

October 20, 2011

MEMORANDUM TO: Doug W. Weaver, Deputy Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

FROM: Kristina L. Banovac, Project Manager */RA/*
Licensing Branch
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

SUBJECT: SUMMARY OF SEPTEMBER 20, 2011, MEETING WITH THE YANKEE COMPANIES, NORTHEAST UTILITIES, AND NSTAR TO DISCUSS THE INDIRECT LICENSE TRANSFER REQUEST RELATED TO PENDING MERGER OF NORTHEAST UTILITIES AND NSTAR, REQUEST FOR EXEMPTION FROM 10 CFR 50.38, AND DECOMMISSIONING FINANCIAL ASSURANCE

Background

A meeting was held on September 20, 2011, in Rockville, Maryland, with representatives of Maine Yankee Atomic Power Company (MY), Connecticut Yankee Atomic Power Company (CY), Yankee Atomic Electric Company (YAEC) (together referred to as the "Yankee Companies"), Northeast Utilities (NU), and NSTAR. The topics of discussion were: (1) status of review of the indirect license transfer request related to pending merger of NU and NSTAR; (2) status of review of request for exemption from 10 CFR 50.38; and (3) decommissioning financial assurance.

Discussion

Status of review of the indirect license transfer request related to pending merger of NU and NSTAR

NRC staff provided a background and current status of the review of the Yankee Companies' request for NRC consent to an indirect license transfer for CY and YAEC, and a threshold determination regarding MY, related to a pending merger between NU and NSTAR. The staff noted that it plans to address existing foreign ownership, control, or domination (FOCD) issues that are independent of the proposed merger, separate from the license transfer review. The staff plans to complete review of the indirect license transfer request by the end of November 2011. NU and NSTAR noted that the November date would support their schedule for the merger.

NRC staff asked about the NU and NSTAR commitments stated in a July 13, 2011, letter (submitted by Morgan, Lewis & Bockius LLP, on behalf of NU and NSTAR; Agencywide

Documents Access and Management System Accession No. ML11195A339), including that NU and NSTAR would support development of an appropriate negotiation action plan (NAP) for each of the Yankee licensees. The staff discussed the possibility of including these commitments as conditions in a future Order related to NRC's review of the license transfer request. A NU representative noted that to the extent that they are able to support development of a NAP at the licensee level, they will do so.

A Yankee Companies representative noted that members of the Boards of Directors for the Yankee licensees have had preliminary discussions about the FOCD issues and NAPs, but the discussions have not extended to specifics of a potential NAP and whether all of the shareholders would support it.

NRC staff noted that on September 8, 2011, NSTAR's Chief Financial Officer stated publicly that NSTAR expected NRC's consent to the indirect license transfer related to the merger, within one month. NRC staff noted that it had not communicated such a schedule.

Status of review of request for exemption from 10 CFR 50.38

NRC staff provided a background and current status of staff's review of the Yankee Companies' request for exemption from the FOCD requirements in 10 CFR 50.38. The staff noted that it will review the exemption request as a licensing action separate from the indirect license transfer review. After receiving the supplemental information on FOCD, dated August 16, 2011 (ML11235A723), the staff plans to accept the exemption request for a detailed review and send an acceptance letter to the Yankee Companies, with the schedule for staff's review. At this time, staff has only developed a schedule for issuing a request for additional information, if needed, by the end of December 2011. The staff has not yet developed a schedule for completing the review, as the exemption request may involve policy issues that would need to be resolved before a decision could be made on the exemption.

The staff noted that the FOCD requirements in 10 CFR 50.38 continue to apply to the Yankee Companies, unless an exemption is granted. The staff also noted that a NAP is still an option that can be pursued by the Yankee Companies. NRC staff also noted that if an acceptable NAP at the licensee level is established, it could streamline NRC staff reviews of FOCD for any future reorganizations or changes in ownership. A Yankee Companies representative noted that they have not decided whether to wait for an NRC decision on the exemption request before exploring a NAP further, or to move forward with further discussions on NAPs with the Boards of Directors at this time.

NRC staff asked questions about the organization and governance of the Yankee Companies. A Yankee Companies representative provided information on the origin of the unanimous consent provision for the CY and MY Boards of Directors. After completing decommissioning of the reactor facilities, CY and MY changed their bylaws to support weighted voting, where the number of directors was appointed based on the percentage of stock ownership. Per the Connecticut and Maine statutes on corporate structuring, CY and MY included a provision for a unanimous vote of shareholders, to support the weighted voting structure. The Yankee Companies representative noted that the Massachusetts statutes on corporate structuring did not support weighted voting. Therefore, YAEC does not use weighted voting or a unanimous consent provision in its bylaws, and all decisions by the Board are through a majority vote.

