

RAS 1941

RELATED CORRESPONDENCE

1800 M Street, N.W.
Washington, D.C. 20036-5869
202-467-7000
Fax: 202-467-7176

Morgan, Lewis
& Bockius LLP

00 JUL 21 P 1.8 COUNSELORS AT LAW

July 17, 2000

Jonathan Block, Esq.
94 Main Street
P.O. Box 566
Putney, Vermont 05346-0566

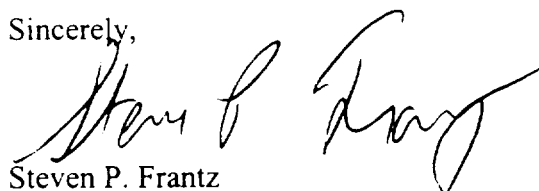
Deborah B. Katz
Citizens Awareness Network, Inc.
P.O. Box 3023
Clairmont, MA 01339-3023

Re: In the Matter of Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC,
Vermont Yankee Nuclear Power Station, Docket No. 50-271 (License Transfer)

Dear Mr. Block and Ms. Katz:

We have received the "Citizens Awareness Network [CAN] Motions for Stay, Clarification, Request for Investigation," which states that the Nuclear Regulatory Commission (NRC) has not provided CAN with a copy of the NRC order and safety evaluation for the transfer of the license for the Vermont Yankee Nuclear Power Station (Vermont Yankee). To assure that you have copies of the documents pertaining to transfer of the Vermont Yankee operating license (Docket No. 50-271), please find enclosed: (1) the relevant NRC cover letter, dated July 7, 2000; (2) the Order Approving Transfer of License and Conforming Amendment, also dated July 7, 2000; (3) the associated Amendment to Facility Operating License, and (4) the associated Safety Evaluation.

Sincerely,



Steven P. Frantz
Counsel for AmerGen Vermont, LLC

Enclosures
cc w/encls. Service List

Template = SECY-043

SECY-02

Philadelphia	Washington	New York	Los Angeles	Miami	Hamburg	Pittsburgh	Princeton
	London	Brussels	Frankfurt	Tokyo	Singapore	Jakarta	

July 7, 2000

Mr. Gerald R. Rainey
Chief Executive Officer
AmerGen Vermont, LLC
965 Chesterbrook Boulevard
Wayne, PA 19087

Mr. Ross P. Barkhurst
President and Chief Executive Officer
Vermont Yankee Nuclear Power
Corporation
185 Old Ferry Road
Brattleboro, VT 05301

SUBJECT: ORDER APPROVING TRANSFER OF LICENSE FOR VERMONT YANKEE
NUCLEAR POWER STATION FROM VERMONT YANKEE NUCLEAR POWER
CORPORATION TO AMERGEN VERMONT, LLC, AND APPROVING
CONFORMING AMENDMENT (TAC NO. MA7875)

Dear Messrs. Rainey and Barkhurst:

The enclosed Order is in response to your application dated January 6, 2000, as supplemented by submittals dated January 13, February 18, March 13, March 30, and April 6, 2000, requesting approval of the transfer of the license for the Vermont Yankee Nuclear Power Station held by Vermont Yankee Nuclear Power Corporation to AmerGen Vermont, LLC, and approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the Code of Federal Regulations. The enclosed Order consents to the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment to be issued at the time the transfer is completed, with the changes as indicated in Enclosure 2.

Enclosures 3 and 4 contain the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation related to the preceding action. The nonproprietary version of the safety evaluation will be placed in the NRC Public Document Room and added to the Agency-wide Documents Access and Management System's Publicly Available Records System (ADAMS PARS) Library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Richard P. Croteau, Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-271

Enclosures: 1. Order
2. Conforming Amendment
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/encs: See next page

**NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT
BECOMES NONPROPRIETARY UPON REMOVAL OF ENCLOSURE 4.**

July 7, 2000

Mr. Gerald R. Rainey
Chief Executive Officer
AmerGen Vermont, LLC
965 Chesterbrook Boulevard
Wayne, PA 19087

Mr. Ross P. Barkhurst
President and Chief Executive Officer
Vermont Yankee Nuclear Power
Corporation
185 Old Ferry Road
Brattleboro, VT 05301

SUBJECT: ORDER APPROVING TRANSFER OF LICENSE FOR VERMONT YANKEE
NUCLEAR POWER STATION FROM VERMONT YANKEE NUCLEAR POWER
CORPORATION TO AMERGEN VERMONT, LLC, AND APPROVING
CONFORMING AMENDMENT (TAC NO. MA7875)

Dear Messrs. Rainey and Barkhurst:

The enclosed Order is in response to your application dated January 6, 2000, as supplemented by submittals dated January 13, February 18, March 13, March 30, and April 6, 2000, requesting approval of the transfer of the license for the Vermont Yankee Nuclear Power Station held by Vermont Yankee Nuclear Power Corporation to AmerGen Vermont, LLC, and approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the Code of Federal Regulations. The enclosed Order consents to the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment to be issued at the time the transfer is completed, with the changes as indicated in **Enclosure 2**.

Enclosures 3 and 4 contain the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation related to the preceding action. The nonproprietary version of the safety evaluation will be placed in the NRC Public Document Room and added to the Agency-wide Documents Access and Management System's Publicly Available Records System (ADAMS PARS) Library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Richard P. Croteau, Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-271

Enclosures: 1. Order
2. Conforming Amendment
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/encls: See next page

**NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT
BECOMES NONPROPRIETARY UPON REMOVAL OF ENCLOSURE 4.**

DISTRIBUTION

See attached list

*See Previous Concurrence + Cover Letter and Order Only

OFFICE	PDI-2/PM	PDI-2/LA	TECH ED +	RGEB/BC	IOLB	PD1-2/SC
NAME	RCroteau	TClark	BCalure *	CCarpenter	GTracy	JClifford
DATE	06/19/00	06/20/00	06/15/00	06/20/00	06/19/00	06/22/00
OFFICE	OGC - NA	OGC	PDI-2/D	DLPM:D	ADPT	NRR/D
NAME	MPSiemens	SHom	JClifford for EAdensam	JZwolinski	BSheron	RZimmerman for SCollins
DATE	7/1/00	06/28/00	07/06/00	06/30/00	07/03/00	07/05/00

OFFICIAL RECORD COPY

DOCUMENT NAME: C:\order-7875.wpd

DISTRIBUTION w/Enclosures 1, 2 & 3

PUBLIC

PDI-2 Reading

SCollins/RZimmerman

BSheron

JZwolinski

EAdensam

TClark

VDricks

OGC

OCA

ACRS

GHill(2) - paper only

SECY

IDinitz

AMcKeigney

GMeyer, RGN-I

MPSiemen

CCarpenter

JShea

DISTRIBUTION w/Enclosures 1, 2, 3 & 4

RCroteau

BZalcman

SHom

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
VERMONT YANKEE NUCLEAR POWER)	Docket No. 50-271
CORPORATION)	
)	
(Vermont Yankee Nuclear Power Station))	

ORDER APPROVING TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) is the holder of Facility Operating License No. DPR-28, which authorizes the operation of Vermont Yankee Nuclear Power Station (Vermont Yankee or the facility) at steady-state power levels not in excess of 1593 megawatts thermal. The facility is located at the licensee's site in the Town of Vernon, Windham County, Vermont. The license authorizes VYNPC to possess, use, and operate the facility.

II.

Under cover of a letter dated January 6, 2000, AmerGen Vermont, Limited Liability Company (LLC), (AmerGen Vermont) and VYNPC, jointly submitted an application requesting approval of the transfer of Facility Operating License No. DRP-28 for Vermont Yankee from VYNPC to AmerGen Vermont. The licensee and AmerGen Vermont also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented

by submittals dated January 13, February 18, March 13, March 30, and April 6, 2000, collectively referred to as the "application" herein unless otherwise indicated.

AmerGen Vermont is a Vermont limited liability company established by AmerGen Energy Company, LLC (AmerGen), to own and operate Vermont Yankee. AmerGen Vermont is a wholly owned subsidiary of AmerGen. AmerGen is a Delaware limited liability company formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc.. (BE, Inc.), each own a 50-percent interest in AmerGen. BE, Inc., is a wholly owned subsidiary of British Energy, plc. The conforming license amendment would remove references to VYNPC from the license and add references to AmerGen Vermont in respective places, and make other administrative changes of a similar nature to reflect the proposed transfer.

Approval of the transfer of the facility operating license and a conforming license amendment was requested by VYNPC and AmerGen Vermont pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and for an opportunity for a hearing was published in the *Federal Register* on February 3, 2000 (65 FR 5376). Pursuant to such notice, the Commission received two requests for hearing. One hearing request was from the State of Vermont Department of Public Service, dated February 23, 2000. A second hearing request was filed by the Citizens Awareness Network, dated February 22, 2000. Commission review of these hearing requests is pending.

