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UNITED STATES OF AMERICA
Before The
NUCLEAR REGULATORY COMMISSION

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USNRC

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In the Matter of
Vermont Yankee Nuclear Power Corporation
and
AmerGen Vermont, LLC
Vermont Yankee Nuclear Power Station

Docket No. 50-271-LT
License No DPR-28
(License Transfer)

ADJUTANT GENERAL
March 10, 2000

**CITIZENS AWARENESS NETWORK'S REPLY
TO AMERGEN/VYCORP'S ANSWER**

I. INTRODUCTION

Citizens Awareness Network (CAN) sought relief available under Subpart M in its Request For Hearing And Petition To Intervene In The License Transfer For Vermont Yankee Nuclear Power Station, Request For Stay Of The Proceeding, And Request For Subpart G Hearing Due To Special Circumstances (February 22, 2000) ['CAN's Hearing Request and Motions']. The request for this relief is not an attack on NRC regulations as AmerGen/VY's Answer generally alleges. The regulations CAN cites in its pleading plainly afford the relief CAN seeks. *See generally*, 10 CFR Subpart M, and compare the subpart's requirements with CAN's Hearing Request and Motions and Declaration of Anne Britton and David Lochbaum attached thereto. Despite further allegations in the AmerGen/VY Answer, CAN, and its representative member Anne Britton, meet the requirements for organizational standing and satisfy the requirements of 10 CFR §§ 2.1306 and 2.1308. CAN makes the following reply to the AmerGen/VY answer as permitted under 10 CFR §2.1307¹:

¹ On March 3, 2000, CAN received by electronic filing, the answer of AmerGen and Vermont Yankee Nuclear Power Corporation ['AmerGen/VY Answer'] to CAN's filing in this matter. CAN did not receive a paper copy of this pleading until March 7, 2000. At this time there is neither a Commission order directing that electronic filing take place, nor CAN's consent to receive such filing. In point of fact, CAN was unable to read the footnotes in the Answer due to file incompatibility in word processing software AmerGen/VYNP Corporation use and the program CAN uses, MS Word6 for Windows 95.

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II. CAN'S ARGUMENTS IN REPLY TO THE AMERGEN/VY ANSWER

A. **Can Is Entitled To The Procedural Relief Requested.**

AmerGen/VY attempts to characterize Subpart M as requiring the NRC to sacrifice its statutory responsibilities under the Atomic Energy Act [AEA] to protect occupational and public health and safety and national security, and ensure meaningful opportunities for public participation in license transfer proceedings, by elevating a speedy process for the licensee over the AEA's *substantive* requirements of due process and rational consideration of the issues presented in a particular application. See, e.g., AEA § 189a, 42 U.S.C. 2239. The congressional delegation of authority to the Commission requires that the Commission respond to the latter, substantive considerations over the merely formal ones exalted in the AmerGen/VY Answer. After all, in license proceedings of any kind, the would-be licensee is seeking a special benefit from The People of the United States. In serving this "special interest," the Commission, with no greater authority than the Congress which created it, and, in fact, with far less authority, may not elevate that private interest over the interests and rights of The People of the United States.

Congress authorizes license proceedings upon substantive findings and assurance of specific protections of the interests of The People. These interests include assurance of occupational and public health and safety, protection of individual property interests under requisite findings of adequate insurance coverage, protection of the human and natural environment (insofar as the National Environmental Policy Act must be "read into" the Atomic Energy Act), and safeguarding national security (which includes, but is not limited to protection of nuclear secrets, assurances that foreign corporations are not in control of the U.S. nuclear

CAN has, however, responded within the five (5) day period allowed under the rules. Time was calculated as omitting the day the filing was received, March 3, 2000, and the intervening weekend days, and counting five days for filing as ending the close of business on March 11, 2000. The Commission

electric generating capacity, and assurance that no single entity will dominate or control all the electric generating capacity in a region through its nuclear power licenses). Moreover, a request for a hearing on a license transfer is all the more poignant today as the Commission has indicated its desire to meet the nuclear industry's demands for lessened regulation, the elimination or curtailment of formal adjudication, and has indicated that it intends to relinquish antitrust reviews required under the AEA.

