

RAS 1969

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

00 01 01 12

July 21, 2000

|  |   |                    |
|--|---|--------------------|
| <u>In the Matter of</u>                  | ) |                    |
|  | ) |                    |
| Vermont Yankee Nuclear Power Corporation | ) |                    |
|  | ) |                    |
| and                                      | ) |                    |
|  | ) | Docket No. 50-271  |
| AmerGen Vermont, LLC                     | ) | License No. DPR-28 |
|  | ) |                    |
| (Vermont Yankee Nuclear Power Station)   | ) | (License Transfer) |
|  | ) |                    |

**APPLICANTS' ANSWER OPPOSING  
CITIZENS AWARENESS NETWORK'S  
MOTIONS FOR A STAY, CLARIFICATION AND  
REQUEST FOR INVESTIGATION**

**I. INTRODUCTION**

AmerGen Vermont, LLC (AmerGen Vermont) and Vermont Yankee Nuclear Power Corporation (VYNPC) (hereinafter jointly referred to as Applicants) hereby submit this Answer to "Citizens Awareness Network Motions for Stay, Clarification, Request for Investigation" (Motion). In its Motion, Citizens Awareness Network (CAN or Petitioner) requests that the Nuclear Regulatory Commission (NRC or Commission):

- (1) "[i]ssue an Order temporarily restraining or staying the effectiveness of any approval which may have been made to the license transfer at issue in this matter"; and

Template = SECY-041

SECY-02

(2) “issue an Order clarifying the procedures that were used in this matter, including, but not limited to the failure to provide a notice or order prior to granting or denying the hearing requested in this matter, and directing the NRC staff to issue a safety evaluation prior to approval of the license transfer at issue. . . .”

Motion, p. 2 (footnote omitted). The principal bases for CAN’s requests are that the NRC did not issue an Order or Safety Evaluation for the license transfer, and CAN did not have notice of the license transfer.

As discussed below, on July 7, 2000, the NRC Staff did issue both an Order and Safety Evaluation approving the transfer of the NRC license for the Vermont Yankee Nuclear Power Station (Vermont Yankee) to AmerGen Vermont. CAN was provided with actual notice of the Order and has now been provided with a copy of that Order and Safety Evaluation. In addition, CAN fails to establish that any stay is warranted, and any such stay could adversely affect AmerGen Vermont’s schedule for completing the transfer once other regulatory approvals are obtained. Accordingly, the Motion should be denied.

## **II. BACKGROUND AND FACTS**

On January 6, 2000, Applicants submitted an application requesting that the NRC approve the transfer of the Vermont Yankee license to AmerGen Vermont.<sup>1/</sup> A notice of the

---

<sup>1/</sup> Application for Order and Conforming Administrative License Amendments for License Transfer (Facility Operating License No. DPR-28).

application was published on February 3, 2000 in the Federal Register.<sup>2/</sup> The notice offered an opportunity for interested persons to request a hearing on the proposed license transfer.

CAN sought a hearing in its Petition dated February 22, 2000. Applicants filed an Answer on March 3, 2000. CAN filed a Reply on March 10, 2000. The NRC has yet to rule on CAN's hearing request.

On July 7, 2000, the NRC issued an Order and Safety Evaluation approving the transfer of the Vermont Yankee license to AmerGen Vermont. The Order itself stated that notice of the action would be promptly transmitted to the Presiding Officer and parties to the proceeding. Order, p. 2. However, it is possible that CAN's representatives did not receive their mailed copies of the Order and Safety Evaluation from the NRC, since Applicants' counsel also did not receive service of the Order and Safety Evaluation from the NRC.

CAN states that it learned of the existence of the NRC's decision to approve of the license transfer through a telephone call from the NRC Staff on July 7, 2000, and through the publication on July 10, 2000 of an NRC Office of Public Affairs (OPA, No. 00-109) press release. Motion, pp. 3-4. The Order and Safety Evaluation were available on ADAMS—through the NRC's website—the morning of Monday, July 17, 2000. Applicants provided both of these documents to CAN and CAN's counsel by facsimile on July 17, 2000. The Order was also published in the Federal Register (65 Fed. Reg. 44549) on Tuesday, July 18, 2000. The Federal Register notice identified that the Safety Evaluation was available “for public inspection at the Commission's Public Document Room.” Id. at 44551.

---

<sup>2/</sup> Notice of Consideration and Approval of Transfer of Facility Operating Licenses and Conforming Amendment, and Opportunity for a Hearing, 65 Fed. Reg. 5376 (2000).

### III. ARGUMENT

CAN's Motion is based on a mistake of fact. The Motion states that the Commission approved the transfer of the Vermont Yankee license to AmerGen Vermont without the issuance of an order or safety evaluation. Motion, p. 1-2, 4. This is incorrect. Mr. Roy Zimmerman, Acting Director of the Office of Nuclear Reactor Regulation (NRR) signed the Order on July 7, 2000.<sup>3/</sup> That same day, the Order, Conforming Amendments, and Safety Evaluation were issued, attached to a cover letter to the Applicants signed by Mr. Richard P. Croteau, the Vermont Yankee Project Manager at NRR.<sup>4/</sup>

CAN's claim that it did not receive notice of the license transfer is also incorrect. As CAN admits, it had actual knowledge that the NRC Staff had approved the license transfer, based upon the phone call from the NRC staff on July 7, 2000 and the NRC press release on July 10, 2000 publicizing the approval of the license transfer. Motion, pp. 3-4.<sup>5/</sup> Therefore, the claim that CAN did not have notice of the license transfer is baseless.

