER STATION (DPR-3);

THRESHOLD DETERMINATION OF FACILITY OPERATING LICENSE FOR

MAINE YANKEE ATOMIC POWER STATION (DPR-36)

DUE TO THE PROPOSED MERGER OF NORTHEAST UTILITIES AND NSTAR


DOCKET NOS. 50-213, 50-029, 50-309, 72-39, 72-31, AND 72-30

1.0 INTRODUCTION

By application dated December 6, 2010 (Agencywide Documents Access and Management System Accession No. ML103490133), as supplemented by letters dated 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), (collectively, "the application"), 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" or licensees), acting on behalf of Northeast Utilities (NU) and NSTAR (indirect co-owners of the Yankee Companies), requested that, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of control of License No. DPR-61 for the Haddam Neck Plant and License No. DPR-3 for the Yankee Nuclear Power Station, to the extent effected by the pending merger of NU and NSTAR. For Maine Yankee, the licensees requested a threshold determination that the merger will not result in a transfer of control of License No. DPR-36 for the Maine Yankee Atomic Power Station, and thus, not require NRC consent.

Connecticut Yankee is the owner and licensed operator of the Haddam Neck Plant (DPR-61). Yankee Atomic is the owner and licensed operator of the Yankee Nuclear Power Station (DPR-3). Maine Yankee is the owner and licensed operator of the Maine Yankee Atomic Power Station (DPR-36). Each Yankee Company holds a 10 CFR Part 50 license with a general license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) under Subpart K of 10 CFR Part 72. Consequently, each of the licensees must meet the applicable requirements of 10 CFR Part 50 for a reactor facility that has submitted certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as well as applicable requirements in 10 CFR Part 72. The reactor facilities at each site have been decommissioned, and the ongoing activities consist of operating the ISFSIs.

The supplemental information of March 16, May 16, June 8, August 16, August 24, and August 25, 2011, provided additional information that clarified the application and did not expand the scope of the application as originally noticed in the *Federal Register* on July 14, 2011 (76 FR 41530, 76 FR 41532).

|  |                               |   |                      |
|--|-------------------------------|---|----------------------|
| United States Nuclear Regulatory Commission Official Hearing Exhibit             | In the Matter of:             | NUCLEAR INNOVATION NORTH AMERICA LLC<br>(South Texas Project Units 3 and 4) |                      |
|  |                               | ASLBP #: 09-885-08-COL-BD01   | Identified: 1/6/2014 |
|  | Docket #: 05200012   05200013 | Withdrawn:  | Stricken:            |
|  | Exhibit #: NRC000162-00-BD01  |   |                      |
|  | Admitted: 1/6/2014            |   |                      |
|  | Rejected:                     |   |                      |
|  | Other:                        |   |                      |

## 2.0 BACKGROUND

According to the application, NU and NSTAR are each currently indirect minority co-owners of each of the Yankee Companies. The proposed merger of NU and NSTAR would result in NU, the surviving company, having the following indirect ownership interests in the Yankee Companies, which hold the NRC licenses for their respective units:

|                    | <i>Northeast Utilities:<br/>Pre Merger</i> | <i>NSTAR:<br/>Pre Merger</i> | <i>Northeast Utilities:<br/>Post Merger</i> |
|--------------------|--|------------------------------|---|
| Maine Yankee       | 20%  | 4%                           | 24%   |
| Connecticut Yankee | 49%  | 14%                          | 63%   |
| Yankee Atomic      | 38.5%                                      | 14%                          | 52.5%                                       |

NSTAR's current ownership of each of the Yankee Companies is through its subsidiary, NSTAR Electric Company. Northeast Utilities' current ownership of each of the Yankee Companies is through its subsidiaries, The Connecticut Light and Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company.

