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Comment On: NRC-2015-0070-0178

Regulatory Improvements for Power Reactors Transitioning to Decommissioning; Request for Comment on Draft Regulatory Basis

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General Comment

Connecticut Yankee Atomic Power Company comments are provided in the attached file(s)

Attachments

CY-17-017 - CY Comments on NRC Draft RBD - Signed



CONNECTICUT YANKEE ATOMIC POWER COMPANY

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June 13, 2017
CY-17-017

Ms. Annette Vietti-Cook
Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Connecticut Yankee Atomic Power Company
Haddam Neck Plant Independent Spent Fuel Storage Installation
NRC License No. DPR-61 (NRC Docket No. 50-213)

Subject: Comments on the NRC Draft Regulatory Basis Document Regulatory Improvements for Power Reactors Transitioning to Decommissioning; Docket ID: NRC-2015-0070

On March 15, 2017, the U.S. Nuclear Regulatory Commission (NRC) issued a notice in the Federal Register soliciting public comments on the agency's draft Regulatory Basis Document (RBD) for a rulemaking proposing changes to the Commission's decommissioning regulations. Subsequently, on May 9, 2017, the NRC issued a notice soliciting public comments on a preliminary draft regulatory analysis that supports the RBD.

Connecticut Yankee Atomic Power Company (CYAPCO) supports the industry comments submitted by the Nuclear Energy Institute and the Decommissioning Plant Coalition on June 13, 2017. CYAPCO is providing additional comments on the RBD below. In addition, the draft regulatory analysis was made available on May 9, 2017, resulting in a limited time period to review the document (just over 30 days). CYAPCO does not believe that adequate time was provided to review the draft regulatory analysis. Thus, it is only addressed in general in these comments.

Scope of Rulemaking

CYAPCO agrees with the NRC staff that the need for a power reactor decommissioning rulemaking is not based on any identified safety or security concerns. CYAPCO also agrees with the NRC staff statements in Appendix H of the RBD that, "there is no indication that the current licensee approaches to spent fuel management or the lack of cross referencing in the regulatory requirements for spent fuel management and handling capabilities diminish the amount of planning, preparation, and oversight expended by the licensee in undertaking decommissioning activities," and "there appear to be no additional public health or safety improvements to be gained by further regulatory

changes in this area.” Accordingly, in the absence of any identified regulatory or safety concern, rulemaking on this issue is unnecessary. The provisions of the current decommissioning regulations and guidance documents with regard to the NRC’s expectations for spent fuel management and handling capabilities during decommissioning are sufficient and there are no needed changes or clarifications to the spent fuel management requirements in 10 C.F.R 50.82, 10 C.F.R 50.54(bb), 10 C.F.R 52.110, or 10 C.F.R 72.218.

Nevertheless, CYAPCO acknowledges the potential to improve the efficiency of the transition from operations to decommissioning in the areas proposed to be addressed in the rulemaking. CYAPCO therefore urges that the scope of the rulemaking be limited to codifying those exemptions and other licensing actions that have historically been justified by licensees and approved by the NRC as part of the power reactor decommissioning process associated with the transition of storage of spent fuel from wet to dry storage. In addition to the exemptions recently granted to licensees that have been issued permanent shutdown certifications, the rulemaking should consider the historical exemptions and approvals provided to licensees that underwent the decommissioning process defined in 10 CFR 50.82 to the point of achieving Stand-Alone ISFSI status.

The RBD and Regulatory Analysis Must Recognize that Differences Exist between ISFSI Only Sites and Stand-Alone ISFSIs

The RBD and Regulatory Analysis should clearly distinguish between the following facilities:

- Independent Spent Fuel Storage Installation (ISFSI) Only sites, as defined in the RBD, are sites that have simply transferred all of its spent fuel to dry storage. This term is applied by the NRC regardless of the decommissioning status of the shutdown plant facility(ies).
- Stand-Alone ISFSIs – these are sites that store all of the spent fuel and Greater than Class C Waste (GTCC) at an ISFSI, have completed decommissioning of the co-located nuclear power plant in accordance with its License Termination Plan and the requirement of 10 C.F.R. 20.1402, and the NRC has released the lands, not associated with the ISFSI, from the 10 C.F.R. Part 50 License in accordance with 10 C.F.R. 50.83.

