

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Maine Yankee Atomic Power Company) Docket Nos. ER98-570-000
)
 and
)
Public Advocate, State of Maine)
 Complainant) EL98-14-000
)
v.)
)
Maine Yankee Atomic Power Company)
Respondent)

OFFER OF SETTLEMENT

This Offer of Settlement, dated as of December 31, 1998, is submitted jointly pursuant to Rule 602 of the Commission's Rules of Practice and Procedure by Maine Yankee Atomic Power Company ("Maine Yankee") and the following Intervenor in this proceeding: the Maine Public Utilities Commission (MPUC), the Maine Office of Public Advocate (OPA), The Friends of the Coast Opposing Nuclear Pollution (Friends of the Coast), the Secondary Purchasers (certain municipal or cooperative utilities who purchased power from Maine Yankee through separate contracts with Maine Yankee's owners, but who are directly billed by Maine Yankee, as billing agent), Central Maine Power Company, Cambridge Electric Light Company, Northeast Utilities Service Company, and the Vermont Department of Public Service.

The purpose of this Offer of Settlement is to resolve, as among Maine Yankee, the Settling Parties (as defined below) and any noncontesting parties, all issues raised or that could have been raised in Maine Yankee's rate filing in Docket No. ER98-570-000 and the Complaint filed by the OPA in Docket No. EL98-14-000, as set for hearing by the Commission's Orders accepting Maine Yankee's rates for filing and establishing hearing procedures (82 FERC & 61,010 (January 14, 1998)) and consolidating the OPA's Complaint with Maine Yankee's rate proceeding (83 FERC & 61,122 (May 4, 1998)).

The signatories to this Offer of Settlement are:

1. Maine Yankee Atomic Power Company;
2. The Maine Office of the Public Advocate (Complainant in Docket No. EL98-14-000);
3. The Maine Public Utilities Commission;
4. The Friends of the Coast Opposing Nuclear Pollution;
5. The Vermont Department of Public Service;
6. Central Maine Power Company;
7. Cambridge Electric Light Company;
8. Northeast Utilities Service Company (on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company; and Public Service Company of New Hampshire); and
9. The Secondary Purchasers.

Together, the above-listed parties represent all the active parties in this proceeding.

The parties identified in Paragraphs 2 through 8 are hereinafter referred to as the A Settling Parties. Because the Secondary Purchasers have reached a separate settlement in principle with Maine Yankee's owners (hereinafter Secondary Purchaser Settlement) that when executed and approved will resolve all issues arising out of their respective power purchase contracts with the owners (including the issues raised or that could have been raised in this proceeding), Part II of this Offer of Settlement shall not apply to or bind in any manner the Secondary Purchasers. However, as an active party in this proceeding, the Secondary Purchasers join in this Offer of Settlement solely to indicate their consent to the Commission's approval of the Offer of Settlement.

The Secondary Purchaser Settlement provides for a fixed cash payment in full satisfaction of all obligations under the separate contracts with Maine Yankee's owners, and terminates those obligations upon full payment of the agreed-upon amount. Those contracts are also the subject of a different proceeding pending before the Commission (Docket No. EL98-13-000) and the Secondary Purchaser Settlement will be filed in that docket. However, the Secondary Purchaser Settlement also will resolve all issues arising out of their claims in this proceeding as well as other Commission and court proceedings, including Docket No. EL98-13-000 and the Maine Yankee portion of Docket No. EL98-35-000, and therefore will be filed in this proceeding and those other dockets as soon as practicable after preparation and execution of the necessary documents.

If accepted and approved by the Commission, this Offer of Settlement will resolve, as among Maine Yankee, the Settling Parties and all noncontesting parties, all issues raised or that could have been raised in Docket Nos. ER98-570-000 and EL98-14-000. All issues set for hearing in both dockets remain unresolved for any parties contesting this Offer of Settlement. Accordingly,

Maine Yankee and the Settling Parties request that the Commission approve the Offer of Settlement for all noncontesting parties, and sever contesting parties, if any, to pursue their claims at hearing.

I. BACKGROUND

Maine Yankee owns and operated a single nuclear generating unit located at Wiscasset, Maine. On August 6, 1997, the Board of Directors of Maine Yankee unanimously voted to cease operations permanently at the plant.

The entire output of the Maine Yankee plant was sold at wholesale by Maine Yankee to ten New England utilities, which collectively own 100% of the common equity of Maine Yankee; a portion of that output (6.2% in total) was in turn resold by certain owners to the Secondary Purchasers. Maine Yankee recovered, and since the shutdown decision continues to recover, its costs of providing service through a formula rate filed with the Commission and contained in Power Contracts with its utility purchasers, which are also filed with the Commission. Maine Yankee's formula rate is based on the Commission's Uniform System of Accounts.

