

May 17, 2002

Mr. Ross P. Barkhurst
President and Chief Executive Officer
Vermont Yankee Nuclear Power
Corporation
185 Old Ferry Road
P.O. Box 7002
Brattleboro, VT 05302-7002

Mr. Michael R. Kansler
Senior Vice President and Chief
Operating Officer
Entergy Nuclear Vermont Yankee, LLC
Entergy Nuclear Operations, Inc.
440 Hamilton Ave.
White Plains, NY 10601

SUBJECT: ORDER APPROVING TRANSFER OF LICENSE FOR VERMONT YANKEE
NUCLEAR POWER STATION FROM VERMONT YANKEE NUCLEAR POWER
CORPORATION TO ENTERGY NUCLEAR VERMONT YANKEE, LLC, AND
ENTERGY NUCLEAR OPERATIONS, INC., AND APPROVING CONFORMING
AMENDMENT (TAC NO. MB3154)

Dear Messrs. Barkhurst and Kansler:

The enclosed Order is in response to your application dated October 5, 2001, as supplemented by submittals dated November 7 and 8, 2001, and January 23 and April 30, 2002, requesting approval of the transfer of the license for Vermont Yankee Nuclear Power Station held by Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. The enclosed Order provides consent to the proposed license transfer. It also approves a conforming license amendment to be issued at the time the transfer is completed, with the changes as indicated in Enclosure 2.

Enclosures 3 and 4 contain the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation (SE) related to the preceding action. Proprietary information is contained on pages 5 and 6 of Enclosure 4. The nonproprietary version of the SE will be placed in the NRC Public Document Room and added to the Agency-wide Documents Access

Messrs. Barkhurst and Kansler

-2-

and Management System's Publicly Available Records System (ADAMS PARS) library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA by RStarkey for R. Pulsifer/

Robert M. Pulsifer, Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-271

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

cc w/encls: See next page

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

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Sincerely,

/RA by RStarkey for RPulsifer/

Robert M. Pulsifer, Project Manager, Section 2
 Project Directorate I
 Division of Licensing Project Management
 Office of Nuclear Reactor Regulation

Docket No. 50-271

- Enclosures: 1. Order
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cc w/encls: See next page

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Package: ML020390193

*See previous concurrence

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Enclosure 4: ML020390187

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NAME	RPulsifer	TClark	RMP for PKleene	CCarpenter	KGibson	DTrimble	JClifford
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DATE	5/13/02	5/15/02	5/13/02	5/14/02	5/16/02	05/16/02	

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Vermont Yankee Nuclear Power Station

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Vermont Yankee Nuclear Power Station

Proprietary

cc:

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

ORDER APPROVING TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) is the holder of Facility Operating License No. DPR-28, which authorizes the operation of Vermont Yankee Nuclear Power Station (Vermont Yankee or the facility) at steady-state power levels not in excess of 1,593 megawatts thermal. The facility is located at the licensee's site in the Town of Vernon, Windham County, Vermont. The license authorizes VYNPC to possess, use, and operate the facility.

II.

Under cover of a letter dated October 5, 2001, Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY), Entergy Nuclear Operations, Inc. (ENO), and VYNPC jointly submitted an application requesting approval of the transfer of Facility Operating License No. DPR-28 for Vermont Yankee from VYNPC to Entergy Nuclear VY and ENO. The licensee, Entergy Nuclear VY, and ENO also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by submittals dated November 7 and 8, 2001, and January 23 and April 30, 2002, collectively referred to as the "application" herein unless otherwise indicated.

Entergy Nuclear VY, a Delaware limited liability company, is an indirect wholly owned subsidiary of Entergy Corporation and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. According to the application, Entergy Nuclear VY will assume title to the facility, while ENO will operate and maintain Vermont Yankee. The conforming license amendment would remove references to VYNPC from the license and add references to Entergy Nuclear VY and ENO, as appropriate, and make other administrative changes to reflect the proposed transfer.

VYNPC, Entergy Nuclear VY, and ENO requested approval of the transfer of the license and a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and an opportunity to request a hearing or submit written comments was published in the FEDERAL REGISTER on December 7, 2001 (66 FR 63566). The Commission received no requests for hearing or written comments.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that Entergy Nuclear VY and ENO are qualified to be the holders of the license to the extent proposed in the application, and that the transfer of the license to Entergy Nuclear VY and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the

application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated May 17, 2002.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license as described herein to Entergy Nuclear VY and ENO is approved, subject to the following conditions:

- (1) Before the completion of the sale and transfer of Vermont Yankee, Entergy Nuclear VY and ENO shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Entergy Nuclear VY and ENO have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.
- (2) On the closing date of the transfer of Vermont Yankee, Entergy Nuclear VY shall obtain from VYNPC all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds into a decommissioning trust for Vermont Yankee established by Entergy Nuclear VY. If the amount of such funds does not meet or exceed the minimum amount required for the facility

pursuant to 10 CFR 50.75, Entergy Nuclear VY shall at such time deposit additional funds into the trust and/or obtain a parent company guarantee (to be updated annually) and/or obtain a surety pursuant to 10 CFR 50.75(e)(1)(iii) in a form acceptable to the NRC and in an amount or amounts which, when combined with the decommissioning trust funds for the facility that have been obtained and deposited as required above, equals or exceeds the total amount required for the facility pursuant to 10 CFR 50.75. To the extent Entergy Nuclear VY will obtain a parent company guarantee and/or surety to comply with the requirements of this Order, specific documentation of (a) the form of the guarantee and/or surety, and (b) the satisfaction of applicable financial tests and requirements for such guarantee and/or surety under NRC regulations shall be provided to the Director of the Office of Nuclear Reactor Regulation no later than 30 days prior to the closing of the transfer of the facility. The decommissioning trust, and surety if utilized, shall be subject to or be consistent with the following requirements, as applicable:

a. Decommissioning Trust

- (i) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (ii) With respect to the decommissioning trust funds, investments in the securities or other obligations of Entergy Corporation and its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

- (iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
- (iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- (v) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a “prudent investor” standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission’s regulations.

b. Surety

- (i) The surety agreement must be in a form acceptable to the NRC and be in accordance with all applicable NRC regulations.
- (ii) The surety company providing any surety obtained to comply with this Order shall be one of those listed by the U.S. Department of the Treasury in the most recent edition of Circular 570 and shall have a coverage limit sufficient to cover the amount of the surety.

