The Yankee Companies

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BYR 2011-022
CY-11-025
OMY-11-150

August 24, 2011

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Reference:

(a) License No. DPR-36 (Docket No. 50-309, 72-30) (MY)
(b) License No. DPR-61 (Docket No. 50-213, 72-39) (CY)
(c) License No. DPR-3 (Docket No. 50-029, 72-31) (YR)
(d) 10 C.F.R. Section 50.75
(e) 10 C.F.R. Section 50.82

Re: Response to Third Request for Additional Information for Application for NRC Consent to Indirect License Transfer/Threshold Determination — Merger of Northeast Utilities and NSTAR

Dear Sir or Madam:

Maine Yankee Atomic Power Company ("MY"), Connecticut Yankee Atomic Power Company ("CY"), and Yankee Atomic Electric Company ("YR") (each a "Yankee Company," and together, "the Yankee Companies"), hereby respond to the Nuclear Regulatory Commission ("NRC") Third Request for Additional Information for Application for NRC Consent to Indirect License Transfer/Threshold Determination (TAC Nos. L24496, L24497, and L24498) ("RAI 3") received by the Yankee Companies on August 5, 2011. If you have questions or require additional information, please contact me or Joe Fay at (207) 350-0300.

Sincerely,

Wayne Norton
CEO and President of Yankee Atomic and Connecticut Yankee
Chief Nuclear Officer of Maine Yankee

Enclosure 1: Response to RAI 3

FSME20
NMSS01
NMSS26

ENCLOSURE 1

RESPONSE TO THIRD REQUEST FOR ADDITIONAL INFORMATION RELATED TO APPLICATION FOR NRC CONSENT/THRESHOLD DETERMINATION FOR INDIRECT LICENSE TRANSFER RELATED TO MERGER OF NORTHEAST UTILITIES AND NSTAR

Request for Additional Information

1. Trust Funds for Radiological Decommissioning vs. Spent Fuel

Request:

For Maine Yankee Atomic Power Company (MY), Connecticut Yankee Atomic Power Company (CY) and Yankee Atomic Electric Company (Yankee Rowe) (YR)), indicate if funds for spent fuel maintenance and storage (as required by 10 CFR 50.54(bb)) are maintained in a fund separate from the decommissioning trust fund. Also, indicate the system of subaccounts used to separate decommissioning funds from other funds in commingled accounts.

Regulatory Basis:

Per Reg. Guide 1.184, *Decommissioning of Nuclear Power Reactors*, amounts set aside for radiological decommissioning, as required by 10 CFR 50.75, should not be used for: the maintenance and storage of spent fuel in the spent fuel pool; the design or construction of spent fuel dry storage facilities; or other activities not directly related to the long-term storage, radiological decontamination or dismantlement of the facility, or decontamination of the site.

Per 10 CFR 50.82(a)(8) and 50.82(a)(8)(i)(A), expenditures from the decommissioning trust fund are allowed for decommissioning as currently defined in 10 CFR 50.2, and withdrawals from decommissioning trust funds are limited to legitimate decommissioning activities consistent with the definition of decommissioning.

Pursuant to 10 CFR 50.75(e)(2), the NRC reserves the right to review the accumulation of decommissioning funds.

Response:

Each of the Yankee Companies includes funds for spent fuel maintenance and storage in its respective decommissioning trust funds. Each also maintains records that enables it to account separately for the funds held for radiological decommissioning, spent fuel storage and maintenance, and other costs. This practice is consistent with the requirements of the Commission's regulations and regulatory guidance. (Note: references to "decommissioning" refer only to radiological decommissioning of the facility as defined in 10 C.F.R. 50.2.

References to "spent fuel management" or "spent fuel maintenance and storage" refer to the activities within the scope of 10 CFR 50.54 (bb).

