UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

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In the Matter of VERMONT YANKEE NUCLEAR POWER CORP. and AMERGEN VERMONT, LLC (Vermont Yankee Nuclear Power Station)	Docket No. 50-271-LT

CLI-00-20

MEMORANDUM AND ORDER

This proceeding involves an application for a direct license transfer of the Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation ("Vermont Yankee") to AmerGen Vermont, LLC ("AmerGen Vermont"). Vermont Yankee and AmerGen Vermont jointly seek NRC approval of the transfer pursuant to Section 184 of the Atomic Energy Act of 1954 ("AEA")[(1)] and section 50.80 of the Commission's regulations.[(2)]

The application, dated January 6, 2000, seeks authorization for the transfer of both ownership and operation of the Vermont Yankee Nuclear Power Station. The proposed owner and operator would be AmerGen Vermont, a wholly owned subsidiary of AmerGen Energy Company, LLC ("AmerGen"), which is in turn owned in equal shares by PECO Energy Company ("PECO") and British Energy, Inc. (a wholly-owned subsidiary of British Energy plc). See Application at 2-3. Under the proposed transfer, AmerGen Vermont would take title to the facility and would assume responsibility for operation, maintenance and eventual decommissioning of the facility. The applicants propose no physical or operational changes, and represent that substantially all of the plant's current operation and maintenance personnel would assume similar roles under the new management. Id. at 4, 16-17. On February 3, 2000, the Commission published a notice of this application in the Federal Register. See 65 Fed. Reg. 5376.

The Vermont Department of Public Service ("Vermont") seeks intervention and a hearing, but takes no position as to whether the transfer should take place. In the event Vermont is not admitted as an intervenor, it seeks participant status in a manner similar to that accorded in the Commission's Subpart G proceedings pursuant to 10 C.F.R. § 2.715(c). See Vermont's Petition, dated Feb. 23, 2000, at 1, 2.

The Citizens Awareness Network ("CAN") likewise seeks intervention and a hearing in which to oppose the application. CAN supplements this request with a motion, filed pursuant to 10 C.F.R. § 2.1329(b), that any hearing be conducted under the Commission's formal hearing regulations (Subpart G) rather than under the Subpart M procedures that normally apply to license transfer adjudications. See CAN's Petition, dated Feb. 22, 2000, at 3-4, 13-14. CAN also requests that the Commission stay the instant proceeding pending a decision of the Vermont Public Service Board addressing the applications of Vermont Yankee and certain other corporations for a "certificate of public good" and determining whether the sale to AmerGen Vermont is "prudent, used and useful." Id. at 1-2. In the alternative, CAN seeks a stay until the Vermont Public Service Board rules on pending motions to dismiss the state proceeding for lack of jurisdiction. In a similar vein, CAN requests that the Commission deny or defer AmerGen's application until the Internal Revenue Service has responded to AmerGen's private letter ruling request regarding the tax consequences of acquiring the decommissioning trust funds for Vermont Yankee and other plants. Id. at 10-11.

The applicants filed answers to these petitions and requests pursuant to 10 C.F.R. § 2.1307(a). The applicants assert that CAN lacks standing and that neither CAN nor Vermont has proffered admissible issues. CAN (but not Vermont) filed a reply pursuant to 10 C.F.R. § 2.1307(b). The NRC staff is not participating as a party in the adjudicatory portion of this proceeding. See generally 10 C.F.R. § 2.1316(b), (c). See also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC __, __ n.1, slip op. at 2 n.1 (Aug. 30, 2000). On July 7, 2000, the staff issued an order approving the license transfer, subject to fourteen conditions, but also indicating that the Commission's independent review of the two petitions to intervene and requests for hearing was still pending.

For the reasons set forth below, we find that both CAN and Vermont have shown standing, but conclude that neither has proffered any admissible issues. We therefore deny CAN's and Vermont's petitions to intervene and requests for hearing. We deny CAN's motion for stay of the adjudication as moot and its motion for a Subpart G proceeding as both moot and impermissible. See 10 C.F.R. § 2.1322(d).

DISCUSSION

To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its "interest may be affected by the proceeding," i.e., it must demonstrate "standing." See AEA, § 189a, 42 U.S.C. § 2239(a). The Commission's rules for license transfer proceedings also require that a petition to intervene raise at least one admissible issue. See 10 C.F.R. § 2.1306.

A. STANDING

For a petitioner to demonstrate standing in a Subpart M license transfer proceeding, the petitioner must

(1) identify an interest in the proceeding by

(a) alleging a concrete and particularized injury (actual or threatened) that

(b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and

(c) is likely to be redressed by a favorable decision, and

(d) lies arguably within the "zone of interests" protected by the governing statute(s).

(2) specify the facts pertaining to that interest.

See 10 C.F.R. §§ 2.1306, 2.1308; Niagara Mohawk Power Corp. (Nine Mile Point, Units 1 and 2), CLI-99-30, 50 NRC 333, 340-41 and n.5 (1999) (and cited authority). Moreover, an organization (such as CAN) which seeks representational standing must demonstrate how at least one of its members may be affected by the licensing action (as a result of the member's activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. See GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (May 3, 2000) (and authority cited therein).

CAN seeks permission to represent the interests of one of its members, Ms. Anne Britton, who lives 6-6½ miles from the Vermont Yankee plant. See Declaration of Anne Britton in Support of CAN's Standing, dated Feb. 18, 2000, at 1, appended to CAN Petition as Exh. 1. On her behalf, CAN alleges injury from a Commission approval of the license transfer,[(3)] seeks specific relief to preclude such injury,[(4)] and asserts that the safety-related issues fall within the zone of interests protected by the AEA and the National Environmental Policy Act ("NEPA"). We recently granted standing in both the Oyster Creek and Prairie Island / Monticello license transfer proceedings to petitioners who (like CAN) raised similar assertions and who (again like CAN) sought to represent members living or active quite close to the site.[(5)] As in these other proceedings, we conclude that CAN has satisfied our standing requirements.