It is noteworthy that while the Commission seems to be bending over backward to accommodate the nuclear industry's "initiatives" for hands off regulating, there has been no corresponding attempt to make it easier for the public to participate in the new, streamlined, informal hearings. Apparently, the Commission believes that it can make the hearings less formal and more streamlined for the special interests who receive privileged (licenses) from representatives of The People of the United States while keeping the barriers to public participation high through standing and other intervention requirements that plainly favor participation of members of the Nuclear Industry "family" over the antinuclear one. CAN contends that the Commission has an obligation under AEA § 189a to facilitate public participation in meaningful, adjudicatory processes, and that failure or avoidance of this charge is an abdication of statutory duty.

Thus, in this case, under the very laws which created the Commission and set forth its power, limitations, and duties, CAN is entitled to a hearing in which the congressionally mandated subjects outline above may be adequately explored in the context of the license transfer at issue, utilizing the twin engines of truth seeking: subpoena power to compel witnesses and evidence and cross examination of witnesses under oath (or affirmation).

should take note that AmerGen/VY did not serve CAN with its Answer to the Vermont Department of Public Service--neither electronically nor by paper copy.

The Atomic Energy Act at §189(a) requires NRC assure the public ample opportunity for substantive, meaningful participation in proceedings of interest to the public. In the AEA, Congress recognized the need for public participation and has declined numerous attempts to limit the kind of public participation the AEA requires. Moreover, in terms of the NRC's new approach to limiting the public's right to a hearing and substituting "streamlined" nuclear industry-favored proceedings for meaningful, adjudicatory process, it is important to note that, with few exceptions, some of the finest jurists of the last century have viewed with suspicion the NRC's idea of what constitutes a Congressionally mandated hearing. CAN's own experience in this regard, *Citizens Awareness Network, Inc. v. U.S. NRC*, 59 F.3d 284 (1st Cir. 1995), a far more recent case than *West Chicago*, is instructive. Therein, generally and throughout the opinion, including approving citations to the prior lower court case which compared the NRC's attempt to thwart the public's right to an adjudicatory hearing with Dickens's proverbial "Department of Circumlocution, the United State Court of Appeals for the First Circuit found that the Commission's view of hearings failed to meet the minimum requirements for such proceedings under the AEA § 189a or any rational view of the meaning of "hearing."

Additionally, although in the *Niagara Mohawk* license transfer case, the NRC denied relief from the burden of simultaneously litigating in multiple forums, CAN, in this case, not unlike Brunhilda in the *Valkurhie*, asks the Commission to do what is in both CAN's and the Commission's best interests. In this case, the NRC [Woton] would conserve adjudicatory resources by preserving its jurisdiction and temporarily staying the a proceed until the pending motion before the Vermont Public Service Board is decided. Under the very agreements which AmerGen/VY have placed before the Commission in their joint application, it is plain that were the Vermont Public Service Board or the IRS fail to provide what AmerGen/VY have asked for

by way of approvals, the agreement would be void (or voidable). Unless AmerGen/VY (and co-petitioners before the Vermont Public Service Board, Green Mountain Power Corporation and Central Vermont Public Service Corporation) have a determination that their transaction is prudent, there will be no transaction. CAN, like Brunhilda, merely asks that the NRC do what is rational, and in its best interest. A temporary stay would have the affect of conserving agency resources. It would, coincidentally, also help CAN avoid the undue burden of trying to participate in simultaneous multiple proceedings, which financial and logistic burden limits the effectiveness of CAN's participation (and *any* public participation) as guaranteed under the AEA. A stay would be relieved, albeit even temporarily, a portion of that burden (as CAN is already party to the Vermont Public Service Board proceeding and is awaiting a ruling on its motion to intervene in the FERC proceeding in this matter).

The Commission also should approve CAN's request for a more formal hearing. Although the Commission ruled out consideration of a Subpart G hearing in the *Niagara Mohawk* case, the reason was that the petitioner, quite unlike CAN in this matter, failed to cite the proper rule, let alone provide the pain-stakingly complete documentation and rationale supporting its request for a hearing that concerns more than merely administrative and financial subject matter.

