



RELEASED TO THE PDR

1/23/97 *AKW*
date initials

50-443
444

POLICY ISSUE

(NEGATIVE CONSENT)

December 19, 1996

SECY-96-260

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: ISSUANCE OF TEMPORARY EXEMPTION FROM 10 CFR 50.75(e)(2) TO
GREAT BAY POWER COMPANY

PURPOSE:

To inform the Commission of the staff's intent to issue an exemption regarding decommissioning funding assurance for a limited time to the Great Bay Power Company, a 12.1324-percent owner of the Seabrook Nuclear Power Station, Unit 1, in view of Great Bay's status as a non-electric utility, so that the NRC may approve the indirect transfer of control of Great Bay's interest in the operating license to allow the formation of a holding company.

DISCUSSION:

In an application dated May 8, 1996, the North Atlantic Energy Service Corporation, for itself and as agent for the joint owners of Seabrook station, sought to obtain NRC's approval under 10 CFR 50.80 of a proposal by Great Bay to reorganize by creating a holding company over Great Bay such that Great Bay would be a wholly owned subsidiary of the holding company. Although the formation of the holding company, in and of itself, is neither unusual nor suggestive of unique safety concerns, the application contained information that indicated that Great Bay may not be an electric utility, irrespective of the proposed reorganization. Great Bay was established in 1994 as a successor to EUA Power Corporation, which had filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Great Bay is a non-operating, 12.1324-percent co-owner of Seabrook and sells its proportionate share (about 140 MWe) of the power from Seabrook on the wholesale electricity market. Great Bay's stated

SECY NOTE: TO BE MADE PUBLICLY
AVAILABLE WHEN THE FINAL SRM IS
MADE AVAILABLE.

Contacts: Robert S. Wood, NRR
415-1255

240061 Albert W. De Agazio, NRR
415-1443

961226 0110

XA 1/24/97

DS14

0/1

SECY NOTE: IN THE ABSENCE OF INSTRUCTIONS TO THE CONTRARY, SECY WILL NOTIFY THE STAFF ON TUESDAY, JANUARY 7, 1997, THAT THE COMMISSION, BY NEGATIVE CONSENT, ASSENTS TO THE ACTION PROPOSED IN THIS PAPER.

intent has been to sell wholesale power through long-term power contracts with purchasers.¹ Great Bay believes that the Federal Energy Regulatory Commission (FERC) has ultimate regulatory authority to review rates for these contracts and, thus, Great Bay meets the NRC's definition of *electric utility*.²

When the NRC staff approved the plan for Great Bay's emergence from bankruptcy in 1993, it did not explicitly address the issue of whether Great Bay met the definition of *electric utility*. The staff, however, believed that Great Bay would continue to be an electric utility based upon its status as such before bankruptcy and upon the expectation that the reorganized entity would be successful in obtaining long-term contracts for the sale of most of its share of power from Seabrook. Further, the staff believed that reorganization under the auspices of the bankruptcy court would improve substantially Great Bay's financial condition.

Notwithstanding the staff's earlier actions with respect to Great Bay's emergence from bankruptcy, the staff now believes that Great Bay does not meet the definition of *electric utility*. Great Bay has successfully entered into only one long-term contract, which is for 10 MWe. Great Bay sells its remaining 130-MWe share of Seabrook power on the spot wholesale market, which, by definition, is subject to market-set rates. The staff believes that although FERC may exercise general regulatory oversight over spot market rates, such rates cannot be considered as "rates established by...a separate regulatory authority" (emphasis added). Thus, notwithstanding Great Bay's assertions to the contrary, Great Bay does not appear to be an electric utility under the NRC's definition of that term.

If Great Bay is no longer an electric utility, it must meet the existing financial qualifications review requirements of 10 CFR 50.33(f)(2) in connection with a 10 CFR 50.80 application. In reviewing Great Bay's current financial statements submitted with its application of May 8, 1996, to form a holding company, and supplemental projections through 1998 submitted on October 18, 1996, the staff has concluded that Great Bay appears to meet these

¹Great Bay is an exempt wholesale generator (EWG) as defined in the Energy Policy Act of 1992 (the act). As defined in the act, an EWG is a corporate person engaged exclusively in the business of owning or operating facilities used for the generation of electricity and selling such energy at wholesale.