Vermont explains that it is charged with representing the interest of the public in utility matters before certain regulatory agencies, including the NRC. Vermont's duties include securing reliable and safe power. See Vermont's Petition at 3. Further, although Vermont states that it takes no position as to whether the transfer should take place, it proffers three issues related to the financial qualifications of AmerGen Vermont, asserts that the injuries associated with these issues fall within the zone of interests protected by the Atomic Energy Act, and requests specific relief which would preclude such injury. Vermont also provides an affidavit and other documents in support of its position on the three issues. See Vermont's Petition at 2-3. Based on the above, we find that Vermont has demonstrated standing.

B. ADMISSIBILITY OF ISSUES

To demonstrate that issues are admissible under Subpart M, a petitioner must

(1) set forth the issues (factual and/or legal) that petitioner seeks to raise,

(2) demonstrate that those issues fall within the scope of the proceeding,

(3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,

(4) show that a genuine dispute exists with the applicant regarding the issues, and

(5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

See 10 C.F.R. § 2.1308; Nine Mile Point, CLI-99-30, 50 NRC at 342 (and cited authority). As we stated recently in Oyster Creek:

> These standards do not allow mere "notice pleading;" the Commission will not accept "the filing of a vague, unparticularized" issue, unsupported by alleged fact or expert opinion and documentary support. General assertions or conclusions will not suffice. This is not to say that our threshold admissibility requirements should be turned into a "fortress to deny intervention." The Commission regularly continues to admit for litigation and hearing issues that are material and are adequately supported.

CLI-00-6, 51 NRC at 203 (citations omitted).

1. Assurance of Decommissioning Funds

> **CAN Issue 1A**: "The application for license transfer should be denied because the application does not provide sufficient assurance of adequate funding for the eventual and actual costs of decommissioning" the plant. See CAN's Petition at 11.

In the application, Vermont Yankee commits to transferring to AmerGen Vermont a decommissioning fund totaling $280 million. See Application at 5. To make sure this happens, the NRC staff has conditioned its approval of the transfer upon "AmerGen Vermont ... provid[ing] decommissioning funding assurance of no less than $280 million after payment of ... taxes." See Staff Order, dated July 7, 2000, at 4 (Condition 2). See also Safety Evaluation Report ("SER") at 3. Using a 2-percent rate of return, as permitted by our regulations, the decommissioning fund would exceed $358 million by the expected time of decommissioning. See 10 C.F.R. § 50.75(e)(1)(i); Application at 25-26 and Enclosure 12.

Applicants correctly point out that this amount exceeds by $30 million the decommissioning cost estimate ($328 million), as calculated by the formula at 10 C.F.R. § 50.75(c). See Application at 25. In addition, AmerGen Vermont commits to providing "additional contributions to the [decommissioning] trust funds or [to] provide an alternative form of decommissioning funding assurance sufficient to meet NRC's requirements under the regulations." See Application at 26. Finally, in the event that the plant closes prematurely, AmerGen Vermont commits to delaying the plant's decommissioning until about 2007 when it would have accumulated sufficient funds to cover those costs. See AmerGen Vermont's Response to Request for Additional Information, dated March 30, 2000, at 2 (RAI Question No. 2).

CAN argues that the current cost estimates for decommissioning Vermont Yankee "do not reflect the costs required to meet Nuclear Regulatory Commission regulations for site remediation standards" (see CAN's Petition at 11), but CAN neither challenges the accuracy of AmerGen Vermont's calculations nor addresses its additional guarantee. It instead relies on a General Accounting Office ("GAO") Report generally concluding that many nuclear facilities do not have sufficient funds to cover future decommissioning costs as estimated under the Commission's current regulations. The GAO report, according to CAN, also criticized the NRC's supposed lack of both "thresholds for acceptable levels of financial assurances" and "mechanisms for responding to the risks caused by unacceptable levels of funding," as well as deficiencies in the agency's oversight of financial assurances for decommissioning nuclear power facilities. See CAN's Petition at 12. CAN points to nothing in the GAO report, however, that specifically addresses the Vermont Yankee plant.

CAN's general attacks on the agency's regulations and competence do not raise an admissible issue in this license transfer proceeding. Inasmuch as CAN's argument generally attacks our formula for estimating decommissioning costs, it constitutes an impermissible collateral attack on our regulations. As we explained in an earlier license transfer proceeding, "a petitioner in an individual adjudication cannot challenge generic decisions made by the Commission in rulemakings." See North Atlantic Energy Service Station, (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n.8 (1999). Given that the agency has made a deliberate decision not to require applicants to show site-specific cost estimates,[(6)] CAN is barred from challenging our regulation's cost formula on the basis of site-specific conditions (i.e., CAN's allegation that Vermont Yankee's decommissioning will cost more than $500 million rather than the Commission's formula-based estimate of $328 million) absent a waiver approved under 10 C.F.R. § 2.1329.[(7)]

CAN also points to a declaration of a Union of Concerned Scientists official, David Lochbaum, in support of its claim of inadequate decommissioning funding. See CAN's Petition at 13. But Mr. Lochbaum's affidavit does not discuss CAN's inadequate funding claim. Mr. Lochbaum's concerns relate instead to alleged staffing reductions, deficient Price-Anderson Act coverage, and loss of institutional memory at Vermont Yankee. We return to Mr. Lochbaum's concerns below, but it suffices to say here that Mr. Lochbaum's declaration provides no basis for admitting CAN's Issue 1A.[(8)]

2. Need for an Environmental Impact Statement

In Issues 1B, 3 and 6, CAN calls for the Commission to prepare an environmental impact statement ("EIS").

> **CAN Issue 1B**: "The NRC must [prepare] an EIS to determine the level of contamination on and off the ... site to fully determine the level of contamination at [the site], and, in turn, to establish the appropriate level of funding necessary for AmerGen [Vermont] to meet NRC site release criteria." See CAN's Petition at 14.