The motions, hearing request, intervention petition, declaration in support of standing and declaration of technical, expert information CAN has placed before the Commission were not answered by AmerGen/VY. All of the legalistic argument merely supports CAN's contention that there are genuine issues of dispute in this matter that are beyond the intended purpose of Subpart M, hence warranting a special hearing, a full Subpart G hearing as the rule provide for in just such special circumstances.

1. Commission Policy Permits CAN's Requested Stay In This Matter.

CAN does not seek an "inefficient process" as AmerGen/VY allege. Rather, under the Commission's own stated intentions in this kind of proceeding, CAN seeks an appropriate and thorough proceeding that reasonably addresses the magnitude of the substantive and unique issues raised CAN's hearing/intervention request and motions. As the Commission has stated, "The Commission's aim in adopting the Subpart M procedures is to provide an efficient and effective hearing process and a structure for compiling a decision record in a timely manner, not a hurried one." Final Rulemaking on Subpart M, 63 Fed. Reg. at 66724 (December 3, 1998). Moreover, in the *Niagara Mohawk* case cited in CAN's petition, the Commission allowed for a stay on just the kind of conditions CAN has raised to the Commission in this matter: a parallel proceeding, part of the pending outcome of which may moot out the need to expend precious Commission adjudicatory resources. *Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, and AmerGen Energy Company, LLC* (Nine Mile Point, Units 1 & 2), CLI-99-30, 199 NRC LEXIS 115 at *18-19 (December 22, 1999). Compare the facts in *Niagara Mohawk* with the facts CAN set forth in its motions preceding its petition in this matter. CAN merely seeks the adjudicatory process Congress intended under §189a of the AEA., and for which the Commission correctly provided access in the Subpart M rules through suspension of the rule barring consideration of a formal hearing and the granting of a request for such a hearing. 10 CFR §§ 2.1329, 2.1322.

2. NRC's Regulations Permit CAN's Request For A Subpart G Hearing

CAN provides sufficient justification for its petition to be accepted. Subpart M allows that NRC "may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact". 10

CFR § 2.1322(d). CAN's petition painstakingly outlines the special circumstances that should move the NRC to provide a full, formal adjudicatory under Subpart G *or otherwise*, and that the Subpart M rules allow for the requested relief. *See id.*, *see also Niagara Mohawk* at 199 NRC LEXIS 115 at *18-19. AmerGen/VY distort CAN's request, attempting to avoid the permitted procedure of asking that the rule barring requesting the Commission for a hearing be suspended so that the very same kind of proceeding the Commission or hearing officer may institute on its own motion would be used in this case from the beginning. The Commission recognized that issues might arise which require additional procedures. The rules explicitly provides that the Commission may use additional procedures *or* convene a formal hearing "on specific and substantial disputes of fact necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing." 10 CFR §. 2.1322(d). Thus, the rule provides sufficient flexibility to cope with cases dealing with more than merely administrative and financial matters. CAN's motions and petition set forth ample justification to apply the rationale of the rule to the facts of this case. All that is required here is that the Commission use the "suspension" rule to permit CAN's request be considered or just take the hint and do the right thing on its own.

The technical and historical issues that CAN raises are directly related to the license transfer. They question AmerGen's expertise to adequately manage the reactor facility at issue and the fleet of aging and deteriorating stations it already has (and intends to keep expanding). They question AmerGen's ability, under the circumstances, to effectively protect the occupational and public health and safety. Note well that CAN does not seek redress for VY's past mismanagement or other problems. The issues CAN raises have an impact upon present and future operation of the reactor, as previous mismanagement, and other problems at VY which

CAN brought to the Commission's attention, will make it difficult for any new owner--let alone a "new" company comprised of corporate owners with the checkered histories of PECO, BE (and, perhaps, Unicom)--to safely operate the plant. The only way to avoid this problem, unless the license transfer is simply denied, is to conduct a full adjudicatory proceeding which gets to the root causes of the problems and creates appropriate license conditions to avoid their repetition.