On November 6, 1997, Maine Yankee submitted for filing certain amendments to the Power Contracts (Amendatory Agreements) and revised rates to reflect the decision to shut down the plant and to request approval of an increase in the decommissioning component of its formula rates. Maine Yankee's submittal also requested certain other rate changes, including recovery of unamortized investment (including fuel), reduction of PBOP and CWIP accruals, and certain changes to its billing formula, consistent with the non-operating status of the plant. By Order dated January 14, 1998, the Commission accepted Maine Yankee's new rates for filing, subject to refund after a minimum suspension period, and set Maine Yankee's Amendatory Agreements, rates, and issues concerning the prudence of the shutdown decision for hearing.

By Complaint dated December 9, 1997, the OPA sought Commission investigation of Maine Yankee's actions leading to the decision to shut down the plant, including actions associated with the management and operation of Maine Yankee since 1993, and associated costs. By Order dated May 4, 1998, the Commission set the OPA's Complaint for hearing and consolidated the Complaint proceeding with Maine Yankee's rate proceeding.

With its initial filing, in support of its request for an increase in decommissioning collections, Maine Yankee submitted a 1997 decommissioning cost study performed by TLG Services, Inc. During 1998, Maine Yankee engaged in an extensive competitive bid process to hire a Decommissioning Operations Contractor (DOC) to perform certain major decontamination and dismantlement activities at the plant on a fixed price, turnkey basis. As a result of that process, a consortium headed by Stone & Webster Engineering Corporation (Stone & Webster) was selected to perform such activities under a fixed-price contract. The contract, among other tasks, provides for construction of an Independent Spent Fuel Storage Installation (ISFSI) and completion of major decommissioning activities and site restoration by December 31, 2004.

The DOC process has resulted in fixing certain costs that had been previously estimated in the decommissioning cost estimate performed by TLG Services, Inc. In negotiating this Offer of Settlement, Maine Yankee and the Settling Parties have taken into account the DOC contract process and costs, as well Maine Yankee's most current decommissioning budget (including costs not included in the scope of the DOC contract and other costs associated with the shutdown and restoration of the Maine Yankee site).

Maine Yankee and active intervenors have engaged in extensive discovery, including depositions and data requests. In recent months, these parties have participated in settlement discussions, which have culminated in this Offer of Settlement.

II. TERMS OF SETTLEMENT

Maine Yankee and the Settling Parties have agreed upon, or do not contest, the following terms and conditions, in

full and final settlement of all issues raised in Docket Nos. ER98-570-000 and EL98-14-000. If approved by the Commission, this Offer of Settlement shall be binding upon Maine Yankee, the Settling Parties, and all noncontesting parties.

For purposes of this Offer of Settlement, Maine Yankee and the Settling Parties agree that Maine Yankee shall collect a total amount of \$33.6 million on an annual basis, effective January 15, 1998, for (1) the ISFSI-related costs defined in Part II-A(7), and (2) the estimated costs associated with decommissioning, all in accordance with the following terms and conditions.

Maine Yankee and the Settling Parties further agree that (1) if actual decommissioning costs and ISFSI-related costs, through December 31, 2004, are consistent with the estimated decommissioning and ISFSI-related costs from which this Offer of Settlement has been negotiated; (2) if the Maine Legislature acts favorably in accordance with legislative actions described in Part II-A(8) and Part II-B(4); (3) if the funds obtained from such legislative actions do not need to be repaid to the DOE, the Maine Spent Fuel Disposal Trust Fund, the State of Maine or the State of Texas under the Texas Compact, as the case may be; and (4) if there are no force majeure events or other unanticipated costs that cause material increases in the decommissioning and ISFSI-related costs (and that are not offset by cost savings or windfalls), or significant delays in decommissioning and ISFSI-related activities, then by approximately mid-2005, sufficient funds should have been collected to recover decommissioning and ISFSI-related costs incurred through December 31, 2004, with all major decommissioning activities and construction of the ISFSI completed by that date. The Settling Parties further recognize and agree that Maine Yankee shall make the filing described in Part II-A(10), regardless of how actual decommissioning and ISFSI-related costs compare to the estimated costs for those activities.

A. Non-Decommissioning Issues and ISFSI-Related Collection Rates.

(1) **Return on Equity.** Commencing as of January 15, 1998, and until October 31, 2008, Maine Yankee's allowed return on equity for its remaining equity balances shall be 6.50%, on all equity balances up to the amounts set forth in Table 1. To the extent that Maine Yankee's equity balances exceed the values set forth in Table 1, the allowed return on such excess equity balances shall be 0.0%. In no event shall the return on equity revenue requirement exceed 6.50% of the amounts set forth in Table 1.

