

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Maine Yankee Atomic Power Company) Docket No. ER04-55-000

OFFER OF SETTLEMENT

Pursuant to Section 602 of the Commission's regulations, 18 C.F.R. § 385.602 (2003), this Offer of Settlement is jointly sponsored by Maine Yankee Atomic Power Company ("Maine Yankee"), the Maine Public Utilities Commission (the "Maine PUC"), the Maine Office of Public Advocate (the "Maine OPA" and collectively with the Maine PUC, the "Maine Agencies"), and NStar Electric & Gas Corporation (collectively, the "Settling Parties"). If accepted by the Commission, this Offer of Settlement would resolve all issues raised by Maine Yankee's filing in this proceeding.

The signatories to this Offer of Settlement are:

1. Maine Yankee Atomic Power Company;
2. The Maine OPA;
3. The Maine PUC; and
4. NStar Electric & Gas Corporation.

Together, the above-listed parties represent all active participants in this proceeding. The remaining Intervenors, the Vermont Department of Public Service and Northeast Utilities Service Company (on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of

New Hampshire) are not joining as signatories to the Offer of Settlement but have indicated they do not oppose it. Accordingly, Maine Yankee and the Settling Parties request that the Commission approve the Offer of Settlement in its entirety.

I. BACKGROUND

On October 20, 2003, Maine Yankee, a cost-of-service company for ratemaking purposes, filed with the Commission revisions to its wholesale power contracts (First Revised Rate Schedule FERC No. 1) to adjust decommissioning collections from Maine Yankee's wholesale power purchasers to reflect the costs of completing the decommissioning of Maine Yankee's retired nuclear generating plant, and to resume collections for Post-retirement Benefits Other than Pensions ("PBOPs"). The schedule of revised decommissioning collections was based on a decommissioning cost estimate (the "2003 Estimate") for work to complete the physical decommissioning of the plant and also to operate and maintain an interim spent fuel storage installation ("ISFSI") through 2023.

Five entities filed motions to intervene in this proceeding. On December 19, 2003, the Commission issued an order accepting for filing and suspending for one day Maine Yankee's proposed revisions. 105 FERC ¶ 61, 309 (2003). The order set the filing for hearing, but held the hearing in abeyance pending settlement judge proceedings.

On December 29, 2003, the Chief Administrative Law Judge issued an order designating Judge Joseph R. Nancy as the settlement judge for the proceeding. With the assistance of Judge Nancy, the Settling Parties and the Commission Trial Staff conducted settlement negotiations, in which all intervenors were invited to participate. After

extensive oral and written discovery, and several settlement conferences and negotiations, both onsite and off, Maine Yankee and the Settling Parties have reached agreement on this Offer of Settlement.

II. TERMS AND CONDITIONS OF SETTLEMENT

Maine Yankee and the Settling Parties agree to, or do not contest, the proposed rate changes in Maine Yankee's filing initiating this Docket No. ER04-55-000, as modified by the following terms and conditions of this Offer of Settlement, in full and final settlement of all issues raised in this docket.

A. Decommissioning and ISFSI Cost Collections and Replenishment of Spent Fuel Trust.

(1) **Annual Collections.** Maine Yankee and the Settling Parties agree that Maine Yankee shall collect a total amount of approximately \$27 million on an annual basis, effective January 1, 2004, through October 31, 2008, for the estimated costs associated with decommissioning, including long-term storage of spent fuel through 2023. A schedule of annual collections by customer is provided at Attachment A.

(2) **Estimates.** For purposes of obtaining a schedule of ruling amounts under Section 468A of the Internal Revenue Code, the decommissioning cost estimate (including ISFSI) for Maine Yankee assumed in this Offer of Settlement, in 2003 dollars, is \$ 752.2 million (consisting of \$525.7 million of actual expenditures for the period 1997-2003 in 2003 dollars assuming escalation of 3.25%, and projected expenditures for 2004-2023 of \$226.5 million in 2003 dollars), with Maine Yankee's collections based on

the following economic assumptions: (1) after tax earned interest on accumulated fund amounts of 5.5% for the years 2004-2019, 3.0% for 2020, 2.8% for 2021, 2.5% for 2022 and 2.2% for 2023; (2) inflation adjustment of 2.5% for 2004 with respect to ISFSI operations-related costs, and 0% for 2004 with respect to all other costs, (3) inflation adjustment of 3.06% for 2005 with respect to ISFSI-related costs and 0% for 2005 with respect to all other costs; (4) annual inflation adjustment of 3.25% for 2006-2023; (5) the assumed method of decommissioning is the DECON method; and (6) the assumed year in which substantial decommissioning costs were first incurred is 1998.