B. Can's Petition Does Establish Standing To Intervene.

CAN has set forth clear and coherent arguments for standing in its initial filing. This proceeding addresses more than "immediate" consequences, many likely harms to CAN's representative member would flow as a consequence of AmerGen's inability to safely operate and fully decontaminate VYNPS under the existing license (which expires in 2012). Thus, in contradistinction to the arguments in the AmerGen/VY Answer, "future" consequences such as these must be addressed in this proceeding. If not now, when? The fact is that the NRC is required to conduct such proceedings in order to assure that under the proposed license transfer, occupational and public health and safety will be assured. It is a reasonable likelihood that harm to CAN and its representative member will result from AmerGen's inability to adequately operate the station and decontaminate the site as a result of financial and management inadequacy. Such are the concerns of CAN's representative member Anne Britton. They are supported by uncontroverted documentation provided by CAN with its initial filing, as well as an uncontroverted expert declaration, which declaration is supplemented by Exhibit 'A' attached hereto, to answer to deliberate confusion which AmerGen/VY offered, unsworn, in answer to CAN's expert. With the facts before it in this matter, it would be dereliction of duty for the NRC to interpret Subpart M as removing such issues from the scope of a license proceeding. To

characterize such issues as within the ambit of the streamlined, informal hearing process of Subpart M--i.e., merely "administrative" and "financial" in nature--is to elevate form over substance, and to act in a way wholly arbitrary, capricious, and outside reason and the law. Yet, this is what AmerGen/VY's Answer would have the NRC do in this case.

CAN's representative member's declaration in support of standing does not differ substantially from other CAN declarations in support of standing. Here, CAN's representative member Anne Britton, in an individual, personal way, will suffer direct economic harm--not necessarily as a home owner, but as a renter--if the NRC grants the license transfer with an adequate examination of the facts CAN has raised. An incompetent licensee could easily cause harm to her, her family, her home, her community, and the natural environment she like to bike and hike in, by releasing radiation. The fact that her economic harm would also likely come in the form of increased electric rates to pay for clean-up of an accident or under-funded decommissioning or under-funded final site release or costly repairs is no less a harm to her financial security and interest than the harm the Commission so readily recognizes when it occurs to a utility. The fact is, Congress, in designating the NRC to grant licenses under the AEA, did not in any way indicate its intention to elevate the property interest which may be licensed above the property interests of The People who are supposed to be able to purchase electricity produced by the licensee. That Commission precedent may have made such an error in the past is no reason in and of itself to maintain such an error. The bottom line is, CAN's declarant's statements, coupled with CAN's petition, provide precisely the "kind of situation [that] justifies standing based on 'real-world consequences[.]'" *Yankee Atomic*, CLI-98-21, 48 NRC at 205 (1998).

CAN's declarant, Anne Britton, as an ordinary home renter who pays electric bills, represents CAN members who will be suffer economic harm if AmerGen does not operate, decommission, and clean up the VYNPS. This aggregate losses to such persons may exceed AmerGen Vermont ability to compensate them. Additionally, the NRC has not considered the unique corporate form of AmerGen Vermont LLC as a limited liability company owned by a limited liability company. The Commission has an obligation to examine this issue as it may bear upon the ability of CAN and its representative member to obtain economic relief in the event of an accident or other circumstance. AmerGen/VY view such potential harms as mere boundary issues--much as Yankee Atomic unsuccessfully tried to do in the Yankee Rowe License Termination Plan case. The issues here are threefold. First, radioactivity does not stop at the perimeter boundary. Second, as the Commission found in the *Yankee Atomic* case, it is not unreasonable to wish to be able to enjoy the site that AmerGen acknowledges it intends to release for unrestricted use. Third, as the Commission noted in *Yankee Atomic*, it is not unreasonable for a person such as Ms. Britton to want to freely walk, hike or bike in the near vicinity of VYNPS. Ms. Britton lives in the same proximity to VYNPS as Mr. van Italie does to Yankee Rowe. But, unlike Mr. van Italie, who lives near a decommissioning reactor site, Ms. Britton lives near an operating one. CAN has responded repeatedly to licensees' protestations that the harms which could flow from a decommissioning facility are far, far less than those from an operating facility. This is a case where following the correct precedent because it is correct is a reasonable thing to request.