Pursuant to 10 CFR §2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the NRC staff's findings in its Safety Evaluation Report (SER). Notice of the action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that AmerGen Vermont is qualified to be the holder of the license, and that the transfer of the license to AmerGen Vermont is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; that the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; that there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; that the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and that the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations, and that all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated July 7, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS

HEREBY ORDERED that the transfer of the license as described herein to AmerGen Vermont is approved, subject to the following conditions:

- (1) AmerGen Vermont shall take no action to cause PECO or BE, Inc., or their affiliates, successors or assigns, to void, cancel, or diminish their \$200 million contingency commitment to provide funding for AmerGen's nuclear power plants, including but not limited to any plant owned by any subsidiary of AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen or AmerGen Vermont's ability to draw upon the commitment. Also, AmerGen Vermont shall inform the NRC in writing at any time that it or AmerGen, for the benefit of AmerGen Vermont, draws upon the \$200 million commitment.
- (2) AmerGen Vermont shall provide decommissioning funding assurance of no less than \$280 million, after payment of any taxes, deposited in the decommissioning trust fund for Vermont Yankee when Vermont Yankee is transferred to AmerGen Vermont.
- (3) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (4) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, BE, Inc., AmerGen, AmerGen Vermont, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (5) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of payment. The decommissioning

trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

- (6) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days' prior written notification to the Director, Office of Nuclear Reactor Regulation.
- (7) The appropriate section of the trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (8) AmerGen Vermont shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Vermont Yankee license to it, the requirements of this Order approving the transfer, and the safety evaluation supporting this Order.
- (9) The AmerGen Vermont Limited Liability Company Agreement dated January 1, 2000, and any subsequent amendments thereto as of the date of this Order, may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (10) At least half of the members of the Management Committee of AmerGen Vermont shall be appointed by a non-foreign member group of AmerGen, all of which appointees shall be U.S. citizens.
- (11) The Chief Executive Officer (CEO), Chief Nuclear Officer (if someone other than the CEO), and Chairman of the Management Committee of AmerGen Vermont shall be U.S. citizens. These individuals shall have the responsibility and exclusive

authority to ensure, and shall ensure, that the business and activities of AmerGen Vermont with respect to the Vermont Yankee operating license are at all times conducted in a manner consistent with the protection of the public health and safety and the common defense and security of the United States.

- (12) AmerGen Vermont shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or of any affiliate, successor, or assignee of PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC, [or of the parent or owner of such affiliate, successor, or assignee, whichever entity is the issuer of such stock.]
- (13) Before the completion of the sale and transfer of Vermont Yankee to it, AmerGen Vermont shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen Vermont has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.
- (14) After receipt of all required regulatory approvals of the transfer of Vermont Yankee, AmerGen Vermont and VYNPC shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within 5 business days, and of the closing date of the sale and transfer of Vermont Yankee no later than 7 business days prior to the date of closing. If the transfer of the license is not completed by July 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may, in writing, be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this order, see the initial application dated January 6, 2000, supplemental letters dated January 13, February 18, March 13, March 30, and April 6, 2000, and the safety evaluation dated July 7, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 7th day of July 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman, Acting Director
Office of Nuclear Reactor Regulation

VERMONT YANKEE NUCLEAR POWER CORPORATION

DOCKET NO. 50-271

VERMONT YANKEE NUCLEAR POWER STATION

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-28

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by the Vermont Yankee Nuclear Power Corporation (the licensee) dated January 6, 2000, as supplemented on January 13, February 18, March 13, March 30, and April 6, 2000, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. DPR-28 is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 60 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Amended Operating License Pages 1 through 8 and Amended Technical Specifications

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. DPR-28

DOCKET NO. 50-271

Replace the following pages of the Facility Operating License and Appendix A Technical Specifications with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the area of change.

Remove

Facility Operating License Pages 1 through 8

253

Insert

Facility Operating License Pages 1 through 8

253

AmerGen Vermont, LLC

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271

Facility Operating License

License No. DPR-28
Amendment No. 5,

The Atomic Energy Commission (the Commission) having found that:

- a. Construction of the Vermont Yankee Nuclear Power Station (the facility) has been substantially completed in conformity with the application, as amended, the Provisional Construction Permit No. CPPR-36, the provisions of the Atomic Energy Act of 1954, as amended (the Act), and the rules and regulations of the Commission as set forth in Title 10, Chapter 1, CFR; and
- b. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission; and
- c. There is reasonable assurance (1) that the activities authorized by this amended operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the rules and regulations of the Commission; and
- d. AmerGen Vermont, LLC, is technically and financially qualified to engage in the activities authorized by this amended operating license, in accordance with the rules and regulations of the Commission; and
- e. AmerGen Vermont, LLC, has satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements" of the Commission's regulations; and
- f. The issuance of this amended operating license will not be inimical to the common defense and security or to the health and safety of the public; and
- g. After weighing the environmental, economic, technical and other benefits of the facility against environmental costs and considering available alternatives, the issuance of this amended operating license (subject to the conditions for protection of the environment set forth herein) is in accordance with 10 CFR Part 50, Appendix D, of the Commission's regulations and all applicable requirements of said Appendix D have been satisfied.

Accordingly, Facility Operating License No. DPR-28, as amended, issued to AmerGen Vermont, LLC (the licensee), is hereby amended in its entirety to read:

1. This license applies to the Vermont Yankee Nuclear Power Station (the facility), a single cycle, boiling water, light water moderated and cooled reactor, and associated electric generating equipment. The facility is located on the licensee's site, in the Town of Vernon, Windham County, Vermont, and is described in the application as amended.
2. Subject to the Conditions and requirements incorporated herein, the Commission hereby licenses the applicant:
 - A. Pursuant to Sections 104b of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," to possess, use, and operate the facility as a utilization facility at the designated location on the licensee's site.
 - B. Pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation as described in the Final Safety Analysis Report, as supplemented and amended.
 - C. Pursuant to the Act and 10 CFR Parts 30, 40 and 70 to receive, possess, and use at any time any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for calibration of reactor instrumentation and radiation monitoring equipment, and as fission detectors in amounts as required.
 - D. Pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components.
 - E. Pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not to separate, such byproduct and special nuclear material as may be produced by operation of the facility.
3. This license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations: 10 CFR Part 20, Section 30.34 of 10 CFR Part 30, Section 40.41 of 10 CFR Part 40, Section 50.54 and 50.59 of 10 CFR Part 50, and Section 70.32 of 10 CFR Part 70; and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:

Amendment No.

A. Maximum Power Level

The licensee is authorized to operate the facility at reactor core power levels not to exceed 1593 megawatts thermal in accordance with the Technical Specifications (Appendices A and B) appended hereto.

B. Technical Specifications

The Technical Specifications contained in Appendix A, as revised through Amendment No. 188, are hereby incorporated in the license. The licensee shall operate the facility in accordance with the Technical Specifications.

C. Reports

The licensee shall make reports in accordance with the requirements of the Technical Specifications.

D. Records

The licensee shall keep facility operating records in accordance with the requirements of the Technical Specifications.

E. Environmental Conditions

Pursuant to the Initial Decision of the presiding Atomic Safety and Licensing Board issued February 27, 1973, the following conditions for the protection of the environment are incorporated herein:

- 1) If, during power operation, an unexpected failure results in a complete loss of coolant tower system, the above closed cycle restriction may be modified to permit an orderly shutdown using the main condenser as a heat sink in the open cycle mode. In this event, the plant shall be reduced below 25 percent power operation as rapidly as possible and shutdown within twenty-four hours.
- 2) This paragraph deleted, Amendment 131, 10/07/91.
- 3) The licensee will define a comprehensive environmental (chemical, biological, and thermal) monitoring program for inclusion in the Technical Specifications, which is acceptable to the Commission for determining changes which may occur in land and water ecosystems as a result of plant operation.
- 4) If harmful effects or evidence of irreversible damage in land or water ecosystems as a result of facility operation are detected by the monitoring program, the

Amendment No.

licensee shall provide an analysis of the problem to the Commission and to the advisory group for the Technical Specifications, and the licensee thereafter will provide, subject to the review by the aforesaid advisory group, a course of action to be taken immediately to alleviate the problem.

- 5) The licensee will grant authorized representatives of the Massachusetts Department of Public Health (MDPH) and Metropolitan District Commission (MDC) access to records and charts related to discharge of radioactive materials to the Connecticut River.
- 6) Prior to discharge of each tank (batch) of liquid radioactive effluents, a representative sample thereof shall be collected and held for independent analysis by the Commonwealth of Massachusetts. Authorized representatives of the Commonwealth shall pick up such samples at the plant site.
- 7) The licensee will furnish advance notification of each scheduled calibration of liquid effluent monitors to MDPH and MDC and, upon request, will permit authorized representatives of the Commonwealth of Massachusetts to be present during such calibrations.
- 8) The licensee will permit authorized representatives of the MDPH and MDC to examine the chemical and radioactivity analyses performed by the licensee.
- 9) The licensee shall immediately notify MDPH, or an agency designated by MDPH, in the event concentrations of radioactive materials in liquid effluents, measured at the point of release from the facility, exceed the limit set forth in the facility Technical Specifications, Appendix A, paragraph 3.8.A.1. The licensee will also notify MDPH in writing within 30 days following the release of radioactive materials in liquid effluents in excess of 10 percent of the limit set forth in the facility Technical Specifications, Appendix A, paragraph 3.8.A.1.
- 10) A report shall be submitted to MDPH and MDC within sixty days of January 1st and July 1st of each year of plant operation, specifying the total quantities of radioactive materials released to the Connecticut River during the previous six months. The report shall contain the following information:
 - (a) Total curie activity discharged other than tritium and dissolved gases.
 - (b) Total curie alpha activity discharged.
 - (c) Total curies of tritium discharged.
 - (d) Total curies of dissolved radio-gases discharged.
 - (e) Total volume (in gallons) of liquid waste discharged.

