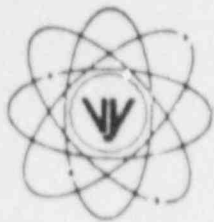


# VERMONT YANKEE NUCLEAR POWER CORPORATION



RD 5, Box 169, Ferry Road, Brattleboro, VT 05301

September 16, 1988  
FVY 88-78

REPLY TO:  
ENGINEERING OFFICE  
1671 WORCESTER ROAD  
FRAMINGHAM, MASSACHUSETTS 01701  
TELEPHONE 617-872-8100

United States Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, DC 20555

Reference: (a) License No. DFR-28 (Docket No. 50-271)

Subject: Application for Exemption from Certain Requirements of  
10CFR§50.54(w)

Dear Sir:

Pursuant to 10CFR§50.12, Vermont Yankee Nuclear Power Corporation hereby applies for exemption from certain requirements of 10CFR§50.54(w). The exemption request is provided as Attachment A to this letter.

We request that your review of the subject exemption request be performed consistent with the schedule described in Attachment A. An application fee of \$150.00 is enclosed in accordance with 10CFR§170.21.

Should you have any questions, or require further information regarding this matter, please contact this office.

Very truly yours,

VERMONT YANKEE NUCLEAR POWER CORPORATION

R. W. Capstick  
Licensing Engineer

RWC/25.815

Attachment

cc: USNRC  
Region I

USNRC  
Resident Inspector - VYNPC

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ATTACHMENT A

Pursuant to 10CFR§50.12, Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), holder of Facility Operating License No. DPR-28, hereby applies for exemption from certain requirements of 10CFR§50.54(w) (the "Property Insurance Rule"), as described below.

In support of this application, Vermont Yankee states as follows:

1. As the operating licensee for the Vermont Yankee Power Station, Vermont Yankee is subject to the Commission's Rules and Regulations, including the Property Insurance Rule, and is an "interested person" under 10CFR§50.12 entitled to apply to the Commission for the limited exemption described below.
2. The Property Insurance Rule, as promulgated in final rulemaking by the Commission on July 31, 1987, requires licensees to maintain on-site property damage insurance in the amount of either "\$1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less." Paragraphs (w)(3) and (w)(4) of the Property Insurance Rule also require, respectively, that the proceeds of such insurance "be used first to ensure that the licensed reactor is in a safe and stable condition" (the "decontamination priority") and that the "proceeds subject to the decontamination priority... be payable to a separate trust" (the "trust provision"). Further, Paragraph (w)(5) of the Property Insurance Rule mandates that provisions implementing the foregoing requirements be incorporated in the applicable insurance policies by October 4, 1988 and apply "uniformly" to all onsite property damage insurance policies for nuclear power plants.
3. Despite the diligent efforts of the nuclear insurers and the nuclear industry, Vermont Yankee is not aware of any available insurance which meets all of the requirements of the Property Insurance Rule. Vermont Yankee has obtained property damage insurance in the aggregate amount of \$1,525 billion, which exceeds the coverage mandated by the Rule. However, its basic policies issued in American Nuclear Insurers ("ANI") and Mutual Atomic Energy Liability Underwriters ("MAELU") in the current amount of \$500 million and excess insurance in the amount of \$250 million contain neither the decontamination priority nor the trust provision; while ANI and MAELU may amend their policies to incorporate the former, Vermont Yankee is not aware that they are contemplating the latter; and neither is likely to be implemented by October 4, 1988. Vermont Yankee's secondary policy, issued by Nuclear Electric Insurance Limited in the amount of \$775 million does contain the decontamination priority and a provision for payments to an independent trust; however, industry efforts to create such a trust have been fruitless to date.

ATTACHMENT A  
(Continued)

4. Accordingly, compliance with the decontamination priority and the trust provision is beyond Vermont Yankee's control and is impossible for Vermont Yankee to achieve. Vermont Yankee submits that it has made a good faith effort to comply with the Property Insurance Rule by purchasing all the property damage coverage currently available and that to enforce against Vermont Yankee the requirement for the decontamination priority or the trust provision or the deadline contained in Paragraph (w)(5)(i) of the Property Insurance Rule when insurance meeting those criteria of that Rule is not available in the marketplace would clearly constitute an "undue hardship... significantly in excess of those contemplated when the regulation was adopted..." 10CFR§50.12(a)(2)(iii) (one of the six bases for exemption).
  
5. Vermont Yankee further submits that the trust provision itself is not only unnecessary but also unworkable and ineffective. In support of this position, Vermont Yankee adopts, and hereby incorporates herein by reference, the Argument in Support of Petition contained in the Petition for Rulemaking filed by the Edison Electric Institute, the Nuclear Utility Management and Resources Council, and certain power reactor licensees on June 21, 1988 (the "Petition"). Vermont Yankee shares the doubts expressed therein that the trust provision accomplishes the Commission's objectives: the trust arrangement may not be effective to shelter funds from bondholders; is probably not essential to ensure the cleanup of a damaged reactor even if the operator files in bankruptcy; and the trust vehicle may not even be feasible because of the unavailability of prospective trustees. In view of these problems, enforcement of the trust provision against Vermont Yankee "would not serve the underlying purpose of the rule (and) is not necessary to achieve the underlying purpose of the rule." 10CFR§50.12(a)(2)(ii) (another basis for exemption).
  
6. When the Commission adopted the trust provision requiring that insurance proceeds subject to the decontamination priority be payable to a "separate trust," it implicitly assumed that an acceptable trustee could be found. However, as noted in the Argument incorporated above, there are serious questions of trustee availability. The primary problem is the potential for conflicts of interest between an institution's role as trustee under a utility's mortgage indenture and its role as trustee of the "separate trust." Another problem is that there is no financial incentive for serving as special trustee. Normally, a trustee would earn a fee for managing the assets of the trust but the "separate trust" contemplated by the Rule would have no assets to be managed until such time as an accident occurred. Even then, it would essentially serve only as a conduit. Accordingly, the trust provision rests on factual assumptions which are invalid, and there exist "material circumstance(s) not considered when the regulation was adopted which justify grant of the exemption requested." The public interest will not be served by a requirement which cannot in fact be met. 10CFR§50.12(a)(2)(vi) (another basis for exemption).

ATTACHMENT A  
(Continued)

7. The Petition requests that, pending completion of rulemaking, the Commission suspend the Property Insurance Rule or otherwise relieve licensees from compliance with the trust provision therein. Vermont Yankee strongly supports that request, as well as the proposed amendments to the Rule contained in the Petition. In the event the Commission determines that it can grant the relief requested in the Petition on an industry-wide basis before October 4, 1988, this application will become moot. In that event, Vermont Yankee would have no objection to the Commission dismissing this application or consolidating it with the Petition. However, if the Commission cannot grant timely relief on an industry-wide basis, Vermont Yankee respectfully requests that the Commission grant Vermont Yankee an exemption from (i) the trust provision of the Property Insurance Rule and (ii) the decontamination priority requirement until such time as there are generally available markets for onsite property insurance policies containing acceptable decontamination priority provisions in an aggregate amount of \$1.06 billion or more in coverage limits.