(3) Escalation Rates. Maine Yankee and the Settling Parties agree that, for purposes of this Offer of Settlement, the escalation rates are as set forth in clauses (2), (3) and (4) of the preceding paragraph.

(4) Replenishment of Spent Fuel Trust. As part of the 1998 Settlement Agreement in Docket No. ER98-570-000 (the “1998 Settlement Agreement”), Maine Yankee and the parties to that agreement agreed that the storage and disposal of spent nuclear fuel and high-level waste, including Greater-Than-Class-C (“GTCC”) waste, are properly the responsibility of the U.S. Department of Energy (“DOE”) and that Maine Yankee would use its best efforts to recover all costs associated with such storage and disposal from the DOE. Maine Yankee and the parties to the 1998 Settlement Agreement further agreed that a portion of the funds already held in trust under Maine law for the express purpose of meeting Maine Yankee’s DOE pre-1983 spent fuel disposal obligation should be utilized to reduce rates to current ratepayers. Accordingly, Maine Yankee and

the Maine Agencies worked together to effectuate a change in Maine law to, *inter alia*, allow Maine Yankee to withdraw funds from the Spent Fuel Disposal Trust (“SFDT”) Fund in order to meet expenditures for ISFSI-related costs. Maine Yankee has been and is withdrawing funds from the SFDT Fund for that purpose. The present estimate of total withdrawals from the fund to meet expenditures to date and the projected future ISFSI-related expenditures through the completion of physical decommissioning in early 2005 is approximately \$80.3 million.

The Settling Parties recognize that Maine Yankee ultimately may be liable to the DOE for payment of the funds currently held in the SFDT Fund as well as the funds that were withdrawn for ISFSI-related expenditures. Maine Yankee and the Settling Parties agree that, unless otherwise agreed to by the parties, Maine Yankee shall not seek to collect amounts from ratepayers to replenish the SFDT Fund until November 1, 2008.

Maine Yankee will file a Section 205 proceeding prior to seeking to collect any amounts to replenish the SFDT Fund and no later than August 1, 2008. The Settling Parties agree that the only aspect of the Section 205 filing related to replenishment of the SFDT Fund that may be challenged is the method of collecting the funds, including the period over which they will be collected. At least 90 days prior to the commencement of these proposed collections, Maine Yankee will file updated information on the trust balances and collection levels. During the 90-day period, Maine Yankee and the Settling Parties will negotiate in good faith to agree upon a mutually acceptable method for collecting the funds. If the Settling Parties and Maine Yankee are able to reach a

mutually acceptable solution, Maine Yankee will submit the Section 205 filing incorporating that agreement. In determining the methodology for replenishing the SFDT Fund, Maine Yankee and the Settling Parties agree to the following principles: In no event shall the rate recovery period for replenishment of the SFDT Fund be shorter than two years (unless otherwise agreed by the parties) nor longer than a period commencing with the start of collections and ending with the then most current official date when DOE says that it will begin performance of its obligations to remove Maine Yankee's spent fuel; provided, however, in no event shall the rate recovery period extend beyond December 31, 2013. By way of example only, if the DOE is officially scheduled to begin performance in June 2010, and Maine Yankee commences collection of amounts to replenish the SFDT Fund in November 2008, the period of collection shall not be less than two years and thus would go through October 2010; if Maine Yankee commences collection of such amounts in November 2008, but the official date for DOE performance is revised to June 2012, the collection period shall be not less than two years and not greater than three years, eight months. The foregoing limitation is intended to place parameters around the future collection period for replenishment of the SFDT Fund and is without prejudice to Maine Yankee's position that a two-year recovery period is just and reasonable and in the public interest.