Stand-Alone ISFSI sites should be addressed as a separate type, category, or level of facility to avoid unintentional adverse impacts from the proposed changes to the rules and guidance. Currently, the RBD includes Stand-Alone ISFSIs in a group of facilities that it terms “ISFSI Only,” i.e., all fuel moved to dry storage. The term “ISFSI Only” as utilized in the RBD and Regulatory Analysis is misleading and would lead to unnecessary regulatory burden for certain facilities, because it includes facilities with all of their fuel stored in dry storage that may have:

- a) A co-located nuclear power plant in SAFSTOR, but GTCC Waste not packaged and stored on the ISFSI;
- b) A co-located nuclear power plant undergoing active decommissioning; and
- c) A Stand-Alone ISFSI that stores all of its spent fuel and GTCC waste on an ISFSI, has completed decommissioning of the co-located nuclear power plant, and the NRC has released the lands, not associated with the ISFSI, from the 10 C.F.R. Part 50 License in accordance with 10 C.F.R. 50.83.

The Stand-Alone ISFSI configuration is fundamentally different than a site undergoing decommissioning (be it SAFSTOR or DECON) with spent fuel stored in a wet pool or dry cask storage. In the case of CYAPCO, physical decommissioning of the former nuclear plant and site in Haddam Neck was safely completed in 2007 with all plant buildings removed and site remediation and restoration completed. The NRC notified CYAPCO that the plant site had been decommissioned in accordance with NRC regulations and formally approved the site Final Status Survey Report in accordance with CYAPCO's License Termination Plan. The NRC license for this site has been reduced to an area that only encompasses the ISFSI facility, which is all that remains to be decommissioned following the removal of the Spent Nuclear Fuel (SNF) and GTCC waste by the federal government.

The facilities defined in a) and b) above are different than a Stand-Alone ISFSI, because those sites will have additional source term associated with contaminated structures, systems, and components (SSCs), potentially contaminated groundwater or soil, and radioactive resins utilized to decontaminate SSCs. For example, in Appendix G, the NRC discusses onsite financial protection requirements for ISFSI Only sites and considers establishing a \$50 million minimum amount based on the estimated amount needed to recover from a postulated onsite event of a rupture of a large slightly contaminated liquid storage tank. There are no radioactive liquid storage tanks at Stand-Alone ISFSI sites. The draft RBD therefore does not properly reflect the limited set of SSCs associated with Stand-Alone ISFSIs. For Stand-Alone ISFSIs, the co-located facilities have been radiologically remediated in accordance with the License Termination Plan and met the criteria in 10 C.F.R. 20.1402, and the lands, with the exception of those associated with the ISFSI, have been released from the 10 C.F.R. Part 50 license in accordance with 10 C.F.R. 50.83.

There are other differences between Stand-Alone ISFSIs and ISFSI Only sites that should be accounted for in the RBD and in any rulemaking, such as requirements for facilities defined in a) and b) above that are not applicable to Stand-Alone ISFSIs, and vice versa. For example, the NRC Orders issued to Stand-Alone ISFSIs to address:

- Access Authorization requirements, because 10 CFR 50.73.56 is not applicable.
- Interim Compensatory Measures that are in addition to Physical Security Plan Requirements

The draft RBD creates confusion in other ways for sites that have achieved or will achieve this Stand-Alone ISFSI status. For example, the RBD inordinately focuses on prior phases of the transition of fuel from wet to dry storage and does not expressly define a Stand-Alone ISFSI stage. The RBD introduces confusion by discussing “ISFSI Only” in earlier phases of the process. For example, in the context of graded Emergency Preparedness requirements, the RBD (page A-10) refers to four levels:

- Level 1 – Post Shutdown Emergency Plan
- Level 2 – Permanently Defueled Emergency Plan
- Level 3 – ISFSI Only Emergency Plan
- Level 4 – No Emergency Plan