²In 10 CFR 50.2, "*Electric utility* means 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.'"

requirements.³ Great Bay has projected operating income and cash flow on the basis of what appear to be reasonable projections of the spot market price of power from Seabrook for the foreseeable future. Great Bay indicates that these projections would be the same with or without formation of the proposed holding company. Thus, Great Bay has demonstrated that it "possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license" (10 CFR 50.33(f)(2)).

However, pursuant to 10 CFR 50.75(e)(2), as a non-electric utility, Great Bay is required to provide additional assurance for decommissioning its proportionate share of Seabrook (e.g., a surety bond or a letter of credit for its unfunded balance of expected decommissioning costs).⁴

In its submittal, Great Bay indicates that the current value of its share of the Seabrook decommissioning liability in 1995 dollars is approximately \$50.2 million. As of December 31, 1995, its accumulated decommissioning reserve was approximately \$5.1 million plus \$10 million in decommissioning costs that is guaranteed by Eastern Utility Associates, Great Bay's former corporate parent. Thus, the unfunded balance of decommissioning costs is \$35.1 million. Great Bay's submittal indicates that the projected cash flow at the end of the current fiscal year would be sufficient to cover most of this amount.

Great Bay requested a meeting with the NRC staff, which was held on September 30, 1996, to discuss the status of Great Bay's holding company application and to advise the staff of the importance to Great Bay's longer term financial health of the timely approval of Great Bay's request to form a holding company. Great Bay indicated that prompt approval of formation of a holding company would allow Great Bay access to additional electricity markets under New Hampshire law, thus potentially improving its financial position. Although Great Bay disputes the NRC staff's interpretation that Great Bay is not an electric utility, it asked that the NRC defer that decision until after

³The standard in 10 CFR 50.33(f)(2) is designed for operating license (OL) applicants and not for post-OL reviews. Thus, this section requires that "the applicant shall submit estimates for...the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs." Given Seabrook's established operating history and associated costs that are now a matter of record, the staff has concluded that Great Bay has complied with the essential requirement of the existing standard, which is to demonstrate reasonable assurance of obtaining its share of Seabrook's operating costs.

⁴The staff believes that Great Bay does not meet existing NRC regulations for decommissioning funding assurance in that it does not have a surety bond or an acceptable equivalent instrument in place. When the NRC issued an advance notice of proposed rulemaking on the impact of electric utility restructuring on nuclear plant safety (61 FR 15427, April 8, 1996), it discussed possible means of strengthening the Commission's regulations in this area, including modifying the definition of "electric utility." However, with respect to Great Bay, this action does not depend on any changes to the Commission's regulations.

it reached a decision on the holding company application. (Great Bay did not request an exemption from any NRC requirements.)

The staff is, of course, particularly interested in Great Bay's longer term financial viability with respect to Great Bay's share of operating and decommissioning costs of Seabrook. The staff believes that Great Bay's financial viability will not be diminished but instead likely will be enhanced by approval of the formation of a holding company. Paradoxically, disapproval of or delaying action on Great Bay's request would limit Great Bay's financial opportunities, which ultimately could have an adverse effect on protecting public health and safety. Further, by conditioning the approval of the formation of the holding company on a condition not to transfer any significant assets to the holding company (i.e., more than 10 percent of Great Bay's total assets) without prior notification to the NRC, the staff's historical concerns about a holding company's ability to transfer assets from a licensee subsidiary would be mitigated. By approving the holding company now, the staff believes that Great Bay could improve its financial strength to meet both the financial qualifications and the decommissioning funding rules.