(2) **Gain On Sale, Lease Or Other Disposal Of Land.** The Settling Parties acknowledge that, as part of Maine Yankee's efforts to mitigate shutdown and decommissioning costs, Maine Yankee is seeking to sell, lease or otherwise dispose of all or a portion of its land located in Wiscasset, Maine. Maine Yankee and the Settling Parties agree that, if at any time between (1) January 15, 1998, and (2) October 31, 2008, or the corporate windup and dissolution of Maine Yankee, whichever shall last occur, Maine Yankee shall sell, lease or otherwise dispose of all or a portion of its land in Wiscasset, Maine, Maine Yankee shall flow through to its ratepayers, in accordance with its formula rate, any net-of-tax gains in excess of book value for such land, for the benefit of ratepayers, and that none of the gain in excess of book value from such sale, lease or other disposition shall inure to the benefit of the shareholders of Maine Yankee. Such flow-through of gain from the sale, lease or other disposition of land shall be effective whether the sale, lease or other disposition is for the purpose of repowering at the Maine Yankee site in Wiscasset or for any other purpose. For purposes of determining gain on sale, lease or disposition of land, the Settling Parties acknowledge and agree that the book value of said land as of the date of this Offer of Settlement is \$686,930.00, subject to adjustment for the property to be transferred as provided in Part II-C(2). In the event Maine Yankee makes any donation of land to an organization exempt under 501(c)(3) of the Internal Revenue Code, Maine Yankee agrees to flow through to ratepayers any tax benefits received as a result of such donation.

(3) **Recovery of Unamortized Investment.** Subject to adjustment pursuant to the terms and conditions of Part II-B(5)(C) dealing with site repowering and recovery of so-called D&D Refunds, Maine Yankee shall be able to recover, pursuant to its revised rate schedules, all unamortized investment (including fuel) in the Maine Yankee plant, together with a return on equity in accordance with the terms and conditions of Part II-A(1) above.

(4) **Amendatory Agreements.** The Settling Parties do not contest the effectiveness of the Amendatory Agreements submitted for approval in Docket No. ER98-570-000; provided that, (1) Maine Yankee shall make an informational filing with the Commission in advance of any acceleration of recovery of unamortized investment pursuant to the terms and conditions of Section 3, Part C(iii) of the Amendatory Agreements; (2) the Settling Parties do not hereby waive their rights to challenge such accelerated collection and any such filing made by Maine

Yankee; (3) notwithstanding the provisions of Section 3, Parts C(a)(i) and D of the Amendatory Agreements, Maine Yankee agrees that it will collect rates associated with spent fuel costs only in accordance with Part II-A(7) and Part II-A(10) of this Offer of Settlement; and (4) without limiting any other provision of this Offer of Settlement, the uncontested effectiveness of the Amendatory Agreements is without prejudice to, and cannot be used as precedent against, the position of any party in any future proceeding as to whether spent fuel storage costs are or are not part of Maine Yankee's total decommissioning costs or decommissioning expenses.

(5) **Maine Retail Settlement.** The Settling Parties acknowledge that, as part of this comprehensive Offer of Settlement, Maine Yankee, the Maine utility owners of Maine Yankee, and the MPUC and OPA have negotiated a further agreement that settles for Maine retail rate purposes all other issues arising from Maine Yankee's decision to cease permanent operations at the Maine Yankee plant and set for hearing in these consolidated proceedings and that such further agreement, as to its signatories, is part of this Offer of Settlement. A copy of that further agreement is attached as Exhibit 1 and made a part hereof, as to those signatories.

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

(7) **Spent Fuel Storage Cost Collection.** Maine Yankee shall bill and collect \$6.8 million per year, effective as of January 15, 1998, pursuant to its formula rate, to cover the estimated costs associated with interim spent fuel storage through December 31, 2004 (ISFSI-related costs), subject to adjustment pursuant to the terms and conditions of Part II-A(8) below. The Settling Parties recognize and agree that in order to smooth the rate impact of ISFSI-related costs, Maine Yankee shall bill and collect the \$6.8 million per year on a levelized basis through October 31, 2008, subject to the adjustment provided in Part II-A(8), notwithstanding a projected ISFSI construction completion date of December 31, 2004.

(8) **ISFSI Costs; Maine Spent Fuel Disposal Trust Fund.**

(A) The decommissioning expenses described in Part II-B below, for purposes of this Settlement Agreement only, do not include expenses to be incurred as a result of the federal government's failure to perform its contractual obligation to remove spent nuclear fuel from the Maine Yankee site, including but not limited to the costs associated with constructing, purchasing, operating, maintaining and terminating the ISFSI. All costs related to operation and maintenance of the ISFSI after December 31, 2004, and all other costs related to spent fuel, except the costs of constructing the ISFSI, will be determined in the proceeding described in Part II-A(10) and collected in a manner determined by the Commission. Maine Yankee and the Settling Parties agree 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 shall use its best efforts to recover all costs associated with such storage and disposal from the DOE, in accordance with the terms and conditions of Part II-A(9) below. Maine Yankee and the Settling Parties further agree that a portion of the funds already held in trust under Maine law for the express purpose of meeting Maine Yankee's DOE payment obligation should be utilized to reduce rates to current ratepayers, in the manner set forth in this Part II-A(8).