The application described the merger as follows:

The increase in ownership by Northeast Utilities of each of the Yankee Companies would be the result of several transactions to be executed pursuant to a Merger Agreement, dated October 16, 2010, as amended on November 1, 2010, among Northeast Utilities, NSTAR and certain subsidiaries of Northeast Utilities. A temporary, special-purpose subsidiary of Northeast Utilities will be merged into NSTAR, with NSTAR surviving. Immediately thereafter, NSTAR will be merged into a second special-purpose subsidiary of Northeast Utilities with this second special-purpose subsidiary surviving. After the second merger has been completed, the second special-purpose subsidiary will be renamed "NSTAR LLC" and will continue as a wholly-owned subsidiary of Northeast Utilities. The corporate organizational and ownership structure of all the other subsidiaries of Northeast Utilities and NSTAR will not be affected by the merger – those subsidiaries that are currently owned by Northeast Utilities will continue to be owned by Northeast Utilities and in the same ownership percentage after the merger, and those that are currently owned by NSTAR will continue to be owned by the renamed entity, NSTAR LLC, and in the same ownership percentage after the merger.

The application discussed the purpose and nature of the transaction necessitating or making desirable the transfer of the license, noting that:

The parties expect that the Merger will positively affect service quality to retail customers in the areas currently served by Northeast Utilities' and NSTAR's electric distribution subsidiaries. The combined company will share best practices and implement them over the entire customer base. Customers are expected to benefit from the exchange of ideas, methods and procedures and the implementation of system-wide best practices in the areas of operations and customer service.

The application noted that to the extent that any of the Yankee Companies' licensed activities involve Restricted Data, the individual Yankee Company will appropriately safeguard such information in accordance with NRC requirements.

The application included information on technical and financial qualifications of the licensees, as a result of the proposed indirect license transfer. Finally, the application stated that the merger will not result in changes to the NRC licensed activities of any of the Yankee Company sites, or any changes in management or personnel, day-to-day operations, or physical changes to any of the Yankee facilities.

### 3.0 REGULATORY EVALUATION

The applicants' request for approval of the indirect transfer of control of the licenses for the facilities discussed in this safety evaluation, is made pursuant to Section 184 of the AEA and 10 CFR 50.80.

Section 50.80(a) of 10 CFR states:

No license for a production or utilization facility ... or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the requirements of 10 CFR 50.80(b) and (c) apply.

Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34, "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license."

Section 50.80(c) states that "the Commission will approve an application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto." For indirect license transfers, where the licensee remains the same, the NRC staff must find that the proposed transaction (i.e., the proposed merger of NU and NSTAR) will not adversely affect the technical and financial qualifications of the holders of the licenses.

The foreign ownership, control or domination (FOCD) requirements of 10 CFR 50.38 apply to the licensees, and the NRC must determine whether or not the licensees comply with the FOCD requirements.

#### § 50.38 Ineligibility of certain applicants.

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.

In some cases, the requirements of 10 CFR 50.38 can be met by negating the FOCD, using the methods identified in the Final Standard Review Plan on Foreign Ownership, Control, or Domination (64 FR 52355; September 28, 1999).

As a result of the proposed merger, NU will indirectly own 63 percent of Connecticut Yankee and 52.5 percent of Yankee Atomic, and thus, the proposed merger will constitute an indirect transfer of control of the licenses for Connecticut Yankee and Yankee Atomic under 10 CFR Part 50. As a result of the proposed merger, NU will indirectly own 24 percent of Maine Yankee, and thus, the proposed merger will not constitute a direct or indirect transfer of control of the license for Maine Yankee. The staff's evaluation of the effect of the merger on the financial and technical qualifications, decommissioning funding assurance, and FOCD, for Connecticut Yankee, Yankee Atomic, and Maine Yankee, is provided below.

#### 4.0 FINANCIAL QUALIFICATIONS

Pursuant to 10 CFR 50.33(f), an electric utility is not required to demonstrate its financial qualifications. Section 50.2 of 10 CFR states, in part, that an electric utility means "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority."

As stated by the applicants, after the proposed merger, Maine Yankee, Connecticut Yankee, and Yankee Atomic will continue to recover costs related to the ISFSI and site through their parent owners via special tariffs reviewed and approved by the Federal Energy Regulatory Commission (FERC). Based on this information, and the staff's review of the most recent FERC approvals, the staff finds that the licensees will continue to meet the definition of "electric utility" set forth in 10 CFR 50.2, and therefore, no specific demonstration of financial qualifications is required.