Great Bay, if deemed not to be an electric utility, currently does not meet the requirements of 10 CFR 50.75 in that it does not have a surety bond or other surety method in place for decommissioning funding assurance. To allow the staff to act, without further delay, upon Great Bay's request for approval of the indirect transfer of the license to the extent held by Great Bay, resulting from the formation of the holding company, the granting of which request may result in an improvement of Great Bay's financial qualifications, and at the same time to afford Great Bay a reasonable opportunity to implement a suitable decommissioning funding assurance method for non-electric utilities, the staff has concluded that Great Bay should be granted a 6-month exemption from compliance with the provisions in the NRC's regulations pertaining to decommissioning funding assurance for non-electric utility licensees.⁵

As previously discussed, Great Bay meets the financial qualifications review standards of 10 CFR 50.33(f)(2) and would thus meet the one-time financial qualifications review for transfers of licenses under 10 CFR 50.80 applicable to non-electric utilities. If, within 6 months, Great Bay continues to be unable to demonstrate that it is an electric utility as defined in 10 CFR 50.2, it would then be required to obtain a surety bond or other allowable decommissioning funding assurance mechanism for non-electric utility licensees.

The staff believes that the circumstances outlined above support issuance of the attached draft exemption under the NRC's criteria in 10 CFR 50.12:

⁵It should be noted that although Great Bay has in place a \$10 million guarantee from Eastern Utility Associates, under 10 CFR 50.75(e)(2)(iii), a parent company guarantee may not be combined with other financial methods to satisfy decommissioning funding requirements.

1. Under 10 CFR 50.12(a)(1), the exemption would be authorized by law. It would not present an undue risk to public health and safety because Great Bay's financial health would be no worse, and may improve, upon approval of transfer of control and formation of the holding company, which would be possible if the exemption was granted. The exemption would be consistent with the common defense and security.

2. Special circumstances are present under 10 CFR 50.12(a)(2)(ii) and (v). Under criterion (ii), application of the regulations in these particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that funds are available for decommissioning at the end of the license term, or in the event of premature shutdown. Here, Great Bay's projected 1996 cash position is nearly sufficient to cover the unfunded decommissioning costs, and its cash position is not likely to deteriorate substantially during the period of the exemption. Under criterion (v), the exemption would provide only temporary relief from the applicable regulation(s). Further, the licensee has made a good faith effort to comply with 10 CFR 50.75 by making payments into an external sinking fund on the basis of its good faith belief that it remains an "electric utility," which arguably is defensible, even though not acceptable to the NRC staff.

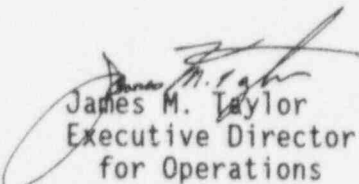
Coordination:

The Office of the General Counsel has no legal objection to this paper and the attached draft exemption.

Recommendation:

That the Commission:

Note that it is the staff's intention to issue the attached exemption, thereby enabling the staff to grant Great Bay's request for approval of the indirect transfer of control of Great Bay's interest in the operating license to permit the formation of a holding company. The staff will issue the exemption and an order approving the indirect transfer of control to North Atlantic Energy Service Corporation, as agent for Great Bay, within 10 working days from the date of this paper unless instructed otherwise by the Commission.


James M. Taylor
Executive Director
for Operations

Attachment: Draft Exemption

DISTRIBUTION:

Commissioners
OGC
OCAA
OIG
OPA

OCA
REGIONS
EDO
SECY



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

Mr. Ted C. Feigenbaum
Executive Vice President and
Chief Nuclear Officer
Northeast Utilities Service Company
c/o Mr. Terry L. Harpster
Director - Nuclear Licensing Services
P.O. Box 128
Waterford, CT 06385

SUBJECT: TEMPORARY EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR 50.75:
REPORTING AND RECORDKEEPING FOR DECOMMISSIONING PLANNING - SEABROOK
STATION, UNIT 1 (TAC NO. M95476)

Dear Mr. Feigenbaum:

By letter dated May 8, 1996, North Atlantic Energy Service Corporation (North Atlantic) requested approval for the indirect transfer of control of Great Bay Power Corporation's (Great Bay) interest in the Seabrook Station, Unit 1. The indirect transfer would result from a proposed corporate restructuring of Great Bay that would result in the creation of a holding company named Great Bay Holdings Corporation of which Great Bay would become a wholly-owned subsidiary. The staff has not completed action on that request because it appears that Great Bay does not meet the definition of *electric utility* as provided in 10 CFR 50.2. As a non-electric utility, Great Bay must meet the requirements of 10 CFR 50.75(e)(2) for additional assurance for decommissioning funding. Currently, Great Bay does not meet these requirements.