For present purposes, it is important that the NRC adopt consistent nomenclature such that Stand-Alone ISFSIs are clearly and properly differentiated from sites in earlier stages of decommissioning. Stand-Alone facilities have received various exemptions related to emergency planning requirements and maintain an ISFSI Only Emergency Plan. But future inspectors must be given sufficient regulatory clarity so that the CYAPCO site (and its peers) are not mistakenly subject to the identical requirements as sites where all fuel has been moved to the ISFSI (hence, “ISFSI Only,” as it is currently used in the RBD, and if defined based solely on the status of fuel movement), and decommissioning is not complete (i.e., the sites are in DECON or SAFSTOR). Likewise, the applicability of requirements for emergency preparedness for “Level 3” should not mean or suggest that other requirements applicable for sites that have not completed the decommissioning process will apply to Stand-Alone ISFSI sites. Accordingly, CYAPCO suggests that the NRC include a category that specifically identifies a Stand-Alone ISFSI (where decommissioning activities are complete except for those related to ISFSI; with no radioactive inventory onsite other than ISFSI) as proposed in the NEI’s RBD comments to Appendix A (Emergency Planning) and Appendix G (Offsite and Onsite Financial Protection Requirements and Indemnity Agreements).

Additional Consideration Regarding Clarifying the Spent Fuel Management Requirements of 10 CFR 72.218, 10 CFR 50.54(bb), 10 CFR 50.82 and 10 CFR 52.110

The following expands upon a discussion contained in the NEI letter dated June 13, 2017.

The contemplated rulemaking would “clarify and update the regulations in 10 CFR 50.82, 10 CFR 50.54(bb), 10 CFR 52.110, or 10 CFR 72.218 as they relate to requirements for a licensee to consider or plan how it is going to manage and remove spent fuel from the site before it decommissions the structures, systems, and components that support moving, unloading and shipping of spent fuel.”

Contrary to the stated intent, CYAPCO is concerned that these proposed changes create uncertainty in two areas. The first area concerns the possibility that the changes could be construed by some to suggest adding a new requirement that utilities maintain or install new structures to handle the dry cask storage system components (particularly those who

have decommissioned their spent fuel pools and associated cask handling cranes and support structures, but have not completed the decommissioning process since they must manage a stand-alone ISFSI). This does not make economic sense nor would it be a prudent use of decommissioning funds.

The second area concerns issues involving spent fuel management, particularly concerning the question of removal of fuel from the site. While licensees can and do provide this information, as it is a current requirement of 10 CFR 50.54(bb), the proposed changes could be considered an expansion of the requirement to the “shipping of spent fuel”. This is clearly not the responsibility of the licensee under current NRC regulation or the Nuclear Waste Policy Act (NWPA).

Removal of the spent nuclear fuel from the reactor sites is the clear responsibility of the U.S. Department of Energy under the Nuclear Waste Policy Act and in accordance with the U.S. Department of Energy Standard Contract for the Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste Contract Article IV.B. “DOE Responsibilities” that specifically states in:

- Section 1, “DOE shall accept title to all SNF and/or HLW, of domestic origin, generated by the civilian nuclear power reactor(s) specified in Appendix A, provide subsequent transportation for such material to the DOE facility, and dispose of such material in accordance with the terms of this contract,” and “DOE shall arrange for, and provide, a cask(s) and all necessary transportation of the SNF and /or HLW from the purchaser’s site to the DOE facility;”
- Section 2 that, “Such cask (s) shall be suitable for use at the purchaser’s site, meet applicable regulatory requirements, and be accompanied [by] pertinent information, including but not limited to, the following:” ... (c) technical information, special tools, equipment, lifting trunnions, spare parts and consumables needed to use and perform incidental maintenance on the cask(s).”

Applicability of New Rule/Backfitting Considerations

The NRC’s decommissioning rulemaking and RBD and Regulatory Analysis focus on “Regulatory Improvements for Power Reactors Transitioning to Decommissioning.” This focus on the “transition” is evident in the title of the RBD and language contained in the RBD itself. For example, the discussions of the technical basis for the decommissioning rulemaking (RBD page 30) and the regulatory objectives (page 32) focus on the regulatory framework for licensees “transitioning to decommissioning.” The rulemaking would simplify the regulatory process that applies beginning at the time of permanent cessation of operations. That process currently involves several exemptions and license amendments for each site during the transition to reflect the changing scope of activities at the licensed site. With the reduced activities, there are reduced risks both onsite and offsite at different stages of the process.