She and those like her will become liable for the costs associated with clean up. Briton's concerns are specific, and she can be granted relief. AmerGen/VY's suggestion that Britton seeks to be able to trespass is clearly specious. Any radioactive releases will not necessarily stop

at the property line. In addition, NRC regulations require as part of remediation that the site be decontaminated to the extent that it could be released for unrestricted use if possible.. Should the property be released as unrestricted, and is not properly decontaminated, Britton will be placed at risk.

Moreover, under its arguments against CAN's standing, AmerGen/VY demonstrate that there is a clear dispute over the issues underlying this case. For example, AmerGen/VY argues that its stated intent to purchase numerous nuclear reactors, and, therefore, any injury which might flow from such a plan being allowed to be carried forward, is unrelated to and beyond the scope of the proceeding. Plainly, CAN disagrees, yet the disagreement between AmerGen/VY and CAN on this point goes beyond a scope issue. *Niagara Mohawk*, even where disallowing a subpart G hearing, acknowledges that holding one on the right set of facts is permissible. Plainly, too, multiple reactor acquisitions will have an effect upon AmerGen's financial adequacy to operate, decommission, and clean up the VYNPS. As such, AmerGen's ability to function under the load it is panning to take on has a direct impact upon, and a potential genuine harm to the health and safety of Anne Britton and CAN. Moreover, this is a harm that the Commission can, through proper adjudication, avoid. In this way, CAN has not only shown that it has standing, but, taken in conjunction with the AmerGen/VY answer in this regard, CAN has also shown a genuine issue in dispute which is beyond merely administrative and financial considerations.

In addition, in the section of their Answer disputing CAN's standing, AmerGen/VY allege that the harms CAN projects in relation to "cost cutting" are actually beneficial. Here, they mistake benefit to the billfold for benefit to the body (and body politic). Not only does their argument once again show that there is yet another genuine dispute over a health and safety

related issue that is more than merely administrative or financial, but they also show that, unless you accept their argument, there are likely to be adverse health and safety consequences to workers and the public due to cost cutting. AmerGen/VY argue that there is no correlation between the cost-cutting and health and safety. However, the history of PECO and BE, AmerGen's parent companies, as CAN contends in its petition, demonstrate the contrary. When it suits their purposes, AmerGen claims it does not have the history CAN decries. When challenged about its experience, it will boast of having PECO and BE as its corporate parents. Whichever way you look at it, AmerGen's experience is, therefore, suspect. In point of fact, one has only to read the AmerGen/VY Answer in conjunction with the CAN petition to see that AmerGen/VY has not refuted the materials that CAN provided. CAN has demonstrated a connection between cost-cutting with risk. In fact, it is a connection that the Commission knows well. In a regulatory era in which "risk based regulation" is to take the place of inspection scrutiny, the NRC must rely upon the self-interest of its licensees to not place profits over health and safety considerations and procedures. Thus, the disputed issue here is ripe for Commission investigation through adjudication.

C. Can's Petition Satisfies Subpart M Pleading Requirements.

CAN has met the pleading requirements under section 2.1306. Can has demonstrated the potential for injury-in-fact to its member, causation, and the possibility of relief. The CAN petition does not attempt to suggest that AmerGen will in the future knowingly and intentionally disregard NRC rules and regulations. CAN's petition, rather, argues that AmerGen will be unable to and incapable of meeting NRC requirements.

CAN has submitted voluminous documentation of the compromising of safety as a result of placing undue emphasis on financial success in a competitive market at nuclear stations

operated by AmerGen's parent companies (BE), which the AmerGen/VY has neither recognized or refuted.

1. CAN's Issues Regarding Adequacy of AmerGen Decommissioning Funds Is A Proper Matter for Consideration in this Proceeding.