It is our understanding that the proposed holding company, if approved, could seek business opportunities in electricity markets that Great Bay is prohibited from entering because of its status as an exempt wholesale generator. Thus, delaying action on Great Bay's request limits Great Bay's financial opportunities, which ultimately could have an adverse effect on protecting public health and safety. Therefore, so that the staff may act upon the May 8, 1996, request without further delay, the enclosed temporary exemption from the requirements of 10 CFR 50.75(e)(2) has been issued. The exemption is effective for a period of 6 months from the date of issue. We find that granting the temporary Exemption from the requirements of 10 CFR 50.75(e)(2) is authorized by law, will not present an undue risk to public health and safety, is consistent with the common defense and security, and meets the special circumstances described in 10 CFR 50.12.

Mr. Ted C. Feigenbaum

- 2 -

A copy of the Exemption is enclosed. The Exemption has been forwarded to the Office of the Federal Register for publication.

Sincerely,

Albert W. De Agazio, Sr. Project Manager
Project Directorate I-1
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Docket No. 50-443
Serial No. SEA-96-011

Enclosure: Exemption

cc w/encls: See next page

T. Feigenbaum
Northeast Utilities Service Company

Seabrook Station, Unit No. 1

cc:

Lillian M. Cuoco, Esq.
Senior Nuclear Counsel
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06037

Mr. Peter Brann
Assistant Attorney General
State House, Station #6
Augusta, ME 04333

Resident Inspector
U.S. Nuclear Regulatory Commission
Seabrook Nuclear Power Station
P.O. Box 1149
Seabrook, NH 03874

Jane Spector
Federal Energy Regulatory Commission
825 North Capital Street, N.E.
Room 8105
Washington, DC 20426

Town of Exeter
10 Front Street
Exeter, NH 03823

Mr. George L. Iverson, Director
New Hampshire Office of Emergency
Management
State Office Park South
107 Pleasant Street
Concord, NH 03301

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Office of the Attorney General
One Ashburton Place
20th Floor
Boston, MA 02108

Board of Selectmen
Town of Amesbury
Town Hall
Amesbury, MA 01913

Mr. Jack Dolan
Federal Emergency Management Agency
Region I
J.W. McCormack P.O. &
Courthouse Building, Room 442
Boston, MA 02109

Mr. David Rodham, Director
ATTN: James Muckerheide
Massachusetts Civil Defense Agency
400 Worcester Road
P.O. Box 1496
Framingham, MA 01701-0317

Jeffrey Howard, Attorney General
G. Dana Bisbee, Deputy Attorney
General
33 Capitol Street
Concord, NH 03301

Mr. D. B. Miller, Jr.
Senior Vice President
Nuclear Safety and Oversight
Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141-0270

Mr. E. A. DeBarba
Vice President - Nuclear Technical
Services
Northeast Utilities Service Company
P.O. Box 128
Waterford, CT 06385

Mr. F. C. Rothen
Vice President - Nuclear Work Services
Northeast Utilities Service Company
P.O. Box 128
Waterford, CT 06385

Mr. A. M. Callendrello
Licensing Manager - Seabrook Station
North Atlantic Energy Service Corp.
P.O. Box 300
Seabrook, NH 03874

T. Feigenbaum
Northeast Utilities Service Company

- 2 -

Seabrook Station, Unit No. 1

cc:

Mr. S. E. Scace, Vice President
Nuclear Reengineering Implementation
Northeast Utilities Service Company
P.O. Box 128
Waterford, CT 06385

Mr. W. A. DiProfio
Nuclear Unit Director
Seabrook Station
North Atlantic Energy Service Corporation
P.O. Box 300
Seabrook, NJ 03874

Mr. Frank W. Getman, Jr.
Cocheco Falls Millworks
100 Main Street, Suite 201
Dover, NH 03820

Mr. B. D. Kenyon
President - Nuclear Group
Northeast Utilities Service Group
P.O. Box 128
Waterford, CT 06385

Mr. B. L. Drawbridge
Executive Director Services &
Senior Site Officer
North Atlantic Energy Service Corp.
Seabrook, NH 03874

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NORTH ATLANTIC ENERGY SERVICE)	Docket No. 50-443
CORPORATION AND GREAT BAY POWER)	(License No. NPF-86)
CORPORATION)	
)	
(Seabrook Station, Unit No. 1))	

EXEMPTION

I.