- (iii) Entergy Nuclear VY shall establish a standby trust to receive funds from the surety, if a surety is obtained, in the event that Entergy Nuclear VY defaults on its funding obligations for the decommissioning of Vermont Yankee. The standby trust agreement must be in a form acceptable to the NRC, and shall conform with all conditions otherwise applicable to the decommissioning trust agreement.
 - (iv) The surety agreement must provide that the agreement cannot be amended in any material respect, or terminated, without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- (3) Entergy Nuclear VY shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.
- (4) Entergy Nuclear VY and ENO shall take no action to cause Entergy Global Investments, Inc., or Entergy International Holdings Ltd. LLC, or their parent companies to void, cancel, or modify the lines of credit to provide funding for Vermont Yankee as represented in the application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.
- (5) After receipt of all required regulatory approvals of the transfer of Vermont Yankee, Entergy Nuclear VY, ENO, and VYNPC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the sale and transfer of Vermont Yankee no later than 7 business days prior to the date of closing. If the transfer of the

license is not completed by May 30, 2003, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may, in writing, be extended.

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

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 5, 2001, supplemental letters dated November 7 and 8, 2001, and January 23 and April 30, 2002, and the safety evaluation dated May 17, 2002, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 17th day of May 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

VERMONT YANKEE NUCLEAR POWER CORPORATION

DOCKET NO. 50-271

VERMONT YANKEE NUCLEAR POWER STATION

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-28

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by the Vermont Yankee Nuclear Power Corporation (the licensee) dated October 5, 2001, as supplemented by letters dated November 7 and 8, 2001, and January 23 and April 30, 2002, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

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

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating
License and Technical Specifications

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. DPR-28

DOCKET NO. 50-271

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

Remove

Facility Operating License pages 1 through 8
Cover page for Appendix A
Page 253 of Appendix A

Insert

Facility Operating License pages 1 through 9
Cover page for Appendix A
Page 253 of Appendix A

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.

(Vermont Yankee Nuclear Power Station)

Docket No. 50-271

Facility Operating License

License No. DPR-28
Amendment No. 5,

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

- a. Construction of the Vermont Yankee Nuclear Power Station (the facility) has been substantially completed in conformity with the application, as amended, the Provisional Construction Permit No. CPPR-36, the provisions of the Atomic Energy Act of 1954, as amended (the Act), and the rules and regulations of the Commission as set forth in Title 10, Chapter 1, CFR; and
- b. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission; and
- c. There is reasonable assurance (1) that the activities authorized by this amended operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the rules and regulations of the Commission; and
- d. Entergy Nuclear Vermont Yankee, LLC is financially qualified and Entergy Nuclear Operations, Inc. is technically and financially qualified to engage in the activities authorized by this amended operating license, in accordance with the rules and regulations of the Commission; and
- e. Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements" of the Commission's regulations; and
- f. The issuance of this amended operating license will not be inimical to the common defense and security or to the health and safety of the public; and

- g. After weighing the environmental, economic, technical and other benefits of the facility against environmental costs and considering available alternatives, the issuance of this amended operating license (subject to the conditions for protection of the environment set forth herein) is in accordance with 10 CFR Part 50, Appendix D, of the Commission's regulations and all applicable requirements of said Appendix D have been satisfied.

Accordingly, Facility Operating License No. DPR-28, as amended, issued to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. is hereby amended in its entirety to read:

1. This license applies to the Vermont Yankee Nuclear Power Station (the facility), a single cycle, boiling water, light water moderated and cooled reactor, and associated electric generating equipment. The facility is located on Entergy Nuclear Vermont Yankee, LLC's site, in the Town of Vernon, Windham County, Vermont, and is described in the application as amended.
2. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
 - A. Pursuant to Sections 104b of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," Entergy Nuclear Vermont Yankee, LLC to possess and use, and Entergy Nuclear Operations, Inc., to possess, use, and operate the facility as a utilization facility at the designated location on the Entergy Nuclear Vermont Yankee, LLC site.
 - B. Entergy Nuclear Operations, Inc., pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation as described in the Final Safety Analysis Report, as supplemented and amended.
 - C. Entergy Nuclear Operations Inc., pursuant to the Act and 10 CFR Parts 30, 40 and 70 to receive, possess, and use at any time any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for calibration of reactor instrumentation and radiation monitoring equipment, and as fission detectors in amounts as required.
 - D. Entergy Nuclear Operations Inc., pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components.

A-31
2/14/77

E. Entergy Nuclear Operations Inc., pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not to separate, such byproduct and special nuclear material as may be produced by operation of the facility.

3. This license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations: 10 CFR Part 20, Section 30.34 of 10 CFR Part 30, Section 40.41 of 10 CFR Part 40, Section 50.54 and 50.59 of 10 CFR Part 50, and Section 70.32 of 10 CFR Part 70; and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:

A. Maximum Power Level

Entergy Nuclear Operations, Inc. is authorized to operate the facility at reactor core power levels not to exceed 1593 megawatts thermal in accordance with the Technical Specifications (Appendix A) appended hereto.

B. Technical Specifications

The Technical Specifications contained in Appendix A, as revised through Amendment _____, are hereby incorporated in the license. Entergy Nuclear Operations, Inc. shall operate the facility in accordance with the Technical Specifications.