(5) DOE Litigation. The Settling Parties agree that to date Maine Yankee has used its best efforts to secure DOE funding or reimbursement for storage and disposal of spent nuclear fuel and high-level waste, including GTCC waste, through Maine Yankee's

current involvement in litigation with the DOE to recover costs associated with the DOE's delay in taking possession of Maine Yankee's spent nuclear fuel. Maine Yankee agrees to continue to pursue aggressively and to the extent practical all remedies available against the DOE, including, without limitation, orders requiring the DOE to assume its obligations and take prompt possession of and title to Maine Yankee's spent nuclear fuel and high-level waste, including GTCC waste; recovery of damages caused by the DOE's delay; other remedy or remedies, legal, equitable or administrative; or reasonable settlement of such claims. Maine Yankee further agrees that any funds recovered from the DOE or any savings resulting from the DOE's performance of its obligations shall flow through to the benefit of Maine Yankee's ratepayers, as follows:

- (i) Maine Yankee will first apply the proceeds to pay any tax liabilities associated with the damage award; and
- (ii) Maine Yankee will then deposit the remaining funds in the SFDT Fund up to the amount necessary to replenish the Fund, with any excess amounts deposited in the decommissioning trust fund.

Maine Yankee agrees to advise the Maine Agencies in advance of any potential settlements with the DOE, and Maine Yankee will use its best efforts to assure that any settlement discussions with the DOE can be concurrently disclosed to the Maine Agencies without waiver of applicable rules of confidentiality and privilege. Maine Yankee also agrees to advise the Settling Parties periodically as to the status of pending

litigation with the DOE and to meet with such Maine Agencies and Settling Parties for these purposes at their request.

B. Non-Decommissioning Issues.

(1) Continuation of Certain 1998 Settlement Agreement Provisions.

Unless modified by this Offer of Settlement, all other terms and provisions in the 1998 Settlement Agreement remain in full force and effect.

(2) Off-Site Storage of Spent Fuel. Maine Yankee and the Settling Parties agree that the presence of spent fuel and GTCC waste onsite is a liability and that it is in the interests of ratepayers and shareholders that the DOE take final acceptance of and remove Maine Yankee's spent fuel and GTCC waste at the earliest feasible date and with no reasonably avoidable delay. Maine Yankee and the Settling Parties acknowledge that instead of storing Maine Yankee's spent nuclear fuel and GTCC nuclear waste at the Maine Yankee site, it may be preferable from a homeland security and economic standpoint to explore opportunities to store that spent nuclear fuel and GTCC waste at a licensed facility outside New England until the DOE takes action to fulfill its obligation to dispose of the spent fuel and GTCC waste at a permanent geological repository.

Maine Yankee and the Settling Parties also acknowledge that the monies identified in the 2003 Estimate for maintenance and security of the spent nuclear fuel and GTCC waste while it is stored at the Maine Yankee site after 2005 could alternatively be spent to pay for temporary storage at a licensed facility outside New England, including at currently existing nuclear waste storage sites owned by DOE, if such a feasible opportunity exists.

In order to further this objective, Maine Yankee and the Settling Parties agree as follows:

- (i) Maine Yankee, to the extent practicable, will continue to work with Yankee Atomic and Connecticut Yankee on steps to facilitate moving each company's spent nuclear fuel to a licensed facility outside New England, and on regularly briefing the parties on the status of these efforts;**
- (ii) In conjunction with collaborative efforts with Yankee Atomic and Connecticut Yankee, Maine Yankee will undertake reasonable efforts to persuade relevant state and federal legislators to support moving Maine Yankee's spent nuclear fuel to a site outside New England and will, if the Settling Parties agree and if funding is assured, engage professional lobbyists to assist in this effort;**
- (iii) Among other lobbying efforts, Maine Yankee will continue to undertake reasonable efforts, separately or collaboratively with other shutdown nuclear plants, to support legislation for federal funding to develop and build a transport cask that can be used to transport Maine Yankee's spent nuclear fuel;**
- (iv) Although transportation of spent nuclear fuel from the Maine Yankee site is the contractual responsibility of DOE, Maine Yankee will undertake reasonable efforts to work with the other shutdown nuclear plants in New England to investigate the utilization of a transport cask or casks to transport spent nuclear fuel from those plants, provided that Maine Yankee**