(B) Maine Yankee, the MPUC and the OPA agree to use their best efforts to effectuate a change in Maine law for the purpose of obtaining access to funds presently held in trust for the disposal of spent nuclear fuel. These funds have been collected previously from ratepayers pursuant to Maine law and are held in trust for the express purpose of meeting Maine Yankee's pre-1983 spent fuel disposal obligations to the DOE. More particularly, Maine Yankee, the MPUC and the OPA agree to support legislation in the next session of the Maine Legislature to amend Title 35-A M.R.S.A. '4391-4393 (governing the establishment and administration of a Spent Fuel Disposal Trust Fund), in order to allow Maine Yankee to withdraw funds from the Spent Fuel Disposal Trust Fund in order to meet expenditures for ISFSI-related costs, including reimbursement for such ISFSI-related costs that Maine Yankee has already incurred and that it expects to incur between the date of this Offer of Settlement and the effective date of such legislation, and to permit the remaining Spent Fuel Disposal Trust Fund to be invested in a manner consistent with the criteria for decommissioning trust funds as described in 18 C.F.R. '35.32(a)(3) and 35.33(c).

(C) Provided that the Maine Legislature has adopted such legislative changes referred to in this Part II-

A(8), and that such legislative changes are effective as a matter of Maine law and have not been stayed pursuant to any legal challenge, then commencing on the first day of the month immediately following the effective date of such legislation, the annual \$6.8 million collection associated with the spent fuel storage costs, as set forth in Part II-A(7), shall be eliminated as provided in Part II-D(4).

(D) The Settling Parties recognize that Maine Yankee ultimately may be liable to the DOE for the payment of the funds currently held in the Spent Fuel Disposal Trust Fund and further agree that, in the event the DOE in the future demands payment of such funds and Maine Yankee is legally required to make such payment, after Maine Yankee has prudently pursued its legal and equitable remedies against the DOE, Maine Yankee's ratepayers are solely responsible for those costs. The Settling Parties agree, therefore, that in such event, Maine Yankee shall be entitled to bill and collect from ratepayers pursuant to its formula rate such amounts as are necessary to replenish the Spent Fuel Disposal Trust Fund. The Settling Parties recognize that the liability for pre-1983 obligations may rise faster than the ability of the Spent Fuel Disposal Trust Fund, after reduction, to generate income and capital appreciation and that, if that occurs, Maine Yankee also shall be permitted to bill and collect this difference in liability pursuant to its formula rate. The Settling Parties also agree that Maine Yankee shall be permitted to bill and collect funds sufficient to replenish the Spent Fuel Disposal Trust Fund pursuant to its formula rate, even if DOE has not actually made demand and presentment for such funds, provided there is a legal obligation to pay such funds and after Maine Yankee has prudently pursued its legal and equitable remedies against the DOE. The Settling Parties agree that, prior to the proceeding described in Part II-A(10), they will not object to future Maine Yankee billings designed to collect amounts from ratepayers to replenish the Spent Fuel Disposal Trust Fund and to cover growth in liability, consistent with Maine Yankee's formula rate and the terms and conditions of this Part II-A(8); provided, however, that nothing in this provision shall preclude any Settling Party from challenging the methodology by which Maine Yankee has replenished the Spent Fuel Disposal Trust Fund and covered growth in liability, or from challenging the prudence of Maine Yankee's expenditures from the Spent Fuel Trust Fund, in the proceeding described in Part II-A(10). Should Maine Yankee's obligation to pay such sums become due, and not be stayed, during the pendency of litigation, Maine Yankee shall be permitted to recover such funds from ratepayers during the pendency of such litigation, in accordance with this Part II-A(8). Maine Yankee and the Settling Parties further agree that, if any such amounts exceed the sum of \$10 million, then in order to smooth the rate impact of such recoveries on ratepayers, Maine Yankee shall amortize such amounts, together with any carrying charges thereon, over two or more years, provided, however, that in any event all such amounts, together with any carrying charges thereon, shall be collected no later than October 31, 2008. The Settling Parties recognize and agree that both the amounts collected and the time over which such collections are amortized are dependent upon when the collections commence and the amounts ultimately due DOE, and that, therefore, specific levelization amounts cannot be stated at this time. Maine Yankee and the Settling Parties agree that any collections implemented under this paragraph (for amounts greater than \$10 million) shall be at the greater of the following rates: (1) \$10 million per year or (2) the annual amortization amount required to replenish the fund by October 31, 2008. Maine Yankee will file a compliance filing with the Commission detailing such amortization or payment schedule not later than sixty (60) days after implementing any collections to replenish the Spent Fuel Disposal Trust Fund under this paragraph.

(9) DOE Litigation. Maine Yankee shall engage in best efforts to secure DOE funding or reimbursement for storage and disposal of spent nuclear fuel and high level waste, including GTCC waste. Maine Yankee is currently involved 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 all remedies available against the DOE, including, without limitation, orders requiring the DOE to assume its obligations and take prompt possession of 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, net of costs of litigation, shall flow through fully to the benefit of Maine Yankee's ratepayers. Maine Yankee agrees to advise periodically the Settling Parties as to the status of pending litigation or potential settlement with the DOE, and to meet with such parties for this purpose at their request.