C. Reports

Entergy Nuclear Operations, Inc. shall make reports in accordance with the requirements of the Technical Specifications.

D. Records

Entergy Nuclear Operations, Inc. shall keep facility operating records in accordance with the requirements of the Technical Specifications.

E. Environmental Conditions

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

1. This paragraph deleted by Amendment No. 206, October 22, 2001.

2. This paragraph deleted by Amendment 131, 10/07/91.

3. This paragraph deleted by Amendment No. 206, October 22, 2001.

4. If harmful effects or evidence of irreversible damage in land or water ecosystems as a result of facility operation are detected by Entergy Nuclear Operations, Inc.'s environmental monitoring program, Entergy Nuclear Operations, Inc. shall provide an analysis of the problem to the Commission and to the advisory group for the Technical Specifications, and Entergy Nuclear Operations, Inc. thereafter will provide, subject to the review by the aforesaid advisory group, a course of action to be taken immediately to alleviate the problem.

5. Entergy Nuclear Operations, Inc. will grant authorized representatives of the Massachusetts Department of Public Health (MDPH) and Metropolitan District Commission (MDC) access to records and charts related to discharge of radioactive materials to the Connecticut River.

6. This paragraph deleted by Amendment No. 206, October 22, 2001.

7. This paragraph deleted by Amendment No. 206, October 22, 2001.

8. Entergy Nuclear Operations, Inc. will permit authorized representatives of the MDPH and MDC to examine the chemical and radioactivity analyses performed by Entergy Nuclear Operations, Inc.

9. Entergy Nuclear Operations, Inc. shall immediately notify MDPH, or an agency designated by MDPH, in the event concentrations of radioactive materials in liquid effluents, measured at the point of release from the Vermont Yankee facility, exceed the limit set forth in the facility Offsite Dose Calculation Manual. Entergy Nuclear Operations, Inc. will also notify MDPH in writing within 30 days following the release of radioactive materials in liquid effluents in excess of 10 percent of the limit set forth in the facility Offsite Dose Calculation Manual.

10. A report shall be submitted to MDPH and MDC by May 15 of each year of plant operation, specifying the total quantities of radioactive materials released to the Connecticut River during the previous calendar year. The report shall contain the following information:
 - (a) Total curie activity discharged other than tritium and dissolved gases.
 - (b) Total curie alpha activity discharged.
 - (c) Total curies of tritium discharged.
 - (d) Total curies of dissolved radio-gases discharged.
 - (e) Total volume (in gallons) of liquid waste discharged.

(f) Total volume (in gallons) of dilution water.

(g) Average concentration at discharge outfall.

(h) This paragraph deleted by Amendment No. 206, October 22, 2001.

(i) Total radioactivity (in curies) released by nuclide including dissolved radio-gases.

(j) Percent of facility Offsite Dose Calculation Manual limit for total activity released.

11. This paragraph deleted by Amendment No. 206, October 22, 2001.

12. This paragraph deleted by Amendment No. 206, October 22, 2001.

13. Entergy Nuclear Operations, Inc. shall establish and maintain a system of emergency notification to the states of Vermont and New Hampshire, and the Commonwealth of Massachusetts, satisfactory to the appropriate public health and public safety officials of those states and the Commonwealth, which provides for:

a. Notice of site emergencies as well as general emergencies.

b. Direct microwave communication with the state police headquarters of the respective states and the Commonwealth when the transmission facilities of the respective states and the Commonwealth so permit, at the expense of Entergy Nuclear Operations, Inc.

c. A verification or coding system for emergency messages between Entergy Nuclear Operations, Inc. and the state police headquarters of the respective states and the Commonwealth.

14. Entergy Nuclear Operations, Inc. shall furnish advance notification to MDPH, or to another Commonwealth agency designated by MDPH, of the time, method and proposed route through the Commonwealth of any shipments of nuclear fuel and wastes to and from the Vermont Yankee facility which will utilize railways or roadways in the Commonwealth.

F. Entergy Nuclear Operations, Inc. shall implement and maintain in effect all provisions of the approved Fire Protection Program as described in the Final Safety Analysis Report for the facility and as approved in the SER dated January 13, 1978, and supplemental SERs, dated 9/12/79, 2/20/80, 4/15/80, 7/3/80, 10/24/80, 11/10/81, 1/13/83, 7/24/84, 3/25/86, 12/1/86, 12/8/89, 11/29/90, 8/30/95, 3/23/97, 6/9/97, 8/12/97, 3/6/98, 3/31/98, 9/2/98, and 2/24/99, subject to the following provisions:

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

G. Security Plan

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

A-168
2/24/99

A-107
8/25/88
10/20/88

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

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

J. License Transfer Conditions

On the closing date of the transfer of Vermont Yankee Nuclear Power Station (Vermont Yankee), Entergy Nuclear Vermont Yankee, LLC shall obtain from Vermont Yankee Nuclear Power Corporation all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds into a decommissioning trust for Vermont Yankee established by Entergy Nuclear Vermont Yankee, LLC. If the amount of such funds does not meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75, Entergy Nuclear Vermont Yankee, LLC shall at such time deposit additional funds into the trust and/or obtain a parent company guarantee (to be updated annually) and/or obtain a surety pursuant to 10 CFR 50.75(e)(1)(iii) in a form acceptable to the NRC and in an amount or amounts which, when combined with the decommissioning trust funds for the facility that have been obtained and deposited as required above, equals or exceeds the total amount required for the facility pursuant to 10 CFR 50.75. The decommissioning trust, and surety if utilized, shall be subject to or be consistent with the following requirements, as applicable:

a. Decommissioning Trust

- (i) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (ii) With respect to the decommissioning trust funds, investments in the securities or other obligations of Entergy Corporation and its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
- (iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- (v) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