#### 5.0 DECOMMISSIONING FINANCIAL ASSURANCE

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. According to the application, shareholders of the Yankee facilities are each obligated to pay ISFSI facility operating expenses in direct proportion to their ownership interest in accordance with rate schedules reviewed and approved by FERC.

Further, the applicants state that the Yankee Companies' current arrangements for the collection of decommissioning funding will remain in effect and will not be affected by the proposed indirect license transfer.

Pursuant to 10 CFR 50.82(a)(8)(i), withdrawals from decommissioning trust funds are limited in the following manner: (a) the withdrawals are for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2; (b) the expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise; and (c) the withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

The licensees submitted information regarding balances and a summary of projected

expenditures from the decommissioning trust funds for Connecticut Yankee, Yankee Atomic and Maine Yankee. The licensees also submitted annual decommissioning funds status reports for 2010 for all three facilities.

Based on the information submitted by the licensees, the Connecticut Yankee decommissioning trust fund will be depleted by 2023, which constitutes a shortfall in decommissioning funding. The criterion applied to an indirect license transfer case is whether the proposed change in ultimate corporate control will affect the licensee's decommissioning funding assurance. As the change in corporate control resulting from the proposed merger would not affect the licensee's decommissioning financial assurance, the NRC will resolve the shortfall in an independent regulatory action.

Based on its review, the NRC staff concludes that Yankee Atomic and Maine Yankee are currently meeting the requirements of 10 CFR 50.75 and 50.82 and have provided reasonable assurance of decommissioning funding.

## 6.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

### 6.1 Background

Section 103d of the AEA prohibits the Commission from issuing a license for a nuclear power plant under Section 103 to "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 Commission's regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition. The Yankee Companies each hold 10 CFR Part 50 licenses from the NRC. Consequently, the licensees are subject to the FOCD requirements of 10 CFR 50.38. The issue addressed in this section is whether the Yankee licensees are meeting the requirements of 10 CFR 50.38.

The NRC has developed a Final Standard Review Plan on Foreign Ownership, Control, or Domination (SRP) to document the process that the staff uses to analyze whether an applicant is owned, controlled, or dominated by foreign interests within the meaning of Section 103d of the AEA. The staff used this SRP, which was approved by the Commission on August 31, 1999, as guidance for evaluating the foreign ownership considerations of the proposed transfer.

### 6.2 Discussion

#### *NU/NSTAR Merger Impact on FOCD of Licensees*

Both NU and NSTAR are U.S. owned and operated entities. However, due to purchase power agreements between NSTAR and foreign-owned entities, the staff issued a request for additional information (RAI) on July 14, 2011. The licensees responded on August 16, 2011. Based on the information provided, and the specific facts and circumstances of the merger, the staff concluded that neither NSTAR's or Northeast Utilities' financial arrangements, nor the merger, posed additional or adverse foreign ownership, control or domination of the licensees.

Ownership and Organization of Licensees

During the review of the license transfer, the staff inquired about the organization of the licensees. The Yankee Companies submitted the following breakdown of foreign and domestic ownership:

|                    | <i>Non-U.S. Owners</i>  | <i>U.S. Owners</i>  |
|--------------------|---|---|
| Maine Yankee       | Iberdrola S.A. (38%)<br>National Grid plc (24%)<br>Emera Inc. (12%) | Northeast Utilities (20%)<br>NSTAR (4%)<br>Central Vermont (2%)                         |
| Connecticut Yankee | National Grid plc (19.5%)<br>Iberdrola S.A. (6%)                    | Northeast Utilities (49%)<br>NSTAR (14%)<br>UIL Holdings (9.5%)<br>Central Vermont (2%) |
| Yankee Atomic      | National Grid plc (34.5%)<br>Iberdrola S.A. (9.5%)                  | Northeast Utilities (38.5%)<br>NSTAR (14%)<br>Central Vermont (3.5%)                    |

A review of the record indicates that foreign entities have acquired ownership interests in the Yankee licensees over time, in some cases without a specific determination regarding foreign ownership, control or domination. Based on a review of all the factors related to FOCD, in an April 20, 2011, RAI related to the license transfer request (ML111101402), the staff stated that it knows and has reason to believe that the licensees are owned, controlled, or dominated by foreign corporations. In the April 20, 2011, letter, the staff requested the Yankee Companies to submit a negation action plan to negate foreign ownership, control or domination of the Yankee licensees.