- shall not be obligated by this provision to procure a transport cask;
- (v) **Maine Yankee and the other interested Settling Parties will work cooperatively to identify all potentially viable alternatives, i.e., opportunities that are legal, licensed or licensable under international, federal, state and/or local statutes and regulations, for temporary storage of Maine Yankee's spent nuclear fuel and GTCC waste outside New England, including at existing DOE-owned nuclear waste storage sites, until DOE takes the spent nuclear fuel and GTCC for permanent disposal; to identify any obstacles to utilizing any such alternatives as well as possible means for overcoming those obstacles; and to evaluate the feasibility and cost-effectiveness of any such alternatives.**
 - (vi) **Maine Yankee and interested Settling Parties agree to work cooperatively to support all of the efforts described above;**
 - (vii) **Maine Yankee will continue to make reasonable efforts, including litigation, to secure DOE funding, reimbursement, or damages for costs of activities that Maine Yankee undertakes in furtherance of the efforts described above;**
 - (viii) **Maine Yankee will not expand the ISFSI or use it for storage of any nuclear materials except the nuclear materials, spent fuel, and GTCC waste associated with Maine Yankee's operations, including decommissioning;**

- (ix) **Maine Yankee has no present intention to transfer ownership, possession, or control of the ISFSI to a third party; however, should a reasonable opportunity for transfer consistent with federal law arise, Maine Yankee agrees to give ninety (90) days' notice to the Maine Agencies prior to any regulatory filing related to such transfer. By stating this agreement, neither Maine Yankee nor the Maine Agencies are expressing an opinion as to whether or not any transfer is feasible. This paragraph is without prejudice to, and cannot be used as precedent against, the position of Maine Yankee in any future transfer proceeding as to any issues that might be raised, including without limitation the extent of jurisdiction of any regulatory body over the transfer of Maine Yankee's facilities, the standing of any particular person to intervene in such proceedings, or the merits of any objections to the transfer;**
- (x) **Nothing in this Offer of Settlement shall require Maine Yankee to take any action that may jeopardize its position that the DOE is responsible for the permanent disposal of spent nuclear fuel and GTCC waste or its claim for compensation for the costs it has incurred or will incur for the interim storage and/or transportation of spent nuclear fuel and GTCC waste, including, without limitation, costs of transport casks;**

- (xi) Nothing in the foregoing shall prevent Maine Yankee from also considering and agreeing to fuel storage options in other New England states besides Maine; and
- (xii) All costs associated with implementation of this Part II.B(2) are “decommissioning expenses” recoverable as such from Maine Yankee’s wholesale purchasers under the power contracts, unless the DOE has funded those efforts, and provided that Maine Yankee shall credit any subsequent reimbursement or damages received from DOE in accordance with Section II-A(5).

(3) State of Maine Assessments. Maine Yankee and the Settling Parties agree that Maine Yankee will pay a fixed annual amount to cover all present and reasonably foreseeable future State of Maine fees, costs, and assessments with respect to Maine Yankee, whether currently legally obligated or not, including, without limitation, costs associated with the State Nuclear Inspector, State Nuclear Safety Advisor, security costs, regulatory oversight of groundwater monitoring, the Advisory Committee on Radioactive Waste, rate case or Nuclear Regulatory Commission interventions, Health Environmental Test Lab, low-level waste program, State Planning Office costs, the Maine OPA and Maine PUC costs, Maine Department of Human Services costs, Maine DEP staff fees, insurance fees, State efforts to relocate nuclear fuel, and all other State of Maine assessments associated with Maine Yankee.

The annual assessment will continue at the levels presently mandated by State of

Maine legislation as of the date of this Offer of Settlement and will continue at such level until the date that is ninety (90) days following adjournment of the 122nd Maine Legislature ("2005 Date"). This current annual assessment is estimated to be approximately \$830,000 per year. On the 2005 Date, which is estimated to occur in September 2005, assuming that legislation described in subparagraph 3(i) below is adopted, the assessment will decline to \$360,000 plus any amounts due the State for actual shipments of low-level waste. This assessment will continue until September 1, 2008, when the assessment will decline to \$170,000 per year, plus any amounts due the State for actual shipments of low-level waste, until such time as the spent fuel is removed from the plant or otherwise transferred to the DOE.

