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Dated at Rockville, Maryland, this 8th day of September 2005.

For the Nuclear Regulatory Commission.

**Brenda L. Mozafari,**

*Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

### **Connecticut Yankee Atomic Power Company, Haddam Neck Plant; Partial Exemption from Requirements of 10 CFR Part 50 Appendix A, Criterion 1, 10 CFR Part 50 Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3)**

#### 1.0 Background

Connecticut Yankee Atomic Power Company (CY) is the licensee and holder of Facility Operating License No. DPR-61 for the Haddam Neck Plant (HNP), a permanently shutdown decommissioning nuclear plant. Although permanently shutdown, this facility is still subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC).

On December 5, 1996, CY notified NRC that operations had permanently ceased and that all fuel had been permanently removed from the reactor. On July 7, 2000, CY submitted its License Termination Plan (LTP), which the NRC approved on November 25, 2002.

CY began actively decommissioning HNP in April 1999, through a contract with Bechtel Power Corporation. In June 2003, CY began managing the decommissioning using staff augmentation and subcontractors for speciality work.

The nuclear reactor and all associated systems and components necessary for the safe generation of power have been removed from the facility and disposed or sold off-site. Additionally, the structures necessary for safe power

generation are either demolished or in an advanced state of demolition. There are no safety-related structures, systems and components (SSCs) remaining at the HNP. Transfer of the spent fuel (SF) and greater-than-Class C (GTCC) waste from the SF pool to the HNP Independent Spent Fuel Storage Installation (ISFSI) was completed on March 30, 2005, but the SF pool has not yet been drained, so it is not ready for demolition.

On February 16, 2005, CY filed a request for NRC approval of an exemption from the recordkeeping requirements of 10 CFR Part 50 Appendix A, Criterion 1, 10 CFR Part 50 Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3).

#### 2.0 Request/Action

Pursuant to the requirements of 10 CFR 50.12, CY requested the following exemption, to the extent necessary, from the record retention requirements of:

(1) 10 CFR Part 50 Appendix A, Criterion 1, which requires certain records be retained "throughout the life of the unit";

(2) 10 CFR Part 50 Appendix B, Section XVII, which requires certain records be retained consistent with applicable regulatory requirements for a duration established by the licensee; and

(3) 10 CFR Part 50.59(d)(3), which requires certain records be maintained until "termination of a license issued pursuant to" Part 50.

CY proposes to eliminate these records when: (1) The nuclear power unit and associated support systems no longer exist for SSCs associated with safe power generation, or (2) spent nuclear fuel has been completely transferred from the spent fuel pool and the building is ready for demolition.

CY is not requesting any exemption associated with record keeping requirements for storage of spent fuel at its ISFSI under 10 CFR Part 50 or the general license requirements of 10 CFR Part 72.

Most of these records are for SSCs that have been removed from HNP and disposed of offsite. Disposal of these records will not adversely impact the ability to meet other NRC regulatory requirements for the retention of records [e.g., 10 CFR 50.54(a), (p), (q), and (bb); 10 CFR 50.59(d); 10 CFR 50.57(g)].

These regulatory requirements ensure that records from operation and decommissioning activities are maintained for safe decommissioning, spent nuclear fuel storage, completion and verification of final site survey, and license termination.

#### 3.0 Discussion

NRC licensees are required to maintain their records according to the NRC regulatory recordkeeping requirements. Pursuant to the requirements of 10 CFR 50.12, "Specific Exemptions," CY filed a request for a partial exemption from the NRC recordkeeping requirements contained in 10 CFR Part 50 Appendix A, Criterion 1, 10 CFR Part 50 Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3). The NRC recordkeeping requirements at issue in CY's request for exemption are as follows.

10 CFR Part 50, Appendix A, "General Design Criteria for Nuclear Power Plants," establishes the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety. Specifically, CY requests an exemption from Criterion 1, "Quality standards and records," which states in part:

Appropriate records of the design, fabrication, erection, and testing of structures, systems, and components important to safety shall be maintained by or under the control of the nuclear power unit licensee throughout the life of the unit.

10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," establishes quality assurance requirements for the design, construction, and operation of structures, systems, and components that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Specifically, CY requests an exemption from Criterion XVII, "Quality Assurance Records", which states:

Sufficient records shall be maintained to furnish evidence of activities affecting quality. The records shall include at least the following: Operating logs and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records shall also include closely-related data such as qualifications of personnel, procedures, and equipment. Inspection and test records shall, as a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. Records shall be identifiable and retrievable. Consistent with applicable regulatory requirements, the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.

CY also requests an exemption from 10 CFR 50.59(d)(3), which states: "The records of changes in the facility must be maintained until the termination of a license issued pursuant to this part or

the termination of a license issued pursuant to 10 CFR Part 54, whichever is later. Records of changes in procedures and records of tests and experiments must be maintained for a period of 5 years.”

