

State of Maine

131st Legislature

Joint Standing Committee on Taxation

Public Hearing on LD 2027, “An Act to Clarify the Property Tax Exemption for Air Pollution Control Facilities”

February 6, 2024 – 1:00 pm

Statement of Peter L. Murray

Dear Chairs and Members of the Joint Standing Committee on Taxation:

My name is Peter Murray, I am a lawyer and I live in Portland. My firm, in association with Attorney Sarah McDaniel, represents the Town of Wiscasset with respect to assessment and taxation of property of Maine Yankee Atomic Power Company. This statement is submitted in support of LD 2027.

The shutdown of Maine’s only nuclear-powered electric generating plant and decommissioning of the facility in 1998-2003 left its owner, Maine Yankee Atomic Power Company with some 550 metric tons of spent nuclear fuel and other high level nuclear waste from nearly 25 years of operation of the nuclear power generating plant. It was and is obliged to safely store this highly dangerous material until the Federal Government is ready to take it off its hands. Maine Yankee constructed on a part of its former generation site in Wiscasset an “Independent Spent Fuel Storage Installation” (ISFSI) to hold this nuclear waste on an interim basis until a more permanent solution will be available. The ISFSI consists of 64 stainless steel canisters that are encased by an equal number of concrete casks placed in 8 rows on specially built concrete pads. The casks are 11.3 feet in diameter and stand vertically 18 feet off the surface of the pad. The canisters and casks are designed above all to hold their dangerous contents safely, to be secure from possible terrorist intrusion or sabotage, to suppress the emission of radioactivity, and to withstand deterioration from their radioactive contents for a period of time sufficient to allow a longer-term storage solution to be found.

The proper local tax valuation of the ISFSI and the land on which it stands has been a point of controversy between Maine Yankee and the Town of Wiscasset. When the ISFSI was first assessed in 2003, negotiations ultimately led to a settlement agreement that was in effect from 2003-2022. In November 2022, Maine Yankee applied to the Maine DEP for a certification that the core elements of the ISFSI, the 64 canisters, the 64 casks, and the concrete pads constitute an “air pollution control facility” that would be exempt from local property taxation under 36 MRS §§ 655 and 656. Surprisingly, the DEP accepted Maine Yankee’s argument that the ISFSI had been built primarily to

prevent the emission of “radionuclides,” tiny particles of radioactive material that, in contrast to radioactivity itself, is classified as an air pollutant. The Town is appealing this certification to the Superior Court.

Regardless of the outcome of the pending appeal, it appears clear as a matter of common sense that the entire ISFSI, built to safeguard the nuclear fuel and protect the public from radioactivity, is not the kind of pollution control equipment that the exemption was intended to cover. The exemption was designed to encourage and make it easier for industrial polluters such as paper companies to invest in equipment designed to minimize air pollution from the emissions of their ongoing industrial processes. Maine Yankee has no ongoing industrial process; its only function now is to store its spent fuel.

Applying the pollution control equipment exemption to the Maine Yankee ISFSI, the only such facility in Maine, would leave the Town of Wiscasset with a highly undesirable facility and without the ability fairly to tax the value there invested.

The State of Connecticut, which has a pollution control equipment exemption very similar to Maine’s, has summarily denied Connecticut Yankee’s request for certification, simply concluding: “the primary purpose of the dry spent fuel rod storage system is near-term containment of radioactive waste prior to permanent disposition.” To our knowledge there is no other state in which spent fuel storage facilities are exempted from taxation as “pollution control facilities.”

LD 2027 merely clarifies 36 MRS §656 to make it clear that spent fuel facilities licensed by the Federal Nuclear Regulatory Commission are not to be considered air pollution control facilities so that the Maine Yankee ISFSI will once again be subject to local assessment and property taxation.

Removing the exemption will not seriously burden Maine Yankee. Since 1998, all U.S. utilities, including Maine Yankee, that have been required to store their own nuclear fuel have been able to obtain from the federal government reimbursement of their costs of doing so, including any municipal taxes paid on their storage facilities. Removing the exemption will also not be detrimental to Maine’s air quality, as the NRC licensing process ensures the safety of the public and the environment by minimizing all of the many dangers posed by the spent nuclear fuel storage.

Please feel free to pose any questions you may have about the legal aspects of this bill or the assessment of the Maine Yankee property.

Thank you for your consideration and support of this legislation.

A handwritten signature in black ink, appearing to read "Peter L. Murray". The signature is fluid and cursive, with a large initial "P" and "M".

Peter L. Murray