(10) Filing for January 1, 2004 Effective Date; ISFSI Operation, Maintenance and Termination Costs. Maine Yankee agrees to file with the Commission a proceeding having an effective date no later than January 1,

2004, for purposes of examining (1) ISFSI operation and maintenance cost assumptions and payment methodologies; (2) any rate adjustments that may be required in connection with such costs and assumptions; (3) the status of DOE litigation and cost recovery as described in Part II-A(9); (4) issues pertaining to the methodology for replenishing of the Spent Fuel Disposal Trust Fund and covering growth in liability in the Fund, as described in Part II-A(8); and (5) any other such decommissioning and non-decommissioning rate issues as may be appropriate for filing with and reporting to the Commission; provided, however, that the Settling Parties agree that such filing is not intended to interfere with or limit Maine Yankee's ability to bill and collect from ratepayers pursuant to its formula rate any costs for the Texas Compact or ISFSI-related costs, in accordance with the terms and conditions of this Offer of Settlement, or otherwise to limit or interfere with the Incentive Budget and associated incentive mechanisms described in the terms and conditions of Part II-B(5) of this Offer of Settlement.

B. Decommissioning Cost Collection Rates; Other Issues.

(1) **Decommissioning Cost Collection.** Maine Yankee shall bill and collect \$26.8 million on an annual basis, effective as of January 15, 1998, and extending until decommissioning costs are fully recovered, subject to subsequent adjustment as a result of Maine Yankee's agreement to submit a filing with the Commission pursuant to Part II-A(10) of this Offer of Settlement. The \$26.8 million annual collection rate is subject to adjustment downward, to approximately \$26.0 million, pursuant to the terms and conditions of Part II-B(4), below.

(2) **Estimates.** For purposes of obtaining schedules of ruling amounts under Section 468A of the Internal Revenue Code, the decommissioning and ISFSI-related cost estimate for Maine Yankee assumed in this Offer of Settlement, in mid-1998 dollars, is \$530.3 million, with Maine Yankee's collections based on the following economic assumptions: (1) after tax earned interest on accumulated fund amounts of 5.5%; (2) annual inflation adjustment of 3.8%; (3) the assumed method of decommissioning is the DECON method; and (4) the assumed year in which substantial decommissioning costs will first be incurred is 1998.

(3) **Escalation Rate.** Maine Yankee and the Settling Parties agree that, for purposes of this Offer of Settlement, the escalation rate for calculating those decommissioning costs subject to escalation is 3.8%, and further agree that some decommissioning costs (that include, but may not be limited to, the DOC contract, Entergy Nuclear, Inc. (ENI) incentive and fixed fees, 1997 and 1998 decommissioning costs and a portion of plant energy costs) are not subject to escalation.

(4) **Texas Compact/State Planning Office Fund.**

(A) Maine Yankee and the Settling Parties agree that, notwithstanding the adoption of the Texas Compact, since the construction of the Texas low level radioactive waste disposal facility currently appears uncertain, funds previously paid by Maine Yankee ratepayers in the amount of \$6,799,517.99, held by the Maine State Planning Office in a non-interest bearing account pursuant to 1993 Maine Law c.664, 22(1) (State Planning Office Fund), should be paid to the Maine Yankee Decommissioning Trust Fund to offset the costs of decommissioning. Consistent with the previously expressed intentions of the Governors of Maine, Vermont, and Texas, and in order to enable Maine Yankee's ratepayers to avoid paying for disposal capacity in Texas that ultimately may not be utilized in conjunction with Maine Yankee's decommissioning, Maine Yankee and the Settling Parties agree to pursue all available options for compensating Maine Yankee's ratepayers for unused disposal capacity at any facility in Texas under the jurisdiction of the Texas Compact Commission. The Friends of the Coast do not agree with, but will not contest, the immediately preceding sentence.

(B) More particularly, Maine Yankee, the MPUC and the OPA agree to use their best efforts to effectuate a change in Maine law for the purpose of obtaining access to the State Planning Office Fund. These parties agree to support legislation in the next session of the Maine legislature to amend 1993 Maine Law c. 664, 22 (1), in order to allow Maine Yankee to recover such funds and deposit those funds in the Nuclear Decommissioning Trust Fund. Provided that the Maine legislature adopts such legislative changes and that such legislative changes are effective as a matter of law, and have not been stayed pursuant to any legal challenge, then commencing on the first day of the month immediately following the effective date of such legislation, the annual decommissioning collection amount will be reduced by approximately \$0.8 million, to approximately \$26.0 million, effective as of January 15, 1998. Such reduction shall be implemented in accordance with the terms and conditions of Part II-D.