CAN argues that NRC is required under NEPA to prepare an EIS to set a level of decommissioning costs uniquely tailored to conditions at the Vermont Yankee plant. CAN contends that site-specific conditions, such as the history of spills and waste

disposal at the site, must be assessed. According to CAN,

> the request for a site specific EIS to ascertain the existence of undocumented radioactive waste, groundwater contamination, and the potential affects [sic] of leakage from the rad waste system is necessary. Without such a detailed study, no current or future owner can develop an accurate estimate for actual decommissioning and site clean-up costs. Without such a study, the NRC cannot possibly known [sic] whether AmerGen's estimates of such costs, and its claims related to the availability of funding to meet such costs, will be adequate to assure that occupational and public health and safety will be protected under the proposed license transfer.

See CAN's Reply at 14. CAN also argues that the field of nuclear reactor decommissioning is still in an "experimental" stage, where actual costs can far exceed NRC cost estimates as reflected in our regulations.

CAN's "NEPA" issue amounts to another effort to litigate site-specific decommissioning cost estimates. CAN's position rests on the assumption that our regulations require AmerGen Vermont, in its license transfer application, to provide an estimate of the actual decommissioning and site clean-up costs. As explained in the previous section of this order, our regulations impose no such requirement. Our decommissioning funding regulation (10 C.F.R. § 50.75(c)) generically establishes the amount of decommissioning funds that must be set aside.[(9)] As noted above, the NRC's decommissioning funding rule reflects a deliberate decision not to require site-specific estimates in setting decommissioning funding levels. CAN has not sought a waiver of that rule in this proceeding. See 10 C.F.R. § 2.1329, supra note 7; Seabrook, CLI-99-6, 49 NRC at 217 n.8. Nor has CAN reconciled its demand for a NEPA review with our rules' "categorical exclusion" of license transfers from NEPA requirements. See 10 C.F.R. § 51.22(c)(21).[(10)]

CAN Issue 6. CAN argues in support of its Issue 6 (see page 19, infra) that the Commission's "failure" to conduct an antitrust evaluation during a "period of rapid consolidation of nuclear reactor holdings under giant, partly foreign controlled mega-corporations is ... a major action affecting the quality of the human and natural environment" and therefore requires the preparation of an EIS. See CAN's Petition at 49. See also CAN's Reply at 14.

As noted above, license transfers fall within a categorical exclusion for which EISs are not required. The fact that a particular license transfer may have antitrust implications does not remove it from the categorical exclusion. In any event, because the AEA does not require, and arguably does not even allow, the Commission to conduct antitrust evaluations of license transfer applications,[(11)] our purported "failure" to conduct such an evaluation cannot constitute a Federal action warranting a NEPA review.

3. AmerGen Vermont's Technical Qualifications

> **CAN Issue 2A**: "AmerGen [Vermont] lacks experience managing aging BWRs [boiling water reactors] such as [the Vermont Yankee plant] -- which lack will place CAN members at risk due to an accident at [the Vermont Yankee plant]." See CAN's Petition at 17.

CAN expresses several general concerns regarding AmerGen Vermont's ability to operate the Vermont Yankee plant safely. CAN initially notes that the plant (together with others that AmerGen is buying) is older than any of the BWR plants currently owned by AmerGen parent PECO. See CAN's Petition at 17-18. CAN concludes from this fact that AmerGen lacks the necessary experience to maintain and operate BWRs. This argument's focus on AmerGen and PECO (AmerGen Vermont's parent and grandparent corporations, respectively) is misplaced, as those entities will neither own nor operate the Vermont Yankee plant, and AmerGen Vermont is not relying on technical personnel from either parent company to run the Vermont Yankee plant.

The application represents that essentially the same personnel (including senior plant managers) who have maintained and operated the Vermont Yankee plant will continue to do so under the new ownership.[(12)] CAN does not challenge that representation. Indeed, the "Technical Qualifications" section of AmerGen Vermont's application relies on only two categories of personnel who are not already part of the plant's staff: corporate-level management and certain AmerGen personnel or contractors who will provide technical support currently provided by offsite personnel.[(13)] Given that CAN questions the technical qualifications of neither group, we see no basis for a hearing on their technical qualifications.

CAN expresses particular concern about AmerGen Vermont's ability to detect cracks and leaks. Consequently, it asks the Commission to impose conditions on the transfer that would require AmerGen Vermont "to modify inspections and leak detection equipment" and "to institute programs to study the rate of crack propagation." See CAN's Petition at 19. In a related vein, CAN also asks the Commission "to oversee the development and implementation of systems and procedures necessary to provide objective review and ensure that the public health and safety is protected." Id. These arguments address the adequacy of the plant's ongoing safety-related programs. Operational issues of this kind will remain the same whether or not the license is transferred. The Commission has indicated that a license transfer hearing is not the proper forum in which to conduct a full-scale health-and-safety review of a plant.[(14)]

CAN also argues that, with a tightly-packed maintenance schedule and a depleted workforce, AmerGen (AmerGen Vermont's parent corporation) will not have the flexibility to react quickly to surprises at its various generating plants.[(15)] To remedy this perceived problem, CAN asks the Commission to require special training as a condition for its approval of the transfer. See CAN's Petition at 20. But CAN fails to specify who should receive training or what kind of training is needed. CAN has thus failed to demonstrate that a genuine dispute exists, with requisite specificity, on this basis.

CAN next raises a general argument regarding the effect that a change of management culture and philosophy may have on the willingness of employees to raise health-and-safety issues:

> Given the pattern of AmerGen's actions at its newly acquired reactor facilities, and those of AmerGen's parent companies, BE and PECO who will set the tone, style, and strategy for management, once the license is transferred, a substantial change in the workforce will be on the horizon. This is a change which will have a chilling effect on workers' abilities to raise health and safety issues to management. When a workforce is in flux and uncertain about who will have a job tomorrow, workers who raise safety-conscious, but not cost-effective, concerns will be in fear of losing their jobs. Such effects ... allow[] increasingly dangerous conditions at [the Vermont Yankee plant] ....

