



CONNECTICUT YANKEE ATOMIC POWER COMPANY

HADDAM NECK PLANT

362 INJUN HOLLOW ROAD • EAST HAMPTON, CT 06424-3099

April 24, 2023

CY-23-010

Re: 10 CFR 50.82(a)(8)(i)(A)

10 CFR 50.75(h)(2)

10 CFR 50.12

10 CFR 50.4

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Connecticut Yankee Atomic Power Company
Haddam Neck Plant Independent Spent Fuel Storage Installation
NRC License No. DPR-61 (NRC Docket Nos. 50-213 and 72-39)

Subject: Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) for
the Haddam Neck Plant Independent Spent Fuel Storage Installation

Pursuant to 10 CFR 50.12, "Specific exemptions," Connecticut Yankee Atomic Power Company (CYAPCO) requests exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) for the Haddam Neck Plant (HNP) Independent Spent Fuel Storage Installation (ISFSI) to establish a method to adjust the funding level in the segregated account for radiological decommissioning of the ISFSI on an annual basis.

Under the proposed exemptions, funds in the segregated account that exceed 110% of the inflation-adjusted Decommissioning Cost Estimate (DCE) for the radiological decommissioning of the ISFSI would be transferred to the overarching Nuclear Decommissioning Trust (NDT) on an annual basis without prior U.S. Nuclear Regulatory Commission (NRC) notification. These funds would then be available to be utilized for spent nuclear fuel and Greater than Class C (GTCC) waste management and non-radiological site restoration. In addition, this would permit additional excess funds in the overarching NDT to be returned to our customers as part of future Federal Energy Regulatory Commission (FERC) rate cases.

CYAPCO is requesting approval of the proposed exemptions by February 29, 2024, so that it may be utilized to transfer funds prior to the submittal of the next annual decommissioning funding assurance letter in March 2024.

NMSS01
NMSS26
NMSS

This letter contains no commitments. If you have any questions regarding this submittal, please do not hesitate to contact me at (860) 267 6426 ext. 306.

Respectfully,



R. Desmarais
ISFSI Manager

Enclosure: CYAPCO Exemption Request to Transfer Funds from Segregated Account for Radiological Decommissioning to the Overarching Nuclear Decommissioning Trust

cc: R. Lorson, NRC Region I Administrator
A. Dimitriadis, Chief, Decommissioning Branch, NRC, Region 1
Y. Diaz-Sanabria, Chief, Division of Fuel Management, Storage and Transportation Licensing Branch
J. Semancik, Director, CT DEEP, Radiation Division

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

1. Specific Exemption Request

Pursuant to 10 CFR 50.12, "Specific exemptions," Connecticut Yankee Atomic Power Company (CYAPCO) requests exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) for the Haddam Neck Plant (HNP) Independent Spent Fuel Storage Installation (ISFSI) to establish a method to adjust the funding level in the segregated account for radiological decommissioning of the ISFSI on an annual basis.

Under the proposed exemptions, funds in the segregated account that exceed 110% of the inflation-adjusted Decommissioning Cost Estimate (DCE) for the radiological decommissioning of the ISFSI would be transferred to the overarching Nuclear Decommissioning Trust (NDT) on an annual basis without prior U.S. Nuclear Regulatory Commission (NRC) notification. These funds would then be available to be utilized for spent nuclear fuel and Greater than Class C (GTCC) waste management and non-radiological site restoration. In addition, this would permit additional excess funds in the overarching NDT to be returned to our customers as part of future Federal Energy Regulatory Commission (FERC) rate cases.

2. Background

In 1996, CYAPCO commenced decommissioning the Haddam Neck Plant. On November 26, 2007, after completion of radiological decommissioning of the power reactor and other facilities, the NRC issued a Safety Evaluation Report to CYAPCO to release most of the formerly licensed land for unrestricted use from the 10 CFR 50 license, shrinking the licensed site to only the property associated with the HNP ISFSI. Thus, the only radiological decommissioning activities and decommissioning funding assurance requirements that remain applicable to CYAPCO are those associated with the decommissioning of the HNP ISFSI. Radiological decommissioning of the ISFSI will occur after the U.S. Department of Energy (DOE) removes the spent nuclear fuel and GTCC waste.