(C) The Settling Parties recognize that Maine Yankee may ultimately be billed by the State of Maine under existing law, 38 M.R.S.A. 1545, for an assessment for its proportionate share of Texas Compact costs. The Settling Parties further agree that in the event that Maine Yankee becomes obligated to pay the State for such costs, Maine Yankee's ratepayers are solely responsible for those costs. The Settling Parties agree, therefore, that Maine Yankee shall be entitled to recover from ratepayers such amounts as may be necessary to pay for the Maine Yankee portion of any Texas Compact assessment by the State of Maine. Such Texas Compact costs will be billed to and recovered from Maine Yankee ratepayers as an Operations and Maintenance expense pursuant to Maine Yankee's formula rate and no further regulatory approvals for collection of such Texas Compact costs will be required. Maine Yankee and the Settling Parties further agree that, in order to smooth the rate impact of such Texas Compact costs, Maine Yankee shall amortize such costs from the date they are incurred through October 31, 2008, together with any carrying costs thereon.

(5) **Budget Incentives.** Maine Yankee and the Settling Parties agree that budget incentives, properly structured, can play an effective role in limiting decommissioning and other shutdown-related expenditures, without impairing safety. To provide such incentives to Maine Yankee's Board of Directors and management, and to reduce the likelihood of future rate increases, Maine Yankee and the Settling Parties agree to the following incentive terms and conditions.

(A) For purposes of implementing an incentive-based settlement, Maine Yankee and the Settling Parties agree that Maine Yankee's revised decommissioning and ISFSI budget, through December 31, 2004, estimated in mid-1998 dollars, is \$446.3 million (Incentive Budget). This amount includes the Stone & Webster DOC contract (including ISFSI-related costs), and ENI annual incentive bonuses, but excludes the ENI final incentive bonus and Operation and Maintenance costs for the ISFSI commencing January 1, 2005, and also excludes decommissioning and license termination costs for the ISFSI. The Incentive Budget also assumes that such amount will be spent by December 31, 2004, and that all major decommissioning activities will have been completed by that date, but excludes costs associated with terminating any Nuclear Regulatory Commission (NRC) license required for spent fuel storage under either the wet or dry storage option.

(B) The Settling Parties agree that, subject to the terms and conditions set forth below, if Maine Yankee is able to complete all major decommissioning and other dismantlement of the plant for less than the Incentive Budget, Maine Yankee shall be entitled to retain 10% of any net savings (after payment of all other incentive fees or bonuses), with Maine Yankee's share of such savings capped at \$10 million, and with the balance of such net savings flowing through to the benefit of ratepayers. The Settling Parties further agree that if Maine Yankee's actual decommissioning costs exceed the Incentive Budget, Maine Yankee, subject to the terms and conditions of this Part II-B(5), shall be required to fund 10% of any such net overage (calculated after recovery by Maine Yankee of all other damage or penalty payments from third parties, including Stone & Webster and ENI), and 90% of such net overage shall be recovered from ratepayers (provided such overages are prudently incurred), with Maine Yankee's share of such overage capped at \$10 million, and any additional prudently incurred overages shall be for the full account of ratepayers. The foregoing incentive payments shall be subject to a \$10 million bandwidth around the \$446.3 million Incentive Budget, such that Maine Yankee's sharing in savings does not begin until costs are less than \$436.3 million and Maine Yankee's sharing in overages does not begin until costs exceed \$456.3 million.

(C) Maine Yankee and the Settling Parties agree that Maine Yankee savings and Maine Yankee overages, as the case may be, will not be subject to windfalls or force majeure events. That is, any windfalls that lower the cost of decommissioning below the Incentive Budget and that are beyond the control or direction of Maine Yankee shall be deducted from the Incentive Budget, and the savings flowed through to ratepayers, without Maine Yankee sharing in any such savings. For purposes of this Part II-B(5): (1) any DOE recoveries that reduce the Incentive Budget shall be considered windfalls and shall not entitle Maine Yankee to earn any incentive payments pursuant to this Part II-B(5); and (2) in the event that Maine Yankee, after the date of this Offer of Settlement, is able to negotiate a reduction in the price of its contract with Stone & Webster to reflect synergistic savings resulting from Stone & Webster providing similar services to another utility, then such reduction in contract price shall not be considered a windfall. Similarly, the Settling Parties agree that any force majeure events (*i.e.*, events that are beyond the control or direction of Maine Yankee) which result in

unexpected and unanticipated increases in the Incentive Budget shall be flowed through for reimbursement by ratepayers, without Maine Yankee's sharing in the cost of any such overages. Maine Yankee agrees that any additional payments or sums received for re-powering of the site, or payments, damages recovery or other funds received from DOE for so-called D&D Refunds, shall not be treated as windfalls for purposes of this Part II-B(5) but shall be utilized to reduce unamortized investment (in the case of re-powering of the site) or unamortized fuel (in the case of D&D Refunds) and shall be flowed through for the benefit of ratepayers.