Maine Yankee and the Settling Parties agree and understand that the cost of the actual groundwater monitoring and testing, other than the oversight or sample analysis costs incurred by the State, shall not be part of the above-described assessment but will be paid by Maine Yankee and not the State. Maine Yankee and the Settling Parties agree that the costs Maine Yankee shall pay directly for actual radiological groundwater monitoring and testing shall not exceed \$500,000 in total, based on Maine Yankee's estimate of costs. Maine Yankee and the Maine Department of Environmental Protection have agreed on the protocols that will be followed by Maine Yankee for such monitoring and testing (attached and incorporated hereto as Attachment C) and that in no event shall the costs required to satisfy such protocols exceed Maine Yankee's estimate of \$500,000 in total except in the event the monitoring and testing results show above-background dose

equivalents for a given well in excess of 2 mrem/yr, based on a 5-year monitoring and sampling plan and calculated on a well-by-well basis, in which case Maine Yankee and the State will use best efforts to agree on protocols and cost responsibility for further monitoring of the well. The Maine Agencies acknowledge that the Maine Department of Environmental Protection has represented that Maine Yankee's achievement of monitoring and testing results at or below the 2 mrem/yr level described in the preceding sentence will satisfy all Maine Yankee obligations under 38 M.R.S.A. § 1455 (if any).

The Settling Parties also agree that all such assessments and groundwater monitoring and testing amounts, as well as costs associated with RCRA compliance, are included in the annual decommissioning collection level described in Part II.A(1) and are valid decommissioning expenses and recoverable from ratepayers.

- (i) Maine Yankee and the Settling Parties acknowledge that the initial assessment, estimated to be \$830,000, reflects the current level of State assessments with respect to Maine Yankee. Maine Yankee and the Maine Agencies further acknowledge and agree that, in order to achieve the reductions in State assessments as described above, actions by the Maine Legislature to repeal (or not renew) existing legislation will be necessary. Accordingly, Maine Yankee and the Maine Agencies agree to use their best efforts to achieve the results intended by this Paragraph (3) and shall cooperate in the presentation of and jointly support legislation before the Maine Legislature to repeal (or not seek renewal) of the following

legislation:

- (a) For effectiveness ninety (90) days following adjournment of the 122nd Maine Legislature:
 - (i) repeal of Title 22 MRSA §663, establishing the position of State Nuclear Safety Inspector, provided that Maine Yankee will not object to legislative provisions that extend the term of the position no longer than six months after the effective date of the repeal legislation, if such extension does not affect the assessments to Maine Yankee as set forth in this Offer of Settlement or require Maine Yankee to retain staff or provide office space for the Inspector; and
 - (ii) amendment of Title 22 MSRA §565-A, to eliminate the statutory levy for the annual Health and Environmental Testing Laboratory fee;
- (b) For effectiveness as of June 30, 2006, as a result of the existing sunset provisions with respect to Title 38 MRSA §1453-A(7), abolition of the Advisory Committee on Radioactive Waste and Decommissioning; and
- (c) For effectiveness as of September 1, 2008, repeal of Title 25 MRSA § 52, the position of the State Nuclear Safety Advisor, and any

associated oversight by the Office of the Public Advocate.

- (ii) **Maine Yankee and the Maine Agencies agree to use their best efforts and act in good faith to achieve the legislative changes contemplated in subparagraph (i) above. In the event such legislation is not adopted or is adopted in a different form or different amounts than outlined in this Paragraph (3), the Maine Agencies agree to use their best efforts to limit State assessments to Maine Yankee to no more than \$360,000 annually for the period September 1, 2005, through August 31, 2008, and \$170,000 annually thereafter. The Settling Parties acknowledge and agree that it is the intent of this paragraph and of this Offer of Settlement to limit the total annual amounts paid by Maine Yankee to the State of Maine for any purpose to the amounts specified in this Paragraph (3) and not to impose double assessments on Maine Yankee. The Settling Parties further acknowledge and agree that in the event the Maine Legislature does not adopt legislation of the type and at the assessment levels contemplated in this Paragraph (3), or if new legislation imposes additional assessments on Maine Yankee for purposes not contemplated herein, then this Paragraph (3) shall have no force and effect, provided, however, that Maine Yankee and the Maine Agencies will meet and use their best efforts to renegotiate another series of assessments consistent with then-existing legislation. The Maine Agencies represent that they have notified and consulted with authorized**