CYAPCO has established a separate account within its over-arching NDT, entitled "ISFSI Radiological Decom," that identifies the funds for radiological decommissioning of the ISFSI apart from the larger balance of funds in the NDT allocated for ongoing management of spent nuclear fuel and GTCC waste and for other site restoration activities.

On December 10, 2021, CYAPCO provided a three-year update to the decommissioning funding plan for the HNP ISFSI in accordance with 10 CFR 72.30(c) that included a revised site-specific DCE for the HNP ISFSI (Reference 1).

On February 9 and 24, 2023, the NRC issued its' analysis of CYAPCO's 2018 and 2021 Updated Decommissioning Funding Plans for the HNP Independent Spent Fuel Storage Installation (References 2 and 3). The NRC concluded:

"The NRC staff reviewed CYAPCO's 2018 and 2021 updated DFP submissions, including the updated DCEs and the method of assuring funds for decommissioning, in accordance

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

with 10 CFR 72.30(c) and NUREG-1757, Vol. 3, Rev. 1, "Consolidated Decommissioning Guidance." Based on its review, the NRC staff finds that the updated DFPs contain the information required by 10 CFR 72.30(c) and that CYAPCO has provided reasonable assurance by which funds will be available to decommission the HNP ISFSI. Therefore, the NRC staff finds that the DCEs adequately estimated the cost, at this time, to carry out required ISFSI decommissioning activities prior to license termination, and that the DCEs are reasonable."

3. Applicable Regulations

The separate or segregated account for radiological decommissioning of the ISFSI, as described above, is subject to 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2).

10 CFR 50.82(a)(8)(i)(A) states: "*Decommissioning trust funds may be used by licensees if—*

"(A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2."

10 CFR 50.2 defines "decommission" as follows: "*...to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—*

- (1) Release of the property for unrestricted use and termination of the license; or*
- (2) Release of the property under restricted conditions and termination of the license."*

The definition does not include other activities, such as spent nuclear fuel and GTCC waste management or site restoration activities.

In addition, 10 CFR 50.2 defines "Electric Utility" as follows:

"...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. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of 'electric utility.'"

Historically, CYAPCO has been an "electric utility" under the NRC definition for purposes of using the trust fund method of decommissioning funding. Following permanent cessation of operations, CYAPCO has continued to utilize this method and has continued to be treated as an electric utility. CYAPCO is regulated by the FERC and recovers current operating costs through FERC-accepted power supply contracts. The power supply contracts are, by their terms, "cost of service" contracts. Operating expenses that can be recovered under the contracts include the direct and indirect costs of operating, maintaining, or dismantling the spent fuel storage facilities and other plant facilities after the cessation of electricity production, including dismantlement

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

and radiological decommissioning of the ISFSI after removal of the spent nuclear fuel and GTCC waste from the site. CYAPCO funding is adjusted periodically as necessary by filing a FERC rate case. A decommissioning cost estimate and cost estimate for management of spent nuclear fuel and GTCC waste (Docket # ER19-2852-000) was most recently filed with FERC on September 23, 2019 (Reference 4) and accepted for filing by FERC on November 7, 2019, with an effective date of December 1, 2019.

The most recent FERC-accepted decommissioning cost estimate and cost estimate for management of spent nuclear fuel and GTCC waste includes the cost associated with the projected ISFSI decommissioning costs and a funding assumption of 15 years of operations costs to manage spent nuclear fuel and GTCC waste. A funding mechanism provides that damage awards and settlement proceeds that CYAPCO receives in future phases of its litigation with the DOE (regarding the DOE default on its obligation to remove spent nuclear fuel from the site for permanent disposal) will be applied to maintain the adequacy of the NDT to cover 15 years of ISFSI operations (as well as all remaining projected decommissioning costs). In addition, CYAPCO has the right to resume collection of decommissioning charges from its customers subject to the submittal of a proposal under section 205 of the Federal Power Act, if needed.

CYAPCO maintains an account within its NDT, entitled "ISFSI Radiological Decom," that distinguishes and segregates the funds for radiological decommissioning of the ISFSI from the larger balance of funds for ongoing management of spent nuclear fuel and GTCC waste held in the NDT.

10 CFR 50.75(h)(2) states, in part:

"Licensees that are "electric utilities" under § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall include a provision in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under § 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment..."

10 CFR 50.75(h)(2) also states:

"...Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under § 50.82(a)(8), no further notification need be made to the NRC."