Yankee Companies representatives noted that the unanimous consent provisions for MY and CY would apply to proposed changes to certain sections of the bylaws. If a proposed NAP

would require changes to these certain sections of the bylaws for MY and CY, a unanimous consent of the Board would be needed to accomplish this. However, creation of a NAP may only require a majority vote. For YAEC, the bylaws could be changed by a majority vote of the Board. Nuclear safety and security decisions for the Yankee Companies are not governed by the unanimous consent provision; these decisions would be approved by a majority vote. The Yankee Companies representatives noted that the Board members, who are appointed by shareholders with ultimate foreign parent companies, only participate in decisions that rise to the Board for a vote. Some decisions are made by the Chief Nuclear Officer at the Yankee Company (licensee) level. Decisions that have a financial impact are usually presented to the Board for a vote. NRC staff noted that it may request copies of the bylaws of all three Yankee licensees in a future request for additional information, as part of the exemption review.

The NRC staff mentioned that a board resolution, where foreign-appointed directors would be limited from participating in decisions regarding nuclear safety and security, could be one approach used to negate FOCD of the Yankee licensees. The staff previously provided examples of instruments used to negate foreign ownership, control, or influence issues, related to the 10 CFR Part 95 requirements, which included examples of board resolutions.

NRC staff asked about the parent companies' financial oversight and involvement in the Yankee licensees. The Yankee Companies representatives noted that the owners are involved as shareholders and as power purchasers in the Yankee licensees. All of the owners have Federal Energy Regulatory Commission (FERC)-approved power contracts with the Yankee licensees, where the owners are required to fund the expenses of the licensees, including decommissioning, spent fuel management, and operations and maintenance. In a shareholder role, the parent companies do independent financial audits of the Yankee licensees. In a power purchaser role, there is no audit provision for the parent companies. Per FERC requirements, the Yankees cannot manage their own investments, and there is an independent investment manager that oversees the funds.

Decommissioning financial assurance

NRC staff noted its appreciation for the thorough financial information provided by the Yankee Companies. In the licensees' August 24, 2011, letter (ML11243A087), the licensees noted that they have one account with commingled monies for decommissioning, spent fuel management, and other costs. The licensees also stated that they maintain records to track and account separately for the funds held in the trust for the different purposes. The staff asked for clarification on the licensees' tracking and accounting practices. The Yankee Companies representatives detailed their cost tracking and reporting system, noting that it includes a work breakdown structure at the project level (e.g., Independent Spent Fuel Storage Installation (ISFSI) operations and maintenance), with a further breakdown and description of all individual expenses.

Per a settlement agreement with FERC, CY and YAEC file their projected expenses with FERC every four years. Although not required, MY also files with FERC at this time. The Yankee Companies representatives mentioned their next scheduled FERC case (review) is scheduled for 2014 for CY and YAEC. FERC reviews all projected costs, including radiological decommissioning costs, spent fuel management costs, and other corporate costs. The Yankee Companies representative noted that FERC considers all of these costs "decommissioning costs," where monies from the decommissioning trust fund may be used; whereas NRC considers that the decommissioning trust funds may only be used for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2,

which would not include expenses for spent fuel management. The Yankee Companies representatives noted that FERC also must approve the Yankee Companies' actual expenses. The parent companies pay the monthly expenses of the licensees through the power purchase contracts.

The Yankee Companies noted that if the decommissioning trust fund goes below \$10 million, at that point, they would need to file with FERC for rate relief. They noted that they have the ability to file with FERC at any time for rate relief. They mentioned that, historically, they have not had any issues with getting rate relief. They also noted that settlement of their lawsuits with the U.S. Department of Energy is still pending. NRC asked about whether there was a return on equity for the decommissioning trust funds, and the Yankee Companies representatives responded that not all of the Yankee licensees have return-on-equity provisions.

NRC noted that it would like more details on the terms of the decommissioning trust agreement to understand how the money needed for radiological decommissioning is protected in the fund, and the staff may request additional information on this in the future. Any future requests for additional information related to decommissioning funding would be through staff's review of the annual decommissioning funding status report and review of compliance with the requirements in 10 CFR 50.75 and 50.82.