In response, the licensees submitted a request for exemption from the FOCD requirements in 10 CFR 50.38, which the NRC staff is currently reviewing. Nevertheless, the FOCD requirements in 10 CFR 50.38 continue to apply to the licensees at this time.

At a public meeting held on September 20, 2011, the licensees stated that members of the Boards of Directors for the licensees have had preliminary discussions about the FOCD issues, but the discussions have not extended to specifics of a potential negation action plan and whether there is shareholder support for such a plan. The licensees also stated that they have not made a decision on whether to wait for an NRC decision on the exemption request, or to proceed with discussions with the Boards of Directors on developing a negation action plan that will meet the requirements of 10 CFR 50.38. At that meeting, a NU representative also stated that to the extent NU is able to support development of a negation action plan at the licensee level, it will do so.

The focus of the staff's review for an indirect license transfer is whether the transfer will have an impact on the FOCD of the licensees. As concluded earlier, the NU/NSTAR merger will not impact the FOCD of the licensees. However, because there is an FOCD issue relating to the Yankee Companies, and in view of the discussion at the September 20, 2011, meeting, the Order approving the proposed license transfers will be subject to the following condition:

Within thirty (30) days following consummation of the proposed merger, Northeast Utilities, via its post-merger subsidiaries, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company, who together will exercise majority control, will call for votes directing that Connecticut Yankee and Yankee Atomic approve negotiation action plans consistent with the requirements of 10 CFR 50.38 and implement said plans within 30 days of the vote, and directing that records of the votes, reflecting the vote of each representative and the stock holder company represented, be forwarded to the NRC within seven (7) days of the vote, and be made available to the public.

### 6.3 Summary

The staff determined that Maine Yankee, Connecticut Yankee and Yankee Atomic are not meeting NRC requirements related to FOCD, based on the information provided during the license transfer review. The FOCD compliance issues that surfaced during this license transfer review are preexisting conditions and will continue to exist regardless whether the license transfer request or the proposed merger of NU and NSTAR is approved or denied. The proposed merger will not pose additional or adverse foreign ownership, control or domination of the licensees. Accordingly, the FOCD compliance issues will be addressed independently from this license transfer application.

### 7.0 NUCLEAR INSURANCE AND INDEMNITY

Because there will be no change in the licensees, the proposed indirect transfer of the control of the licenses due to the merger of NU and NSTAR, would not affect the existing Price-Anderson indemnity agreements and the required nuclear property damage insurance pursuant to 10 CFR 50.54(w) and nuclear energy liability insurance required under Section 170 of the AEA, and 10 CFR Part 140.

In addition, participation in the secondary insurance pool is not required based on the permanently defueled status of the Maine Yankee Atomic Power Station, Haddam Neck Plant, and Yankee Nuclear Power Station.

### 8.0 ANTITRUST REVIEW

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications (*Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999)). The application here postdates the issuance of the operating licenses for units under consideration, and therefore no antitrust review is required or authorized.

### 9.0 TECHNICAL QUALIFICATIONS

The NRC staff reviewed the Yankee Companies' submittal to determine the acceptability of any changes to the technical qualifications of the licensees resulting from the request for the indirect transfer of control of the licenses related to the proposed merger between NU and NSTAR. Following the proposed merger, NU, the surviving company, will have an indirect ownership of 63 percent of Connecticut Yankee, 52.5 percent of Yankee Atomic, and 24 percent of Maine Yankee. Connecticut Yankee, Yankee Atomic, and Maine Yankee will continue to hold the licenses for and operate the facilities at the Haddam Neck Plant, Yankee Nuclear Power Station, and Maine Yankee Atomic Power Station, respectively.

## 9.1 Management and Technical Support Organization

The NRC staff reviewed the Yankee Companies' submittal to determine the acceptability of any proposed changes to the corporate management and technical support organization, related to the proposed merger. The NRC staff evaluated the submittal using the applicable criteria contained in Section 13.1.1, "Management and Technical Support Organization," of NUREG-0800 (Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition).