10 CFR 50.82(a)(8)(i)(A) states that funds from the segregated account for radiological decommissioning may be used by licensees if the withdrawals are for expenses for legitimate radiological decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2 (and the other criteria in the regulation are met).

Similarly, 10 CFR 50.75(h)(2) requires that trust agreements require disbursements (other than those for ordinary administrative and other incidental expenses of the fund) to be restricted to decommissioning expenses until final decommissioning is completed. The NRC construes the definition of "decommission" in 10 CFR 50.2 as including those costs associated with radiological decommissioning activities to achieve license termination and does not include costs for those activities associated with spent nuclear fuel and GTCC waste management or non-radiological site restoration.

Based on the above, CYAPCO has concluded that 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would prohibit the use of funds from the segregated account for radiological decommissioning for activities related to spent nuclear fuel and GTCC waste management and non-radiological site restoration, prior to the completion of radiological decommissioning (i.e., a transfer of funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT).

Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are requested to allow CYAPCO to transfer excess funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT so that those funds would be available to be utilized to pay costs associated with spent nuclear fuel and GTCC waste management and site restoration activities without prior notification to the NRC. The exemptions would allow use of the funds for all costs associated with spent nuclear fuel and GTCC waste management and site restoration activities at CYAPCO. These exemptions would not present an undue risk to the public health and safety or prevent decommissioning from being completed as planned since the segregated account for radiological decommissioning will continue to contain adequate funds to complete radiological decommissioning.

4. Exemption Request Considerations

CYAPCO has established an account within its over-arching NDT, entitled "ISFSI Radiological Decom," that segregates the funds for radiological decommissioning of the ISFSI from the larger balance of funds held in the NDT for ongoing management of spent nuclear fuel and GTCC waste.

ENCLOSURE TO CY-23-010
**CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST**

Through the exemption request, CYAPCO proposes to establish a method to tie the amount maintained in the segregated account for radiological decommissioning of the ISFSI to the inflation adjusted DCE for the radiological decommissioning of the ISFSI on an annual basis, and permit the appropriate transfer of funds to the overarching NDT for spent nuclear fuel and GTCC waste management and site restoration without notification to the NRC. A disbursement of funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT would only be permitted if the funds in the segregated account for radiological decommissioning exceeded 110% of the inflation adjusted DCE for the radiological decommissioning of the ISFSI. Additional margin is provided by the FERC-accepted power supply contracts which provide an ongoing mechanism to obtain additional funds if needed. The power supply contracts and the FERC process by themselves provide assurance of adequate funding for radiological decommissioning of the ISFSI.

A. Authorized by Law

The proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would allow CYAPCO to transfer funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT for activities other than radiological decommissioning, without prior notice to the NRC. This would only occur if funds in the segregated account exceeded 110% of the inflation adjusted DCE for the radiological decommissioning of the ISFSI. As stated above, 10 CFR 50.12(a) allows the NRC to grant exemptions from the requirements of 10 CFR 50. Granting of the proposed exemptions will not present any undue risk to radiological safety and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions would be authorized by law.

B. No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors (including the associated 10 CFR 72 general license ISFSIs). The proposed exemptions would not reduce assurance of eventual radiological decommissioning of the ISFSI.

CYAPCO may collect funds through their power contracts and amendatory agreements under FERC regulation. The power contracts and the amendatory agreements specify the obligations of the power purchasers for the costs of CYAPCO, including the ongoing costs of managing spent nuclear fuel and GTCC waste and for eventual radiological decommissioning costs associated with the ISFSI. The contracts have been filed with and accepted under the FERC process. Pursuant to these contracts, CYAPCO has the ongoing ability to seek collections from its past power purchasers for additional funds that may be required to cover these costs.

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

CYAPCO has also received proceeds from the successful litigation of several phases of its breach of contract damages claims against the DOE for failure to begin the removal of spent nuclear fuel and GTCC waste from the site in 1998. The company will continue to file claims against the DOE as long as the DOE continues to breach its contract obligations related to spent nuclear fuel and GTCC waste. Based upon past results from the previous phases of litigation, each of these prospective claims is expected to result in the receipt of proceeds that can be used to offset future costs, if required.