- (f) Total volume (in gallons) of dilution water.
 - (g) Average concentration at discharge outfall.
 - (h) Time, date and duration of maximum concentration released (average over the period of release).
 - (i) Total radioactivity (in curies) released by nuclide including dissolved radio-gases.
 - (j) Percent of technical specification limit for total activity released.
- 11) Upon notification by MDPH or MDC that all plans and construction for the diversion of water from the Connecticut River to recharge Quabbin Reservoir have been completed, the licensee shall establish a system of communication and notification, satisfactory to MDPH and MDC, to give adequate warning to the appropriate agency or agencies of the Commonwealth of Massachusetts of any accidental discharge of radioactive materials into the Connecticut River from the facility.
- 12) Upon notification in writing by MDPH or MDC that water from the Connecticut River is being diverted to recharge Quabbin Reservoir, the licensee shall submit to both MDPH and MDC, until receipt of notification that such diversion has been terminated, monthly reports of liquid radioactive releases.
- 13) The licensee shall establish and maintain a system of emergency notification to the states of Vermont and New Hampshire, and the Commonwealth of Massachusetts, satisfactory to the appropriate public health and public safety officials of those states and the Commonwealth, which provides for:
- a. Notice of site emergencies as well as general emergencies.
 - b. Direct microwave communication with the state police headquarters of the respective states and the Commonwealth when the transmission facilities of the respective states and the Commonwealth so permit, at the expense of the licensee.
 - c. A verification or coding system for emergency messages between the licensee and the state police headquarters of the respective states and the Commonwealth.

Amendment No.

- 14) The licensee shall furnish advance notification to MDPH, or to another Commonwealth agency designated by MDPH, of the time, method and proposed route through the Commonwealth of any shipments of nuclear fuel and wastes to and from the facility which will utilize railways or roadways in the Commonwealth.
- F. The licensee shall implement and maintain in effect all provisions of the approved Fire Protection Program as described in the Final Safety Analysis Report for the facility and as approved in the SER dated January 13, 1978, and supplemental SERs, dated 2/20/80, 10/24/80, 1/13/83, 3/25/86, 12/8/89, 6/9/97, 8/12/97, 9/2/98, and 2/24/99, subject to the following provisions:

The licensee may make changes to the approved Fire Protection Program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

3.G Security Plan

The licensee shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10CFR73.55 (51FR27817 and 27822) and to the authority of 10CFR50.90 and 10CFR50.54(p). The plans, which contain Safeguards Information protected under 10CFR73.21, are entitled: "Vermont Yankee Nuclear Power Station Physical Security Plan," with revisions submitted through March 16, 1988; "Vermont Yankee Nuclear Power Station Training and Qualification Plan," with revisions submitted through November 10, 1982; and "Vermont Yankee Nuclear Power Station Safeguards Contingency Plan," with revisions submitted through December 30, 1985. Changes made in accordance with 10CFR73.55 shall be implemented in accordance with the schedule set forth therein.

3.H This paragraph deleted, Amendment 107, 8/25/88.

3.I This paragraph deleted, Amendment 131, 10/7/91.

3.J License Transfer Conditions

- (1) AmerGen Vermont shall take no action to cause PECO or British Energy, Inc., or their affiliates, successors or assigns, to void, cancel, or diminish their \$200 million contingency commitment to provide funding for AmerGen's nuclear power plants, including but not limited to any plant owned by any subsidiary of AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen or AmerGen Vermont's ability to draw upon the commitment. Also, AmerGen Vermont shall inform the NRC in writing at any time that it or AmerGen, for the benefit of AmerGen Vermont, draws upon the \$200 million commitment.

- (2) AmerGen Vermont shall provide decommissioning funding assurance of no less than \$280 million, after payment of any taxes, deposited in the decommissioning trust fund for Vermont Yankee when Vermont Yankee is transferred to AmerGen Vermont.
- (3) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (4) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, British Energy, Inc., AmerGen, AmerGen Vermont, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (5) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- (6) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days' prior written notification to the Director, Office of Nuclear Reactor Regulation.
- (7) The appropriate section of the trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (8) AmerGen Vermont shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Vermont Yankee license to it, the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting such Order.
- (9) The AmerGen Vermont Limited Liability Company Agreement dated January 1, 2000, and any subsequent amendments thereto may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (10) At least half of the members of the Management Committee of AmerGen Vermont shall be appointed by a non-foreign member group of AmerGen, all of which appointees shall be U.S. citizens.
- (11) The Chief Executive Officer (CEO), Chief Nuclear Officer (if someone other than the CEO), and Chairman of the Management Committee of AmerGen Vermont shall be

Amendment No.

U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen Vermont with respect to the Vermont Yankee operating license are at all times conducted in a manner consistent with the protection of the public health and safety and the common defense and security of the United States.

- (12) AmerGen Vermont shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or of any affiliate, successor, or assignee of PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC, [or of the parent or owner of such affiliate, successor, or assignee, whichever entity is the issuer of such stock.]

4. This license is effective as of the date of issuance and shall expire at midnight on March 21, 2012.

FOR THE ATOMIC ENERGY COMMISSION

Original signed by Roger S. Boyd for:

A. Giambusso, Deputy Director
for Reactor Projects
Directorate of Licensing

Enclosures:
Appendix A Technical Specifications

Date of Issuance:
Feb. 28, 1973

Amendment No.

Vermont Yankee Nuclear Power Station

cc:

Mr. Samuel L. Newton
Vice President Operations
Vermont Yankee Nuclear Power Corp.
185 Old Ferry Road
PO Box 7002
Brattleboro, VT 05302-7002

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

Mr. David R. Lewis
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037-1128

Mr. Richard P. Sedano, Commissioner
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601

Mr. Michael H. Dworkin, Chairman
Public Service Board
State of Vermont
112 State Street
Montpelier, VT 05620-2701

Chairman, Board of Selectmen
Town of Vernon
P.O. Box 116
Vernon, VT 05354-0116

Mr. Richard E. McCullough
Operating Experience Coordinator
Vermont Yankee Nuclear Power Station
P.O. Box 157
Governor Hunt Road
Vernon, VT 05354

G. Dana Bisbee, Esq.
Deputy Attorney General
33 Capitol Street
Concord, NH 03301-6937

Chief, Safety Unit
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

Ms. Deborah B. Katz
Box 83
Shelburne Falls, MA 01370

Mr. Raymond N. McCandless
Vermont Department of Health
Division of Occupational
and Radiological Health
108 Cherry Street
Burlington, VT 05402

Mr. Gautam Sen
Licensing Manager
Vermont Yankee Nuclear Power
Corporation
185 Old Ferry Road
PO Box 7002
Brattleboro, VT 05302-7002

Resident Inspector
Vermont Yankee Nuclear Power Station
U. S. Nuclear Regulatory Commission
P.O. Box 176
Vernon, VT 05354

Director, Massachusetts Emergency
Management Agency
ATTN: James Muckerheide
400 Worcester Rd.
Framingham, MA 01702-5399

Jonathan M. Block, Esq.
Main Street
P. O. Box 566
Putney, VT 05346-0566

Morgan, Lewis, & Bockius
ATTN: Michael A. Bauser
1800 M Street NW
Washington, DC 20036-5869

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
PROPOSED TRANSFER OF VERMONT YANKEE NUCLEAR POWER STATION
OPERATING LICENSE
FROM VERMONT YANKEE NUCLEAR POWER CORPORATION
TO AMERGEN VERMONT, LLC
DOCKET NO. 50-271

1.0 INTRODUCTION

By application dated January 6, 2000, as supplemented by submittals dated January 13, February 18, March 13, March 30, and April 6, 2000, AmerGen Vermont, LLC (AmerGen Vermont) and Vermont Yankee Nuclear Power Corporation (VYNPC), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of Facility Operating License No. DRP-28 for Vermont Yankee Nuclear Power Station (Vermont Yankee) from VYNPC to AmerGen Vermont. The application also requested NRC approval of a conforming license amendment to reflect the proposed transfer. The supplements did not expand the scope of the application as originally noticed in the FEDERAL REGISTER on February 3, 2000 (65 FR 5376).

AmerGen Vermont and VYNPC requested that the NRC consent to this transfer and authorize AmerGen Vermont to possess, use, and operate Vermont Yankee under the same conditions and authorizations included in the existing Operating License, except as modified as requested by their application. According to the applicants, no physical changes will be made to Vermont Yankee as a result of this transfer, and there will be no significant change in the day-to-day operations of Vermont Yankee. VYNPC is the owner and operator of Vermont Yankee. Following the proposed transfer, AmerGen Vermont will become the licensed owner and operator of Vermont Yankee.

2.0 BACKGROUND

AmerGen Vermont is a limited liability company formed by AmerGen Energy Company, LLC (AmerGen) to own and operate Vermont Yankee, as specified in the Limited Liability Company Agreement of AmerGen Vermont (AmerGen Vermont, LLC Agreement) and in the Articles of Organization of AmerGen Vermont. AmerGen Vermont is a wholly owned subsidiary of AmerGen and is organized in the State of Vermont; its principal office is located in Brattleboro, Vermont.

AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States; its principal office is located in Wayne, Pennsylvania. AmerGen is organized under the laws of the State of Delaware pursuant to the AmerGen Limited Liability Company Agreement among PECO Energy Company (PECO Energy, or PECO), a Pennsylvania company; British Energy, plc (British Energy, or BE, plc), a Scottish corporation; and British Energy, Inc. (BE, Inc.), a Delaware corporation that is a wholly owned subsidiary of BE, plc. BE, plc is a party to the AmerGen Limited Liability Company Agreement, but only PECO and BE, Inc., are members of AmerGen, with each holding a 50-percent ownership interest in AmerGen.