b. Surety

- (i) The surety agreement must be in a form acceptable to the NRC and be in accordance with all applicable NRC regulations.
- (ii) The surety company providing any surety obtained to comply with the Order approving the transfer shall be one of those listed by the U.S. Department of the Treasury in the most recent edition of Circular 570 and shall have a coverage limit sufficient to cover the amount of the surety.
- (iii) Entergy Nuclear Vermont Yankee, LLC shall establish a standby trust to receive funds from the surety, if a surety is obtained, in the event that Entergy Nuclear Vermont Yankee, LLC defaults on its funding obligations for the decommissioning of Vermont Yankee. The standby trust agreement must be in a form acceptable to the NRC, and shall conform with all conditions otherwise applicable to the decommissioning trust agreement.
- (iv) The surety agreement must provide that the agreement cannot be amended in any material respect, or terminated, without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

c. Entergy Nuclear Vermont Yankee, LLC shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of this license to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., and the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting the Order.

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

A-127 12/17/90

FOR THE ATOMIC ENERGY COMMISSION

Original Signed By
Roger S. Boyd /f/

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

Enclosures:
Appendix A Technical Specifications

Date of Issuance:
Feb. 28, 1973

Amendment No.

APPENDIX A
TO
OPERATING LICENSE DPR-28
TECHNICAL SPECIFICATIONS
AND BASES
FOR
VERMONT YANKEE NUCLEAR POWER STATION
VERNON, VERMONT
ENTERGY NUCLEAR OPERATIONS, INC.
AND
ENTERGY NUCLEAR VERMONT YANKEE, LLC
DOCKET NO. 50-271

Reissued by
Change Nos. 13, 15, and 17
Dated 1/17/74, 1/28/74, and 4/10/74

VYNPS

5.0 DESIGN FEATURES

5.1 Site

The station is located on the property on the west bank of the Connecticut River in the Town of Vernon, Vermont, which Entergy Nuclear Vermont Yankee, LLC either owns or to which it has perpetual rights and easements. The site plan showing the exclusion area boundary, boundary for gaseous effluents, boundary for liquid effluents, as well as areas defined per 10CFR20 as "controlled areas" and "unrestricted areas" are on plant drawing 5920-6245. The minimum distance to the boundary of the exclusion area as defined in 10CFR100.3 is 910 feet.

No part of the site shall be sold or leased and no structure shall be located on the site except structures owned by Entergy Nuclear Vermont Yankee, LLC or related utility companies and used in conjunction with normal utility operations.

5.2 Reactor

- A. The core shall consist of not more than 368 fuel assemblies.
- B. The reactor core shall contain 89 cruciform-shaped control rods. The control material shall be boron carbide powder (B_4C) or hafnium, or a combination of the two.

5.3 Reactor Vessel

The reactor vessel shall be as described in Table 4.2-3 of the FSAR. The applicable design codes shall be as described in subsection 4.2 of the FSAR.

5.4 Containment

- A. The principal design parameters and applicable design codes for the primary containment shall be as given in Table 5.2.1 of the FSAR.
- B. The secondary containment shall be as described in subsection 5.3 of the FSAR and the applicable codes shall be as described in Section 12.0 of the FSAR.
- C. Penetrations to the primary containment and piping passing through such penetrations shall be designed in accordance with standards set forth in subsection 5.2 of the FSAR.

5.5 Spent and New Fuel Storage

- A. The new fuel storage facility shall be such that the effective multiplication factor (K_{eff}) of the fuel when dry is less than 0.90 and when flooded is less than 0.95.
- B. The K_{eff} of the fuel in the spent fuel storage pool shall be less than or equal to 0.95.
- C. Spent fuel storage racks may be moved (only) in accordance with written procedures which ensure that no rack modules are moved over fuel assemblies.

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED TRANSFER OF OPERATING LICENSE FOR

VERMONT YANKEE NUCLEAR POWER STATION

FROM VERMONT YANKEE NUCLEAR POWER CORPORATION TO

ENTERGY NUCLEAR VERMONT YANKEE, LLC AND

ENTERGY NUCLEAR OPERATIONS, INC., AND CONFORMING AMENDMENT

DOCKET NO. 50-271

1.0 INTRODUCTION

By application submitted under cover of a letter dated October 5, 2001, Vermont Yankee Nuclear Power Corporation (VYNPC), Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) and Entergy Nuclear Operations, Inc. (ENO), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of Facility Operating License No. DPR-28 for the Vermont Yankee Nuclear Power Station (VY) from VYNPC to Entergy Nuclear VY and ENO.

The application also requested the approval of a conforming license amendment to reflect the proposed transfer and was filed pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. Supplemental information was filed by the applicants by submittals dated November 7 and 8, 2001, and January 23 and April 30, 2002. The supplements to the initial application that were not specifically referenced in the *Federal Register* notice of the transfer and amendment request did not expand the application beyond the scope of the notice.

The transfer is requested as a result of the Purchase and Sale Agreement (PSA) entered into by VYNPC and Entergy Nuclear VY on August 15, 2001, to purchase VY (see Enclosure 4 of the October 5, 2001, application).

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly through the transfer of control of the license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

2.0 BACKGROUND

VY is a 510 MWE single unit boiling water reactor located in Vernon, Vermont. On March 21, 1972, VYNPC was issued an operating license which expires on March 21, 2012. VYNPC is the sole owner and operator of VY. The application proposes that Entergy Nuclear VY will own VY, and ENO will operate and maintain VY as agent for Entergy Nuclear VY, pursuant to an Operating Agreement between Entergy Nuclear VY and ENO (see Enclosure 5 of the

October 5, 2001, application). The sale and transfer of VY would implement VYNPC's decision to divest its nuclear generation assets. Entergy Nuclear VY is a newly formed entity that will be engaged principally in the business of owning a nuclear power facility and selling electric energy at wholesale in the United States. ENO was formed in February 2000, and is engaged principally in the business of operating nuclear power facilities. The application states that, at the closing of the purchase, VY will be the only asset on the balance sheet of Entergy Nuclear VY and that, as of the date of the application, Entergy Nuclear VY had no liabilities.