As the request notes, section B of Regulatory Guide 1.184, *Decommissioning of Nuclear Power Reactors* (issued in August 2000), prohibits the use of radiological decommissioning funds for activities unrelated to long-term storage, dismantling the facility, or radiological or site decontamination. It does not, however, require licensees to separate radiological decommissioning trust funds from funds for spent fuel and non-radiological decommissioning expenditures. Nor does it require that accounts for radiological decommissioning be separated from accounts for non-radiological expenditures. The Commission has subsequently confirmed that it will not require separate trusts or accounts for each funding obligation, so long as licensees can identify the amounts held within a commingled trust for each of its obligations regulated by the Commission. In its Final Rule on Decommissioning Trust Provisions, 67 Fed Reg. 78,332 (December 24, 2002) ("Final Rule"), the Commission explained that "The NRC does not object to licensees mingling funds for decommissioning activities as defined by the NRC and for other activities outside the NRC's definition." 67 FR at 78340. Similarly, Section 2.1.7 of Regulatory Guide 1.159, Revision 1, *Assuring the Availability of Funds for Decommissioning Nuclear Reactors*, (issued October 2003) states, "A licensee may use a single account to commingle its radiological decommissioning funds with its non-radiological decommissioning funds as long as the licensee is able to identify and provide an account for the radiological decommissioning funds that are contained within its single account."

In the Final Rule, the Commission also clarified that it will allow withdrawals from the nuclear decommissioning fund for non-radiological decommissioning expenses, including trust administration, legal expenses, "greenfielding," and site-cleanup. The Commission stated:

> [W]ith respect to commingling of funds, the Commission does not object to that practice as long as the licensees are able to provide a separate accounting showing the amount of funds earmarked for radiological decommissioning versus utilities [sic: presumably the word should be "activities"] not subsumed under the NRC's definition of decommissioning.

67 Fed. Reg. at 78339.

Later, in addressing "Non-radiological Decommissioning Funds," the Commission also stated that

> [T]he Commission's position is that withdrawals for non-radioactive decommissioning expenses that do not affect the amount of funds remaining for radiation decommissioning costs are not covered by this rule. However, the Commission is not proposing that licensees institute separate trusts to account for the different types of activity. The Commission appreciates the benefits that some licensees may derive from their use of a single trust fund for all of their decommissioning costs, both radiological and not; but, as stated above, a licensee must be able to identify the individual amounts contained within its single trust.

67 Fed. Reg. at 78340.

The Yankee Companies have managed their respective decommissioning trusts consistent with this guidance. Each Yankee Company uses a Nuclear Decommissioning Trust ("NDT") (or two NDTs, where doing so maximizes tax benefits) to hold funds that meet both radiological and non-radiological expenditures. Furthermore, each Yankee Company has maintained its NDT in a manner that tracks funds held for different purposes and assures the adequacy of funds held to cover remaining radiological decommissioning costs and spent fuel storage and maintenance costs.

The funds held in the NDTs are tracked and accounted for separately, based on their specific purposes, in accordance with the collections that the Yankee Companies make from wholesale customers, as approved by FERC. The charges to these customers for amounts to be deposited in a Yankee Company's NDT must be presented to FERC for its approval. To support its proposed charges, each Yankee Company prepares an estimate of projected costs and an associated funding analysis. In each case, the estimate separately identifies the projected costs in each category: decommissioning, spent fuel storage and maintenance, and certain non-decommissioning costs that FERC has previously authorized the company to recover. In presenting each estimate and funding analysis to FERC, the Yankee Company explains that the costs projected for radiological decommissioning reflect activities encompassing engineering, site preparations, independent spent fuel storage facility ("ISFSI") remediation, removal of major equipment, demolition of remaining portions of the waste containment structure, disposal of low level waste, decontamination and environmental site restoration, conducting final radiation surveys, and preparation of a final dismantling program for the Commission, as well as the general corporate, regulatory and administrative costs associated with these activities. *See, e.g.*, Connecticut Yankee Atomic Power Company, Docket No. ER11-101-000 (October 13, 2010), Exhibit CY-200 (Testimony of Todd Smith) at 21-22 ("CY 2010 Rate Filing"); *see also* Yankee Atomic Electric Company, Docket No. ER11-109-000 (October 13, 2010), Exhibit YA-200 (Testimony of Todd Smith) at 20-21. (Available from FERC's website; copies will be supplied upon request). When FERC accepts or approves the decommissioning charges based on the estimate and funding model, the categories in that estimate and model enable each Yankee Company "to identify the individual amounts contained within its single trust." Final Rule, 67 Fed. Reg. at 78340.

