

September 29, 2014

EA-14-120

Mr. Wayne Norton  
President and Chief Executive Officer  
Connecticut Yankee Atomic Power  
Company  
362 Injun Hollow Road  
East Hampton, CT 06424-3099

SUBJECT: CONNECTICUT YANKEE ATOMIC POWER COMPANY, HADDAM NECK  
PLANT- RELAXATION OF CONFIRMATORY ORDER, DATED JUNE 4, 2012  
(TAC NO. L24867)

Dear Mr. Norton:

In a letter dated August 28, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13252A232), you requested that the U.S. Nuclear Regulatory Commission (NRC) rescind the Confirmatory Order issued to Connecticut Yankee Atomic Power Company (Connecticut Yankee or the Licensee) on June 4, 2012 (ML12124A372). Specifically, you stated that the Confirmatory Order should be rescinded because it no longer has a regulatory basis, it lacks a safety or security basis, and the Negation Action Plan required by the Confirmatory Order should instead be managed in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 95. For the reasons explained below, the NRC has determined that the requirements of the Confirmatory Order are no longer necessary given the Licensee's exemption from 10 CFR 50.38. Therefore, I hereby relax the Order in its entirety.

#### Background

By application dated December 6, 2010 (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), Connecticut Yankee requested NRC consent to the indirect transfer of control of License No. DPR-61 for the Haddam Neck Plant, to the extent required by the proposed merger between Northeast Utilities and NSTAR.

As part of the indirect license transfer review, the staff examined compliance with the Commission's rules and regulations and identified an apparent violation of 10 CFR 50.38, which implements Sections 103d. and 104d. of the Atomic Energy Act (AEA) and prohibits foreign ownership, control or domination (FOCD). On April 20, 2011 (ML111101402), the staff requested additional information from Connecticut Yankee, including the submission of a negation action plan to negate the FOCD issues. On May 16, 2011, Connecticut Yankee responded to the request for additional information (ML11139A088) and acknowledged the foreign ownership of certain Licensee shareholders. Connecticut Yankee 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, Connecticut Yankee requested an exemption from the FOCD requirements in 10 CFR 50.38. In the exemption request,

Connecticut Yankee stated that it believed Sections 103d. and 104d. of the AEA applied only to a license for a "production" or "utilization" facility, as defined within the AEA. Connecticut Yankee stated that regardless of its 10 CFR Part 50 license, the possession only conditions of the license do not authorize the possession or operation of a production or utilization facility, and therefore an exemption from the FOCD restrictions in 10 CFR 50.38 was warranted.

On December 21, 2011, as supplemented April 24, 2012, Connecticut Yankee submitted a letter to the NRC (ML11364A053 and ML12124A230), stating that it had implemented a negation action plan by adopting a Board of Directors Resolution preventing any potential for foreign control over safety and security matters, including access to security information and to special nuclear material, in part to address NRC's concerns with 10 CFR 50.38 while its exemption request was still pending. The Board of Directors Resolution was passed on December 14, 2011, enclosed in a Foreign Ownership, Control and Influence application filed with the NRC on January 3, 2012, and also provided in a letter to the NRC dated February 23, 2012 (ML12066A044).

By letter dated January 27, 2012 (ML120300184), the staff informed Connecticut Yankee of its determination that a Severity Level IV violation of the requirements in 10 CFR 50.38 had occurred. In addition, the NRC also informed Connecticut Yankee that NRC was reviewing the exemption request separately and would convey the results of the review under separate correspondence.

On February 23, 2012, Connecticut Yankee replied via letter to the NRC (ML12066A044) stating that it did not agree that a violation of 10 CFR 50.38 existed. As requested, the reply included (1) the basis for disputing the violation; (2) corrective steps taken by the Licensee and the results achieved; (3) further steps to be taken by the Licensee; and (4) without conceding that a violation occurred, the date when full compliance was achieved.

On June 4, 2012, the NRC issued a Confirmatory Order (ML12124A372) to address the FOCD requirements of Section 103d. of the AEA and 10 CFR 50.38. The letter accompanying the Confirmatory Order stated that the NRC reviewed and evaluated Connecticut Yankee's executed Negation Action Plan and Board Resolution and found that the plan and implementing actions were acceptable to negate the FOCD issues and satisfied the NRC requirements. The letter additionally stated that the Confirmatory Order would require Connecticut Yankee to maintain the implemented Negation Action Plan and to make no changes concerning decision-making authority without written consent of the Director of the Office of Nuclear Material Safety and Safeguards.

By letter dated July 15, 2013 (ML13086A010), the NRC informed Connecticut Yankee that the staff completed review of the exemption request and, pursuant to 10 CFR 50.12, granted the request because it was authorized by law, presented no undue risk to public health and safety, was consistent with the common defense and security, and special circumstances were present. The letter stated that after reviewing the AEA and several other Commission documents, the staff concluded that AEA Section 103d. applies to commercial licenses for production and utilization facilities, as defined within the AEA. Thus, although Connecticut Yankee is licensed under 10 CFR Part 50, Section 103d. of the AEA does not preclude the NRC from granting the Licensee an exemption from 10 CFR 50.38, as it is currently not a "production" or "utilization" facility.

### Request to Rescind the Confirmatory Order

On August 28, 2013, you submitted a letter (ML13252A232) requesting the NRC rescind the Confirmatory Order dated June 4, 2012. The NRC staff reviewed your request and has determined that because the exemption from 10 CFR 50.38 has been granted, the Confirmatory Order may be relaxed such that the order ceased to be effective as of July 15, 2013. The purpose of the Confirmatory Order was to ensure compliance with the FOCD requirements of the AEA and 10 CFR 50.38. The staff first informed the Licensee that it was not subject to 10 CFR 50.38 on July 15, 2013 when it granted the Licensee's exemption request. Thus, from this date forward, the requirements of the Confirmatory Order were no longer necessary to comply with 10 CFR 50.38. In your letter, you acknowledged the requirements of 10 CFR Part 95. The role of your Negation Action Plan in meeting the requirements of 10 CFR Part 95 is unchanged by the relaxation of this Confirmatory Order.

### Summary of NRC Actions

The NRC relaxes all conditions of the Order in their entirety due to the Licensee's exemption request granted on July 15, 2013.

You are not required to respond to this letter; however, if you choose to provide a response, your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

These documents may also be viewed electronically on the public computers located at 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.

W. Norton

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If you have any questions, or you would like to schedule a meeting with us, please contact Mr. John Goshen at 301-287-9250.

Sincerely,

**/RA/**

Catherine Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

Docket Nos. 50-213, 72-39  
License No. DPR-61

TAC No.:L24867

cc. Haddam Neck Plant Service List

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