Furthermore, the applicants state that upon closing, the following events will occur, as addressed in the PSA:

1. Entergy Nuclear VY will assume title to the facility (including all equipment, spare parts, fixtures, inventory and other property necessary for the operation and maintenance of VY), will take title to all used and spent nuclear fuel and other licensed nuclear materials at VY, and through its authorized agent, ENO, will assume all responsibility for the operation and maintenance of the plant. (Enclosure 5 of the October 5, 2001, application, which is the proposed operating agreement between Entergy Nuclear VY and ENO, clarifies that the immediately preceding encompasses a proposed arrangement under which ENO, rather than Entergy Nuclear VY, would actually operate and maintain the facility, and ENO would have "sole authority" as the operator to make decisions relating to public health and safety.)
2. All regular employees of VYNPC will be offered employment with ENO.
3. As part of the transaction, VYNPC has entered into a Power Purchase Agreement (PPA) through March 21, 2012 with Entergy Nuclear VY under which VYNPC will purchase energy and capacity from Entergy Nuclear VY at pre-established rates and schedules.
4. At the closing of the sale, VYNPC will transfer the assets of its qualified and non-qualified decommissioning trust funds to a trust fund to be established by Entergy Nuclear VY. If any additional amount is needed in order to satisfy the NRC's funding requirements, this amount will be supplied by Entergy Nuclear VY through an additional deposit of funds, or by a guarantee method. The responsibility for decommissioning the plant will transfer to Entergy Nuclear VY upon transfer of the NRC license and closing of the sale.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

Entergy Nuclear VY and ENO *do not qualify* as electric utilities under 10 CFR 50.2. In accordance with 10 CFR 50.33(f), a non-electric utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought.

Pursuant to 10 CFR 50.33(f)(2), the application states that Entergy Nuclear VY and ENO have assurance of obtaining the funds necessary to cover estimated costs to operate VY as a result of the PPA Entergy Nuclear VY signed with VYNPC. Under that contract, Entergy Nuclear VY will sell 100% of the total energy output of VY at fixed prices through March 2012. Table 1 summarizes the average annual prices and terms of the PPA through 2007. After March 2012, Entergy Nuclear VY will pursue other firm contracts or sell any uncommitted power into the market in Vermont and the surrounding area.

Table 1
Average Annual kWh Price Per the PPA for Years 2002-2007

Year	Output to Contract	Contract Price (\$/KWh)
2002	100%	42.60
2003	100%	42.00
2004	100%	42.80
2005	100%	39.50
2006	100%	39.00
2007	100%	40.00

As required by 10 CFR 50.33(f)(3), the application provides information for Entergy Nuclear VY as a newly formed entity. Entergy Nuclear VY is an indirect wholly owned subsidiary of Entergy Corporation, and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3. The principal office will be located in Vernon, VT; an additional office will be located in Brattleboro, VT.

ENO, which holds licenses for other facilities as the operator and thus is not newly formed, is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. The principal place of business is located in White Plains, NY.

The corporate structure of these organizations is shown in Enclosure 6 of the October 5, 2001, application.

Entergy Corporation, with its headquarters located in New Orleans, Louisiana, is a U.S.-based global energy company with power production, distribution operations, and related diversified services. Entergy Corporation owns, manages, or invests in power plants, generating nearly 31,000 megawatts of electricity. Through its subsidiaries (both regulated and non-regulated), Entergy Corporation owns and operates nine nuclear power plants at seven sites - Arkansas Nuclear One Units 1 and 2, Grand Gulf Nuclear Station, River Bend Station, Waterford 3 Steam Electric Station, Pilgrim Nuclear Power Station, Indian Point Nuclear Generating Unit Nos. 2 and 3 (it also owns Unit 1, which is shut down), and the James A. FitzPatrick Nuclear Power Station.

Entergy Corporation distributes energy to more than 2.5 million customers in the U.S. and is also among the top 10 power marketers in the U.S. As of June 30, 2001, Entergy Corporation had total assets of \$21 billion. Entergy Corporation's 10-K's for the past 5 years are attached as Enclosure 2 to the October 5, 2001, application. Also attached as Enclosure 3 are Moody's and S&P's bond ratings for the past 3 years which demonstrate investment-grade bond ratings for certain subsidiaries of Entergy Corporation and Entergy Corporation's most recent S&P's bond ratings.

The application further states that Entergy Nuclear VY, either through a parent or affiliate company, will provide the funds necessary to purchase VY, and that Entergy Corporation has unconditionally guaranteed payment of the purchase price and performance under the PSA, at or prior to closing.

3.1 Evaluation

The NRC staff evaluated the proposed transferees' financial qualifications consistent with the guidance provided in NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999 (SRP).

The staff reviewed the financial projections provided in the application for:

- reasonableness of estimated operating costs; and
- reasonableness of assumptions used in projections of revenues or sources of funds.

Based on Entergy Nuclear VY's projected expenses, Entergy Nuclear VY and ENO's assertion in the application that they have not identified any design, technical, or environmental deficiencies which would adversely impact the continued performance of VY at the same or higher capacity factor, and the performance of the facilities that have been acquired by other Entergy subsidiaries, the NRC staff believes that the applicants' expense projections are reasonable.

The application states that Entergy Nuclear VY and ENO expect to continue to operate VY at a capacity factor at or above the 10-year historical performance average of 89% (see Table 2 below). The average capacity factor for the years 1994-1999 per NUREG-1350, Vol. 12 is 88%, which includes a capacity factor of 72% in 1998 that resulted from a 72-day outage. That outage included installation of new emergency core cooling system pump suction strainers, and re-coating of the torus.