North Atlantic Energy Service Corporation (North Atlantic or the licensee) is a holder of Facility Operating License No. NPF-86, which authorizes operation of Seabrook Station, Unit No. 1 (the facility or Seabrook), at a steady-state reactor power level not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Rockingham County, New Hampshire. The license provides among other things, that it is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Great Bay Power Corporation (Great Bay) was established in 1994 as a successor to EUA Power Corporation, which had filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Great Bay is a non-operating, 12.1324 percent co-owner of Seabrook and sells its proportionate share of power from Seabrook on the wholesale electricity market. Great Bay is an exempt wholesale generator as defined in the Energy Policy Act of 1992.

On May 8, 1996, North Atlantic submitted to the NRC a request on behalf of Great Bay for Commission consent to the indirect transfer of control of Great Bay Power's interest in the Operating License. Additional information relating to this request was submitted on October 18 and December 9, 1996. Approval of the indirect transfer of control of Great Bay would allow Great Bay, through the formation of several subsidiaries and a merger, to become a wholly owned subsidiary of a new holding company, Great Bay Holdings Corporation. The indirect transfer of control of Great Bay's share of Seabrook is subject to NRC approval pursuant to 10 CFR 50.80.

In its May 8, 1996, submittal, North Atlantic indicated that, after the indirect transfer of control to the new holding company, Great Bay would remain an electric utility as defined by the NRC in 10 CFR 50.2. This conclusion is based on Great Bay's intended approach to market its share of power from Seabrook (approximately 140 MWe) through the implementation of long-term contracts. Great Bay believes that the Federal Energy Regulatory Commission (FERC) would have the ultimate regulatory authority to review rates for these contracts and, thus, Great Bay would meet the definition of "electric utility."

When the NRC staff approved the plan for Great Bay's emergence from bankruptcy in 1993, it did not explicitly address the issue of whether Great Bay met the definition of "electric utility." The staff believed, however, that Great Bay would continue to be an electric utility based upon its status as such prior to bankruptcy and upon the expectation that the reorganized entity would be successful with obtaining long-term contracts for the sale of most of its share of power from Seabrook.

Notwithstanding the staff's earlier actions with respect to Great Bay's emergence from bankruptcy, the staff now believes that Great Bay does not meet

the definition of "electric utility." Great Bay has successfully entered only one long-term contract, which is for 10 MWe. Great Bay sells its remaining 130 MWe share of Seabrook power on the spot wholesale market, which by definition is subject to market-set rates. The staff believes that, although FERC may exercise general regulatory oversight over spot market rates, such rates cannot be considered to be "rates established by...a separate regulatory authority" (emphasis added).

If Great Bay is no longer an electric utility, Great Bay is required to meet the existing financial qualifications review requirements of 10 CFR 50.33(f)(2). This section requires that "the applicant shall submit estimates for the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs." Seabrook has an established operating history and associated costs that are now a matter of record. Based on a review of Great Bay's current financial statements submitted with its May 8, 1996, submittal, and supplemental projections submitted on October 18, 1996, the staff has concluded that Great Bay has complied with the essential requirement of the existing standard, which is to demonstrate reasonable assurance of obtaining its share of Seabrook operating costs. Great Bay has projected operating income and cash flow based on what appear to be reasonable projections of the spot market price of and demand for power from Seabrook for the foreseeable future. Great Bay indicates that these projections would be the same with or without formation of the proposed holding company. Thus, Great Bay has demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license as required by 10 CFR 50.33(f)(2).