representatives from the Governor's Office, the Maine Department of Environmental Protection, the Maine Department of Human Services, and other State agencies having oversight over Maine Yankee's activities prior to execution of this Offer of Settlement and that such representatives have indicated they are fully cognizant of and have not objected to the provisions of this Paragraph (3).

(iii) The State of Maine shall have the sole discretion to allocate the proceeds of the annual assessments paid under this paragraph. The assessments shall be invoiced by the State and paid quarterly by Maine Yankee, beginning with the 2005 Date.

(iv) It is the intent of Maine Yankee and the Maine Agencies that the terms of this Paragraph (3) are comprehensive and address any and all State assessments with respect to Maine Yankee. To assure that all such assessments are addressed, Maine Yankee and the Maine Agencies also agree to use their best efforts to identify any other assessments not identified in this paragraph, evaluate the continuing need for such other assessments and to support legislation to eliminate any unnecessary assessments.

(4) **Decommissioning Trust Fund Administration.** Maine Yankee agrees to give the Maine Agencies annual briefings on the performance of the decommissioning trust fund. Such briefings shall occur within 30 days of the date Maine Yankee receives

its year-end statement regarding the trust fund's performance and will cover, *inter alia*, the fund's year-end balance, yearly performance, investment criteria, and fees.

In the event that Maine Yankee is dissolved or enters bankruptcy without a qualified successor under the provisions of the Decommissioning Trust Agreement, pursuant to Section 4.02 of the Decommissioning Trust Agreement, Maine Yankee will transfer its interests in the decommissioning fund to a duly authorized Maine state agency to be determined by the State of Maine. Maine Yankee agrees that it will not oppose any legislation that will allow a Maine state agency to become authorized by applicable statutes or regulations to assume responsibility for the decommissioning of nuclear facilities and, therefore, capable of assuming Maine Yankee's responsibilities under the Decommissioning Trust Agreement in the event of Maine Yankee's dissolution or bankruptcy without a qualified successor. The Maine Agencies and Maine Yankee agree that nothing in this paragraph is intended to displace, circumvent, or waive the application of any laws, including the Federal Power Act or bankruptcy laws, governing the Decommissioning Trust Fund or Maine Yankee's or any successor's rights and responsibilities under the Decommissioning Trust Fund.

(5) Earnings on Spent Fuel Disposal Trust. Effective January 1, 2004, Maine Yankee will no longer credit net-of-tax earnings of the SFDT in its billing formula and will instead credit income to the fund and may withdraw taxes from the fund. Consistent with this treatment, Maine Yankee will not credit customers the amount of

deferred SFDT earnings not previously credited to cost of service as of December 31, 2003.

(6) **Recovery of Basis in Land.** The parties acknowledge and agree that the book value of Maine Yankee's land as of the date of this Offer of Settlement is \$652,269 for purposes of determining the gain on the sale, lease, or disposition of land under Part II.A(2) of the 1998 Settlement Agreement.

(7) **Prudence of Prior Decommissioning Expenditures.** Maine Yankee and the Maine Agencies acknowledge that, as part of this proceeding, the Maine Agencies conducted an extensive review and examination of Maine Yankee's decommissioning operations and expenditures and that, as a result of this investigation, the Maine Agencies have determined that Maine Yankee's decommissioning expenditures through the date of this Offer of Settlement have been prudently incurred.

(8) **Formula Rate Specificity.** The specification of the manner in which Maine Yankee calculates its formula rates to its ratepayers is attached as Attachment B.