See CAN's Reply at 15.

We are of course concerned with management integrity. But CAN offers no hard facts or expert opinion in support of its issue, and fails to impeach the commitment in the application that the plant staff, including senior plant managers, would remain substantially unchanged. Speculation about chilling effects and demoralization of the workforce does not suffice to trigger our hearing process.[(16)] Nor do poorly documented claims of staffing deficiencies at other nuclear facilities owned by AmerGen call for a hearing on Vermont Yankee's transfer. See Oyster Creek, 51 NRC at 209-10.

We see nothing in CAN's petition sufficient to suggest that CAN's concerns about technical qualifications, or about management integrity and chilling effects, are sufficiently tangible and credible that they raise a genuine issue of dispute within the meaning of 10 C.F.R. § 2.1308 on which we should obtain further evidence or testimony at an NRC hearing. We therefore find CAN's Issue 2A inadmissible.[(17)]

4. Independent Evaluation of Vermont Yankee Plant

> **CAN Issue 4**: "Given the historical problems in NRC Region I, CAN contends that an independent evaluation of the Vermont Yankee nuclear generating station is required before any license transfer application can proceed." See CAN's Petition at 37.

An inquiry such as the one CAN advocates would go considerably beyond the scope of our inquiry in this proceeding, i.e., AmerGen Vermont's qualifications to own and operate the Vermont Yankee plant. We also note that Region I's overall performance in overseeing Vermont Yankee is far outside the scope of a license transfer proceeding. CAN does not explain how any action taken with respect to this license transfer, whether it be denial of the license or the imposition of conditions on the transferee, could remedy CAN's broad complaints that NRC's Region I has abdicated its oversight responsibilities.

5. Sufficiency of Baseline Funding

> **CAN Issue 5**: "Given AmerGen's lack of expertise in a deregulated market, CAN contends that the license transfer should be denied until AmerGen and its parent corporations establish baseline funding that is clearly defined and substantially increased over current levels to address the dangers to public health and safety inherent in permitting the controversial and risky endeavor in which AmerGen and its parent companies are engaged." See CAN's Application at 40.

CAN complains of inadequate "baseline funding" but nowhere defines the term; nor is it a term with which we are familiar. We assume, though, that CAN intends to argue that AmerGen Vermont, and AmerGen itself, are underfunded, thus jeopardizing the public health and safety. CAN fails to offer adequate support for that claim.

CAN argues that the Vermont Yankee plant is in an advanced state of deterioration, and faces such problems as a lack of fuel storage capacity that will cause the operating expenses to increase over current levels. See CAN's Petition at 40. CAN therefore contends that the Commission must hold a hearing to determine the actual costs of operating the facility, including proper maintenance and fuel storage. However, CAN fails to support its position with expert opinion, documentation or specific facts.[(18)] Although CAN mentions problems at the facility, such as structural cracks on the ground floor of a building where spent fuel is housed on the seventh floor (see CAN's Petition at 40), CAN has not given us any reason to believe that AmerGen's cost-and-revenue projections fail to take into account such maintenance issues.

CAN next argues that the Commission's current regulatory process for reviewing and approving power plant license transfers never contemplated -- and is ill-suited to address -- an applicant seeking to acquire 100 plants in North America. According to CAN, the existing Commission review process permits AmerGen to segment the regulatory review of its purchases on a plant-by-plant basis, and thereby precludes the Commission from considering the accumulated risks of AmerGen's attempt to buy and operate so large a fleet of reactors. Such a piecemeal approach, CAN continues, violates the letter and spirit of both the AEA and NEPA.

For this reason, CAN asks that the Commission "broaden the scope of [this] proceeding" to include "the ramification[s] of AmerGen's desired centralization of nuclear power generating capacity, along with the parallel issues of impacts upon the human and natural environment, and the health and safety effects of such a potential concentration of responsibility." See CAN's Petition at 41-42. More specifically, CAN is concerned that AmerGen will have insufficient finances and expertise to deal

with unscheduled outages, costly repairs and untimely shutdowns occurring simultaneously at many plants.

CAN acknowledges that the "license transfer applications may meet present NRC requirements," but asserts that the Commission should nevertheless broaden the scope of the proceeding to consider the cumulative effects of past and present transfers involving the same applicant. See CAN's Reply Brief at 42. Such an inquiry would go well beyond the scope of the proceeding which is limited to the appropriateness of the proposed Vermont Yankee license transfer.

Nothing in CAN's petition supports conducting an adjudicatory hearing on the matter in the context of the proposed Vermont Yankee transfer. While CAN raises a purely theoretical concern about PECO and British Energy owning an unprecedented number of facilities, predictions about future acquisitions are purely speculative and the fact remains that the potential acquisition of Vermont Yankee will not cause them to approach a level of plant ownership that is unprecedented. For example, it is a matter of public record that Commonwealth Edison has owned more than a dozen plants for a lengthy period of time. See note 20, infra. This is not to say that the Commission is unconcerned about the effects of consolidating "fleets" of reactors under one owner. In fact, the NRC staff is currently conducting a study on the policy implications of industry consolidation. See COMNJD-99-06 (Feb. 10, 2000) (released to the public on Feb. 11, 2000).

Next under the rubric of "Issue 5," CAN challenges the acceptability of AmerGen's creating limited liability holding companies ("LLCs"). (Although CAN is again not specific, we assume it is alluding to AmerGen Vermont.) CAN argues that, although other players in the nuclear industry have regularly set up LLCs, AmerGen's situation differs from those of other players in two critical respects: the others have proven track records of expertise and financial assurance necessary for the safe operation and decommissioning of nuclear power plants, and their financial competence was guaranteed by state regulation and ratepayer subsidies. By contrast, according to CAN, AmerGen has so limited a track record as to be meaningless, and it will operate in a deregulated environment offering no ratepayer guarantees. CAN asserts that AmerGen simply lacks the necessary expertise and financial qualifications to guarantee its ability to safely operate and decommission a fleet of nuclear stations in a deregulated energy market -- especially where AmerGen's plants are aging and embrittled, their decommissioning costs are uncertain, and waste disposal possibilities are likewise uncertain. See CAN's Petition at 42-43.