Table 2
Projected Capacity Factors for Years 2002-2007

	2002	2003	2004	2005	2006	2007
Projected Capacity Factor	86.6%	92.6%	88.5%	88.5%	92.6%	88.5%

(The simple-average capacity factor for the period is 89.5%.)

Based on VY's current operating performance, ENO's operating experience at other plants, and Entergy Nuclear VY and ENO's assertion as to a lack of deficiencies which would impact the continued performance of VY at the same or higher capacity factor, the NRC staff has no reason to believe that such capacity factors cannot be obtained and, thus, finds the applicants' capacity factor projections to be reasonable.

In support of the claim that there is reasonable assurance of obtaining the necessary funds to operate and maintain VY, the proposed transferees have provided a proprietary Entergy Nuclear VY projected income and expense statement for the period 2002 through 2007.

Table 3
Projected Income and Expenses 2002 - 2007
(\$000s)

	2002	2003	2004	2005	2006	2007
Power Sales - Contract	[]	[]	[]	[]	[]	[]
Power Sales - Market	[]	[]	[]	[]	[]	[]
Total Revenue	[]	[]	[]	[]	[]	[]
Operation & Maintenance	[]	[]	[]	[]	[]	[]
Fuel	[]	[]	[]	[]	[]	[]
Administrative & Other	[]	[]	[]	[]	[]	[]
Total Operating Expenses	[]	[]	[]	[]	[]	[]
Interest Expense and Income Taxes	[]	[]	[]	[]	[]	[]
Net Income/(Loss)	[]	[]	[]	[]	[]	[]

The sale of power in accordance with Table 3 is anticipated to cover the expected operating and maintenance (O&M) costs of VY for the first full 5 years of operation following the transfer. Thus, in view of the foregoing, the staff finds Entergy Nuclear VY financially qualified to own VY, under 10 CFR 50.33(f)(2).

3.2 Additional Analyses

To augment the revenue from the described power sales, Entergy Nuclear VY (and ENO through Entergy Nuclear VY) will have access to an established, initial line of credit of \$35 million from an affiliate company, Entergy Global Investments, Inc. (EGI). This line of credit will provide working capital and, if necessary, funds for the operation and maintenance of the plant. If revenues and/or retained earnings are sufficient at the end of the sixth year of operation, this line of credit will be reduced to \$20 million. Also, \$35 million will be provided through a line of credit from Entergy International Holdings Ltd. LLC (EIHL), to provide additional financial resources if needed for the safe operation and maintenance of VY, including the costs of nuclear property damage insurance and any retrospective premium pursuant to 10 CFR 140.21. The applicants have represented that, except as previously described, Entergy Nuclear VY and ENO will not reduce, replace, or withdraw these lines of credit without the express consent of

the NRC; further, neither the EGI nor the EIHL lines of credit may be amended without prior approval of the NRC and prior written approval of VYNPC.

The applicants represented that funds to cover fixed operating costs during a 4- or 6-month shutdown would be paid from retained earnings, as available, or from the funds previously described, i.e., the lines of credit. The 6-month costs are shown in Table 4. Information in the application demonstrated EGI's and EIHL's ability to provide the above lines of credit. The staff concludes that costs for a 6-month outage would be covered as the applicants represented.

Table 4
VY Fixed Operating Expenses for 6-Month Plant Shutdown
(\$000s)

	2002*	2003	2004	2005	2006	2007
Total Operating Expenses	[]	[]	[]	[]	[]	[]
Ongoing Capital Expenditures	[]	[]	[]	[]	[]	[]
Plant Depreciation	[]	[]	[]	[]	[]	[]
Variable Outside Goods and Services (25% of 25% of O&M)	[]	[]	[]	[]	[]	[]
Fuel	[]	[]	[]	[]	[]	[]
Outage	[]	[]	[]	[]	[]	[]
Annual Fixed Operating Expenses	[]	[]	[]	[]	[]	[]
6 Month's Operating Expenses	[]	[]	[]	[]	[]	[]

* Values are for 10 months, which assumes a February 28, 2002, close.

Notwithstanding the staff's earlier finding that the applicants' projected capacity factors are reasonable, even if somewhat lower capacity is experienced compared to what the applicants have forecast, Entergy Nuclear VY should still be able to remain financially stable through the use of retained earnings, or through the above lines of credit to provide additional necessary funds to compensate for lower revenues resulting from lower capacity.

To ensure that the lines of credit described in the application will be available as might be necessary, the staff believes that they should be subject to a condition of approval of the transfer of the license and to a corresponding condition in the license as part of the conforming amendment, essentially as follows:

Entergy Nuclear VY and ENO shall take no action to cause Entergy Global Investments, Inc., or Entergy International Ltd. LLC, or their parent companies to void, cancel, or modify the lines of credit to provide funding for Vermont Yankee as represented in the application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.

With regard to ENO, the application provides that ENO is seeking authority under the license to operate and maintain VY, but not to own the facility. According to the application, ENO will operate VY at cost and be reimbursed by Entergy Nuclear VY for such costs pursuant to the terms of an operating agreement that was submitted with the application. In essence, while ENO may be nominally responsible for costs, Entergy Nuclear VY will have the full financial responsibility for funding the safe operation of the facility. Since the staff has determined that Entergy Nuclear VY is financially qualified to hold the license as the owner of the facility, in that indicated sources of revenues will cover estimated costs, the staff concludes that ENO, in light of the cost pass-through contract that will exist, will have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and thus, is financially qualified to hold the operating authority under the license.

4.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety. Section 50.33(k) of Title 10 of the *Code of Federal Regulations* requires that an application for an operating license for a utilization facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility. Pursuant to 10 CFR 50.75(b), each power reactor licensee must certify that it will provide decommissioning funding assurance in an amount that may be more, but not less, than the amount determined under the formulas in 10 CFR 50.75(c)(1) and (2).