A decommissioning cost estimate and cost estimate for management of spent nuclear fuel and GTCC waste (Docket # ER19-2852-000) was filed most recently with FERC on September 23, 2019 (Reference 4) and accepted for filing by FERC on November 7, 2019, with an effective date of December 1, 2019. CYAPCO's power contracts and the FERC-accepted filing provide that any DOE damage awards remaining after meeting income tax obligations, financial assurance level obligations and reduction in any scheduled charges for funding of the NDT, shall be credited to the purchasers, i.e., ratepayers. Historically, in accordance with the FERC Informational Filing, the amounts awarded during a phase of DOE litigation were credited to the ratepayers.

CYAPCO's FERC filing includes a fifteen-year funding mechanism that was originally adopted in the 2013 FERC Filing. Until the 2013 FERC filing, the Company had employed a "full funding" assumption in developing funding requirements. The fifteen-year funding mechanism was put in place to incorporate the potential for the receipt of future DOE breach of contract damages as a source of funding as discussed below. If future damage recovery does not occur, the company has the ability to apply to FERC for more funding, if necessary. The accepted FERC filing also requires the company to provide an information filing regarding the adequacy of funding if five years pass without receipt of damage awards from litigation with the DOE.

CYAPCO also expects to utilize the investment return on NDT assets as a funding source. As established in the Decommissioning Funding Status Report for the HNP Independent Spent Fuel Storage Installation submitted on March 6, 2023, the current assumed rate of investment return, after fees and taxes, is 4.0% (Reference 5).

The CYAPCO site-specific DCE for the radiological decommissioning of the ISFSI submitted in December 2021 conservatively assumes that the material that comprises seven of the Vertical Concrete Casks will be disposed of as low-level radioactive waste, and it contains an additional 25% contingency. These assumptions provide additional assurance regarding the funding level for the CYAPCO segregated account for radiological decommissioning of the ISFSI.

Based on the site-specific DCE for the radiological decommissioning of the ISFSI and the cash flow analysis provided above, the potential annual transfer of funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT when those funds exceed 110% of the inflation adjusted DCE for radiological decommissioning of the ISFSI will not adversely impact the ability of CYAPCO to complete radiological decontamination within the required time frame and terminate the applicable 10 CFR 50 license and 10 CFR 72 general

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

license. Furthermore, the proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the segregated account for radiological decommissioning of the ISFSI without prior written notification to the NRC will not affect the sufficiency of funds in the segregated account to accomplish radiological decontamination of the site, because funds would only be transferred from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT when the account funds exceed 110% of the inflation adjusted DCE for radiological decommissioning of the ISFSI.

Additionally, CYAPCO will remain subject to the annual requirements to provide a decommissioning funding assurance status report in accordance with 10 CFR 50.75(f)(1) and (2) and 10 CFR 50.82(a)(8)(v) and (vi).

No new accident precursors are created by using funds from the segregated account for radiological decommissioning of the ISFSI or the overarching NDT in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite.

CYAPCO would only transfer funds from the segregated radiological decommissioning account to the overarching NDT if the account exceeded 110% of the inflation adjusted decommissioning cost estimate. Additional margin is provided by the FERC-accepted power contracts which provide an ongoing mechanism to obtain additional funds and by themselves provide assurance of adequate funding.

There is also no significant increase in occupational or public radiation exposure from the proposed exemptions.

Therefore, for all these reasons, the proposed exemptions do not involve any undue risk to public health and safety.

C. Consistent with the Common Defense and Security

The proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would allow CYAPCO to transfer funds from the segregated account for radiological decommissioning for the ISFSI to the overarching NDT for spent nuclear fuel and GTCC waste management and site restoration without prior notice to the NRC. Spent nuclear fuel management under 10 CFR 50.54(bb) is an integral part of the planned CYAPCO decommissioning and final license termination process and the proposed exemptions would not adversely affect our ability to physically secure the site or protect special nuclear material. The proposed change to enable use of a portion of the funds from the segregated account for radiological decommissioning of the ISFSI for activities other than decommissioning activities (specifically including spent nuclear fuel and GTCC waste management) would not degrade the ISFSI security program. Therefore, the common defense and security would not be impacted by the exemptions as proposed.

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors and ISFSIs, respectively. Strict application of these requirements would prohibit withdrawal of funds from the segregated account for radiological decommissioning for activities other than radiological decommissioning activities until final radiological decommissioning of the ISFSI has been completed.

On March 6, 2023, CYAPCO submitted a status report regarding radiological decommissioning funding assurance (Reference 5). The following table establishes the inflation-adjusted CYAPCO's DCE for the radiological decommissioning of the ISFSI, the balance in the segregated account for radiological decommissioning of the ISFSI as of December 31, 2022, the amount over funded, and the percentage over funded.