#### *Exemption Requirements*

In order to be granted an exemption from the requirements of 10 CFR Part 50, Appendix A, Criterion I, Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3), the licensee must meet the requirements of 10 CFR Part 50.12(a)(1), and demonstrate that special circumstances, as defined in 10 CFR 50.12(a)(2) exist. In its exemption request dated February 16, 2005, CY provides the following justification for granting the exemption request and regulatory basis for meeting the requirements of 10 CFR 50.12(a)(1), and that the special circumstances, as defined in 10 CFR 50.12(a)(2), exist:

#### I. General Justification for Granting the Exemption Request

##### A. Nuclear Power Generation SSCs

The HNP power generation unit no longer exists. Its systems and components have been removed to various offsite disposal facilities or reuse applications. The structures that have not yet been fully demolished have been remediated or partially demolished to the point of rendering them useless for any application. The general justification for disposition of records associated with these SSCs is that the SSCs no longer exist, they no longer serve, nor can they conceivably serve, any function regulated by the NRC.

While the safe power generation SSCs no longer exist, the HNP site and the power generation “footprint” continue to be under NRC regulation due, primarily, to presence of residual radioactivity. The radiological controls (and other programmatic controls such as quality assurance) of the “footprint” and the implementation of cleanup criteria are fully covered through the current plant documents such as the updated Final Safety Analysis Report (UFSAR), which includes the HNP License Termination Plan and the Quality Assurance Program. These programmatic elements and their associated records are unaffected by the exemption request.

##### B. Spent Fuel and Associated SSCs

With all spent fuel and GTCC transferred from the spent fuel pool (SFP) to the ISFSI on March 30, 2005, the SFP and its associated SSCs no longer have a safety function. All records necessary for spent fuel storage have been retained for the ISFSI. Similar

to the power generation SSC records, once the SFP is drained and ready for demolition, there is no safety-significance or other regulatory value in retaining SFP SSC records. Also, similar to the power generation “footprint”, the SFP SSCs “footprint” is included under the radiological control provided by the UFSAR, Quality Assurance Program, and their programmatic elements.

Finally, CY believes that when the NRC developed record retention requirements, there was little, if any discussion related to decommissioning facilities. In the case of ISFSI records, however, recent clarification was provided. Specifically, when updating 10 CFR 72.48 requirements (72.48 is the dry fuel storage equivalent of 10 CFR 50.59), the NRC clarified the retention period for records for changes in the facility or spent fuel storage cask design to be until “\* \* \*. Spent fuel is no longer stored in the facility” (10 CFR 72.48(d)(3)(I)). This is analogous to what CY is requesting—retention of related records until fuel is no longer stored in the SFP and the SFP building is ready for demolition.

##### C. ISFSI SSCs and Spent Nuclear Fuel

CY is not requesting any exemption associated with retention of these records.

#### II. Specific Justification for Exemptions and Special Circumstances

##### A. Specific Exemption Is Authorized by Law

The CY exemption request to reduce record retention durations is authorized by law and within the Commission’s authority. CY believes that the Commission would have made these clarifying changes to the regulations had there been sufficient industry experience in performing decommissioning and license termination at Part 50 facilities when the record retention rules were originally promulgated.

##### B. Specific Exemption Will Not Present an Undue Risk to the Public Health and Safety

The public health and safety are not affected by the proposed exemption. Removal of the underlying SSCs associated with the records has been already determined by CY, in accordance with 10 CFR 50.59, to have no adverse public health and safety impact. Elimination of associated records for these SSCs will not impact health and safety.

##### C. Specific Exemption Consistent With the Common Defense and Security

CY believes that the elimination of these records is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

##### D. Special Circumstances

Further CY provides the following regulatory basis for meeting the requirements of:

##### *10 CFR 50.12(a)(2)(ii)*

“Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule \* \* \*”

The common and underlying purpose for the regulations cited above is to ensure that the current license and design basis of the facility is understood, documented, preserved and retrievable. The current license basis encompasses all those elements of SSCs functionally necessary to ensure, within the boundaries of nuclear regulation, safe operation of the facility. In order to ensure future safe operation, a license basis is maintained current by evaluating changes against up-to-date information. The terms such as “safety functions”, and “safe operation” is meaningless if a facility has been dismantled and disposed. In this case, retention of records associated with nonexistent SSCs serves no safety or regulatory purpose. Therefore, application of these record requirements in CY’s circumstances does not serve the underlying purpose of the regulations.