There is a clear dispute over the adequacy of AmerGen's financial assurances to guarantee the decommissioning and decontamination of the Vermont Yankee site. CAN is not asking the NRC to impose stricter requirements. AmerGen/VY provided differing cost estimates for decommissioning. In its filing to the NRC, the estimate was \$320 million. Yet, its FERC filing states that the costs will likely be in excess of \$500 million.² The public needs, and has a statutory right under the AEA, to assurance that AmerGen is financially capable of funding myriad associated costs of decommissioning and site clean-up. CAN does not suggest the insufficiency of NRC rules governing on- and off-site release documentation and materials disposal. However, as the NRC is well aware, NRC regulations (and lack thereof) allowed undocumented disposal of unidentified quantities of radioactive waste at facilities like VYNPS. As a new owner, AmerGen will have responsibility for finding and cleaning up any and all such wastes. Significantly, in this regard, AmerGen/VY does not even attempt to refute the documentation CAN submitted in support of this issue.

D. CAN's Request for an Environmental Impact Study is Warranted.

CAN's petition requests that an EIS of VYNPS be conducted to assay the cumulative financial (and, consequently, health and safety) allowing a single corporation to concentrate a large number of nuclear operations under a single source of financing and ultimate authority. Indeed, the NRC has begun to study this phenomenon, but does not view it in the context of the

² An agency such as the NRC, which of late has been claiming that lack of adequate funding is the reason for relinquishing a number of its regulatory activities, must understand that a couple of hundred million dollars here or there, as the saying goes, is a significant amount of money.

antitrust evaluations for licensing (and the congressional rationale for same). In addition, the request for a site specific EIS to ascertain the existence of undocumented radioactive waste, ground water contamination, and the potential affects of leakage from the rad waste system³ 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 know whether AmerGen's estimates of such costs, and its claims relating 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.

E. CAN's Petition Provides a Sufficient Basis To Challenge the Technical Qualifications of AmerGen Vermont.

Although, according to AmerGen/VY, the current staff at Vermont Yankee may temporarily remain in place, changes in the management structure and philosophy of the company running VYNP will have a profound impact on operations. 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 the 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, in addition to being health and safety related, genuine, non-administrative or merely financial issues in dispute with AmerGen/VY, adversely impact the health and safety of CAN's representative member by allowing increasingly dangerous conditions at VYNPS which

³ This problem was described as a serious issue in the original expert declaration of David Lochbaum attached to CAN's petition as Exhibit '2'.

would likely lead to an accident. AmerGen/VY does not refute CAN's expert testimony on this issue, nor does it offer contrary expert opinion of its own.

There is a evidently a genuine dispute between CAN and AmerGen/VY over the issue of the adequacy of AmerGen's capacity to protect the public's health and safety in VYNPS operations. As noted above, when convenient, AmerGen/VY cites the technical qualification of AmerGen and PECO as owners and operator of nuclear reactors. Yet AmerGen does not, and cannot, cite the technical qualifications of some its parent companies in one breath, and then, in the next breath, state that these issues are immaterial to a license transfer proceeding such as this. Notably, AmerGen/VY does not address the issues CAN raised regarding BE's troubled management practices. In fact, it appears that AmerGen would like to forget about its foreign parent. Yet AmerGen, plainly, cannot, and does not, refute the facts CAN presents. These facts show that AmerGen has no reason to boast about its corporate parentage.

F. CAN's Allegation that AmerGen Is Likely To Reduce the Size of the Work Force at Vermont Yankee is Valid--and an Important Public and Occupational Health and Safety Consideration Warranting a Formal Adjudicatory Process.

AmerGen's parent companies have indeed reduced workforces, and AmerGen/VY does not refute the CAN documents provides to show that these reductions created an unwarranted risk of harm to workers and the public. AmerGen/VY is disingenuous in failing to acknowledging that it has or intends to reduce the workforce at the reactors it has acquired (and those it intends to acquire, such as VYNPS). however, AmerGen/VY does not controvert CAN's contention that such practices have created and will create a "chilled" workplace which, as argued above and argued and documented in the petition, adversely affects occupations, and then, public health and safety.

Thus, in this regard, there is a genuine dispute about the health and safety consequences of AmerGen's workforce reduction practices, which health and safety consequences should be completely explored through an adjudicatory process prior to license transfer.

G. CAN's Request that NRC Consider AmerGen's Acquisition of Multiple Nuclear Stations is an Essential Component to Determine the Adequacy of AmerGen's Ability to Manage Any and All of its Stations, As Well As Part of Any Occupational and Public Health and Safety Based Analysis of Antitrust Implications of AmerGen's Acquisitions Plans.