Given the impetus and focus of the proposed rulemaking, CYAPCO believes that it is imperative that the rulemaking not create new regulatory burdens for licensees who have already completed the decommissioning process for the formerly co-located nuclear power plant (that is, these sites are well beyond the “transition” to decommissioning). CYAPCO has completed radiological decommissioning of the co-located nuclear power plant to comply with the requirements of their License Termination Plan and the release criteria of 10 C.F.R. 20.1402 or 1403, and the NRC has released the site, with the exception of the land supporting the ISFSI, from the 10 C.F.R. Part 50 License in accordance with 10 C.F.R. 50.83. Thus, the CYAPCO sites, and others similarly situated, are commonly referred to as “Stand-Alone ISFSIs.” The RBD does not adequately address Stand-Alone ISFSI sites that are 10 C.F.R. Part 50 licensees and 10 C.F.R. Part 72 general licensees.

In Section 6 of the RBD, the NRC discusses the application of the Backfit Rule of Part 50 (10 C.F.R. 50.109) and the issue finality provision of Part 52 (10 C.F.R. 52.83) to the rulemaking and to decommissioning licensees. As licensees under 10 C.F.R. Part 50 and general licensees under 10 C.F.R. Part 72 for its ISFSI sites, CYAPCO is impacted by the Backfit Rule in 10 C.F.R. 50.109, not the finality provision of 10 C.F.R. 52.83. CYAPCO believes that the Backfit Rule does and should apply to any new requirements imposed by the rulemaking or during the terms of the licenses.

The RBD includes the following statement regarding existing licensees:

“To the extent that a proposed rule would codify certain regulatory exemptions from regulatory requirements associated with [Emergency Planning], physical security, [Decommissioning Trust Funds], and onsite insurance for decommissioning power reactors, a proposed rule, as applied to existing licensees would not constitute a new instance of backfitting under 10 C.F.R. 50.109, or an inconsistency with the issue finality provisions applicable to holders of combined licenses in 10 C.F.R. 52.98. A proposed rule that would codify these exemptions would not impose upon licensees in decommissioning any new or changed requirements because these licensees would already be acting under the exemptions.”

CYAPCO is concerned with the broad premise in this statement – that a proposed rule would be “applied to existing licensees.” Existing licensees such as CYAPCO, who have completed site decommissioning activities separate from the ISFSI, should not be subject to the proposed rule. The licensees entered the shut down and decommissioning transition phases long before the effective date of any final rule (assuming the rule becomes final). The NRC has provided no discussion, much less a basis, for retroactive rulemaking, which is generally prohibited by the Administrative Procedure Act. As a result, prior license amendments and exemptions should not be affected by the proposed rulemaking. To the extent prior actions are “codified” by the proposed rule, there would be no new requirements. The rule should not be “applied” to the existing licensees.

While currently licensed in accordance with 10 C.F.R. Part 50 and general licenses under 10 C.F.R. Part 72, the CYAPCO site is long past the milestones that would trigger

application of the rule. Accordingly, any future rulemaking should not apply to Stand-Alone ISFSI sites. If the rulemaking is applicable to Stand-Alone ISFSI sites, it should specifically address the modified requirements as they pertain to the Stand-Alone ISFSI configuration. Otherwise, there could be significant unintended consequences regarding the licensing bases for Stand-Alone ISFSI sites.

A facility in the Stand-Alone ISFSI configuration should be permitted to continue managing the facility according to its current licensing basis, with no changes required as a result of any alternative requirements established in this rulemaking. Such facilities are currently being managed in a safe and secure fashion in accordance with current NRC requirements, as the NRC specifically acknowledges in the draft RBD. There is no safety or security reason for the Commission to impose any new or amended requirements on such licensees as a result of this decommissioning rulemaking.

The RBD continues:

“For other changes, such as requirements that exceed those resulting from certain exemptions from regulatory requirements associated with [Emergency Planning], physical security, [Decommissioning Trust Funds], and onsite and offsite insurance, the NRC staff would address the applicable backfitting and issue finality provisions with respect to the added requirements as part of the rulemaking.”

To the extent new requirements are adopted and applied to licensees who have previously ceased operations, the NRC staff must comply with the Backfit Rule and the Administrative Procedure Act prior to finalizing a rule establishing those requirements.