The summary reports of expenditures and decommissioning cost estimates previously provided in this proceeding demonstrate this system. *See* June 8, 2011 Response at Attachments A, B, C, D, E, H. Because each of the Yankee Companies has completed the physical decommissioning of its licensed nuclear generating facility, virtually all of the costs included in the estimate are associated with spent fuel storage and maintenance, and the associated funds in the NDTs are held to meet those expenses. The only remaining costs associated with decommissioning are the costs projected for the decommissioning of each Yankee Company's ISFSI. Those costs include the costs of radiological decommissioning, e.g., radiological site surveys. The Yankee Companies anticipate that the costs of ISFSI radiological decommissioning will be a small component of the costs of ISFSI decommissioning, because the ISFSI sites were surveyed prior to the construction of the ISFSIs and ISFSI operations are not expected to result in significant radiological contamination. Those projected costs of decommissioning the ISFSI are identified in each estimate, allowing each Yankee Company to identify and account for the funds held for that purpose. For CY, projected ISFSI decommissioning costs appear in Attachment A, rows 23 and 24 (see Column H—"Decommissioning"). For YR, these projected costs appear in Attachment B, rows 4 and 43 (see Column O—"Decommissioning ISFSI (Legal)" and "Final Fuel Moves and ISFSI Decommissioning." For MY, these projected costs appear in Attachment H, rows 52, 53 and 54 (see Column B—"LT ISFSI D&D"; see also Column I).

In addition, in the case of CY, FERC has approved the inclusion in the NDT of funds held for a non-decommissioning purpose, i.e., making the payment due to the U.S. Department of Energy ("DOE") with respect to pre-1983 spent fuel when the DOE removes that fuel. This amount is separately calculated and added to the project costs in CY's estimate to calculate the decommissioning charges to CY's wholesale customers. *See* CY 2010 Rate Filing, Transmittal Letter at 8; Exhibit CY-100 (Testimony of Carla Pizzella) at 12. This amount, too, is separately identified in CY's NDT.

Each Yankee Company thus maintains records enabling it to identify and account separately for the funds held in its NDT for radiological decommissioning, spent fuel storage and maintenance, and for other purposes, as the Commission's regulations and guidance authorize.

Note that the summaries in the estimates submitted June 8, 2011 for CY and YR also include entries for "Outside Services—Decom." (Attachment A at row 13, Attachment B at row 12). To prevent confusion, the Yankee Companies clarify that both of these rows refer to decommissioning of the nuclear plants, rather than the projected costs of decommissioning the ISFSIs. The entries are a holdover from materials prepared when CY and YR were still decommissioning the plants. Because both have now completed plant decommissioning, neither projects any future expenses for these activities.

2. Withdrawals from the Decommissioning Trust Fund

Request

For MY, CY, and YR, explain how the actual and projected expenditures from the decommissioning trust fund, which are listed in Attachments A through H of the request for additional information (RAI) response dated June 8, 2011 (ML11166A124), are for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2, with particular attention to the expenses listed in the tables below.

a. Connecticut Yankee

These expenses were listed in Attachment A, pgs. 1-4, of the RAI response dated June 8, 2011 (ML11166A124), as follows:

Row	Description	Annual Cost
14	Morris Spent Fuel	1,755,089
11	Travel Expenses	42,666
50	Community Relations	26,300
58	DOE Litigation	1,096,000
69	Consulting Services	64,170
115	Vehicles Corporate	43,429