(D) In the event that decommissioning is completed at a cost below the \$436.3 million savings target in Part II-B(5)(B), above, but the Generic Environmental Impact Statement (GEIS) total site dose for the project is exceeded, Maine Yankee's net incentive provided in this Part II-B(5) shall be reduced by 10%. In the event that decommissioning is completed at a cost above the \$456.3 million overage target in Part II-B(5)(B), above, but the GEIS site dose is exceeded, then Maine Yankee shall be required to pay to ratepayers \$ 10,000 per person/rem over the GEIS dose.

In the event that decommissioning is completed at a cost below the \$436.3 million savings target in Part II-B(5)(B), but the Occupational Safety and Health Administration lost time accident rate exceeds 2 per 200,000 hours of work by all on-site personnel, then Maine Yankee's net incentive shall be reduced by an additional 10%. In the event that decommissioning is completed at a cost above the \$456.3 million overage target in Part II-B(5)(B), above, but the OSHA lost time accident rate exceeds 2 per 200,000 hours of work by all on-site personnel, then Maine Yankee shall be required to pay to ratepayers \$25,000, and an additional \$25,000 for each 50% increase in rate.

The reduction in incentive and the payment to ratepayers, as the case may be, shall be decreased by the amount Maine Yankee is able to recover in any penalties for such excess site dose or accident rate from third parties (including Stone & Webster). In no event shall Maine Yankee's payments to ratepayers under this paragraph (D), taken together with any overages funded by Maine Yankee under Part II-B(5)(B), exceed a total of \$10 million.

(E) For purposes of this Part II-B(5), except as otherwise noted, all numbers shall be calculated in mid-1998 dollars (unless, in the alternative, the Settling Parties agree to nominal dollar calculations; for such purposes, the Incentive Budget is \$ 488.8 million, utilizing a 3.8% escalation rate). Reconciliation of any amounts to, or to be paid by, Maine Yankee or ratepayers shall be calculated within sixty (60) days of the NRC license termination or site release date (*i.e.*, the date the NRC approves license termination or release of the site applicable to the balance of the plant site other than the ISFSI), regardless of whether such date occurs before, on, or after December 31, 2004. The terms and timing of flow-through of any such benefits or additional payments shall be determined by the Commission pursuant to proceedings commenced by Maine Yankee, and Maine Yankee shall commence such proceedings as promptly as possible after calculating such reconciliation.

C. Site Restoration Issues.

(1) Maine Yankee and Friends of the Coast agree that Maine Yankee has been lawfully allowed to discharge low levels of radioactive waste emissions through its licensed pathways. Maine Yankee and Friends of the Coast agree to use their best efforts to reach agreement on thresholds of radiation which would be expected to be in the environment as a result of discharges at licensed limits, and to educate the public through the Community Action Panel on those expectations. Maine Yankee agrees to work with Friends of the Coast to develop a request for proposal (RFP) for competitive bids for an environmental field survey of off-site marine sediments and a full spectrum analysis following the presumed pattern of dispersal from the Maine Yankee outflow. The RFP will request that bidders consider use of the computer modeling of projected disposition developed by Professor Thomas Hess (University of Maine at Orono), if possible. The purpose of this survey would be to develop an isotopic picture of how licensed discharges are distributed and accumulated in the environment. Maine Yankee and Friends of the Coast agree that this study will be performed for the sole purpose of measuring and developing such an isotopic picture, and the study will compare the findings to the expected levels of radiation. Maine Yankee shall pay for the costs of the study as part of its decommissioning cost. Maine Yankee and Friends of the Coast agree that the price Maine Yankee pays shall not exceed \$165,000, and that the specific scope of the study shall be configured so that the costs of the study do not exceed \$165,000.

(2) Maine Yankee agrees to investigate with environmental organizations that are tax exempt under Section

501(c)(3) of the Internal Revenue Code, including, without limitation, colleges and universities, the development of an environmental center at the location of the so-called Eaton Farm property on the Maine Yankee site in Wiscasset, Maine. Maine Yankee agrees to consult with Friends of the Coast regarding organizations from which to solicit proposals. Maine Yankee agrees to convey to such an organization the Eaton Farm property, comprised of approximately 200 acres. Such donation will be provided for the purpose of creating a nature preserve and an environmental education center, and to provide public access of coastal lands in the mid-coast region of Maine. The center shall foster stewardship of the Sheepscot estuarine environment and provide a center for dialogue on environmental policy issues. Prior to making its decision and donating property, Maine Yankee agrees to seek the input of the so-called Community Advisory Panel regarding the donation. Maine Yankee's shareholders will contribute \$100,000 in start-up funds and \$25,000 annually for four years thereafter for the center. Such donation may be in the form of a matching grant.

(3) Maine Yankee agrees to provide a description to Friends of the Coast of all pertinent environmental impact, safety, and radiological hazards analyses required in the event that Maine Yankee selects water-borne transportation for any heavy component leaving the Maine Yankee site, to the extent that such information is not safeguard information under NRC regulations. Maine Yankee shall provide such analyses to Friends of the Coast as soon as practicable after completion. In addition, Maine Yankee will provide copies of all related public documents (e.g., applications, petitions or correspondence) to Friends of the Coast, simultaneously with the submittal of the public document. Friends of the Coast will provide to Maine Yankee copies of all correspondence, memoranda, or other documents it sends to or serves upon public agencies with respect to such analysis.