In fact, a premise for the NRC’s conclusion that the rulemaking is not subject to the Backfit Rule is that the new regulations will only affect future applicants and potential applicants. (RBD, page 46). Any impact on current decommissioned Stand-Alone ISFSIs would, by definition, be a backfit if applied to those licensees that have completed decommissioning of the site (with the exception of the ISFSI and the associated land).

Consideration of a Stand-Alone ISFSI Status in 10 C.F.R.

In the event the NRC pursues additional changes that are not required to address previous exemptions or licensing actions, the NRC should also consider a more global change to 10 C.F.R. Parts 50 and 72 that would provide significant improvements in regulatory efficiencies. 10 C.F.R. 72.6 defines two types of 10 C.F.R. Part 72 licenses (general and specific). A general license can be issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 C.F.R. Part 50 or 10 C.F.R. Part 52 in accordance with 10 C.F.R. 72.210. A general licensee achieves a Stand-Alone ISFSI configuration once the plant has been decommissioned in accordance with the site NRC approved License Termination Plan and only that portion of the property directly associated with the ISFSI remains within the control of the 10 C.F.R. 50 license.

Because this draft RBD does not address the Stand-Alone ISFSI state, which is a necessary interim state of many decommissioned sites, the NRC should consider modifying 10 C.F.R. Part 72 and the applicable portions of 10 C.F.R. Parts 50 and 73 to define the Stand-Alone ISFSI state for a 10 C.F.R. Part 72 general licensee and create alignment with the state currently approved for 10 C.F.R. Part 72 specific licensees.

This process could be described as part of the decommissioning process defined in 10 C.F.R. 50.82 without requiring the general licensee to file a license application in accordance with Sub-part B of 10 C.F.R. Part 72. This type of licensee would have the option of complying with the requirements of 10 C.F.R. 72.32 regarding emergency planning and 10 C.F.R. 73.51 regarding physical security in lieu of 10 C.F.R. 50.47 and Appendix E, and 10 C.F.R. 73.55, respectively. Codifying this transition would also provide for a more efficient process than currently exists to obtain a 10 C.F.R. Part 72 specific license for a general licensee that has obtained Stand-Alone ISFSI status.

In addition, this action would eliminate the need for numerous exemptions and other approvals that general licensees need to acquire after achieving Stand-Alone ISFSI status, allowing the NRC to better optimize resources consistent with the Project AIM 2020 re-baselining efforts. As part of such an effort, the NRC should also consider establishing that a License Termination Plan that has been approved by the NRC in accordance with 10 C.F.R. 50.82(a)(10) would meet the applicable requirements for the Decommissioning Plan in 10 C.F.R. 72.30.

Conclusion

In conclusion, CYAPCO agrees with the NRC staff that the need for a power reactor decommissioning rulemaking is not based on any identified safety or security concerns and that there is a sound regulatory basis to improve the efficiency of the transition from operations to decommissioning in the areas proposed to be addressed in the rulemaking.

CYAPCO urges that the scope of the rulemaking be limited to codifying those exemptions and other licensing actions that have historically been justified by licensees and approved by the NRC as part of the power reactor decommissioning process associated with the transition of storage of spent fuel from wet to dry storage.

Finally, CYAPCO also agrees with the RBD statement that the requirements of the new rule would apply only to “power reactors that permanently shut down and defuel and enter into decommissioning after the effective date of the final rule.” However, because the RBD also states that the proposed requirements would apply to “nuclear power plants currently licensed under 10 C.F.R Part 50” the new rule should specifically clarify that it does not impose any new requirements on sites such as the CYAPCO site that are currently licensed under a Part 50/Part 72 general license.

If you have any questions regarding this submittal, please do not hesitate to contact Mr. Matt Arsenault at (860) 267-6426 ext. 303.

Respectfully,

A handwritten signature in black ink, appearing to read 'Wayne Norton', with a long horizontal flourish extending to the right.

Wayne Norton
President and Chief Executive Officer

cc: Mr. Michael Layton, USNRC
Mr. Dan Dorman, US NRC
Mr. John Nguyen, USNRC
Mr. Rod McCullum, NEI
Mr. Mike Callahan, Decommissioning Plant Coalition