The requirements for indicating to the NRC how reasonable assurance will

be provided that funds will be available for decommissioning are identified in 10 CFR 50.75, "Reporting and recordkeeping requirements for decommissioning planning." Acceptable methods for providing this assurance are described at 10 CFR 50.75(e)(1) and the methods that may be used by non-electric utilities are identified at 10 CFR 50.75(e)(2). If Great Bay is no longer an electric utility, it does not meet the requirements of 10 CFR 50.75(e)(2) in that it does not have a surety bond or other surety method in place to provide additional assurance for decommissioning funding. Great Bay, however, does contribute to an external sinking fund, which alone would satisfy the requirements of 10 CFR 50.75 if Great Bay in fact were an electric utility, as it asserts. Great Bay has stated that the current value of Great Bay's share of the decommissioning liability in 1995 dollars is approximately \$50.2 million. As of December 31, 1995, its accumulated decommissioning reserve was approximately \$5.1 million. Great Bay also has in place \$10 million in decommissioning costs guaranteed by Eastern Utility Associates, Great Bay's former corporate parent. However, Great Bay has not provided assurance as required under 10 CFR 50.75(e)(2). In its October 18, 1996, submittal, Great Bay indicated that the projected cash on hand at the end of the current fiscal year would be sufficient to cover most of the \$50.2 million that is not otherwise offset by the \$5.1 million reserve and the \$10 million guarantee.

III

Great Bay currently is a stand-alone entity; that is, it is not itself a subsidiary of another organization and it has no subsidiary organizations (other than those recently formed to effect the proposed corporate reorganization). Great Bay has requested Commission approval of the indirect transfer of control of its interest in the Seabrook Operating License. This

approval would permit Great Bay to become a wholly owned subsidiary of a new entity, Great Bay Holdings Corporation. The current owners of Great Bay would exchange their equity interest in Great Bay for equity interest in the holding corporation; thus, the current owners would own Great Bay indirectly rather than directly. The Great Bay interest in the Seabrook Operating License would remain directly with Great Bay. Great Bay indicated that the proposed restructuring would protect Great Bay's status as a wholesale electric generator and allow management to develop opportunities in additional electricity markets through the holding company, thus, potentially improving Great Bay's financial position.

The staff is, of course, particularly interested in Great Bay's longer-term financial viability with respect to Great Bay's share of operation and decommissioning costs of Seabrook. The staff believes that Great Bay's financial viability will not be diminished but instead likely will be enhanced by the formation of the holding company. By approving the indirect transfer of control now, the staff believes that Great Bay could be in a stronger position to meet both the financial qualifications and decommissioning rules.

Thus, to allow the staff to act upon, without further delay, Great Bay's request for approval of indirect transfer of control of Great Bay, and at the same time afford Great Bay a reasonable opportunity to implement a suitable decommissioning funding assurance method required of a non-electric utility, the staff is granting Great Bay a 6-month exemption from compliance with the provisions 10 CFR 50.75(e)(2) pertaining to the additional surety arrangements for decommissioning funding assurance for non-electric utility licensees. If, within the effective period of this exemption, Great Bay has been unable to establish itself as an electric utility as defined in 10 CFR 50.2, Great Bay then must obtain a surety bond or other allowable decommissioning funding

assurance mechanism for non-electric utility licensees meeting all of the requirements of 10 CFR 50.75(e)(2).

The Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are present justifying the exemption. Under criterion (ii), special circumstances exist in that application of the regulation in this particular circumstance is not necessary, for the 6-month period, to achieve the underlying purpose of the rule, which is to ensure that funds are available for decommissioning at the end of the license term or in the event of premature shutdown. Here, Great Bay's projected 1996 cash position is nearly sufficient to cover the unfunded decommissioning costs, and its cash position is not likely deteriorate substantially during the period of the exemption.

Further, under criterion (v), special circumstances exist because the exemption provides only temporary relief from the applicable regulation(s), and Great Bay has made a good faith effort to comply with 10 CFR 50.75 by making payment into an external sinking fund based on its good faith belief that it is an electric utility.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment
(61 FR).

This Exemption is effective upon issuance and shall expire 6 months from the date of issue.

FOR THE NUCLEAR REGULATORY COMMISSION

Frank J. Miraglia, Acting Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this day of December 1996