(4) Maine Yankee has retained Stone & Webster and its subcontractors to provide license termination services. In conjunction with such services, after removal of the containment and spent fuel pool, groundwater samples will be taken from pre-existing and/or new on-site wells at the Maine Yankee site in accordance with standard science-based protocols and in connection with the license termination or Resource Conservation & Recovery Act closure activities. Counting protocols will be consistent with NRC license termination requirements. Maine Yankee further agrees to split 10% of the samples with the Friends of the Coast for its review at a qualified laboratory. Maine Yankee and Friends of the Coast expect to find reactor-derived radionuclides at federally permissible concentrations. Sampling and analyses will be performed in a manner to identify radioactivity down to Environmental Protection Agency drinking water standards (5 mR/year), recognizing that NRC license termination standards are 25 mR/year/ALARA.

(5) Maine Yankee and Friends of the Coast understand that the repowering option provided to Stone & Webster pursuant to the DOC contract prevents Stone & Webster from repowering the site through the use of nuclear power. In the event Stone & Webster fails to exercise its option, then Maine Yankee agrees to incorporate such restriction into any other agreement to convey the site.

(6) In the event that Maine Yankee develops an ISFSI, Maine Yankee agrees to use its best efforts to restrict use of such facility to storage of fuel and high level waste, including GTCC waste, generated by Maine Yankee. Maine Yankee agrees to oppose any expansion of the ISFSI facility beyond that necessary for storage of its own spent fuel and high level waste and GTCC waste.

(7) Maine Yankee agrees to publicly acknowledge the contribution and efforts of Friends of the Coast with respect to all site restoration matters described in this Part

II- C.

D. Effective Date; Refunds.

(1) 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 non-appealable order.

(2) Refunds shall be made of all amounts collected in excess of the 6.50% allowed return on common equity, from January 15, 1998 onward, and with interest as required by 18 C.F.R. 35.19(a), within sixty (60) days of the

Effective Date, without modification or condition. Bills rendered under the Power Contracts on and after the Effective Date shall reflect the 6.50% allowed return on common equity, consistent with the terms and conditions of this Offer of Settlement. Maine Yankee will submit a Refund Report with the Commission within 15 days of making the refunds associated with this provision.

(3) The rates established in Part II-A(7) & B(1) 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 \$33.6 million for the time period commencing January 15, 1998. Instead, Maine Yankee shall credit ratepayers through an equal reduction in future billings for such excess decommissioning and ISFSI cost 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.

(4) Maine Yankee and the Settling Parties agree that the effective date of the rate reductions as a result of the enactment by the Maine legislature of the laws enabling Maine Yankee to obtain access to the Spent Fuel Disposal Trust Fund and the State Planning Office Fund shall be the first day of the month immediately following the effective date of the applicable legislation. Maine Yankee agrees to make a compliance filing with the Commission not later than sixty (60) days after the effective date of any such reduction or reductions in combined collection rates arising out of permission to utilize the Spent Fuel Disposal Trust Fund, the State Planning Office Fund, or both.

III. GENERAL PROVISIONS

By entering into this Offer of Settlement, Maine Yankee and the Settling Parties shall not be deemed in any respect to make 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 which 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, non-decommissioning, or other issues, as fundamental to a comprehensive agreement of all issues in Docket Nos. ER98-570-000 and EL98-14-000. 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 may be executed in one or more counterparts.

IN WITNESS WHEREOF, Maine Yankee and the Settling Parties have caused this Offer of Settlement to be executed by their respective officers, attorneys or agents, each having full authority to enter into this Offer of Settlement.

Dated: December __, 1998

Respectfully submitted,

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| <p>{PRIVATE} _____</p> <p>Mary Ann Lynch Vice President, Law & Government Affairs Maine Yankee Atomic Power Company</p> | <p>_____</p> <p>James Buckley Special Counsel Maine Public Utilities Commission</p> |
| <p>_____</p> <p>Kathleen Mazure Counsel for Vermont Department of Public Service</p> | <p>_____</p> <p>Stephen G. Ward Public Advocate, State of Maine</p> |
| <p>_____</p> <p>Raymond Shadis Friends of the Coast</p> | <p>_____</p> <p>Raymond W. Hepper General Counsel Central Maine Power Company</p> |
| <p>_____</p> <p>Joseph M. Oliver, Jr. Counsel for Cambridge Electric Light Company</p> | <p>_____</p> <p>Phyllis E. Lemell Senior Counsel Northeast Utilities Services Company (on behalf of Connecticut Light and Power Co., Western Massachusetts Electric Co., and Public Service Co. of New Hampshire)</p> |
| <p>_____</p> <p>Frances Francis Counsel for Secondary Purchasers</p> | <p>_____</p> |