---

<sup>3/</sup> CAN also appears to mistakenly assume that issuance of the Order constitutes a denial of its hearing request. See Motion, p. 3, 5-6. As the Order itself states, "Commission action on the pending hearing requests is being handled independently of this action." Order, p. 2. To the extent CAN opposes issuance of an Order prior to an NRC ruling on CAN's request for a hearing and/or completion of any such proceeding, such opposition is at odds with NRC rules and precedent. See 10 CFR § 2.1316(a) (license transfers may and should be approved prior to the completion of pending hearings); Long Island Lighting Co. (Shorham Nuclear Power Station, Unit 1), CLI-92-4, 35 NRC 69, 76-77 (1992). See also, Order, p. 2.

<sup>4/</sup> CAN apparently was not aware of these facts at the time it filed the Motion. Apparently, CAN did not receive service of the Order and Safety Evaluation even though the cover letter included a list of recipients, including CAN's representatives.

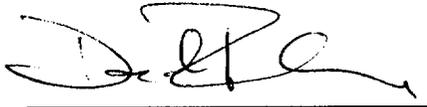
<sup>5/</sup> Further, publication in the Federal Register on July 18, 2000, constitutes official notice of the NRC's Order.

In any event, CAN now has a copy of both the Order and Safety Evaluation because Applicants provided copies of both to CAN and CAN's counsel on July 17, 2000. Therefore, to the extent that the Motion is predicated upon lack of receipt of the Order and Safety Evaluation, the Motion is now moot and should be denied.

Finally, CAN does not set forth sufficient reasons to support a stay. In determining whether to grant or deny an application for a stay, the Commission will consider four factors. See 10 CFR § 2.1327(d). In this case, the four factors weigh in favor of denying the Motion. First, CAN has not experienced any irreparable injury; CAN now has copies of the Order and Safety Evaluation. Moreover, the Vermont Yankee license has not yet been transferred and, as CAN acknowledges in its Motion, cannot be transferred until other agency approvals are obtained. Accordingly, the slight delay in CAN's receipt of the NRC Order cannot possibly have harmed or prejudiced CAN. Second, CAN made no showing that it is likely to prevail on the merits, since its Motion is based upon a mistake of fact and since CAN had actual notice of the approval of the license transfer. Third, issuance of a stay would harm the Applicants, since it could unfairly delay the transfer of the Vermont Yankee license following receipt of other regulatory approvals. Finally, granting the stay would not be in the public interest, both because the NRC Staff did in fact prepare and issue an Order and Safety Evaluation, and because CAN's complaint was resolved when it received a copy of them.

**IV. CONCLUSION**

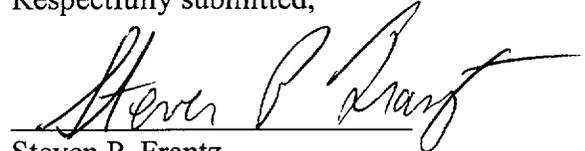
For the reasons set forth above, Applicants respectfully request that the Commission deny the Motion.



Ernest L. Blake, Jr.  
David R. Lewis  
Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8474  
Facsimile: (202) 663-8007  
Email: David\_Lewis@shawpittman.com  
Email: Ernest\_Blake@shawpittman.com)

Counsel for Vermont Yankee Nuclear  
Power Corporation

Respectfully submitted,



Steven P. Frantz  
Michael A. Bauser  
Alex S. Polonsky  
Morgan, Lewis & Bockius LLP  
1800 M Street, N.W.  
Washington, DC 20036-5869  
(202) 467-7000  
Facsimile: (202) 467-7176  
E-mail: spfrantz@mlb.com

Counsel for AmerGen Vermont, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Applicants' Answer Opposing Citizens Awareness Network's Motions for a Stay, Clarification and Request for Investigation were served upon the persons listed below by e-mail or facsimile, with a conforming copy deposited in the U.S. mail, first class, postage prepaid, this 21st day of July, 2000.

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Attn: Rulemakings and Adjudications Staff  
Washington, D.C. 20555-0001  
(E-mail: secy@nrc.gov)

Office of the Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
(E-mail: hrb@nrc.gov)

Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: ogclt@nrc.gov)

James Volz, Esq.  
Director for Public Advocacy  
Vermont Department of Public Service  
112 State Street - Drawer 20  
Montpelier, VT 05620-2601  
(E-mail: volz@psd.state.vt.us)

David R. Lewis  
Ernest L. Blake, Jr.  
Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037  
(Email: david\_lewis@shawpittman.com)  
(Email: ernest\_blake@shawpittman.com)

Frederick Katz  
Deborah B. Katz  
Citizens Awareness Network, Inc.  
P.O. Box 3023  
Clairmont, MA 01339-3023  
(E-mail: can@shaysnet.com)

Jonathan Block, Esq.  
94 Main Street  
P.O. Box 566  
Putney, Vermont 05346-0566  
(Email: jonb@sover.net)

  
Steven P. Frantz  
Counsel for AmerGen Vermont, LLC