The Commission has recently ruled that the limited liability nature of LLCs does not preclude them from owning and operating nuclear power plants. See Oyster Creek, 51 NRC at 208 (ruling that limited liability companies are no different from corporations in that both are legally structured to limit the liability of their shareholders, and that the Commission has issued reactor licenses to such limited liability organizations for decades); accord Monticello, CLI-00-14, 52 NRC at ___, slip op. at 20. CAN's first distinction (that prior transferees had proven track records) is inaccurate. AmerGen Vermont was the new creation of an existing entity just as New NSP (also a limited liability company) was when it took over the plant and personnel at Monticello and Prairie Island from Northern States Power Company. See Monticello. Similarly, AmerGen owned no plants before it purchased TMI-1 and Clinton. CAN's second distinction (that earlier transferees' financial competence was guaranteed by state regulation and ratepayer subsidies) would essentially preclude most sales of nuclear power plants in the current financial environment of deregulation, given that (as of December, 1999) 60 of the 103 nuclear power plants operate in states that have, to some degree, restructured their electric industries. As the Commission has previously stated:

> [W]e cannot accede to NEP's [petitioner's] seeming view that Little Bay [the proposed transferee] inherently cannot meet our financial qualification rules because its rates are not regulated by a state utilities commission. This view runs counter to the premise underlying the entire restructuring and economic deregulation of the electric utility industry, i.e., that the marketplace will replace cost-of-service ratemaking. In our view, unregulated electricity rates are not incompatible with maintaining sufficient financial resources to operate a nuclear power reactor.

Seabrook, CLI-99-6, 49 NRC at 222.

Finally, CAN considers "the mere administrative formality of a [S]ubpart M license transfer process... ill equipped" to evaluate adequately the effects of industry consolidation and limited liability companies, and therefore recommends that the Commission suspend all license transfer proceedings involving AmerGen "until ... NRC has established the necessary criteria to make such evaluations." See CAN's Petition at 43-44. We see no immediate threats to public health and safety requiring such a drastic course of action.[(20)] We reiterate that CAN has provided us no sufficient basis to hold a hearing on the Vermont Yankee transfer.

6. Antitrust Implications

> **CAN Issue 6**: "NRC has not adequately examined the implications of AmerGen's commitment to establish a fleet of nuclear power stations in America and Canada in light of the serious anti-trust implications of such a fleet in the hands of what is, essentially, a single company. These implications include, but are not limited to: (a) regional energy dependence on a single supplier, a matter potentially adverse to the national interest and national security, (b) health and safety issues for workers and persons living in proximity to Vermont Yankee or any of the facilities in the event that the single corporate holder is unable to maintain the necessary capital flow for operations, maintenance, repairs, and/or decommissioning, and (c) foreign domination of a corporation in control of a large portion of the U.S. nuclear electric generating capacity." See CAN's Petition at 45.

The Commission no longer conducts antitrust reviews of license transfer applications. See Final Rule, "Antitrust Review Authority: Clarification," 65 Fed. Reg. 44,649 (July 19, 2000); Kansas Gas and Elec. Co., (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). See also page 11, supra. CAN disagrees with our ruling in Wolf Creek but has not

convinced us that either our detailed analysis or our conclusions in that decision are mistaken. We note, too, that our decision in Wolf Creek and our subsequent rulemaking preclude neither the Federal Trade Commission nor the Department of Justice from conducting an antitrust review of the transfer.

7. Sufficiency of Parent Companies' Various Financial Guarantees

> **CAN Issue 7**: "AmerGen's parent companies have ... committed to put up only $110 million to assure their joint venture has sufficient revenues to safely operate its fleet of reactors. The funds reasonably required to support an endeavor on the scale AmerGen intends far exceeds that amount. Given that: (a) many of AmerGen's reactors will be in varying state[s] of operation and decommissioning, (b) Price[-]Anderson Act insurance does not cover decommissioning, and (c) decommissioning costs are always uncertain at best, it is plain that AmerGen's generalized assurances are insufficient [to] permit license transfer." See CAN's Petition at 52.

This issue seems straightforward enough: CAN believes that $110 million is an insufficient cushion of operating and decommissioning funds.[21] We see no reason for a hearing on this issue. The parent company guarantee is supplemental information and not material to

the financial qualifications determination under 10 C.F.R. § 50.33(f)(2).[22] CAN has given us no reason to doubt the applicant's assertion that AmerGen Vermont has satisfied our financial qualification requirements for funding the operation and maintenance of the plant. See Application at 20-24; SER at 3-9. For the reasons previously set forth in this order, CAN has also not demonstrated that a genuine issue for hearing exists concerning a possible shortfall in AmerGen Vermont's decommissioning funding assurance under 10 C.F.R. § 50.75 warranting further inquiry.

Finally, nothing about Price-Anderson coverage changes as a result of this license transfer. The same coverage will exist after license transfer as exists today. Moreover, contrary to what CAN suggests, Price-Anderson indemnification agreements continue in effect even after plants have ceased permanent operation and are engaged in decommissioning. See 10 C.F.R. § 140.92 (NRC Indemnification Agreement, Article VII); 10 C.F.R. § 50.54(w). Thus, CAN's Price-Anderson argument is ill-conceived; it does not affect our previous finding that CAN has failed to raise a genuine issue for hearing concerning the adequacy of decommissioning funding.

> **Vermont Issue 1**: "The funding arrangements described by the Joint Applicants are not adequate because the $110 million pledge by AmerGen's members is not sufficient to pay the full costs of a six-month outage at Vermont Yankee considering scenarios which might reasonably occur." See Vermont's Petition at 3-5.