DCE (escalated to 2022 \$s)	Segregated Account Balance (12/31/2022)	Amount Over Funded	% Over Funded
\$7,070,450	\$47,609,309	\$40,538,859	573%

The current funds and projected earnings of the segregated account for radiological decommissioning provide reasonable assurance of adequate funding to complete NRC required decommissioning activities. CYAPCO has demonstrated reasonable assurance that sufficient funding will be available for radiological decommissioning of the ISFSIs, and that the exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2), with respect to the use of funds from the segregated account for radiological decommissioning for spent nuclear fuel and GTCC waste management and site restoration activities, will still achieve the underlying purposes of the rule.

The CYAPCO segregated account for radiological decommissioning of the ISFSI contain funds in excess of the estimated costs of radiological decommissioning of the ISFSI. These excess funds should be available for spent nuclear fuel and GTCC waste management and site restoration activities to minimize the potential to require additional funding from ratepayers in accordance with the FERC process. The NRC does not preclude use of funds from the NDT in excess of those needed for radiological decommissioning for other purposes, such as spent nuclear fuel and GTCC waste management or site restoration. The NRC has stated that funding for spent nuclear fuel and GTCC waste management and other site restoration activities may be commingled in the NDT provided the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for spent nuclear fuel and GTCC waste management (see NRC Regulatory Issue Summary 2001-07, Rev 1, "10 CFR 50.75

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

Reporting and Recordkeeping for Decommissioning Planning,” dated January 8, 2009 [ADAMS Accession No. ML083440158], and Regulatory Guide 1.184, Rev 1, "Decommissioning of Nuclear Power Reactors,” [ADAMS Accession No. ML 13144A840]). If the NRC were to prevent access to funds in the segregated account for radiological decommissioning of the ISFSI that exceed 110% of the DCE for radiological decommissioning of the ISFSI to fund spent nuclear fuel and GTCC waste management and site restoration, this would create an unnecessary financial burden without any corresponding safety benefit. Prior to making any disbursements from the account, the segregated account for radiological decommissioning would have to exceed 110% of the cost established in the inflation adjusted DCE for the ISFSI. As discussed above, additional margin is provided by the FERC-accepted power contracts which provide an ongoing mechanism to obtain additional funds and by themselves provide assurance of adequate funding.

The DCE contains additional margin regarding the costs, because they assume that the material that comprises seven of the Vertical Concrete Casks will be disposed of as low-level radioactive waste and the DCE contains an additional 25% contingency.

Transferring funds in excess of 110% of the inflation adjusted DCE for the ISFSI from the segregated account to the overarching NDT to fund spent nuclear fuel and GTCC waste management and site restoration activities would minimize the need to obtain additional funding from ratepayers via FERC rate cases. CYAPCO is currently underfunded regarding the costs to manage spent nuclear fuel and GTCC waste. The projected cost estimate for managing spent nuclear fuel and GTCC waste is approximately \$241.7 million (2023-2038) in 2022 dollars and the amount of funds accumulated to cover the cost of managing the spent nuclear fuel and GTCC waste is approximately \$148 million as of December 31, 2022.

As described in the funding status report for managing spent nuclear fuel and GTCC waste submitted on March 6, 2023, CYAPCO has several methods of obtaining additional funds to cover projected costs (Reference 6). If granted, this exemption would provide another option to fund the management of spent nuclear fuel and GTCC waste.

Allowing the transfer of funds from the segregated account to the overarching NDT would alleviate the potential need to obtain additional funding from ratepayers. Obtaining additional funding from ratepayers is unnecessary and would be an undue burden not contemplated when the regulation was adopted.

In addition, CYAPCO requests an exemption from the requirements of 10 CFR 50.75(h)(2) concerning prior written notification to the NRC of withdrawals from the segregated account for radiological decommissioning of the ISFSI to fund activities other than decommissioning activities. The underlying purpose of notifying the NRC prior to withdrawal of funds from the segregated account is to provide opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) that could result in insufficient funds in the segregated account to accomplish radiological decontamination of the site.

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

Pursuant to the annual reporting requirements in 10 CFR 50.82(a)(8)(v) through (vii), CYAPCO is required to monitor and report the status of the radiological decommissioning trust fund and the funding status for managing spent nuclear fuel and GTCC waste.

