

Dr. Robert C. Mecredy
Vice President, Nuclear Corporations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

December 14, 1998

SUBJECT: ORDER APPROVING APPLICATION REGARDING RESTRUCTURING OF
ROCHESTER GAS AND ELECTRIC CORPORATION BY ESTABLISHMENT OF
A HOLDING COMPANY AFFECTING LICENSE NO. DPR-18, R. E. GINNA
NUCLEAR POWER PLANT (TAC NO. MA3270)

Dear Dr. Mecredy:

The enclosed Order responds to your application dated July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, on behalf of Rochester Gas and Electric Corporation (RG&E). These submittals request approval, pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR 50.80), of the proposed indirect transfer of Facility Operating License No. DRP-18, held by RG&E, to a new holding company to be created as a New York corporation over RG&E in accordance with electric industry restructuring goals established by the New York State Public Service Commission. The NRC staff's safety evaluation in support of the Order is also enclosed.

The Order is being forwarded to the Office of the Federal Register for publication.

Sincerely,

ORIGINAL SIGNED BY:

Guy S. Vissing, Senior Project Manager
Project Directorate I-1
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Docket No. 50-244

Enclosures: 1. Order
2. Safety Evaluation

cc w/encls: See next page

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December 14, 1998

Department, Penfield Library, State University of New York, Oswego, New York 13126 and the
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Dated at Rockville, Maryland, this day of 1998.
FOR THE NUCLEAR REGULATORY COMMISSION

ORIGINAL SIGNED BY:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

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SUBJECT: ORDER APPROVING APPLICATION REGARDING RESTRUCTURING OF
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Guy S. Vissing, Senior Project Manager
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Samuel J. Collins, Director
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NAME	SHom	SCollins	TEssig
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 14, 1998

Dr. Robert C. Mecredy
Vice President, Nuclear Operations
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

SUBJECT: ORDER APPROVING APPLICATION REGARDING RESTRUCTURING OF
ROCHESTER GAS AND ELECTRIC CORPORATION BY ESTABLISHMENT OF
A HOLDING COMPANY AFFECTING LICENSE NO. DPR-18, R. E. GINNA
NUCLEAR POWER PLANT (TAC NO. MA3270)

Dear Dr. Mecredy:

The enclosed Order responds to your application dated July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, on behalf of Rochester Gas and Electric Corporation (RG&E). These submittals request approval, pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR 50.80), of the proposed indirect transfer of Facility Operating License No. DRP-18, held by RG&E, to a new holding company to be created as a New York corporation over RG&E in accordance with electric industry restructuring goals established by the New York State Public Service Commission. The NRC staff's safety evaluation in support of the Order is also enclosed.

The Order is being forwarded to the Office of the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script, reading "Guy S. Vissing", is positioned above the typed name.

Guy S. Vissing, Senior Project Manager
Project Directorate I-1
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Docket No. 50-244

Enclosures: 1. Order
2. Safety Evaluation

cc w/encls: See next page

Dr. Robert C. Mecredy
Rochester Gas and Electric Company

R.E. Ginna Nuclear Power Plant

cc:

Peter D. Drysdale, Sr. Resident Inspector
R.E. Ginna Plant
U.S. Nuclear Regulatory Commission
1503 Lake Road
Ontario, NY 14519

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

Mr. F. William Valentino, President
New York State Energy, Research,
and Development Authority
Corporate Plaza West
286 Washington Avenue Extension
Albany, NY 12203-6399

Charles Donaldson, Esquire
Assistant Attorney General
New York Department of Law
120 Broadway
New York, NY 10271

Nicholas S. Reynolds
Winston & Strawn
1400 S Street N.W.
Washington, DC 20005-3502

Ms. Thelma Wideman, Director
Wayne County Emergency Management
Office
Wayne County Emergency Operations Center
7336 Route 31
Lyons, NY 14489

Ms. Mary Louise Meisenzahl
Administrator, Monroe County
Office of Emergency Preparedness
111 West Falls Road, Room 11
Rochester, NY 14620

Mr. Paul Eddy
New York State Department of
Public Service
3 Empire State Plaza, 10th Floor
Albany, NY 12223

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ROCHESTER GAS AND ELECTRIC CORPORATION)	Docket No. 50-224
)	
(R. E. Ginna Power Plant))	

ORDER APPROVING APPLICATION REGARDING RESTRUCTURING OF ROCHESTER
GAS AND ELECTRIC CORPORATION BY ESTABLISHMENT OF A HOLDING COMPANY
AFFECTING LICENSE NO. DPR-18, R. E. GINNA NUCLEAR POWER PLANT

I.