##### *10 CFR 50.12(a)(2)(iii)*

“Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted,\* \* \*”

The records retention itself is an expensive proposition. Retention of records alone is not sufficient. They must be legible, retrievable and stored in a safe condition. This expense was understood on the part of the Commission and the nuclear industry for the current license basis to ensure the continued safe operation of the facility. However, what was not well understood (when the regulation was adopted) was the effect of explicit record retention durations that survived the life of a facility and no longer served an underlying safety purpose. This is the current situation at the decommissioning facilities.

CY’s available record storage capacity continues to shrink as buildings are

remediated, surveyed and demolished. CY is less than one year from demolishing the administrative building where many of the records are stored and retained. Retaining records associated with non-existent SSCs and a non-existent nuclear power generator is a significant hardship today as records are shuffled between buildings and administrative support personnel are reduced. It will become more of a hardship and cost increase as they must make provisions for offsite storage well in advance of building demolition.

*10 CFR 50.12(a)(2)(vi)*

“There is present any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.”

First, the cost associated with maintaining records that no longer serve a safety purpose can be significant, particularly for a facility at an advanced stage in the decommissioning process. Decommissioning costs, including record maintenance, are paid by the ratepayers throughout the multi-state region that benefitted from the power produced by the HNP when it was operating. Since HNP is no longer generating electric power and is in decommissioning, the requested records exemption helps towards maintaining a cost-efficient decommissioning.

Second, elimination of these records ensures their future unavailability to individuals and groups interested in adversely affecting commercial nuclear facilities.

#### 4.0 Conclusion

Based on its evaluation, the staff concludes the requirements for a specific exemption in 10 CFR 50.12 have been satisfied.

The staff concludes that the requested exemption from the recordkeeping requirements of 10 CFR Part 50 Appendix A, Criterion 1, 10 CFR Part 50, Appendix B Criterion XVII, and 10 CFR 50.59(d)(3), will not present an undue risk to the public health and safety. The destruction of the identified records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security.

Further, the staff concludes that the destruction of the identified records is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

The staff agrees that an underlying purpose of the record keeping regulations in 10 CFR Part 50, Appendix A, Criterion 1, 10 CFR Part 50, Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3) is to ensure that the NRC staff has access to information in order for the NRC to perform its regulatory functions including inspection and licensing. For example, in the event of any accident, incident, or condition that could impact public health and safety, the records would assist in the protection of public health and safety during recovery from the given accident, incident, or condition, and also could help prevent future events or conditions at the site adversely impacting public health and safety. Because the CY-HNP reactor primary systems, including the reactor vessel, steam generators, pressurizer, reactor coolant pumps and piping, and their associated support systems have been removed for offsite disposal or resale, there are no longer regulatory functions for NRC to perform associated with these systems or components. Thus, the records identified in the exemption would not provide the NRC with information for carrying out its regulatory function. To the extent that CY had sold components, the new user of the components may have need for the associated records, however, that is an issue for the new owner and not a regulatory issue under CY's license.

Therefore, the Commission grants CY the requested exemption to the recordkeeping requirements of 10 CFR Part 50 Appendix A, Criterion 1, 10 CFR 50 Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3), as described in the February 16, 2005, letter. Specifically, pursuant to the requirements of 10 CFR 50.12, CY is exempted from the record retention requirements of 10 CFR Part 50 Appendix A, Criterion I, 10 CFR Part 50 Appendix B, Criterion XVII, and 10 CFR 50.59(d)(3) for: (1) Records pertaining to structures, systems, and components, or activities associated with the nuclear power unit and associated support systems that no longer exist at the CY site; and (2) records pertaining to the spent fuel pool and associated support systems for the safe storage of fuel in the spent fuel pool after the spent nuclear fuel and GTCC has been completely transferred from the spent fuel pool and the spent fuel pool is ready for demolition. This exemption does not apply to any recordkeeping requirements for storage of spent fuel at the CY ISFSI under 10 CFR Part 50 or the general requirements of 10 CFR Part 72. In addition, this exemption does not apply to any

records reflecting spills, releases or other information relevant to remaining decommissioning requirements and activities at the CY site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as documented in **Federal Register** (70 FR 53258, September 7, 2005).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of September, 2005.

For the Nuclear Regulatory Commission.

**Claudia M. Craig,**

*Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.*

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Plant License Renewal and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Plant License Renewal and on Plant Operations will hold a joint meeting on September 21, 2005, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, September 21, 2005—8:30 a.m. until 5 p.m.*

The purpose of this meeting is to gather information regarding the current status and condition of Browns Ferry Unit 1 in preparation for ACRS reviews of the license renewal application for Browns Ferry Units 1, 2, and 3, and the restart of Browns Ferry Unit 1. The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff, Tennessee Valley Authority, and other interested persons regarding this matter. The Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Cayetano Santos (telephone 301/415-7270) five days prior to the meeting, if possible, so that