In support of this issue, Vermont offers an affidavit from State Nuclear Engineer William K. Sherman of the Vermont Department of Public Service. Mr. Sherman's argument can be distilled to the following: (1) Section 50.33(f)(2) of the Commission's regulations requires both five-year cost projections and a showing of sufficient revenue to meet those expenses. (2) Given the volatility of electricity prices, AmerGen Vermont has provided no assurance that the operating revenue from Vermont Yankee would provide an adequate source to meet that plant's ongoing operational expenses during an unanticipated six-month outage. (3) Given that AmerGen Vermont may be required to pay some or all of its revenue to its parent corporations, AmerGen Vermont has provided no assurance that its net income will even be available to fund future operational shortfalls. (4) Simultaneous six-month outages at multiple AmerGen reactors are a reasonable possibility and not without precedent. (5) Immediate decommissioning is not an alternative for insufficient funding. (6) Consequently, AmerGen must be able to rely on the $110 million guarantee in addition to its net revenue and available assets. (7) However, $110 million is insufficient to cover the costs of a six-month outage at Vermont Yankee if the guaranteed funds were also apportioned to another of the various facilities owned by AmerGen.[23] (8) There is no guarantee that AmerGen Vermont's parents will be liable for more than the $110 million. See Sherman Affidavit at 3-7, attached to Vermont's Petition.

Vermont's financial concerns are supported by the affidavit of an expert and plainly fall within the scope of this proceeding -- i.e., Vermont raises questions about AmerGen Vermont's compliance with the Commission rule on financial qualifications to operate a nuclear power reactor. See 10 C.F.R. § 50.33(f)(2). As we ruled in Oyster Creek, a license transfer applicant satisfies our financial qualifications rule if it provides a cost-and-revenue projection for the first five years of operation that predicts sufficient revenue to cover operating costs. See 51 NRC at 206-08. However, we have also held that where a petitioner raises a genuine issue about the accuracy or plausibility of an applicant's cost-and-revenue projection, the petitioner is entitled to a hearing. See Seabrook, 49 NRC at 220-21.

Here, inconsistencies and unexplained assertions in Mr. Sherman's affidavit defeat Vermont's claim that it has raised a genuine dispute of fact or law requiring a hearing on financial qualifications. For example, in support of the claim that AmerGen Vermont's projected revenue would be insufficient to cover Vermont Yankee's expenses during a six-month outage, Mr. Sherman provides market price projections for Vermont Yankee's electricity that indicate annual price changes ranging from +1.9% to -8.5% and averaging about -3¾%.[24] However, these numbers reflect a reduction in market prices significantly milder than the 10-percent decline he assumes when concluding that AmerGen Vermont's own projected net revenue will drop to the point where it earns almost no net profit. Compare Sherman Affidavit at 4 and Exh. WKS-3 with Exh. WKS-4. Moreover, his only justification for this 10-percent figure is that it is "not an unreasonable possibility", "considering the speculative nature of estimated market prices." See Sherman Affidavit at 4. He further admits both that Vermont's own estimated market prices for electricity are higher than those projected by AmerGen Vermont (and therefore higher than his own projections) and that electricity prices are currently on the rise. See Sherman Affidavit at 4. Finally, even using Mr. Sherman's own estimates based on a ten-percent fall in market price, Vermont Yankee's estimated revenue would still be sufficient to cover its costs for

the first five years. See Exh. WKS-3. Mr. Sherman's key assertions, in short, fail to show that a genuine dispute exists with the applicants.

Similarly, we find no support in Vermont's filings for Mr. Sherman's assumption that the costs of outages at other plants would cause AmerGen to consume its $110 (now $200) million supplemental fund, leaving the Vermont Yankee facility underfunded. Vermont made no effort to show that the operating revenue at those other plants could not cover some or all of the costs of such an outage. Moreover, the Sherman affidavit addresses the original $110 million supplemental fund only. Vermont has made no effort to supplement its pleadings to claim inadequacy of what is now a $200 million commitment. Nor does Vermont offer any reason to question AmerGen's more general commitment to provide "such funds [as] are necessary" to meet ongoing expenses of to maintain safety. See note 26, infra, and accompanying text. As we have held, in any event, absent a demonstrated shortfall in the revenue predictions required by 10 C.F.R. § 50.33(f), the adequacy of a corporate parent's supplemental commitment is not material to our license transfer decision. See Oyster Creek, CLI-00-6, 51 NRC at 205.

> **Vermont Issue 3**: "The funding arrangements described by the Joint Applicants are not adequate because the $110 million pledged by AmerGen's members is not sufficient to pay the full potential costs for which Vermont Yankee would be liable in the event of a severe nuclear accident resulting in Price-Anderson liability." See Vermont's Petition at 6-8.

Vermont alleges that AmerGen Vermont's potential liability in case of a severe nuclear accident would be $88 million.[(25)] Therefore, Vermont argues, the $110 million (now $200 million) guarantee, which is intended to cover all facilities of AmerGen and AmerGen Vermont, would be insufficient to cover the potential liability should severe accident occur at all facilities potentially covered by this guarantee (Vermont Yankee and the three other facilities currently owned by AmerGen).

AmerGen Vermont counters that our regulations only require it to show that it has sufficient cash equivalents (such as the parent company guarantee) to cover the retroactive $10 million premium required by our regulations at 10 C.F.R. § 140.21(e)-(f). See Oyster Creek, CLI-00-6, 51 NRC at 206. We agree. Vermont's argument that the applicant must meet financial requirements in addition to those imposed by our regulations constitutes an impermissible attack on our regulations. Moreover, as explained earlier in this section, prior to issuance of the amended license, AmerGen Vermont must obtain all regulatorily-required property damage insurance.

Finally, we reiterate that, although AmerGen's $200 million reserve fund provides significant assurance of sufficient operating and decommissioning funds in the event of a problem, the fund is not required by our rules. It therefore lies outside the bounds of our license transfer hearing process -- which focuses on whether AmerGen Vermont meets the required financial and technical qualifications.