In connection with the ongoing restructuring of the electric utility industry in the United States, and in New England in particular, VYNPC decided to sell Vermont Yankee to AmerGen Vermont. On November 17, 1999, AmerGen and VYNPC executed the Vermont Yankee Asset Purchase Agreement (Vermont Yankee Agreement), under which VYNPC will transfer its interests in Vermont Yankee to AmerGen. Also, under a Power Purchase Agreement executed on November 17, 1999, VYNPC agreed to buy 61.5 percent of the capacity and energy of Vermont Yankee for resale. As permitted under the terms of these agreements, AmerGen will assign its rights to acquisition of Vermont Yankee and in the Power Purchase Agreement to AmerGen Vermont, as provided for in the Assignment Agreement between AmerGen and AmerGen Vermont (Assignment Agreement). In accordance with the Vermont Yankee Agreement, the closing of the transaction will take place on the Closing Date, as defined in the Vermont Yankee Agreement, once all conditions are satisfied and all required regulatory approvals are obtained.

The application states that, on and after the Closing Date, the following events will occur, pursuant to the Vermont Yankee Agreement and the Assignment Agreement:

- (1) AmerGen Vermont will assume all rights, title, and interest in and to Vermont Yankee, including all buildings, machinery, equipment, spare parts, fixtures, inventory, documents, records, assignable contracts, fresh and spent nuclear fuel, other licensed materials at the site, and other property necessary for the operation and maintenance of Vermont Yankee, and assume all responsibility for the operation, maintenance, and eventual decommissioning of Vermont Yankee.
- (2) Substantially all of VYNPC's employees located at the Vermont Yankee site involved in the operation and maintenance of the plant will assume similar roles and responsibilities for AmerGen Vermont and continue to perform these functions at Vermont Yankee.

- (3) AmerGen Vermont will be interconnected with the Vermont transmission system owned and operated by Vermont Electric Power Company, Inc., (VELCO), and will contract for any necessary transmission service and backup power to the site consistent with NRC requirements.
- (4) VYNPC will purchase 61.5 percent of the capacity and energy from Vermont Yankee under the Power Purchase Agreement from the Closing Date through March 21, 2012, when the current NRC operating license is due to expire; and
- (5) VYNPC will have made or will make additional cash deposits to the Vermont Yankee decommissioning funds, and AmerGen Vermont anticipates that the fair market value of these funds after the transfer will not be less than \$280 million.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

While the staff does not find that AmerGen Vermont qualifies as an "electric utility" under 10 CFR 50.2, the staff finds that AmerGen Vermont meets the financial qualifications requirements for a "nonelectric utility" pursuant to 10 CFR 50.33(f). As both a newly formed entity and a nonelectric utility applying to own and to operate a nuclear power plant, AmerGen Vermont is subject to a more detailed financial qualifications review by the NRC than an established electric utility. Specifically, AmerGen Vermont must meet the requirements of 10 CFR 50.33(f) by providing information that shows the following:

- (1) As a nonelectric utility applicant for an operating license, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. Also, it must submit estimated total annual operating costs for the first 5 years of facility operation and indicate the source(s) of funds to cover these costs.
- (2) As a newly formed entity organized primarily for the purpose of operating a nuclear power plant, it must show: (a) the legal and financial relationships it has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity which it has incurred or proposes to incur; and (c) any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

Also, 10 CFR 50.33(k)(1) requires that AmerGen Vermont must provide information as described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facility. AmerGen Vermont's proposals for decommissioning funding assurance for Vermont Yankee are discussed in Section 4.0 of this safety evaluation.

In support of AmerGen Vermont's claim that it has reasonable assurance of obtaining the necessary funds to operate Vermont Yankee, the application contains a proprietary version of a Vermont Yankee projected income statement for the period from 2000 to 2005. This projected income statement is based on assumptions developed by AmerGen Vermont. The application shows that the projected operating revenue for Vermont Yankee is a sufficient source of funds

to meet its ongoing operating expenses and, therefore, should satisfy this aspect of NRC's financial qualification requirements. (See the application, Proprietary Enclosure 9A.)

In AmerGen Vermont's income statement, some significant year-to-year variations occur within each of the categories of operating revenues, operating expenses, and net income, primarily because of the impact of planned outages. Also, the year 2000 includes a power purchase transaction between AmerGen Vermont and VYNPC that is expected to cause net income to be much higher when compared to each of the other years. Overall, AmerGen Vermont's forecast for revenue and expenses shows positive adjusted net income averaging approximately \$[] annually over the period from 2000-2005.

SUMMARY OF PROJECTED INCOME STATEMENTS
\$MILLIONS PER YEAR

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Operating Revenue	[]	[]	[]	[]	[]	[]
Operating Expenses	[]	[]	[]	[]	[]	[]
Operating Income (Loss)	[]	[]	[]	[]	[]	[]
Effect of Other Income, Expenses, and Taxes	[]	[]	[]	[]	[]	[]
Net Income (Loss)	[]	[]	[]	[]	[]	[]

A significant portion of AmerGen Vermont's income is expected to be provided by VYNPC's purchase of 61.5 percent of Vermont Yankee's capacity and energy from the Closing Date through March 21, 2012 (when the current NRC operating license is due to expire), pursuant to the Power Purchase Agreement at rates stipulated therein. The remaining 38.5 percent of Vermont Yankee's capacity and energy is expected to be sold at market-based prices. Moreover, the application states that AmerGen has made a financial commitment to AmerGen Vermont such that, subject to the terms and conditions of the Limited Liability Company Agreement of AmerGen Vermont, AmerGen will provide funds to AmerGen Vermont to assure that AmerGen Vermont will have sufficient funds available to meet its expenses in connection with the operation and maintenance of Vermont Yankee. Enclosure 8 of the application contains the "Letter Agreement Assuring Financial Obligations of AmerGen Vermont, LLC," dated February 17, 2000, which states the terms of this financial commitment. This letter agreement states specifically that "AmerGen represents and warrants that it will provide funding to AmerGen Vermont, at any time that the Management Committee of AmerGen Vermont determines that, in order to protect the public health and safety and/or to comply with NRC

requirements, such funds are necessary to meet the ongoing expenses at VYNPS [Vermont Yankee] or such funds are necessary to safely maintain VYNPS." Additionally, PECO and British Energy have made certain financial commitments to AmerGen to provide funds to cover AmerGen operating expenses as necessary to maintain the safety of nuclear plants owned by AmerGen during any periods in which revenues from capacity and energy sales might not cover these operating expenses.

The staff conducted a more extensive review regarding the projected revenues in the income statement for the 2001-2005 forecast period. Projected revenues are the product of expected megawatt-hour sales times AmerGen Vermont's price assumptions as stated in the supporting schedules for the income statements. Projected revenues and net income are more than adequate to cover expected Vermont Yankee expenses and to provide AmerGen Vermont's owners with favorable returns on their expected investment in the facility. A key stability factor supporting Vermont Yankee's pricing structure is the contract with VYNPC for 61.5 percent of the facility's capacity and energy. However, for that portion of Vermont Yankee output being sold in a competitive market, the possibility exists that prices, revenue, and net income levels could be significantly lower than anticipated by AmerGen Vermont during some portions of the projection period, and that this could mean less funding than is forecast would be available for Vermont Yankee operations.

The staff's analysis focuses on how sensitive the AmerGen Vermont revenue forecasts are to lower market prices for the purpose of establishing a projected market price "floor" below which AmerGen Vermont would begin to have difficulty covering its operating expenses by relying on Vermont Yankee revenues. This is done by determining the average Vermont Yankee market price per kilowatt-hour (kWh) that would produce virtually zero net income (or a breakeven level) over the 2001-2005 period, and comparing this price to the market prices in AmerGen Vermont's forecast. If AmerGen Vermont were to experience this lower (or floor) level of prices for an extended period, AmerGen Vermont or AmerGen might decide to continue operating Vermont Yankee without profits or, at a certain point, to cease Vermont Yankee operations permanently.

The market price for Vermont Yankee output is forecast to be [] cents per kWh in 2001, which is expected to increase only slightly to [] cents per kWh by the year 2005. The price stipulated for purchased power output per the agreement with VYNPC increases from [] cents per kWh in 2001 to [] cents per kWh in 2005. For Vermont Yankee to break even (the floor price), staff calculations indicate that the average market price per kWh could be about [] percent per kWh lower (about [] cents per kWh lower) than AmerGen Vermont's market price forecast. Not only is this forecast conservative in predicting only a slight increase in the price per kWh, but also the actual price on average could be about [] percent lower than forecast levels with AmerGen Vermont's still being able to operate at a breakeven level for the 2001-2005 period.

The staff evaluated how reasonable or probable these changes in rates might be for the period 2001-2005. Forecasts of electric rates in competitive markets are subject to many unknown

factors that make such predictions highly speculative at best, but the reasonableness of various growth rates may be assessed by considering various factors that could provide some indication of future electricity prices. For example, recent trends in electricity prices could allow some inferences as to how such prices might continue to change in the more competitive future environment expected in the electric power industry.

Data on U.S. retail electricity prices from the Energy Information Administration indicate that the overall price (all sales categories) has declined from its highest level in 1993 (at 6.93 cents per kWh) to 6.81 cents per kWh by 1998. The average retail price for the industrial category declined from 4.85 cents per kWh in 1993 to 4.52 cents per kWh in 1998. Considering this downward trend in retail prices and increasing competition in the electric power industry, the general trend of electricity prices at the retail level is likely to continue downward in the near term.