VYNPC currently maintains two decommissioning trusts for VY, one for funds qualified for tax treatment under 26 USC § 468A (qualified fund), the other a non-qualified fund. The application states that at the closing of the sale, VYNPC will transfer the assets of its qualified and non-qualified decommissioning trust funds to a trust fund to be established by Entergy Nuclear VY. As of August 30, 2001, the aggregate value of the assets in the funds totaled \$296.2 million. Between August 15, 2001, the effective date of the PSA, and the closing of the sale and transfer, VYNPC will make additional deposits from time to time to the decommissioning fund in accordance with Federal Energy Regulatory Commission and Internal Revenue Service requirements. The amount required at closing to meet the minimum amount required under NRC regulations, assuming a 2-percent real rate of growth on the fund until the end of license, was calculated by Entergy Nuclear VY to be \$304 million (see Enclosure 10). The NRC staff has verified Entergy Nuclear VY's calculation and accepts this amount as accurate.

Pursuant to Section 6.10 of the PSA, in the event the aggregate value of the qualified and nonqualified decommissioning funds, as of the closing, is less than the minimum decommissioning amount required by the NRC, Entergy Nuclear VY shall be required to make an additional deposit to the nonqualified decommissioning fund so that the aggregate value of both funds is equal to the NRC minimum. However, the additional deposit, together with the deposits made between the effective date of the PSA and the closing, shall not exceed an aggregate amount equal to \$16,777,380 times the number of days between July 1, 2001, and the closing date divided by 365. The application further states that if any additional amount is needed in order to satisfy the NRC's funding requirements, this amount will be supplied by Entergy Nuclear VY through an additional deposit of funds, a surety, or a parent or affiliate

company guarantee. The responsibility for decommissioning the plant will transfer to Entergy Nuclear VY upon transfer of the NRC license and closing of the sale.

The NRC staff concludes that Entergy Nuclear VY has complied with the requirements in 10 CFR 50.75(b) with respect to the amount of decommissioning funds that Entergy Nuclear VY must certify that it will provide. However, the NRC staff has concluded that the application contains insufficient information upon which the staff can analyze the possible affiliate company guarantee, which, in contrast to parent company guarantees or sureties, is not expressly provided for in the regulations as an acceptable mechanism to provide decommissioning funding assurance. Thus, the staff is not, without additional information or details provided by the applicants, prepared to find that an affiliate company guarantee would be acceptable as proposed in the application. Otherwise, the decommissioning funding assurance mechanisms proposed by the applicants are, in general, permitted by the NRC's regulations, and therefore, the staff finds the proposed decommissioning funding arrangements acceptable, subject to conditions of approval of the license transfer, which should also be made (in relevant parts) corresponding conditions of the license as part of the conforming amendment, essentially as follows:

- (1) On the closing date of the transfer of Vermont Yankee Nuclear Power Station (Vermont Yankee), Entergy Nuclear Vermont Yankee, LLC shall obtain from Vermont Yankee Nuclear Power Corporation all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds into a decommissioning trust for Vermont Yankee established by Entergy Nuclear Vermont Yankee, LLC. If the amount of such funds does not meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75, Entergy Nuclear Vermont Yankee, LLC shall at such time deposit additional funds into the trust and/or obtain a parent company guarantee (to be updated annually) and/or obtain a surety pursuant to 10 CFR 50.75(e)(1)(iii) in a form acceptable to the NRC and in an amount or amounts which, when combined with the decommissioning trust funds for the facility that have been obtained and deposited as required above, equals or exceeds the total amount required for the facility pursuant to 10 CFR 50.75. The decommissioning trust, and surety if utilized, shall be subject to or be consistent with the following requirements, as applicable:

- a. Decommissioning Trust

- (i) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (ii) With respect to the decommissioning trust funds, investments in the securities or other obligations of Entergy Corporation and its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.
- (iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of

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

- (iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- (v) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a “prudent investor” standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission’s regulations.

b. Surety

- (i) The surety agreement must be in a form acceptable to the NRC and be in accordance with all applicable NRC regulations.
- (ii) The surety company providing any surety obtained to comply with the Order approving the transfer shall be one of those listed by the U.S. Department of the Treasury in the most recent edition of Circular 570 and shall have a coverage limit sufficient to cover the amount of the surety.
- (iii) Entergy Nuclear Vermont Yankee, LLC shall establish a standby trust to receive funds from the surety, if a surety is obtained, in the event that Entergy Nuclear Vermont Yankee, LLC defaults on its funding obligations for the decommissioning of Vermont Yankee. The standby trust agreement must be in a form acceptable to the NRC, and shall conform with all conditions otherwise applicable to the decommissioning trust agreement.
- (iv) The surety agreement must provide that the agreement cannot be amended in any material respect, or terminated, without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

In sum, based on all the foregoing, the staff finds that decommissioning funding as proposed in the application will be acceptable (with the exception of the use of an affiliate company guarantee), provided the staff’s general condition to ensure appropriate maintenance of the decommissioning trust is imposed as part of the transfer approval and conforming license amendment, essentially as follows:

Entergy Nuclear VY shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application and the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting the Order.

5.0 ANTITRUST REVIEW

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

6.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Section 104d of the Atomic Energy Act prohibits the Commission from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The Commission’s regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition.

The application states that Entergy Nuclear VY is a Delaware limited liability company, with its principal office located in Vernon, VT and an additional office to be located in Brattleboro, VT. Entergy Nuclear VY is an indirect wholly owned subsidiary of Entergy Corporation, and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3.

The application states that ENO is a Delaware corporation with its principal place of business located in White Plains, New York. ENO is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2 and an indirect wholly owned subsidiary of Entergy Corporation.

The application gives the names of the principal officers, directors, and management committee members, as applicable, of Entergy Nuclear VY and ENO, and represents that all are citizens of the United States.