> **Vermont Issue 2**: "The funding arrangements described by the Joint Applicants are not sufficient because AmerGen's Performance Guarantee for AmerGen Vermont creates a funding gap between the end of operation and the beginning of decommissioning such that sufficient funds would not be available to maintain the plant safely." See Vermont's Petition at 5-6.

Vermont here is concerned, not about the $200 million supplemental funding guarantee addressed above, but rather about AmerGen's guarantee to AmerGen Vermont that "AmerGen Vermont will ... have the right to continue to obtain the funds necessary to assure the safe and orderly shutdown of [the Vermont Yankee plant] and continue the safe maintenance of [the plant] until AmerGen Vermont can certify to the NRC that the fuel has been permanently removed from the reactor vessel." See Letter from Charles P. Lewis, Vice President, AmerGen Energy Co., to AmerGen Vermont, dated Jan. 6, 2000, at 2, appended as Attachment 8 to Application.

Vermont's concerns are misplaced. In a later letter supplementing the January 6th guarantee, AmerGen explained that the language quoted above was "in no way intended to limit AmerGen Vermont's right to continue to obtain funds under this agreement until such time as decommissioning is completed." AmerGen then went on to state 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 [the plant] or such funds are necessary to safely maintain [the plant].

This agreement shall ... remain in effect and remain irrevocable until such time as decommissioning is completed.[(26)]

Consequently, Vermont's "funding gap" claim fails to raise a genuine dispute requiring a hearing under NRC rules. We therefore decline to admit this issue.

CONCLUSION

For the reasons set forth above, the Commission:

(1) denies CAN's petition to intervene and request for hearing;

(2) denies Vermont's petition to intervene and request for hearing; and

(3) dismisses as moot CAN's various requests for a stay of the instant proceeding;

(4) denies CAN's motion that any hearing be conducted under 10 C.F.R. Part 2, Subpart G;

(5) terminates this adjudicatory proceeding.

IT IS SO ORDERED.

For the Commission

[Original signed by
Annette L. Vietti-Cook]

_____
Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of October, 2000.

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1. 42 U.S.C. § 2234 (precluding the transfer of any NRC license unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing).

2. 10 C.F.R. § 50.80. This regulation reiterates the requirements of AEA § 184, sets forth the filing requirements for a license transfer application and establishes the following test for approval of such an application: (1) the proposed transferee is qualified to hold the license and (2) the transfer is otherwise consistent with law, regulations and Commission orders.

3. Ms. Britton alleges in her affidavit that the license transfer would adversely affect her interests in two ways that the Commission recognizes as supportive of standing. As a person living near the plant, she may incur radiation dangers if, as a result of the transfer, the plant operates unsafely. She would also like to walk and hike in the area of the facility after it is decommissioned and therefore claims an interest in sufficient funding being set aside for the decommissioning to be properly performed. See also CAN's Reply, dated March 10, 2000, at 10-11.

4. Specifically, CAN asks that the Commission deny the application and also that the Commission impose conditions controlling the working hours and overtime of employees, establishing parameters for handling and accumulating adequate decommissioning funds, requiring additional training, requiring a full-scale engineering review of the plant prior to any approval of the transfer, and conducting a study to preserve institutional memory concerning spills, contamination and other decommissioning and site cleanup-related matters. See CAN's Petition at 13, 17, 20-21, 25, 26, 29, 31-32, 36, 38-39, 44, 51-52, 53-54.

5. See Oyster Creek, CLI-00-6, 51 NRC at 202-03; Northern States Power Co. (Monticello Nuclear Generating Plant; Prairie Island Nuclear Generating Plant, Units 1 and 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC ___, slip op. at 5-6 (Aug. 1, 2000).

6. See Final Rule, "General Requirements for Decommissioning Nuclear Facilities," 53 Fed. Reg. 24,018, 24,030-31 (June 27, 1988); Seabrook, CLI-99-6, 49 NRC at 217 n.8.

7. Under 10 C.F.R. § 2.1329(a), (b), participants in the NRC hearing process may seek a waiver of regulations, but only upon a showing that, due to "special circumstances ... application of [the] ... regulation would not serve the purpose for which it was adopted." See generally Monticello, CLI-00-14, 52 NRC at ___, slip op. at 23.

8. In defending the propriety of their license transfer arrangements, including their handling of decommissioning funding, applicants repeatedly invoke as "precedents" prior NRC staff actions approving allegedly analogous transactions. Prior NRC staff actions, however, are not binding on the Commission in adjudications.

9. CAN's supporting argument that decommissioning technology is still in an experimental stage fails for the same reason, i.e., it is a collateral attack on 10 C.F.R. § 50.75(c) establishing the amount of decommissioning funds that must be set aside. It is worth noting in this connection that the NRC rule which CAN attacks, 10 C.F.R. § 50.75(c), is in fact supported by a generic environmental impact statement. See Generic Environmental Impact Statement, NUREG-0586 (August 1988) (issued in conjunction with the promulgation of 10 C.F.R. §§ 50.75 and 50.82). See generally Final Rule, "General Requirements for Decommissioning Nuclear Facilities," 53 Fed. Reg. 24,018, 24,051 (June 27, 1988).

10. For the same reasons as set forth in our discussion of Issue 1B, we decline to admit CAN's Issue 3: "Given the historical problems at the Vermont Yankee nuclear generating station, CAN believes that an Environmental Impact Study is warranted before the license transfer application is approved to protect the health and safety of the workers and the public." See CAN's Petition at 32.

11. See Kansas Gas and Elec. Co., (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999); Final Rule, "Antitrust Review Authority: Clarification," 65 Fed. Reg. 44,649 (July 19, 2000).

12. See, e.g., Application at 16-18:

The existing [Vermont Yankee] nuclear organization at the Vermont Yankee site will be transferred to AmerGen Vermont, and substantially all of [Vermont Yankee]'s nuclear employees at the Vermont Yankee site involved in the operation and maintenance of the plant will assume similar roles and responsibilities for AmerGen Vermont as of that date. The unions which currently represent employees at the Vermont Yankee site will continue to be recognized. Personnel assigned to Vermont Yankee will ... be responsible to the management of AmerGen Vermont and the AmerGen Vermont Management Committee. [Application at 16-17.]