III. **Effective Date; Refunds**

(1) **Effective Date.** This Offer of Settlement shall become effective the first day of the calendar month immediately following Commission approval of the Offer of Settlement ("Effective Date") by final and nonappealable order.

(2) **Refunds.** The rates established in Attachment A shall be reflected in Maine Yankee's bills to its ratepayers commencing on the Effective Date. Maine Yankee will not refund decommissioning amounts or estimated ISFSI costs collected in excess of

\$27 million on an annual basis for the time period commencing January 2, 2004, through the Effective Date. Instead, Maine Yankee shall credit ratepayers through an equal reduction in future billings for such excess decommissioning collections that occurred prior to the Effective Date. Maine Yankee agrees to make a compliance filing with the Commission not later than sixty (60) days after the Effective Date to reflect implementation of such rates.

IV. Reservations and Miscellaneous Conditions

By entering into this Offer of Settlement, Maine Yankee and the Settling Parties shall not be deemed in any respect to be making any admission that any allegation or contention in the above-captioned proceeding is true or valid.

This Offer of Settlement establishes no principles or precedents on any issue, including the appropriateness of the calculations or assumptions utilized in reaching this Offer of Settlement, and acceptance of this Offer of Settlement by any party or by the Commission shall not in any respect constitute a determination as to the merits of any allegations or contentions made in this proceeding.

The discussions that have produced this Offer of Settlement have been conducted with the explicit understanding and pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedure, that all offers of settlement, settlement agreements and discussions relating thereto are and shall be privileged, shall be without prejudice to the position of any party or participant presenting such offer, entering into such agreement, or participating in such discussions, and are not to be used in any manner in connection

with these or any other proceedings involving one or all of the parties to this proceeding or otherwise, except to interpret or enforce this settlement.

In negotiating this Offer of Settlement, Maine Yankee and the Settling Parties have considered the various separate promises and obligations contained herein, whether related to decommissioning, nondecommissioning, or other issues, as fundamental to a comprehensive agreement of all issues in Docket No. ER04-55-000. This Offer of Settlement is thus submitted under the condition that, in the event the Commission does not by order approve this Offer of Settlement in its entirety, without change or condition, Maine Yankee and the Settling Parties each reserve the right to withdraw this Offer of Settlement in its entirety, and under the further condition that any party contesting this Offer of Settlement, in whole or in part, shall not receive the benefits of any portion of this Offer of Settlement.

Nothing in this Offer of Settlement shall be construed to prevent the Settling Parties from challenging or contesting the prudence of any action taken by Maine Yankee after the date of this Offer of Settlement.

This Offer of Settlement does not have major factual or policy implications, does not affect other pending cases, does not reverse Commission precedent, and does not involve issues of first impression.

This Offer of Settlement may only be amended by the agreement in writing of all the Parties hereto. The standard of review for any modification not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*,

shall be the “public interest” standard **under the *Mobile Sierra* doctrine**. Nothing in this Offer of Settlement shall preclude any party from exercising its rights under Section 205 or Section 206 of the Federal Power Act to submit a filing seeking Commission determination of rate issues whose ratemaking treatment is not finally determined in this Offer of Settlement.


V. Waivers

The Commission is hereby requested to grant such waivers of its regulations as may be necessary to effectuate all of the provisions of this Offer of Settlement.

VI. Execution in Counterparts

This Offer of Settlement may be executed in counterparts and each shall have the same force and effect as an original instrument, as if each of the signatories to all the counterparts had signed the same instrument.

Executed and agreed to this ___th day of ___, 2004, by the below listed attorneys for the respective Settling Parties who represent that they are fully authorized to do so on behalf of their principals.




John W. Gulliver
Counsel for Maine Yankee Atomic Power
Company

Randall L. Speck
Counsel for the Maine Public Utilities
Commission and the Maine Office of the
Public Advocate

James A. Buckley
Counsel for the Maine Public Utilities
Commission

Stephen G. Ward
Public Advocate
State of Maine



Mary E. Grover
Counsel for NStar Electric & Gas
Corporation

ATTACHMENT A

Decommissioning Collection Schedule

ATTACHMENT B

Formula Rate Specificity

ATTACHMENT C

Groundwater Monitoring Agreement