AmerGen's financial ability and resources for operating VYNPS depends upon the circumstances that will exist at its other nuclear reactor facilities. The NRC permitted AmerGen's other license transfers without looking at the "big picture" of its over all acquisition plans and ability to simultaneously handle so many reactor operations (or the effects of using "nested" limited liability companies to hold the various reactors in its portfolio). CAN, in this instance, raises issues surrounding the likely impacts of AmerGen's attempt to operate a fleet of reactors. One issue is the interactive effects of problems at one or more facilities upon the owner's ability to continue to safely operate its other reactors. It is common sense that the greater the number of reactor operations financially bound together in single company, the greater potential for adverse interactive impacts upon all of the reactors due to problems in some small number of those reactors. AmerGen/VY's claim that the \$110 million its parent companies offer to back up and mitigate problems at all of these reactors is a laughably paltry sum incapable of solving major problems at even one of these facilities. (That is probably way the State of Vermont has become somewhat concerned about the limitations of the \$110 million backing at issue here.⁴ licenses that are financially bound together, the greater the potential for impacts at one or more stations to affect others. AmerGen/VY's claims that the \$110 million its

⁴ Had AmerGen/VY bothered to serve CAN with its Answer to the Vermont Department of Public Service, CAN might know what its Answer said.

parent companies offer in an attempt to mitigate the effects of accidents or other problems reveals that it knows that such contingencies are real. But the offering is so small compared to the magnitude of the costs of any number of likely significant repairs or remediation of potential accidents, that, at the same time, it shows AmerGen's planning to be out of touch with real world reactor costs. The NRC must consider the occupational and public health and safety consequences of AmerGen's inadequate contingency plans in the license transfer proceeding. Plainly, such considerations, as described above and described and documented in CAN's petition, are not solely financial (nor merely administrative) in nature. That AmerGen is only putting forward \$110 million for all of its planned reactors bespeaks a lack of judgment and rational planning for emergencies. Such plainly poor judgement reflects upon the character of the applicant, and is, hence, a proper subject matter in a license transfer proceeding as CAN stated in its petition.

H. CAN's Request for Antitrust Review In Connection with the Pending Application is Warranted, Consistent with the Atomic Energy Act's Requirements, And, In a Case Such as This, An Indispensable Part of Assaying the Occupational and Public Health and Safety and National Security Implications of the Proposed License Transfer.

The circumstances involved in the license transfer of VYNPS to a multinational conglomerate comprised of British Energy and Unicom/PECO cry out for an Antitrust Review. The Commission has made a grave mistake in viewing antitrust review initiated at the initial licensing stage as all that Congress intended. In a case such as this, given the vast change in corporate structure since the AEA was last amended, the NRC's failure to consider the implications of a giant multinational conglomerate acquiring a fleet of nuclear stations runs counter to the very charge Congress gave the Commission under the AEA. No conglomerate of this magnitude (i.e., one spanning the globe *and*, significantly, including foreign partners) was

contemplated by the AEA as being able to acquire U.S. reactors. As CAN stated in its petition, the NRC has a Congressionally mandated oversight duty on antitrust matters in license transfer proceedings under Atomic Energy Act of 1946, as amended 1954, et seq [AEA]. §§105, 184; 42 USC §§ 2135(c), 2234, and related portions concerning the licensing of nuclear facilities and the NRC's oversight authorities for such licensees. *See also*, NUREG-1574, *Standard Review Plan For Antitrust Reviews*.

Congress intended that the Commission evaluate the antitrust implications implicit in U.S. companies owning large numbers of nuclear powered electric generating facilities. So much is plain in the AEA, at least for the initial licensing stage. In interpreting the act, it is arbitrary, capricious, and not in accordance with law for the NRC to take the position that Congress intended giant multinational corporations, including those with foreign owners, to escape antitrust scrutiny *merely* because their take-over occurs *after* issuance of the original license.