10 CFR 50.82(a)(8)(v) requires an annual report that provides financial assurance regarding the cost to decommissioning the facility. For a shortfall, CYAPCO would have to comply with 10 CFR 50.82(a)(8)(vi) which states:

"If the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2 percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning, the financial assurance status report must include additional financial assurance to cover the estimated cost of completion."

To comply, CYAPCO would have to fund any shortfall to make the decommissioning account whole prior to making the annual report. The FERC-accepted power contracts provide an ongoing mechanism to obtain additional funds and by themselves provide assurance of adequate funding.

10 CFR 72.30(c) requires CYAPCO to resubmit the decommissioning funding plan for the ISFSI with adjustments as necessary to account for changes in costs and the extent of contamination at intervals not to exceed 3 years.

These submittals provide the NRC with awareness of the ongoing funding status and the NRC will retain the ability to take action on any actual or potential funding deficiencies. Therefore, the granting of this exemption to 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the segregated account for radiological decommissioning for the ISFSI when they exceed 110% of the inflation adjusted DCE for the radiological decommissioning of the ISFSI without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Therefore, compliance with the strict requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) is not necessary to achieve the purpose of the regulations. Assurance of adequate funding for ISFSI decommissioning is provided by ensuring that adequate funds for radiological decommissioning of the ISFSI are maintained in the segregated account. Funds would only be transferred from the segregated account regarding radiological decommissioning of the ISFSI to the overarching NDT when the account funds exceed 110% of the inflation adjusted DCE for radiological decommissioning of the ISFSI. Additional margins have been discussed previously. Compliance with the rules could result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist.

E. Precedent

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

There are no identical precedents for the CYAPCO request for exemptions to 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2). However, the concept of sharing funds with an overarching NDT is similar to the following recent exemptions issued by the NRC for other nuclear power reactor facilities undergoing decommissioning.

- Entergy Nuclear Operations, Inc. for Pilgrim Nuclear Power Station (Reference 7)
- Pacific Gas and Electric Company for Diablo Canyon Nuclear Power Plant, Units 1 and 2 (Reference 8)
- Exelon Generation Company, LLC for Three Mile Island Nuclear Station, Unit 1 (Reference 9)

However, CYAPCO will not commingle all of the funds as permitted by the exemptions in References 7 through 9. CYAPCO will continue to maintain a segregated account for radiological decommissioning of the ISFSI. Funds from that account would only be transferred to the overarching NDT account when the account funds exceed 110% of the inflation adjusted DCE for radiological decommissioning of the ISFSI.

F. No Significant Hazards Consideration Determination

CYAPCO has evaluated the proposed exemptions to determine whether or not a significant hazards consideration is involved by focusing on the three standards set forth in 10 CFR 50.92(c) as discussed below. For the reasons discussed below, CYAPCO concludes that the proposed exemptions present no significant hazards consideration, and, accordingly, a finding of “no significant hazards consideration” is justified.

1. Do the proposed exemptions involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed exemptions would allow the annual transfer of funds from the segregated account for the radiological decommissioning of the ISFSI to the overarching NDT if the funds exceed 110% of the inflation adjusted DCE for the radiological decommissioning of the ISFSI. These funds would then be utilized to conduct activities associated with spent nuclear fuel and GTCC waste management and site restoration activities. The proposed exemptions have no effect on ISFSI structures, systems, and components (SSCs) and no effect on the capability of any SSC to perform its design function. The proposed exemptions would not increase the likelihood of the malfunction of any SSC. The proposed exemptions would have no effect on the CYAPCO Updated Final Safety Analysis Report. Use of funds as allowed under the requested exemptions would not affect the probability of occurrence of any previously analyzed accident.

The proposed exemptions would not change the requirements pertaining to spent nuclear fuel and GTCC waste management and physical security.

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

Therefore, the proposed exemptions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed exemptions create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed exemptions would not involve a physical alteration of the ISFSI. No new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed exemptions. Similarly, the proposed exemptions would not physically change any SSCs involved in the mitigation of any accidents. Thus, no new initiators or precursors of a new or different kind of accident would be created.

Furthermore, the proposed exemptions would not create the possibility of a new accident as a result of new failure modes associated with any equipment or personnel failures. No changes would be made to parameters within which the ISFSI is normally operated, or in the setpoints which initiate protective or mitigative actions, and no new failure modes are being introduced.