The application also states that Entergy Nuclear VY and ENO are not owned, controlled, nor dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe otherwise.

7.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission’s regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect Entergy Nuclear VY and ENO as the new licensees of VY.

In accordance with the Price-Anderson Act, the new licensees will also be required to provide primary insurance and participate in the secondary retrospective insurance pool. They will also be required to maintain property insurance as specified in 10 CFR 50.54(w). The information provided in the application concerning financial qualifications demonstrates that Entergy Nuclear VY, the owner, will be able to satisfy applicable insurance requirements for itself and ENO.

Consistent with NRC practice, the staff will require Entergy Nuclear VY and ENO to provide satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license reflecting the new licensees. Because the issuance of the amended license is directly tied to the consummation of the proposed transfer, the order approving the transfer will be conditioned essentially as follows:

Before the completion of the transfer of the VY license, Entergy Nuclear VY and ENO shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

8.0 TECHNICAL QUALIFICATIONS

8.1 Background

The following evaluation addresses the technical qualifications of ENO, the proposed operator of VY, using the guidance as described in the NRC Standard Review Plan (SRP) (NUREG-0800), Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization," and Sections 13.1.2-13.1.3, "Operating Organization." The staff also based its evaluation on 10 CFR 50.40(b), "Common Standards," and American National Standards Institute (ANSI) N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel."

8.2 Purpose of the Evaluation

The purpose of this evaluation is to ensure that the corporate management of the proposed operator is involved with, informed of, and dedicated to the safe operation of the plant and, that sufficient qualified technical resources will be provided to support safe plant operation and maintenance, and to evaluate proposed changes to the operating organization that may occur as a result of the license transfer.

8.3 Management and Technical Support Organization

The staff reviewed the application to determine the acceptability of the proposed corporate management and technical support organization, using the applicable acceptance criteria contained in SRP, Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization."

The applicants' submittal stated "The organizational structure provides for the integrated management of the activities that support the operation and maintenance of Vermont Yankee. Clear management control, clear lines of authority, and effective communications exist between the organizational units involved in the management, operations, and technical support for operation of Vermont Yankee. The only anticipated changes will be that the senior officer at the site (Site Vice President-Operations) will report to the Senior Vice President and Chief Operating Officer of ENO rather than the President of VYNPC. Sufficient experience and availability of personnel exist to implement the responsibility for technical support of Vermont Yankee. The Chief Nuclear Officer will be clearly responsible for nuclear activities and will be

free of ambiguous assignments of primary responsibility without ancillary responsibilities that might detract from nuclear safety matters.”

Based on the application, the staff finds that the proposed operator of VY has shown and described its organization for managing and its means for providing technical support to the plant staff, and that ENO’s qualifications in this regard will be essentially equivalent to the current qualifications of the VYNPC management and technical support organization, regarding which the staff is aware of no deficiencies. Accordingly, the staff concludes that the proposed ENO organization for managing and its means of providing technical support for the continued operation of VY under both normal and off-normal conditions are in accordance with SRP, Chapter 13, “Conduct of Operations,” Section 13.1.1, “Management and Technical Support Organization.”

8.4 Operating Organization

The staff reviewed the application to determine the acceptability of the proposed ENO operating organization and to evaluate changes to the current operating organization proposed as a result of the license transfer. The initial operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization were required to have been evaluated with an appropriate methodology and the staff is not aware of any deficiencies with the current operating organization. Therefore, the staff’s review focused on evaluating any changes to the current operating organization proposed as a result of the transfer. The staff evaluated the application using the applicable acceptance criteria contained in SRP, Chapter 13, “Conduct of Operations,” Sections 13.1.2-1.3, “Operating Organization.”

In its October 5, 2001, submittal, the applicants indicated that, “All regular employees of the VYNPC will be offered employment with ENO. Thus, no changes to the technical qualifications of the operating organization are expected. The position currently held by the senior officer on site will be renamed Vice President, Operations, Vermont Yankee, and will report to the Senior Vice President and Chief Operating Officer (COO) of ENO...The Senior Vice-President and COO of ENO will report to the President and CEO [Chief Executive Officer] of ENO...who will also serve as the Chief Nuclear Officer. The nuclear operating organization will not otherwise be significantly affected by the transfer.”

Since substantially all of the operating organization and personnel now responsible for the operation and maintenance of VY will be transferred to ENO, the staff concludes that ENO’s onsite organization that will operate and maintain VY under both normal and off-normal conditions will be acceptable, in accordance with SRP, Chapter 13, “Conduct of Operations,” Sections 13.1.2-1.3, “Operating Organization.”

8.5 Conclusions

The application has described the corporate level management and technical support organization and the onsite operating organization of ENO that will be responsible for the operation and maintenance of VY after the transfer of licensed operating authority to ENO. The staff concludes that ENO will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation of the plant under both normal and off-normal conditions after the transfer of licensed operating

authority from VYNPC to ENO. The application adequately addressed the relevant requirements of 10 CFR 50.40(b) and 10 CFR 50.80.

Accordingly, in light of the foregoing evaluation, the staff concludes that ENO will be technically qualified to hold the operating authority under the license.

9.0 CONFORMING AMENDMENT

9.1 Introduction

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

9.2 Discussion

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

9.3 State Consultation

In accordance with the Commission's regulations, the Vermont State official was notified of the proposed issuance of the amendment. The State official did not provide any comments.

9.4 Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or the health and safety of the public.

10.0 ENVIRONMENTAL CONSIDERATION

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

11.0 CONCLUSIONS

The NRC staff has concluded, based on the information and representations contained in the application and on the considerations in the foregoing discussion, that with the appropriate conditions discussed above, Entergy Nuclear VY and ENO are qualified to be the license holders for VY to the extent requested, and the transfer of the license to Entergy Nuclear VY and ENO is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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