However, it is difficult to predict the direction of prices likely to be paid for Vermont Yankee power in its market area. Such prices will be a mix of competitively determined retail and wholesale prices. Also, trends in retail and wholesale electricity prices vary from one region to another, so AmerGen Vermont's prices within its market area may not follow national trends. Thus, the recent downward trend in national retail prices may not necessarily produce a significant downward influence on Vermont Yankee market prices. The North American Electric Reliability Council (NERC) projects that capacity margins will decline substantially in the Northeast Power Coordination Council (NPCC) region, the region in which Vermont Yankee operates, from 1998 to 2007. The 17.3 percent capacity margin in 1998 in the NPCC-US region is forecast to decline to 5.0 percent by 2007. (See NERC's Reliability Assessment 1998-2007, October 1998, page 11.) This trend would tend to cause market prices of electricity to increase, other factors being equal.

After reviewing several forecasts of U.S. electricity prices and other relevant information (such as a forecast of regional capacity margins), the staff concludes that attempting to forecast the growth rate, or even the direction of change, for market-based prices in the Vermont Yankee market area is too speculative to be useful for its contingency analysis. However, the staff concluded from this analysis that, even if prices for Vermont Yankee power were to change at an average annual rate much lower than that anticipated by AmerGen Vermont, this does not preclude AmerGen Vermont from operating and maintaining Vermont Yankee in a manner that would protect public health and safety.

The applicant states that AmerGen's owners have committed to provide additional funds to cover operating expenses as necessary to maintain adequate safety conditions during any periods in which operating revenues from Vermont Yankee might not cover operating expenses. Also, if Vermont Yankee profits were inadequate for the owners, they could decide to cease Vermont Yankee operations; if this were to occur, AmerGen states that it would have the right to obtain adequate funding from its owners to ensure safe conditions at Vermont Yankee in a transition to decommissioning (as is noted in the application and as is discussed in more detail below).

The staff has concluded that the projected income statement shows that the anticipated revenues from sales of capacity and energy from Vermont Yankee provide reasonable assurance of an adequate source of funds to meet its ongoing operating expenses.

In the January 6, 2000, application, AmerGen Vermont provided a projected opening balance sheet showing its anticipated assets, liabilities, and capital structure related to Vermont Yankee as of the Closing Date. AmerGen Vermont expects that by the Closing Date, it will have sufficient capital to make the payments required at closing (as defined in Article III of the Vermont Yankee Agreement). Beyond this initial capital contribution, AmerGen Vermont states that its revenues from the sale of electricity generated from Vermont Yankee and its access to funds from AmerGen, which has revenues from other plants and access to funds from PECO Energy and British Energy, will provide AmerGen Vermont with working capital on an ongoing basis.

AmerGen has proposed in prior applications to the NRC that its financial qualifications be evaluated in light of its planned operation of multiple units at multiple sites. As stated above, PECO and British Energy have entered into additional financial arrangements that provide funds to meet operating expenses, if revenue expectations should fall short. Previously, PECO and British Energy each entered into letter agreements with AmerGen dated December 3, 1998, July 22, 1999, and April 5, 2000 (PECO); and November 5, 1998, July 22, 1999, and April 3, 2000 (British Energy), in which they committed, subject to the terms of their respective agreements, to provide their share of funds to AmerGen to ensure that AmerGen will have sufficient funds available to meet its operating expenses for AmerGen's nuclear power plants. Under the terms of these letter agreements (Funding Agreements), AmerGen has the right to obtain up to \$200 million if PECO and British Energy do not otherwise provide adequate funding to AmerGen for meeting additional operating expenses for its nuclear power plants.

Based upon its projections for the 5 years following the transfer of Vermont Yankee, AmerGen Vermont projects an average operating cost over a 6-month period for Vermont Yankee of approximately \$56 million. In connection with AmerGen's applications for NRC consent to the transfers of the Three Mile Island Nuclear Station, Unit 1 (TMI-1) and the Clinton Power Station (Clinton), AmerGen has previously described these financial commitments, which also were incorporated by reference in its November 5, 1999, application for the Oyster Creek Nuclear Generating Station (Oyster Creek) as being applicable to Oyster Creek, and which are incorporated by reference in the January 6, 2000, AmerGen Vermont application as being applicable to Vermont Yankee through AmerGen's ownership of AmerGen Vermont. AmerGen submitted the April 2000 commitments after the Oyster Creek application had been filed.

In its letter of agreement assuring financial obligations of AmerGen Vermont, LLC, AmerGen stated that it "represents and warrants that it will provide funding to AmerGen Vermont, at any time that the Management Committee of AmerGen Vermont determines that, in order to protect the public health and safety and/or to comply with NRC requirements, such funds are necessary to meet the ongoing expenses at VYNPS or such funds are necessary to safely maintain VYNPS."

Pursuant to the terms of the Funding Agreements, PECO and British Energy each will provide funding to AmerGen at any time that the Management Committee of AmerGen determines that, in order to protect the public health and safety and/or to comply with NRC requirements, such funds are necessary to meet the ongoing operating expenses for any nuclear power plant in AmerGen's fleet, or such funds are necessary to safely maintain any such plant, provided, however, that the liability to provide funding under each agreement shall not exceed the lesser of (a) 50 percent of the total funding required by AmerGen from time-to-time pursuant to the letter agreements, or (b) the aggregate amount of \$100 million cumulatively over the life of the

agreements. Pursuant to these agreements, AmerGen will be able to draw upon financial resources of up to \$200 million if such funds are necessary to meet its expenses and/or to meet its obligations to safely maintain any of the nuclear power plants owned and operated by AmerGen, including any units being acquired, or to be acquired, by AmerGen Vermont.

According to their terms, the Funding Agreements will remain irrevocable until such time as either (1) AmerGen has submitted to the NRC a written certification that fuel has been permanently removed from all of the reactors owned by AmerGen (i.e., after AmerGen has determined to permanently cease operations at all of its reactors), or (2) the NRC has given its prior written consent to the discontinuance of the funding arrangements contemplated by these agreements. These Funding Agreements are subject to the understanding that PECO or British Energy shall have the right to demand that AmerGen permanently cease operations at any plant rather than use funds available under these agreements for continued operations, provided that, in such event, AmerGen shall nevertheless have the right to continue to obtain the funds necessary to ensure the safe and orderly shutdown of any such plant and to continue the safe maintenance of any such plant until AmerGen can certify to the NRC that the fuel has been permanently removed from the reactor vessel.

In its application to the NRC for approval of the transfer of the license for Clinton, dated July 23, 1999, AmerGen stated it did not anticipate that it would ever need to draw upon the Funding Agreement commitments because it expected "that both PECO and British Energy will make adequate contributions to AmerGen, on an ongoing basis, necessary to assure AmerGen's ability to fund the ongoing operation and maintenance of all its nuclear power plants, as well as to fund other acquisitions" (page 19 of the July 23, 1999, application). AmerGen also stated that if it ever were forced to draw upon these commitments, which would require specific findings in a vote of the AmerGen Management Committee, it would exercise care to ensure that it either maintained funds, or held in reserve the right to draw upon funds sufficient to ensure that AmerGen would be able to fund the transition to a safe shutdown. AmerGen stated that it would inform the NRC in writing at any time that it draws upon these commitments and that it recognized that the NRC has authority to assure that adequate funds will remain available to fund the transition to a safe shutdown, should a question arise regarding the availability of funds for such a purpose (page 20, *ibid.*). All or some portion of AmerGen's earnings will be available for distribution to PECO and British Energy in the years in which it has operating surpluses, and AmerGen will be able to use any carryover surpluses or obtain additional funds from PECO and British Energy in years in which it needs to do so (page 19, *ibid.*). All of AmerGen's prior representations regarding these matters were incorporated by reference into the Vermont Yankee application.

AmerGen had previously submitted license transfer applications for, and the NRC had approved the purchase of TMI-1, Clinton, and Oyster Creek. As AmerGen begins operating its units with accompanying revenue streams, it expects to have additional funds beyond the \$200 million amount in the Funding Agreements available for contingent events, as is stated above. The staff has reviewed the Funding Agreements and finds that the availability of \$200 million, pursuant to these agreements, combined with the expected availability of funds from AmerGen's anticipated revenue stream and of additional funding support from PECO and British Energy, provides reasonable assurance that AmerGen will have sufficient funds to provide to AmerGen Vermont and AmerGen Vermont would have access to such funds, for an outage lasting 6 months at Vermont Yankee estimated to require approximately \$56 million. The \$200 million commitment by AmerGen's owners provides additional assurance beyond that

required in 10 CFR 50.33(f). However, the staff makes no determination as to whether the availability of the \$200 million would be adequate to fund the concurrent shutdown of multiple units owned by AmerGen.

As noted earlier, a newly formed entity organized primarily for the purpose of operating a nuclear power plant must provide certain information about its legal and financial relationships with its stockholders or owners and about its financial ability to meet any contractual obligation to the entity that it has incurred or proposes to incur. AmerGen provided such information in conjunction with the application for the transfer of the TMI-1 Operating License, dated December 3, 1998, as supplemented on January 11, February 4, March 4, March 10, and March 15, 1999. The staff found the information sufficient to meet the requirements of the regulations. (See Safety Evaluation for the Transfer of Facility Operating License from General Public Utilities Nuclear, Inc., et al. to AmerGen Energy Company, LLC and Approval of Conforming Amendment, Three Mile Island Nuclear Station, Unit 1, Docket No. 50-289, April 12, 1999).