Therefore, the proposed exemptions do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed exemptions involve a significant reduction in a margin of safety?

The proposed exemptions do not alter the design basis or any safety limits for the ISFSI. The proposed exemptions do not impact ISFSI operation or any ISFSI SSC that is relied upon for accident mitigation or physical security.

Therefore, the proposed exemptions do not involve a significant reduction in a margin of safety.

Based on the above, the proposed exemptions present no significant hazards consideration, and, accordingly, a finding of "no significant hazards consideration" is justified

G. Environmental Considerations

Pursuant to 10 CFR 51.21, the following environmental considerations are provided.

1. Description of Action

CYAPCO requests exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75 (h)(2) for the HNP ISFSI to establish a method to adjust the funding level in the segregated account for radiological decommissioning of the ISFSI on an basis. Funds in the segregated account that exceed 110% of the inflation-adjusted DCE for the radiological

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

decommissioning of the ISFSI could be transferred to the overarching NDT without prior NRC notification. These funds could then be utilized for spent nuclear fuel and GTCC waste management and non-radiological site restoration. In addition, this would permit additional excess funds in the overarching NDT to be returned to our customers as part of future FERC rate cases.

2. Need for Action

As required by 10 CFR 50.82(a)(8)(i)(A), funds from the segregated account for radiological decommissioning of the ISFSI may be used by CYAPCO if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decontamination and does not include activities associated with the spent nuclear fuel and GTCC waste management or site restoration. Similarly, the requirements of 10 CFR 50.75(h)(2) restrict the use of disbursements from the segregated account for radiological decommissioning of the ISFSI (other than for ordinary and incidental expenses) to decommissioning expenses until final decommissioning has been completed. Therefore, partial exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are needed to allow CYAPCO to transfer funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT when those funds exceed the DCE for radiological decommissioning of the ISFSI, so that those funds may be utilized for spent nuclear fuel and GTCC waste management and site restoration activities.

The adequacy of funds in the segregated account for radiological decommissioning of the ISFSI will be ensured. CYAPCO would only transfer funds from the segregated account for radiological decommissioning of the ISFSI to the overarching NDT if the account funds exceeded 110% of the inflation-adjusted DCE for the radiological decommissioning of the ISFSI.

The requirements of 10 CFR 50.75(h)(2) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8)(i)(A) or for payments of ordinary administrative costs and other incidental expenses of the trust, no disbursements may be made from the trust until written notice of the intention to make a disbursement has been given to the NRC at least 30 working days in advance of the intended disbursement. Therefore, an exemption from 10 CFR 50.75(h)(2) is needed to allow CYAPCO to use funds from the segregated account for radiological decommissioning of the ISFSI for spent nuclear fuel and GTCC waste management and site restoration activities without prior NRC notification.

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

3. Environmental Impacts of the Proposed Action

The proposed action involves exemptions from requirements that are of a financial or administrative nature and will not have an impact on the environment. The exemptions do not authorize any additional land-disturbing activities.

The exemptions also would not result in any significant risk of underfunding for radiological decommissioning of the ISFSI. CYAPCO is proposing to only transfer funds in the segregated account for radiological decommissioning of the ISFSI to the overarching NDT when the funds in that account exceed 110% of the inflation adjusted DCE for radiological decommissioning of the ISFSI. Additional margin is provided by the FERC-accepted power contracts which provide an ongoing mechanism to obtain additional funds and by themselves provide assurance of adequate funding.

Additionally, a status report regarding decommissioning funding must be submitted to the NRC annually as required by 10 CFR 50.75(f)(1) and (2) and 10 CFR 50.82(a)(8)(v). These annual reports provide a means for the NRC to monitor the adequacy of the funding available for the radiological decommissioning of the HNP ISFSI. For a shortfall, CYAPCO would have to comply with 10 CFR 50.82(a)(8)(vi), which states:

"If the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2 percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning, the financial assurance status report must include additional financial assurance to cover the estimated cost of completion."

To comply, CYAPCO would have to fund any shortfall to make the decommissioning account whole prior to submitting the decommissioning funding assurance status report to the NRC in accordance with 10 CFR 50.75(f)(1) and (2) and 10 CFR 50.82(a)(8)(v) and (vi).