The plant staff, including senior managers, will be substantially unchanged. [Application at 17.]

[M]ost engineering support for Vermont Yankee is currently provided by a dedicated engineering organization that will continue as an integral part of the Vermont Yankee site organization. [Application at 18.]

13. See Application at 16, 18:

Most of the Management Committee members and principal executives and officers of AmerGen Vermont currently serve as Management Committee members of AmerGen. [Application at 16.]

The existing [Vermont Yankee] technical support for the plant, which are not currently assigned to the Vermont Yankee site, will either continue to perform these functions on behalf of AmerGen Vermont or transfer their functions to AmerGen or contractors who will meet existing FSAR [Final Safety Analysis Report] technical support requirements for these functions. [Application at 18.]

14. "A license transfer proceeding is not a forum for a full review of all aspects of current plant operation." See Oyster Creek, CLI-00-6, 51 NRC at 213, 214. We also note that CAN provides no details as to the specific kinds of conditions or oversight it seeks. CAN may, of course, file a petition for staff enforcement action pursuant to 10 C.F.R. § 2.206 if it is concerned about current safety issues at Vermont Yankee.

15. See CAN's Petition at 20. See also id. at 23 (arguing that AmerGen' schedule of six-month outages per plant ignores the fact that outages are often triggered by unplanned events). Apparently, CAN here does intend to refer to AmerGen rather than AmerGen Vermont, which owns only the Vermont Yankee plant.

16. See Oyster Creek, CLI-00-6, 51 NRC at 203, 209-10. See also id. at 214 ("the Commission is interested in whether the plant poses a risk to the public health and safety, and so long as personnel decisions do not impose that risk, our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff").

17. For reasons similar to those given in the text, CAN's Issues 2B, 2B1 and 2B2 are also inadmissible:

CAN's Issue 2B: "Since AmerGen [Vermont] is a newly formed corporation, we must look to its parent companies to assess their qualifications to own and operate [the Vermont Yankee plant] and a fleet of nuclear generating stations. The record of these companies is not good enough to warrant license transfer without an in-depth investigation through a formal hearing process." See CAN's Petition at 21.

CAN Issue 2B1: "AmerGen's policy of cost-cutting through job cutting jeopardizes the health and safety [of] Vermont Yankee workers and the public; absent license transfer conditions requiring a base level of staffing for full time employees and contractors to assure safe reactor operations, the license transfer must be denied." See CAN's Petition at 26.

CAN Issue 2B2: "[British Energy's] commitment to excessive overtime jeopardizes the worker and public health and safety and unless there are commitments by the transferee to establish a base level of overtime for both full time employees and contractors to assure the safe operation of the reactor, the license transfer should be denied." See CAN's Petition at 29.

In general support of these issues, CAN relies on Mr. David Lochbaum's declaration (discussed above). Mr. Lochbaum, in turn, refers to a Union of Concerned Scientists report on overtime and staffing problems in the nuclear industry. Mr. Lochbaum's concerns, however, are general -- covering the entire nuclear industry. His declaration raises no claims that are peculiar to the Vermont Yankee license transfer or that raise a genuine question of fact warranting a hearing.

18. See Oyster Creek, quoted supra at page 6.

19. See CAN's Petition at 42. See also Vermont's Petition at 5. Cf. CAN's Reply at 11 ("multiple reactor acquisitions will have an effect upon AmerGen's financial adequacy to operate, decommission, and clean up" the Vermont Yankee plant).

20. Notably, as mentioned above, a fleet of three (and soon, four) operating plants (i.e., units) owned by AmerGen and its family of companies is not out-of-the-ordinary when compared with the holdings of other nuclear utilities -- either currently or historically. For instance, Commonwealth Edison has, for quite some time, held an ownership interest in 12.5 plants. Similarly, Entergy currently owns 5.9 plants (3.9 being long-term holdings), Duke 5.3 (all long-term holdings), and PECO 4.7 plants (again, all long-term holdings).

21. Although the original amount of this Funding Agreement guarantee was $110 million, PECO and British Energy later increased the amount to $200 million. See Letter to Samuel J. Collins, Director of NRC's Office of Nuclear Reactor Regulation, from Gerald R. Rainey, CEO of AmerGen, dated April 6, 2000 (and attachments).

22. See Oyster Creek, CLI-00-6, 51 NRC at 205. We have previously noted that we recognize that the NRC staff does include

conditions requiring a parent company guarantee in the orders approving license transfers, as additional assurance of financial qualifications, in cases like this one in which such a guarantee has been offered by the applicant. See id. at 205 n.8.

23. AmerGen currently owns the reactors at Three Mile Island 1, Clinton and Oyster Creek.

24. See Exh. WKS-4. Mr. Sherman does not explain either his numbers' meaning or derivation, and claims to present these projections simply for the purpose of illustrating the volatility of market price forecasts -- a conclusion we do not doubt. See Sherman Affidavit at 3. We see no reason to hold a license transfer hearing to allow Vermont to demonstrate the obvious proposition that electricity price forecasts are uncertain. A hearing would have been called for only if Vermont, through Mr. Sherman or otherwise, reasonably had alleged that AmerGen Vermont's cost and revenue projections are implausible.

25. This amount is calculated by adding a 5-percent surcharge to the $83.9 million number specified in our regulations. See 10 C.F.R. § 140.11(a)(4); Final Rule, "Adjustment of the Maximum Retrospective Deferred Premium," 63 Fed. Reg. 39,015 (July 21, 1998).

26. See Letter from Charles P. Lewis, Vice President, AmerGen Energy Co., to AmerGen Vermont, dated Feb. 17, 2000, at 2 (emphasis added), appended to Answer to Vermont's Petition, dated March 6, 2000. Vermont filed no reply to AmerGen Vermont's Answer.