In Attachment A, Page 1, of the RAI response dated June 8, 2011, the licensee provided a table of annual decommissioning costs for 2010 for a total of $11.7 million. The licensee then provided a line item breakdown of each cost in part 2 of Attachment A, pages 1-4.
Further, in Attachment C of the RAI response dated June 8, 2011, the licensee provided a table of actual expenses from the CY trust fund, for the period of 2005-April 2011.

b. Yankee Rowe

These expenses were listed in Attachment B of the RAI response dated June 8, 2011, as follows:

Row	Description	Year/Cost
2	DOE Litigation	1,096,931 (2014)
1	FERC Rate Case Legal	548,465 (2010)
27	High Speed Internet	15,526 (2010)

In Attachment E of the RAI response dated June 8, 2011, the licensee provided a table of actual expenses from the YR trust fund, for the period of 2005-April 2011.

c. Maine Yankee

These expenses were listed in Attachment H of the RAI response dated June 8, 2011 (ML11166A124), as follows:

Row	Description	Year/Cost
BSOP	Meals	2,627 (2008)
EXEC	Travel	10,506 (2008)
BSOP	Business Auto	2,101 (2008)
BSOP	FERC Rate Case	525,313 (2008)

In Attachment D of the RAI response dated June 8, 2011, the licensee provided a table of actual expenses from the MY trust fund, for the period of 2005-April 2011.

Regulatory Basis:

Reg. Guide 1.184, *Decommissioning of Nuclear Power Reactors*, states that funds set aside for radiological decommissioning, as required by 10 CFR 50.75, should not be used for: the maintenance and storage of spent fuel in the spent fuel pool; the design or construction of spent fuel dry storage facilities; or other activities not directly related to the long-term storage, radiological decontamination or dismantlement of the facility, or decontamination of the site.

Per 10 CFR 50.82(a)(8) and 50.82(a)(8)(i)(A), expenditures from the decommissioning trust fund are allowed for decommissioning as currently defined in 10 CFR 50.2, and withdrawals from decommissioning trust funds are limited to legitimate decommissioning activities consistent with the definition of decommissioning.

Pursuant to 10 CFR 50.75(e)(2), the NRC reserves the right to review the accumulation of decommissioning funds.

This information is required to evaluate compliance with 10 CFR 50.75 and 50.82.

Response:

As explained in response to Request No. 1, because each Yankee Company has completed the physical decommissioning of its licensed nuclear generating facility (other than the eventual decommissioning of its ISFSI), all current expenditures, including those cited in the request, are associated with spent fuel storage and maintenance and associated general corporate expenses. The sole purpose and function of the Yankee Companies at the present time is to maintain and store their spent fuel. Thus, all expenditures needed to operate the Yankee Companies are also needed to store and maintain these facilities. Specific explanations of the identified expenses follow.

a. Connecticut Yankee

- The "Morris Spent Fuel" expense maintains fuel assemblies held at the General Electric facility in Morris, Illinois. *See* CY October 13 Filing, Exhibit CY-200 (Testimony of Todd Smith) at 13-14.
- "Travel Expenses" compensate CY employees for travel on company business, which, as noted above, is concerned principally with the storage and maintenance of spent fuel.
- In connection with its storage and maintenance of spent fuel, CY encounters issues that require interaction with the population of the surrounding area of Haddam Neck, Connecticut—hence, it incurs a "Community Relations" expense.
- The "DOE Litigation" category covers the ongoing cost of the company's efforts to obtain compensation from the DOE for the breach of its obligation to remove spent nuclear fuel and greater than class C (GTCC) waste. Compensation, if recovered, will potentially contribute to CY's costs of storing and maintaining the spent fuel. (*See* brief discussion of CY's damages awards from its spent fuel litigation with DOE in response to question 4 below.)
- CY relies on consultants to prepare its rates for submission to FERC to ensure the adequacy of funds held to meet the costs of storing and maintaining spent fuel. For instance, it pays Marsh USA Inc. to compile an estimate of projected insurance costs. *See* CY 2010 Rate Filing, Exhibit CY-200 (Testimony of Todd

Smith) at 14. Accordingly, it tracks the annual cost of "Consulting Services" as an expense necessary to maintain the spent fuel facility.