On the basis of information contained in the application for the transfer of the Vermont Yankee Operating License as cited above, the staff concludes that AmerGen Vermont has provided reasonable assurance of being able to obtain adequate funding to own Vermont Yankee and to cover estimated operation costs for the period of the current Vermont Yankee Operating License, as required by 10 CFR 50.33(f). In addition, pursuant to guidance in NUREG-1577, Rev. 1, AmerGen Vermont has provided reasonable assurance of operating expenses in the event of an extended outage. However, to ensure that adequate funds are available as might be necessary to fund the transition to a safe shutdown, the staff believes that the commitments to allow AmerGen Vermont to draw up to \$200 million from AmerGen through PECO Energy and British Energy should be the subject of a condition of approval of the transfer of the operating license and a corresponding condition in the operating license itself, essentially as follows:

AmerGen Vermont shall take no action to cause PECO or BE, Inc., or their affiliates, successors, or assigns, to void, cancel, or diminish their \$200 million contingency commitment to provide funding for AmerGen's nuclear power plants, including but not limited to any plant owned by any subsidiary of AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen or AmerGen Vermont's ability to draw upon the commitment. Also, AmerGen Vermont shall inform the NRC in writing at any time that it or AmerGen, for the benefit of AmerGen Vermont, draws upon the \$200 million commitment.

4.0 DECOMMISSIONING FUNDING ASSURANCE

A. Amount of Decommissioning Funds

Pursuant to 10 CFR 50.75(b), each power reactor licensee must certify that it will provide decommissioning funding assurance in an amount that may be more but not less than the formulas in 10 CFR 50.75(c)(1) and (2). These formulas are based on the size and type of the reactor and on cost escalation factors for labor, energy, and low-level waste (LLW) disposal costs. The LLW disposal cost factor is to be derived from the latest version of NUREG-1307, "Report on Waste Burial Charges," which is currently Revision 8. Revision 8 allows licensees a

variety of methods by which they may estimate disposal costs of LLW, including disposition by waste vendors. (See for example, page 6, Example 4, in Revision 8.) In Enclosure 13 to its application, AmerGen Vermont calculated the required funding using the formulas in 10 CFR 50.75(c) and information in Revision 8. On the basis of this calculation, AmerGen Vermont concludes that it currently must certify that it will provide at least \$328.3 million for Vermont Yankee's eventual decommissioning to comply with the requirements of 10 CFR 50.75(b). The staff has verified AmerGen Vermont's calculation and accepts this amount as accurate.

In its application AmerGen Vermont indicates that VYNPC has agreed to make additional deposits to the Vermont Yankee decommissioning trust funds such that, at closing, the funds will have a fair market value of not less than \$280 million, which is less than the NRC-required formula amount of \$328.3 million. However, after crediting earnings on the minimum after-tax value of the decommissioning funds at a 2-percent annual real rate of return from the time of the collection of the funds through the projected expiration date of the Vermont Yankee license in the year 2012, the credited value of the funds transferred to AmerGen Vermont is expected to exceed \$358 million (as shown in Enclosure 12 of the application). The NRC's regulations at 10 CFR 50.75(e)(1)(i) allow licensees to take a credit of up to a 2-percent annual real rate of return on decommissioning trust funds on deposit when using the prepayment method of decommissioning funding assurance. This credit may be applied toward the current estimate of decommissioning funds needed for decommissioning at the time of permanent cessation of operations. This amount of \$358 million or more thus exceeds the required formula amount cited above.

NRC Staff's Conclusion on Amount of Decommissioning Funds

The staff concludes that AmerGen Vermont has complied with the requirements in 10 CFR 50.75(b) with respect to the amount of decommissioning funds that AmerGen Vermont must certify that it will provide. The amount that AmerGen Vermont proposes to have placed in Vermont Yankee's decommissioning trust fund, combined with earnings on the trust fund calculated at a real rate of 2 percent annually, is greater than the approximately \$328.3 million that is required under the generic formulas in 10 CFR 50.75(c).

To reflect AmerGen Vermont's commitment for decommissioning funds, the staff concludes that the following should be a condition of approval of the transfer as well as a license condition:

AmerGen Vermont shall provide decommissioning funding assurance of no less than \$280 million, after payment of any taxes, deposited in the decommissioning trust fund for Vermont Yankee when Vermont Yankee is transferred to AmerGen Vermont.

B. Decommissioning Funding Assurance Mechanism

Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e), determined to be acceptable by the NRC. The NRC has determined that the requirement to provide assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. AmerGen Vermont has selected the prepayment method, coupled with an external trust fund, as provided for in 10 CFR 50.75(e)(1)(i). As noted previously,

AmerGen Vermont is also relying on future earnings on the decommissioning trust as allowed in 10 CFR 50.75(e)(1)(i). The decommissioning trust fund will be transferred to AmerGen Vermont at the time that the Vermont Yankee operating license is transferred to AmerGen Vermont.

AmerGen Vermont will not be regulated by the Vermont Public Service Board, or any other rate regulator, with the result that there will be no rate regulatory oversight over the terms and provisions of the decommissioning trust fund. Consequently, the staff concludes that, to provide additional assurance regarding the trust itself, the following provisions shall be made conditions to approving the transfer of the operating license for Vermont Yankee to AmerGen Vermont, and incorporated into the license as conforming conditions:

- (1) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (2) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, BE, Inc., AmerGen, AmerGen Vermont, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (3) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- (4) The decommissioning trust must provide that the agreement cannot be amended in any material respect without 30 days' prior written notification to the Director, Office of Nuclear Reactor Regulation.
- (5) The appropriate section of the trust agreement shall reflect that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

NRC Staff's Conclusion on the Decommissioning Funding Assurance Mechanism

The NRC staff concludes that, given the considerations discussed above and subject to the trust agreement containing provisions as previously discussed, AmerGen Vermont's proposed decommissioning funding assurance mechanism meets the requirements of 10 CFR 50.75(e). The staff further concludes that in order to ensure that the decommissioning trust is maintained consistent with the staff's action on the application, the following should be included as a condition of the transfer approval and as a condition in the operating license:

AmerGen Vermont shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Vermont Yankee license to it, the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting such Order.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

A. Background

Section 104d of the Atomic Energy Act (AEA) prohibits the Commission from issuing a license for a nuclear power plant under Section 104 to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The Commission's regulations at 10 CFF, 50.38 contain virtually identical language to implement this prohibition. The issue addressed in this section is whether, in the NRC staff's view, AmerGen Vermont is controlled by foreign interests such that it may not be issued a license under Section 104d.

The NRC has developed a Standard Review Plan (SRP) to document the process that the staff uses to analyze whether an applicant is owned, controlled, or dominated by foreign interests within the meaning of Section 104d. The staff has used this SRP, approved by the Commission on August 31, 1999, as guidance for evaluating the foreign ownership considerations of the proposed purchase of Vermont Yankee by AmerGen Vermont.

B. Discussion

AmerGen Vermont's and AmerGen's Ownership and Organization

AmerGen Vermont is a limited liability company formed by AmerGen to own and operate Vermont Yankee. AmerGen Vermont is a wholly owned subsidiary of AmerGen and is organized in the State of Vermont. AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. AmerGen is organized under the laws of the State of Delaware pursuant to an agreement among PECO, BE, Inc., and BE, plc. PECO and BE, Inc., each own 50 percent of AmerGen. In its application AmerGen Vermont has provided substantively the information required in 10 CFR 50.33(d). AmerGen Vermont's ownership by AmerGen, with its 50-percent indirect ownership by BE, plc, a foreign corporation, raises the issue of whether AmerGen Vermont is owned, controlled, or dominated by foreign interests within the meaning of the prohibition contained in Section 104d of the AEA.

Guidance Relevant to the Issue of Foreign Control

The Commission has stated that, in the context of the other provisions of Section 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security. Guidance in the SRP provides that an applicant that is partially owned by a foreign entity -- for example, foreign ownership of 50 percent or greater -- may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant who are responsible for special nuclear material must be U.S. citizens. In addition, partial ownership must be considered in light of all of the information that bears on

who in the corporate structure exercises control over what issues and what rights may be associated with certain types of ownership interests or shares. However, the NRC has considered the issue of foreign ownership, control, or domination in the TMI-1, Clinton, and Oyster Creek transfer cases and approved AmerGen's purchase of TMI-1, Clinton, and Oyster Creek. AmerGen's indirect ownership of Vermont Yankee through its wholly owned subsidiary, AmerGen Vermont, and its direct ownership of TMI-1, Clinton, and Oyster Creek raise essentially the same foreign ownership issues. The staff has followed the guidance of the TMI-1, Clinton, and Oyster Creek decisions in considering foreign ownership issues with respect to Vermont Yankee.

Information Provided

AmerGen Vermont has provided, in addition to information required by 10 CFR 50.33(d), information specified in Section 2.2 of the SRP on Foreign Ownership, Control, and Domination. In addition, AmerGen Vermont has submitted information that essentially describes a "negation action plan" as referred to in Section 4.4 of the SRP. The staff believes that this information is sufficient to conclude that AmerGen Vermont has taken, or has committed to take, sufficient mitigating steps to continue to ensure that AmerGen Vermont is not owned, controlled, or dominated by an alien, foreign corporation, or foreign government for the purposes of the AEA and the NRC's regulations.

As stated earlier, AmerGen Vermont is a limited liability company organized in the State of Vermont, and AmerGen is a limited liability company organized under the laws of the State of Delaware. Principal officers of AmerGen Vermont include both U.S. and British citizens. The positions of Chief Executive Officer (CEO) and Chief Nuclear Officer (CNO) are jointly held by a U.S. citizen, and the President is a British citizen. Principal officers of AmerGen also include both U.S. and British citizens. The positions of CEO and CNO are jointly held by a U.S. citizen, and the President is a British citizen. The Management Committee of AmerGen Vermont, which directs and controls the affairs of AmerGen Vermont, consists of at least 50 percent U.S. citizens, including the Chairman. AmerGen's Management Committee, which directs and controls the affairs of AmerGen, has a similar structure. Gerald R. Rainey, a U. S. citizen, is the CEO and CNO for both AmerGen Vermont and AmerGen, and "is authorized to employ and retain other officers, subject to the approval of the Management Committee" for both organizations.