Public Comment

A public participant commented that he felt new information was discussed in the meeting that would initiate a new starting point for intervention, and he plans to file for intervenor status within 30 days. The participant expressed general concerns with the Yankee Companies, including his concern that the Yankee Companies had planned in the past to transfer spent fuel to British Nuclear Fuels. He expressed concerns with security requirements for MY and ISFSIs, in general. The participant also requested that future meetings with the Yankee Companies be transcribed. NRC staff noted that a meeting summary would be prepared for the meeting. He also expressed his desire for the Yankee Companies to be more open in sharing information with the affected communities.

A public participant expressed concerns regarding foreign involvement in the Yankee Companies and the special nuclear material that is stored at the Yankee sites. She also expressed concern that NRC and FERC apparently have different definitions of decommissioning costs, and she feels it is not appropriate that FERC may allow the Yankee Companies to collect from ratepayers to fund spent fuel management costs.

Another participant seconded the concern that ratepayers should not pay for spent fuel management. She also expressed concern that ISFSI decommissioning would not be considered a small financial liability if there were any issues with the ISFSI. She also mentioned that when MY remediated subsurface soils, the remediation costs were not allowed to be passed on to ratepayers. The participant also noted that she would like to know what fund CY's groundwater monitoring came out of and also the total cost of decommissioning the reactor facilities at the Yankee sites. NRC acknowledged that because of current reporting requirements, it is difficult for NRC to determine the final total cost of decommissioning at reactor sites.

Another public participant asked about management of decommissioning trust funds, and the staff noted that NRC does not allow the licensee to manage the fund and requires that a trustee independently manage the fund.

The following action items were identified during the meeting. NRC will provide the interested public participants with: (1) publicly available information on an ongoing rulemaking regarding ISFSI security; and (2) information on NRC's requirements and guidance on decommissioning funding. NRC will also confirm that the Citizens Awareness Network is included on the current CY distribution list. NRC completed these action items on October 6, 2011.

Docket Nos.: 50-309, 50-213, 50-029, 72-30, 72-39, 72-31

TAC Nos.: L24496, L24497, L24498, L24538, L24565, L24566

Enclosures:

1. Meeting Attendees
2. Agenda

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OFFICIAL RECORD COPY

September 20, 2011, Meeting
between
Yankee Companies, Northeast Utilities, and NSTAR
and
the U.S. Nuclear Regulatory Commission

MEETING ATTENDANCE LIST

Kristina Banovac	NRC/NMSS
John Goshen	NRC/NMSS
Doug Weaver	NRC/NMSS
Ray Wharton	NRC/NMSS
Thomas Fredrichs	NRC/NRR
Bob Nelson	NRC/NRR
Anneliese Simmons	NRC/NRR
JoAnn Simpson	NRC/NRR
Beth Mizuno	NRC/OGC
Mary Spencer	NRC/OGC
Susan Uttal	NRC/OGC
Wayne Norton	Yankee Companies
Carla Pizzella	Yankee Companies
Gerald Garfield	Day Pitney LLP / Yankee Companies
David Repka	Winston & Strawn LLP/ Yankee Companies
Tim Matthews	Morgan, Lewis & Bockius LLP / Northeast Utilities and NSTAR
Gregory Butler	Northeast Utilities
Duncan MacKay	Northeast Utilities
Neven Rabadjija	NSTAR
Scott Mahoney	Iberdrola USA
Mike Callahan	Government Strategies
Patrick Dostie	State of Maine
Jay Hyland	State of Maine
Raymond Shadis	Friends of the Coast
Rosemary Bassilakis	Citizens Awareness Network
Deborah Katz	Citizens Awareness Network
Richie Davis	The Recorder
Olga Peters	The Common
Ed Schwing	Haddam Bulletin
Caroline Bone	Deutsche Bank Securities Inc.

MEETING AGENDA

Meeting with Maine Yankee Atomic Power Company, Connecticut Yankee Atomic Power Company, Yankee Atomic Electric Company (together referred to as the “Yankee Companies”), Northeast Utilities (NU), NSTAR

September 20, 2011
9:00 a.m. – 11:00 a.m.
EBB-1-E-03

- Introduction (NRC)
- Opening Comments (NRC, Yankee Companies/NU/NSTAR)
- Discussion on status of review of indirect license transfer request related to pending merger of NU and NSTAR (NRC, Yankee Companies/NU/NSTAR)
- Discussion on status of review of request for exemption from 10 CFR 50.38 (NRC, Yankee Companies)
- Discussion on decommissioning financial assurance (NRC, Yankee Companies)
- Closing comments (NRC, Yankee Companies/NU/NSTAR)
- Opportunity for public comment (Public)
- Adjourn