

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos.: 50-309 and 72-30; NRC-2012-0189]**

**Maine Yankee Atomic Power Company**

**Maine Yankee Independent Spent Fuel Storage Installation**

**Exemption - Staff Evaluation**

**1.0 BACKGROUND**

Maine Yankee Atomic Power Company (MY, the licensee) is the holder of Facility Operating License No. DPR-36 which authorizes possession of nuclear fuel under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. Per 10 CFR Part 72, Subpart K, a general license is issued for the storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) to persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50. Thus, MY also holds a 10 CFR Part 72 general license for storage of spent fuel and greater than Class C waste at the MY ISFSI.

Under Facility Operating License No. DPR-36, MY operated a Pressurized Water Reactor until 1997 when operations ceased. In 2002, MY began transferring fuel from the reactor spent fuel pool into vertical dry casks at their ISFSI facility. These activities were completed in 2004. The MY ISFSI is a stand-alone ISFSI located on Bailey Point Peninsula near Wiscasset, Maine.

The Power Reactor Security Rule, which applies to all 10 CFR Part 50 licensees, was revised on March 27, 2009, with compliance required by March 31, 2010 (74 FR 13926). The NRC held a webinar on July 20, 2010, on this subject to provide clarification on the applicability

of the power reactor security regulations to 10 CFR Part 50 licensees undergoing decommissioning or 10 CFR Part 50 licensees that have only a general licensed ISFSI. On August 2, 2010, the NRC issued a letter to MY clarifying the applicability of the revised power reactor security regulations to a Part 50 licensee undergoing decommissioning or a Part 50 licensee that has only a general licensed ISFSI. In the August 2, 2010, letter the NRC noted that there are currently no security or health and safety concerns at these facilities that may not be in compliance with the current 10 CFR 73.55 requirements because the Security Plans at these facilities meet the baseline requirements of the previous version of 10 CFR 73.55 and also meet the requirements of subsequent NRC security orders. The NRC requested a response be submitted within 120 days of receipt of the August 2, 2010, letter.

By letter dated November 29, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103410468), MY responded to the August 2, 2010, letter. In its response, MY requested exemptions from certain requirements in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," and 10 CFR 73.57, "Requirements for Criminal History Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility or Access to Safeguards Information" which it considered either not applicable or caused an undue burden to a stand-alone ISFSI. MY also submitted a matrix which described how MY either complied with 10 CFR 73.55, 10 CFR 73.57 and applicable orders or needed an exemption. MY further stated that its intent in submitting this exemption request is to maintain its NRC-approved Physical Security Plan (PSP). In addition, MY noted that the statement of consideration for the Power Reactor Security Rule states that the Commission did not intend to make changes to the substantive requirements of 10 CFR 72.212 and that the Commission has initiated a separate rulemaking to revise the ISFSI security requirements (March 27, 2009; 74 FR 13958).

## 2.0 DISCUSSION

Pursuant to 10 CFR 73.5, *Specific Exemptions*, “The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements in 10 CFR Part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.” The NRC evaluated the exemption requests submitted by MY in its November 29, 2010, letter. After evaluating the exemption requests, the staff determined that MY should be granted an exemption from 10 CFR 73.55(e)(10)(ii). Section 73.55(e)(10)(ii) sets forth requirements for restricting access by waterborne vehicles. The remaining requirements from which the licensee requested exemptions were determined either to be inapplicable to the facility or are being met by the licensee’s current PSP; therefore, these exemptions are denied. Additional information regarding the NRC staff evaluation is documented in a Safety Evaluation Report that contains Sensitive Unclassified Non-Safeguards Information and is being withheld from public inspection in accordance with 10 CFR 2.390.

The purpose of the regulations in 10 CFR 73.55 is to establish and maintain a physical protection system designed to protect against radiological sabotage. The purpose of 10 CFR 73.55(e)(10)(ii) is to restrict waterborne vehicle access and perform periodic surveillance of waterway approaches. However, there are no pathways which allow waterborne vehicles to gain direct access to the ISFSI. Furthermore, MY employs site specific barriers as part of its NRC-approved PSP which are appropriate for the reduced radiological risk associated with a stand-alone ISFSI. Therefore, the staff concludes that the exemption does not pose an increased risk to public health and safety and is not inimical to the common defense and security. Given the above considerations, this exemption will not endanger life or property or the common defense and security.

In considering these exemption requests, the staff reviewed an NRC letter dated July 25, 2001, MY responses to Orders EA-03-97, EA-02-104, and EA-02-077, and the NRC approved MY ISFSI PSP, Rev. 0, dated August 2009. The staff also reviewed the revised Power Reactor Security Rule, 10 CFR 73.55, which became effective on May 26, 2009 (74 FR 13926), to identify substantive changes affecting previously approved exemptions. In addition, the staff reviewed a 2009 inspection report prepared after conducting an inspection of the licensee's facility, procedures, and PSP for compliance with applicable regulations and NRC Orders. Based upon its review, the NRC staff determined that current barriers and actions implemented under the MY ISFSI PSP satisfy the requirements of 10 CFR Part 73, and that granting the requested exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. After completing its review, the staff determined granting MY an exemption from the requirements of 10 CFR 73.55(e)(10)(ii) would not decrease the level of security currently in place at the MY ISFSI, and will not result in increased radiological risk to the public from operation of this general licensed, stand-alone ISFSI. Accordingly, the staff has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law and is otherwise in the public interest.

Granting an exemption from the requirement in 10 CFR 73.55(e)(10)(ii) involves safeguards plans. Section 51.22(c)(25)(vi)(F) provides a categorical exclusion for exemptions involving safeguard plans provided that the criteria in 10 CFR 51.22(c)(25)(i)-(v) are also satisfied. In its review of the exemption request, the NRC determined that, pursuant to 10 CFR 51.22(c)(25): (i) granting the exemption neither involves a significant reduction in a margin of safety nor creates a new or different kind of accident from any accident previously evaluated, and thus no significant hazards considerations because there is no significant increase in either the probability or consequences of an accident previously evaluated; (ii) granting the exemption would not produce a significant change in either the types or amounts of any effluents that may be released offsite because the requested exemption neither changes the effluents nor

produces additional avenues of effluent release; (iii) granting the exemption would not result in a significant increase in either occupational radiation exposure or public radiation exposure because the requested exemption neither introduces new radiological hazards nor increases existing radiological hazards; (iv) granting the exemption would not result in a significant construction impact because there are no construction activities associated with the requested exemption; and; (v) granting the exemption would not result in a significant increase in the potential for or consequences from radiological accidents because the exemption neither reduces the level of security in place at the MY ISFSI nor creates new accident precursors. Accordingly, this exemption meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25)(vi)(F).

### **3.0 CONCLUSION**

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants MY an exemption from the 10 CFR 73.55(e)(10)(ii) requirement to restrict waterborne vehicle access and perform periodic surveillance of waterway approaches. In addition, MY shall continue to follow the NRC approved ISFSI PSP and applicable NRC orders. As discussed in the preceding paragraph, the Commission has determined that this action meets the criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(vi)(F). Therefore, pursuant to 10 CFR 51.22(b), no environmental

impact statement or environmental assessment need be prepared in connection with the granting of this exemption. This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of August, 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

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