AmerGen Vermont further states in its application that there has been no material change in the nature and extent of foreign participation in AmerGen and its parent company owners from that described in the TMI-1 safety evaluation. It states additionally, "in all respects material to the issue of foreign participation, the AmerGen Vermont, LLC Agreement is identical to the AmerGen, LLC Agreement."

AmerGen Vermont's Proposed Measures to Address Foreign Control Concerns

AmerGen Vermont has developed essentially the same negation action plan to address foreign control issues with respect to Vermont Yankee as AmerGen did for TMI-1, Clinton, and Oyster Creek. Under the AmerGen Vermont, LLC Agreement by which AmerGen Vermont was formed, the property, business, and affairs of AmerGen Vermont are directed and controlled by a Management Committee pursuant to Article 6.3, just as in the same article in the AmerGen, LLC Agreement. Under Article 6.1(a) of the AmerGen Vermont, LLC Agreement, PECO,

through the PECO Energy Member Group (one of the two member groups of AmerGen), appoints and may remove half of the members of the AmerGen Vermont Management Committee, and BE, Inc., through the BE Member Group, also appoints and may remove half of the members of the Management Committee. (AmerGen Vermont indicates that there will be four members on the Management Committee, half of whom are directly appointed by PECO and are U.S. citizens, and half of whom are directly appointed by BE, Inc., and are U.K. citizens.) Pursuant to Article 6.1(d) of the AmerGen Vermont, LLC Agreement, the PECO Energy Member Group appoints the Chairman of the Management Committee. The Chairman can only be removed by the PECO Energy Member Group. The Chairman of the Management Committee has a tie-breaking vote on Management Committee decisions regarding "all [s]afety issues."

The term "Safety Issue" is defined in Section 1.6 of the AmerGen Vermont, LLC Agreement to mean any matter that concerns any of the following:

- (i) implementation or compliance with any generic letter, bulletin, order, confirmatory order, or similar requirement issued by the NRC;
- (ii) prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
- (iii) placement of the plant in a safe condition following any nuclear event or incident;
- (iv) compliance with the Atomic Energy Act (AEA), the Energy Reorganization Act, or any NRC rule;
- (v) compliance with a specific operating license and its technical specifications;
- (vi) compliance with a specific Updated Final Safety Analysis Report, or other licensing basis document.¹

The staff has previously concluded and continues to conclude that this definition broadly encompasses all issues involving common defense and security, as well as public health and safety, that are under NRC's jurisdiction.

AmerGen Vermont indicates that Gerald R. Rainey, a U.S. citizen, is Chairman of the AmerGen Vermont Management Committee. Michael J. Egan, a U.S. citizen, is Chairman of the

¹ The definition of "Safety Issue" also states, "Any matter on which the Management Committee shall vote in accordance with Section 6.3 that is not primarily one of nuclear safety shall not constitute a Safety Issue, so that, for purposes of illustration only, any plant expenditure of a material nature intended to extend the economic operational life or improve the economic performance of the power station in question shall not be considered a Safety Issue." The staff believes that, for purposes of establishing whether safety decisions are subject to foreign ownership, control, or domination, this and analogous distinctions are acceptable and do not appear to compromise such safety decisions.

AmerGen Management Committee. As noted earlier, the CEO and CNO of both AmerGen and AmerGen Vermont is Gerald R. Rainey. Mr. Rainey is elected by the AmerGen Management Committee and is responsible for the day-to-day operations of AmerGen and AmerGen Vermont. The President of AmerGen and AmerGen Vermont is Dr. Robin Jeffrey, a U.K. citizen. AmerGen indicated in the TMI-1 and Clinton applications that the President will not have decision-making authority with respect to TMI-1 and Clinton operations. Rather, the President's duties will be directed toward business decisions, such as future acquisitions by AmerGen. The NRC staff believes that the provisions of the AmerGen Vermont, LLC Agreement may not specifically require that AmerGen Vermont's CEO and Chairman of the Management Committee must be U.S. citizens in the future. However, in its application AmerGen Vermont has proposed that the NRC staff require that its CEO, CNO (if someone other than the CEO), Chairman of the AmerGen Vermont Management Committee, and at least half the members of the AmerGen Vermont Management Committee shall all be U.S. citizens, as reflected in license conditions that AmerGen Vermont has proposed for the Vermont Yankee transfer. AmerGen also agreed to accept such requirements as license conditions in prior license transfer applications to the NRC.

AmerGen Vermont has also indicated that the current plant staff at Vermont Yankee, including senior managers, will be essentially unchanged. However, as Vermont Yankee experiences personnel changes, AmerGen Vermont expects that additional experienced personnel may join the site organization during the period leading up to and after the license transfer. In its applications for the transfer of the TMI-1 and Clinton Operating Licenses, AmerGen had recommended that substantial weight should be given to the fact that BE, plc is a corporate citizen of the United Kingdom (U.K.). The U.K. is, of course, a close ally of the United States to the degree that the U.S. and the U.K. have had an often-cited "special relationship" since at least World War II. The U.K. is also a signatory to the Treaty on Non-Proliferation of Nuclear Weapons, supports the International Atomic Energy Agency (IAEA) safeguards, is a member of the European Atomic Energy Community (EURATOM), and adheres to other international nuclear safety and safeguards guidelines. AmerGen specifically cited a 1995 decision by the U.S. Secretary of Energy, which found that a U.S. - EURATOM agreement for cooperation is not inimical to the common defense and security of the United States. BE, plc, as a U.K. corporation, is subject to the laws of the U.K. and the international conventions and treaties to which the U.K. adheres.

The staff believes that such considerations are consistent with making a non-inimicality finding with respect to protecting the common defense and security of the U.S. Though not dispositive of the prohibition of foreign ownership, control, or domination under Section 104d of the AEA, these considerations are also consistent with a favorable determination under that section, because, as the Commission has stated in General Electric Co. and Southwest Atomic Energy Associates, 3 AEC 99 (1966), in context with the other provisions of Section 104d, the foreign control limitation should be given an orientation toward safeguarding the national defense and security.

AmerGen Vermont indicates that if it determines that a senior management position is to be filled with a new individual from outside the existing Vermont Yankee organization contemporaneously with the license transfer, it will inform the NRC in advance of any such change and provide the NRC with a resume for any such individual in advance of the effective date of any such change. As a general matter, new individuals do not require prior approval by

the NRC; however, the appointment of any such individual must be consistent with the Vermont Yankee operating license and licensing basis and any conditions of approval of the transfer.

Staff Conclusions With Respect to Foreign Ownership Considerations

The staff has considered guidance contained in the Commission's previous decisions with respect to foreign ownership, control, or domination, and in the SRP. Additionally, the staff has relied extensively on the analysis and conclusions contained in the TMI-1 and Clinton safety evaluations. The staff has also evaluated AmerGen Vermont's proposed operating structure and information concerning the management officials of the company. As a result, the staff concludes that the transfer of the Operating License for Vermont Yankee to AmerGen Vermont would not violate the prohibitions in the AEA pertaining to foreign ownership, control, or domination, provided that AmerGen Vermont is subject to the following conditions, to become license conditions when the conforming amendment is issued:

Transfer Approval and License Conditions:

- (1) The AmerGen Vermont Limited Liability Company Agreement dated January 1, 2000, and any subsequent amendments thereto as of the date of this safety evaluation may not be modified in any material respect concerning decision-making authority over "safety issues" as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation
- (2) At least half of the members of the Management Committee of AmerGen Vermont shall be appointed by a non-foreign member group of AmerGen, all of which appointees shall be U.S. citizens.
- (3) The Chief Executive Officer (CEO), Chief Nuclear Officer (if someone other than the CEO), and Chairman of the Management Committee of AmerGen Vermont shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen Vermont with respect to the Vermont Yankee operating license are at all times conducted in a manner consistent with the protection of the public health and safety and common defense and security of the United States.
- (4) AmerGen Vermont shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or of any affiliate, successor, or assignee of PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC, [or of the parent or owner of such affiliate, successor, or assignee, whichever entity is the issuer of such stock.]

The staff concludes that these conditions are consistent with Commission precedent.

6.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA) and 10 CFR Part 140 require that AmerGen Vermont be added to the current Vermont Yankee indemnity agreement. Additionally, in accordance with these requirements AmerGen Vermont must provide primary insurance of \$200 million and participate in the secondary retrospective insurance pool once it becomes a licensee. These requirements can be met by purchasing insurance policies from the nuclear liability insurance pool, American Nuclear Insurers. AmerGen Vermont also will be required to maintain property insurance as specified in 10 CFR 50.54(w). The staff does not have any reason to believe that AmerGen Vermont will be unable to meet the statutory and regulatory insurance requirements applicable to all power reactor licensees.

Consistent with NRC practice, the staff will require AmerGen Vermont to provide satisfactory documentary evidence that AmerGen Vermont has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license reflecting AmerGen Vermont as the licensee. Since the issuance of the amended license is directly tied to the consummation of the sale and transfer of Vermont Yankee, the order approving the transfer should contain a condition providing that prior to consummation of the sale and transfer of Vermont Yankee to AmerGen Vermont, AmerGen Vermont shall provide satisfactory documentary evidence to the staff that AmerGen Vermont has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

7.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 468 (1999). Therefore, since the transfer application postdates the issuance of the Vermont Yankee operating license, no antitrust review is required or authorized.