The proposed action will not significantly increase the probability or consequences of radiological accidents; nor will it have any direct radiological impacts. There will be no change to the types or amounts of radiological effluents that may be released, and therefore, no change in occupational or public radiation exposure from the proposed action. The exemptions also will not introduce any materials or chemicals into the ISFSI that could affect the characteristics or types of effluents released offsite. In addition, no waste processing systems will be added by the proposed exemptions. The proposed exemptions will not result in changes to the design basis requirements of SSCs that function to limit or monitor the release of effluents. All the SSCs associated with limiting the release of effluents will continue to be able to perform their functions. Moreover, no changes will be made to the ISFSI or the licensed site property. Accordingly, there are no significant radiological environmental impacts associated with the proposed action.

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

With regard to potential non-radiological impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of ISFSI operational systems. There would be no changes to the quality or quantity of non-radiological effluents. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed change. Therefore, there are no significant non-radiological environment impacts associated with the proposed action.

Accordingly, CYAPCO concludes that there are no significant environmental impacts associated with the proposed action to grant the requested exemptions.

4. Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, CYAPCO considered the "no-action" alternative. This would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

5. Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

The exemption request meets the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(25), because the proposed exemptions involve: (i) no significant hazards consideration; (ii) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) no significant increase in individual or cumulative public or occupational radiation exposure; (iv) no significant construction impact; (v) no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which the exemption is sought involve surety, insurance or indemnity requirements. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the proposed exemptions.

5. Conclusion

Based on the above, the proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) 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. Special circumstances as defined in 10 CFR 50.12(a)(2)(ii) and (iii) exist. In addition, the exemption request meets the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(25).

6. References

ENCLOSURE TO CY-23-010
CYAPCO EXEMPTION REQUEST TO TRANSFER FUNDS FROM SEGREGATED
ACCOUNT FOR RADIOLOGICAL DECOMMISSIONING TO THE OVERARCHING
NUCLEAR DECOMMISSIONING TRUST

1. Letter from T. Conry (CYAPCO) to NRC, CY-21-015, "Three-Year Update to the Independent Spent Fuel Storage Installation Decommissioning Funding Plan," dated December 10, 2021 (ADAMS Accession No. ML21362A132)
2. Letter from NRC to T. Conry (CYAPCO), U.S. Nuclear Regulatory Commission's Analysis of Connecticut Yankee Atomic Power Company's 2018 And 2021 Updated Decommissioning Funding Plans for the Haddam Neck Plant Independent Spent Fuel Storage Installation, dated February 9, 2023
3. Letter from NRC to T. Conry (CYAPCO), U.S. Nuclear Regulatory Commission's Analysis of Connecticut Yankee Atomic Power Company's 2018 And 2021 Updated Decommissioning Funding Plans for the Haddam Neck Plant Independent Spent Fuel Storage Installation, dated February 24, 2023 (ADAMS Accession No. ML22340A492)
4. Letter from Alston & Bird LLP to Federal Energy Regulatory Commission, "Connecticut Yankee Atomic Power Company Docket No. ER19-____," dated September 23, 2019
5. Letter from T. Conry (CYAPCO) to NRC, CY-23-006, "Decommissioning Funding Assurance Status Report," dated March 6, 2023
6. Letter from T. Conry (CYAPCO) to NRC, CY-23-007, "Funding Status Report for Managing Irradiated Fuel and GTCC Waste," dated March 6, 2023 (ADAMS Accession No. ML23088A203)
7. Letter from U.S. Nuclear Regulatory Commission to Entergy Nuclear Operations, Inc. "Pilgrim Nuclear Power Station - Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) (EPID L-2018-LLE-0019)," July 22, 2019 (ADAMS Accession No. ML19162A334)
8. Letter from U.S. Nuclear Regulatory Commission to Pacific Gas and Electric Company, "Diablo Canyon Nuclear Power Plant, Units 1 and 2 - Exemptions from the Requirements of 10 CFR Part 50, Sections 50.82(a)(8)(i)(A) and 50.82(a)(8)(ii) (EPID L-2018-LLE-0023)," September 10, 2019 (ADAMS Accession No. ML19163A104)
9. Letter from U.S. Nuclear Regulatory Commission to Exelon Generation Company, LLC, "Three Mile Island Nuclear Station, Unit 1 - Exemptions from the Requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) (EPID L-2019-LLE-0009)," October 16, 2019 (ADAMS Accession No. ML19259A175)