In the submittal dated December 6, 2010, the Yankee Companies stated:

There are no planned management changes for any of the Yankee Companies, resulting directly from the Merger. Each licensee will continue to manage its own ISFSI in accordance with its license by the NRC; no change in organization of the Yankee Companies will result from the merger.

All spent fuel management and future decommissioning activities will continue to be managed by the individual Yankee Companies. No changes in any licensed activities will result from the merger. Each Yankee Company will maintain the technical capabilities necessary to oversee the spent fuel storage facility and the Merger will have no effect on any Yankee Company's technical capabilities.

Based on the Yankee Companies' submittal, the licensees have described that there will be no changes to their organization for managing, and their means for providing technical support for operation of the facilities, as a result of the indirect transfer of control of the licenses. Accordingly, NRC staff concludes that the change of corporate control resulting from the transfer will not adversely affect the current qualifications of the licensees' management and technical support organization.

## 9.2 Operating Organization

The NRC staff reviewed the Yankee Companies' submittal to determine the acceptability of any proposed changes to the operating organization, related to the proposed merger. The NRC staff evaluated the submittal using the applicable criteria contained in Section 13.1.2-13.1.3, "Operating Organization" of NUREG-0800.

The Yankee Companies' submittal indicated that essentially the same organization and staff will be responsible for the operation and maintenance of the licensed sites. The submittal stated:

The proposed merger will not result in ... changes in the officers, personnel, or day-to-day operations of any of the Yankee Companies....

There are no planned management changes for any of the Yankee Companies, resulting directly from the Merger. Each licensee will continue to manage its own ISFSI in accordance with its license by the NRC; no change in organization of the Yankee Companies will result from the merger.

Each Yankee Company will maintain the technical capabilities necessary to oversee the spent fuel storage facility and the Merger will have no effect on any Yankee Company's technical capabilities.



Based on the Yankee Companies' submittal, the licensees have described that there will be no changes to the operating organizations and personnel responsible for the operation and maintenance of the licensed sites, as a result of the indirect license transfer. Accordingly, NRC staff concludes that the indirect transfer of control of the licenses will not adversely affect the current qualifications of the licensees' operating organization.

### 9.3 Summary

The Yankee Companies have described that there will be no changes to their management, technical support organization, and the onsite operating organizations that will be responsible for the operation and maintenance of the licensed facilities, following the proposed merger of NU and NSTAR. Accordingly, the NRC staff concludes that the indirect license transfer, related to the proposed merger of NU and NSTAR, will not affect the technical qualifications of the licensees to carry out their responsibilities under their licenses, Facility Operating Licenses DPR-36, DPR-61, and DPR-3.

## 10.0 ENVIRONMENTAL CONSIDERATIONS

The subject application is for approval of the indirect transfer of licenses issued by the NRC. Accordingly, this approval meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

## 11.0 CONCLUSION

Based on review of the information provided by the licensees, and of supplemental information, the NRC determined that there is a preexisting issue regarding foreign ownership, control or domination of the Yankee Companies. The merger will not change this preexisting issue. The NRC staff will resolve this issue in a separate action. In addition, the NRC has determined that there is a preexisting issue regarding a decommissioning funding shortfall for Connecticut Yankee. The merger will not affect the decommissioning funding for Connecticut Yankee. The NRC staff will resolve this issue in a separate action.

Based on the information provided by the applicants, review of supplemental information, and independent review of the impact to the NRC licensees based on the proposed merger between NU and NSTAR, the NRC staff concludes that the proposed transfer of control of the licenses for Connecticut Yankee and Yankee Atomic and the related ownership changes will not affect the qualifications of Connecticut Yankee and Yankee Atomic, subject to the condition listed above. The NRC staff also finds that the transfer of licenses is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto. As previously stated, the issue regarding foreign ownership, control or domination requirements in 10 CFR 50.38, and decommissioning funding for CY are being handled in separate actions.

Based on the information provided by the licensees, the NRC staff finds that the proposed merger does not involve a transfer of control, direct or indirect, of the license held by Maine Yankee. Accordingly, prior NRC consent under 10 CFR 50.80 is not required. From its threshold review, the NRC staff concludes that the subject merger and related ownership interest change will not affect the qualifications of Maine Yankee.

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Date: December 20, 2011