8.0 TECHNICAL QUALIFICATIONS

Purpose of the Evaluation

The purpose of this evaluation is to ensure that the applicant's corporate management will be involved with, informed of, and dedicated to the safe operation of the plant and that sufficient, qualified technical resources will be provided to support safe plant operation and maintenance. The staff also evaluated changes to the operating organization that may occur as a result of the license transfer to ensure such changes are acceptable.

Basis and Guidance for NRC Evaluation

The staff used the following regulations and guidance to complete its evaluation: 10 CFR 50.40(b), "Common Standards"; and 10 CFR 50.80, "Transfer of Licenses"; the Standard Review Plan (SRP), NUREG-0800, Chapter 13, "Conduct of Operations"; Section 13.1.1, "Management and Technical Organization"; Section 13.1.2-13.1.3, "Operating Organization"; and ANSI N18. 1-1971, "Selection and Training of Nuclear Power Plant Personnel", as

endorsed by Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants" April, 1987.

Evaluation: Management and Technical Support Organization

The staff reviewed the applicant's submittal to determine the acceptability of the corporate management and technical support organization for the proposed transfer. The staff evaluated the applicant's submittal using the applicable acceptance criteria in the Standard Review Plan, Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization."

In its January 6 and March 13, 2000, submittals, the applicant stated that no physical changes would be made to Vermont Yankee as a result of the transfer and that there would be no significant change in the day-to-day operations of the facility. The applicant provided organization charts which depict the various reporting and communication relationships among the principal AmerGen Vermont corporate level executive officers and managers involved in the management of Vermont Yankee. The Vermont Yankee plant will be managed by the AmerGen Vermont site Vice President, who will be responsible for day-to-day operations, and will report to the AmerGen Vermont Chief Nuclear Officer (CNO). The applicant stated that AmerGen Vermont's CEO and CNO will have executive responsibility for the safe operation of Vermont Yankee and for ensuring that activities conducted at the plant are conducted consistent with the protection of public health and safety and common defense and security of the United States. The corporate personnel presented by the applicant exhibit sufficient experience to implement the responsibilities for technical support. The corporate organizational structure provides for integrated management of activities that support the operation and maintenance of the facility.

In their January 6, 2000, submittal, the applicant stated that the existing VYNPC technical support organizations for Vermont Yankee whom are not currently assigned to the site will be used in one of three ways:

- a. The technical support staff who are not currently located on site will continue to perform on behalf of AmerGen Vermont
- b. The technical support function will be transferred to AmerGen (the parent company)
- c. The technical support function will be transferred to contractors.

The applicant provided additional and supplemental information by letter dated March 13, 2000, and stated that each of the possible options will be exercised to some extent at the time of transfer. The applicant further stated that most technical support functions for Vermont Yankee are performed by on-site personnel. As a result of the transfer, existing VYNPC on-site personnel will assume similar roles and responsibilities for AmerGen Vermont and continue to perform those functions at Vermont Yankee. The applicant also stated that on-site personnel providing technical support will report to the Vice President, Vermont Yankee.

The supplemental information identified the reporting relationship which will exist for the off-site personnel performing technical support functions for Vermont Yankee after transfer of the operating license. As either AmerGen Vermont or AmerGen employees, the technical support organization will be responsible to, and will receive functional direction from, the Vice President,

Vermont Yankee. If technical support is provided by AmerGen employees, the applicant stated that sufficient resources will be assured through a written binding agreement between AmerGen and AmerGen Vermont. Regardless of whether personnel are AmerGen or AmerGen Vermont employees, they will be responsible to the Vice President, Vermont Yankee.

The supplemental information also indicated that some technical support activities are being provided currently by contractors. The applicant stated that the existing contracts would be assumed by or otherwise transferred directly to AmerGen Vermont as a result of the license transfer. The duties and responsibilities of contractors to provide technical support to Vermont Yankee will be bound by written agreement between the contractor and AmerGen Vermont. The applicant also stated that if existing technical support contracts are not assumed by AmerGen Vermont, the contracts would be replaced with equivalent, qualified contracted services.

Based on all the information submitted, the staff concludes that the applicant has adequately described its organization for managing and its means for providing technical support to the staff at Vermont Yankee for operation of the facility after the license transfer. Assignments of primary responsibility within the corporate level management and technical support structure are clearly defined. The breadth and level of experience and availability of personnel are sufficient to implement the responsibility for technical support for operation of Vermont Yankee. The staff has concluded that the applicant meets the criteria described in SRP Section 13.1.1, "Management and Technical Support Organization," and will have an acceptable organization and adequate resources after the transfer to provide off-site technical support for the operation of the facility under both normal and off-normal conditions.

Evaluation: Operating Organization

The applicant stated in its submittal that substantially all of VYNPC's employees located at the Vermont Yankee site involved in the operation and maintenance of the plant will assume similar roles and responsibilities for AmerGen Vermont and continue to perform these functions at Vermont Yankee. The supplemental information provided by the applicant on March 14, 2000, indicated that, at the time of license transfer, the on-site organizational structure and assignment of primary responsibility to the plant staff will not be changed. The applicant expects that additional experienced personnel may join the site organizations during the period leading up to and after the license transfer. Prior to the license transfer, decisions regarding such changes will be made by the current licensee. Following the license transfer, such decisions will be made by AmerGen Vermont. The applicant has stated that any new personnel will meet all of the existing qualification requirements in accordance with the Vermont Yankee license and technical specifications.

Based on the application, the plant staff, including senior managers, will be substantially unchanged after the proposed transfer; therefore, the staff concludes that the proposed on-site organization to operate and maintain Vermont Yankee will meet the criteria described in SRP Section 13.1.2-13.1.3, "Operating Organization", and will provide for the integrated management of operation and maintenance activities at the site after the transfer.

Conclusions

The applicant's submittals adequately address the relevant requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable. The applicant has described the proposed organization and personnel qualifications for the management of, and means for providing technical support to the plant staff for the operation of Vermont Yankee after the transfer of the facility operating license from VYNPC to AmerGen Vermont. The management and technical support organization has been reviewed and the staff concludes that AmerGen Vermont will have an acceptable corporate organization and adequate resources to provide technical support for the safe operation of Vermont Yankee under both normal and off-normal conditions after the license transfer. The staff has reviewed the operating organization and concludes that it will continue to provide for the integrated management of operation and maintenance activities at the site after the license transfer. The staff concludes that AmerGen Vermont meets the relevant criteria, and, therefore, the management and technical support organization and the operating organization proposed for Vermont Yankee after the license transfer are acceptable.

9.0 CONFORMING AMENDMENT

Introduction

As stated previously, VYNPC and AmerGen Vermont have requested approval of a proposed conforming amendment to Vermont Yankee Facility Operating License No. DPR-28. The requested changes eliminate references to VYNPC in the Operating License and Technical Specifications and, as appropriate, replace them with references to AmerGen Vermont or "the licensee" to reflect the proposed license transfer and change of ownership. No physical changes to the facility have been requested. Supplemental information received after the initial *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

Discussion

The changes to be made to the operating license and Technical Specifications, as indicated in Enclosure 2 to the cover letter forwarding the Order approving the transfer, do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer, and that were identified and discussed earlier in this safety evaluation. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

State Consultation

In accordance with the Commission's regulations, the Vermont State official was notified of the proposed issuance of the amendment. The State official did not provide any comments as to whether the license amendment accurately reflects the proposed transfer.

Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the

Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

10.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

11.0 CONCLUSION

In view of the foregoing discussion, the staff concludes that AmerGen Vermont is financially qualified to own, operate, and decommission Vermont Yankee and technically qualified to operate Vermont Yankee. Additionally, the staff concludes that no antitrust review is required or authorized in connection with the proposed transfer. Furthermore, the staff concludes that, with the imposition of the conditions described elsewhere in this safety evaluation and contained within the Order approving the transfer, the foreign ownership prohibition contained in Section 104d of the AEA does not bar AmerGen Vermont from acquiring the Vermont Yankee Operating License.

Thus, the staff has determined that AmerGen Vermont is qualified to be the holder of the Vermont Yankee operating license, and that the transfer of the operating license to AmerGen Vermont is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, with the conditions referenced above.

Principal Contributors: A. McKeigney
Mary Ann Ashley

Date: July 7, 2000

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached letter to Mr. Jonathan M. Block and Ms. Deborah B. Katz from Steven P. Frantz, dated July 17, 2000, were served on them by facsimile, and were also served upon the persons listed below by deposit in the U.S. mail, first class, postage prepaid, this 17th day of July, 2000.

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Office of the Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

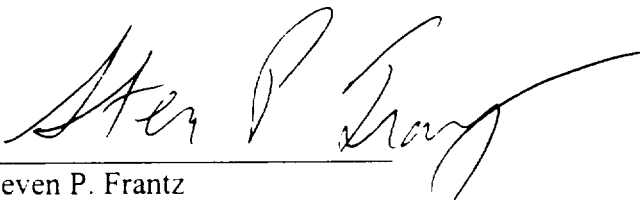
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

James Volz, Esq.
Director for Public Advocacy
Vermont Department of Public Service
112 State Street - Drawer 20
Montpelier, VT 05620-2601

David R. Lewis
Ernest L. Blake, Jr.
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

Frederick Katz
Deborah B. Katz
Citizens Awareness Network, Inc.
P.O. Box 3023
Clairmont, MA 01339-3023

Jonathan M. Block, Esq.
94 Main Street
PO Box 566
Putney, Vermont 05346-0566


Steven P. Frantz
Counsel for AmerGen Vermont, LLC