- Finally, the "Corporate Vehicles" category accounts for the vehicles that the company must purchase to travel and perform other aspects of business needed to maintain the ISFSI.

b. Yankee Rowe

- As explained above, the "DOE Litigation" expense reimburses YR for the ongoing cost of the company's efforts to obtain compensation from DOE for its breach. Recovered compensation will provide funds for spent fuel maintenance and storage expenses.
- "FERC Rate Case Legal" covers the cost of legal services to present for FERC approval the rates through which YR obtains from its wholesale customers funding necessary to support the storage and maintenance of spent fuel.
- "High Speed Internet" is a general administrative function that the company pays for communications necessary to operate the ISFSI and associated corporate functions.

c. Maine Yankee

- The "Meals" category represents the expenses made by the MY employees who operate and maintain the ISFSI to pay for meals directly attributable to business activities which, as noted above, is concerned principally with the storage and maintenance of spent fuel.
- The "Travel" expense, as explained above, compensates these employees for the costs of travelling to perform activities associated with storage, maintenance, or general corporate expenses of the ISFSIs.
- "Business Auto" expenses, similarly to the "Corporate Vehicles" expense noted above, covers the costs of vehicles that the company purchases for activities related to spent fuel maintenance and storage.
- The "FERC Rate Case" expense covers legal and other expenses needed to calculate and justify the company's charges for the support of spent fuel maintenance and storage and related corporate activities.

<u>3. Connecticut Yankee – Summary of Expenses</u>

Provide the supporting calculations and further clarification for the end of year balance listed for the year 2011 for spreadsheet 1 on page 2 of Enclosure 1, of the RAI response dated June 8, 2011. The total shown for the end of year balance is $206.4 million. Based on your March 15, 2011 submission (ML110810111), the end of year 2010 balance for the CY decommissioning trust fund was $197.2 million. However, the staff notes a discrepancy between the 2011 end of year balance reported ($206.4M) and the 2011 end of year balance based on the values submitted ($235.7M).

Please clarify the end of year 2011 fund balance.

Description	Total ($ millions)
Fund balance Dec. 31, 2010	197.2
Less Spent Fuel Expense	(10.8)
Earnings on Trust Fund	8.3
Collections deposited in trust fund	40.9
Total End of Year 2011	**235.7**

Regulatory Basis:

Per 10 CFR 50.82(a)(8) and 50.82(a)(8)(i)(A), expenditures from the decommissioning trust fund are allowed for decommissioning as currently defined in 10 CFR 50.2, and withdrawals from decommissioning trust funds are limited to legitimate decommissioning activities consistent with the definition of decommissioning.

Pursuant to 10 CFR 50.75(e)(2), the NRC reserves the right to review the accumulation of decommissioning funds.

This information is required to evaluate compliance with 10 CFR 50.75 and 50.82.

Response:

The request inadvertently commingles two different analyses. The values submitted in the June 8, 2011 response are all projections, calculated for the purposes of CY's October 13, 2010 rate filing with FERC. The Yankee Companies submitted those figures because they provide the best basis to reflect their current cost projections, and are the most responsive answers to the June 2, 2011 RAI. Those projections were based on CY's actual NDT balance as of year-end 2009. At the time CY prepared these calculations, it projected a 2010 end-of-year balance of approximately $168 million. The amount of $197.2 million submitted in the March 15, 2011 report reflected the actual end-of-year balance for CY, as of December 31, 2010. Thus, the values submitted in the June 8, 2011 spreadsheet began from a different starting point than the actual 2010 end-of-year balance. The noted difference is not a discrepancy, but a reflection of the different starting points.

4. Connecticut Yankee – Decommissioning Funding Assurance

Request:

Based on the information submitted by the licensee, in the RAI response dated June 8, 2011, CY has a potential shortfall in decommissioning funding of $5.66 million, beginning in 2023, listed on spreadsheet 1 on page 2 of Enclosure 1. Provide further information regarding total expenses from the decommissioning trust and projected future collections in sufficient detail for the staff to determine if there is reasonable assurance that sufficient funds will be available for decommissioning.