I. CAN's Issues on the Inadequacy of AmerGen's Insurance to Cover VYNPS Final Site Release Is A Proper Subject of this Proceeding

AmerGen Vermont claimed that the concern about liability coverage protection under the provisions of the Price-Anderson Act was unjustified. AmerGen Vermont based its claim primarily on the following argument. Under 10 CFR § 50.82(a)(11), the Part 50 license for a nuclear power reactor may not be terminated until "[t]he terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E." AmerGen/VY Answer at 39. AmerGen/VY's claim that § 50.82(a)(11) and Part 20, subpart E, obviate the need for liability coverage following termination of Vermont Yankee's operating license is simply unfounded. Prior to license termination, liability coverage is required because the federal regulations do not

provide adequate protection for the general public and the environment. Liability coverage is also necessary prior to license termination because licensees do not always comply with federal regulations. Following license termination, radioactivity may remain at the VYNPS site in sufficient quantities that adequate assurance of protection for the public and the environment cannot be demonstrated absent insurance. Given such a hazard, post Part 50 license liability coverage is as necessary as post-operational coverage prior to license termination. *See generally*, Declaration Of David A. Lochbaum, Nuclear Safety Engineer, Union Of Concerned Scientists, Concerning Technical Issues And Safety Matters Involved In The Transfer Of The Vermont Yankee Operating License To AmerGen (March 9, 2000). AmerGen/VY's Answer attempts to muddy the waters on this issue. This is further evidence that the would-be owner is not adequately concerned about occupational and public health and safety. The Commission should inquire into this matter in the course of evaluating the application for license transfer.

J. CAN's Issues Related to the Adequacy of AmerGen's Financial Qualifications, Particularly As These Issues Directly Affect Occupational and Public Health and Safety and National Security, Are Proper Subjects For A Formal License Transfer Proceeding.

The NRC itself has questioned the adequacy of the funding, as well as other matters in AmerGen's previous license transfer applications. See, e.g., Airozo, Dave, "NRC Questions Funding, Citizenship of Chairman of New TMI Owner," 21 *Inside NRC* 2 (January 4, 1999). The AmerGen/VY application asserts that the parent companies will commit funds as needed but is vague as to the circumstances and the limits to which the parent companies will make up any shortfall. There is a clear dispute over the adequacy of the financial assurances in the application. Moreover, even the State of Vermont Department of Public Service believes that there is inadequate financial assurance and have filed a petition for a hearing and intervention in

this matter. *See generally* Vermont Department of Public Service Petition for Hearing (February 23, 2000).

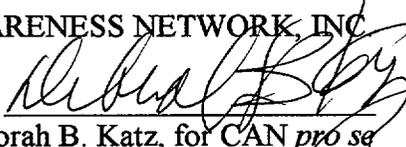
III. CONCLUSION

CAN has standing to be in the license transfer proceeding. It has demonstrated that there are issues in this proceeding that are beyond the merely administrative and financial considerations for which Subpart M was intended. Moreover, as AmerGen/VY's Answer shows, and as CAN illustrated above, there are genuine issues in dispute in this matter which concern occupational and public health and safety--as well as national security.

For the reasons set forth above and in its petition and motion, CAN respectfully requests that the Commission accept its petition and grant the motions in this matter.

Respectfully submitted:

CITIZENS AWARENESS NETWORK, INC

BY: 
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Before the
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'00 MAR 13 P4:28

Docket No. 50-271

CAN's Reply To
AmerGen/VY Answer

In the matter of
Vermont Yankee Nuclear Power Corp.
Application for transfer of Part 50 license
for Vermont Yankee Nuclear Power Station
to AmerGen Vermont, LLC

CERTIFICATE OF SERVICE

I, Deborah Katz, acting for Citizens Awareness Network, Inc., *pro se*, certify that on this 10th day of March, 2000, caused a copy of the above captioned filing to be sent to the United States Nuclear Regulatory Commission and the parties listed below by e-mail and U.S. mail, first class postage pre-paid (except as otherwise noted):

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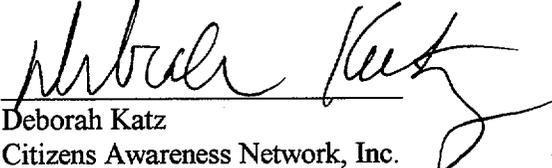
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