Regulatory Basis:

Per 10 CFR 50.82(a)(8)(i)(C), withdrawals are not permitted if they would inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

This information is required to evaluate compliance with 10 CFR 50.75 and 50.82.

Response:

As CY stated in its October 13, 2010 filing with FERC, the estimate is subject to uncertainties. First, the costs of remaining decommissioning funding requirements could fluctuate substantially, depending on when the DOE eventually performs its obligation to remove spent nuclear fuel and GTCC waste. Second, market volatility could affect returns from CY's NDT. Third, the amount awarded CY as damages from its litigation with DOE may change. CY has brought two lawsuits against DOE seeking damages for failure to perform its obligations to remove spent fuel from the CY plant site. In the first lawsuit, addressing injury over the period 1998 through 2001 ("Phase I"), the U.S. Court of Federal Claims has awarded CY approximately $40 million in damages. Yet the DOE has appealed and the amount could change. In the second lawsuit, addressing injury from 2002 to 2008 ("Phase II"), CY currently seeks over $135 million in damages from DOE. It is too early to predict the ultimate outcome of these proceedings. Finally, CY may face additional costs due to enhanced nuclear, security and environmental regulations. CY's October 13 filing provides further explanation of these contingencies.

If these various uncertainties are resolved in a manner that reflects a funding shortfall, CY has the right at any time to make a rate filing with FERC to adjust collections as necessary to meet current and projected expense. At present, moreover, CY has adequate funds in its NDT to cover projected spent fuel maintenance and storage costs for the remainder of the projected fuel storage period.

5. Yankee Rowe – Summary of Expenses

Provide the supporting calculations and further clarification for the end of year balance listed for the year 2011 for spreadsheet 2 on page 2 of Enclosure 1, in the RAI response dated June 8, 2011. The total shown for the end of year balance for 2011 is $46.1 million. Based on your March 15, 2011, submission (ML110810115), the end of year 2010 balance for the YR decommissioning trust fund was $95.6 million. However, the staff notes a discrepancy between the 2011 end of year balance reported ($46M) and the 2011 end of year balance based on the values submitted ($102.1M).

Please clarify the end of year balance for 2011.

Description	Total ($ millions)
Fund balance Dec. 31, 2010	95.6
Less Spent Fuel Expense	(7.1)
Earnings on Trust Fund	1.8
Collections deposited in trust fund	11.8
Total End of Year 2011	**102.1**

Per 10 CFR 50.82(a)(8) and 50.82(a)(8)(i)(A), expenditures from the decommissioning trust fund are allowed for decommissioning as currently defined in 10 CFR 50.2, and withdrawals from decommissioning trust funds are limited to legitimate decommissioning activities consistent with the definition of decommissioning.

Pursuant to 10 CFR 50.75(e)(2), the NRC reserves the right to review the accumulation of decommissioning funds.

This information is required to evaluate compliance with 10 CFR 50.75 and 50.82.

Response:

As noted in response to question 3 above, the request inadvertently commingles two different analyses. YR also notes an error in the request: the actual end-of-year balance submitted in the March 15, 2011 report was $49.3 million, not $95.6 million. The values submitted in the June 8, 2011 response are all projections, calculated for the purposes of YR's October 13, 2010 rate filing with FERC. The Yankee Companies submitted those figures because they provide the best basis to reflect their current cost projections, and are the most responsive answers to the June 2, 2011 RAI. Those projections were based on YR's actual NDT balance as of year-end 2009. At the time YR prepared these calculations, it projected a 2010 end-of-year balance of approximately $39.6 million. The amount of $49.3 million submitted in the March 15, 2011 report reflected the actual end-of-year balance for YR, as of December 31, 2010. Thus, the values submitted in the June 8, 2011 spreadsheet began from a different starting point than the actual 2010 end-of-year balance. The noted difference is not a discrepancy, but a reflection of the different starting points.