Rochester Gas and Electric Corporation (RG&E and licensee) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to possess, maintain, and operate the R. E. Ginna Nuclear Power Plant (Ginna or the facility), under Facility Operating License No. DPR-18, issued by the Commission on December 10, 1984. RG&E fully owns Ginna. The facility is located in Wayne County, New York.

II.

RG&E submitted an application dated July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, for consent by the Commission, pursuant to 10 CFR 50.80, to the extent a proposed corporate restructuring action would result in the indirect transfer of the operating license for the facility. Under the proposed restructuring, RG&E would establish a new holding company and become a subsidiary of the new holding company in accordance with a Settlement Agreement reached with the New York Public Service Commission (PSC

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Case Nos. 96-E-0989), dated October 23, 1997. Unregulated subsidiaries of RG&E would also become subsidiaries of the new holding company.

According to the application, essentially each share of RG&E's common stock would be exchanged for one share of common stock of the holding company such that the holding company would own the outstanding common stock of RG&E. Under this restructuring, RG&E would continue to be an "electric utility" as defined in 10 CFR 50.2 engaged in the transmission, distribution and generation of electricity. RG&E would continue to be the direct owner of Ginna and would continue to operate Ginna. No direct transfer of the operating license would result from the proposed restructuring. The transaction would not involve any change in the responsibility for nuclear operations within RG&E. Officer responsibilities at the holding company level would be primarily administrative and financial in nature and would not involve operational matters related to Ginna. No RG&E nuclear management positions would be changed as a result of the corporate restructuring.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the Federal Register on October 26, 1998 (63 FR 57141), and an Environmental Assessment and Finding of No Significant Impact was published in the Federal Register on October 26, 1998 (63 FR 57143).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, the NRC staff has determined that the restructuring of RG&E by establishment of a holding company will not affect the qualifications of RG&E as the holder of the license for Ginna, and that the transfer of control of the license, to the extent effected by the proposed restructuring, is otherwise consistent with applicable

provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated December 14, 1998.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission approves the application regarding the proposed restructuring of RG&E by the establishment of a holding company, subject to the following: (1) RG&E shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from RG&E to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of RG&E's consolidated net utility plant, as recorded on RG&E's books of account; and (2) should the restructuring of RG&E as described herein, not be completed by December 14, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV.

By January 11, 1999, any person whose interest may be affected by this Order may file in accordance with the Commission's rules of practice set forth in Subpart M of 10 CFR Part 2 a request for a hearing and petition for leave to intervene with respect to issuance of the Order. Such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should

address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Dr. Robert C. Mecredy, Vice President, Nuclear Operations, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.


The Commission will issue a notice or order granting or denying a hearing request of intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the Federal Register and served on the parties to the hearing.

For further details with respect to this Order, see the application for approval filed by RG&E dated July 31, 1998, as supplemented by letter dated August 18, 1998, and attachments thereto, and letter dated September 14, 1998, with attachments, and the Safety Evaluation dated December 14, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents

Department, Penfield Library, State University of New York, Oswego, New York 13126 and the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 14th day of December 1998.

FOR THE NUCLEAR REGULATORY COMMISSION


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED CORPORATE REORGANIZATION

OF ROCHESTER GAS AND ELECTRIC CORPORATION

DOCKET NO. 50-244

R. E. GINNA NUCLEAR POWER PLANT

1.0 INTRODUCTION

By application dated July 31, 1998, as supplemented August 18, 1998, and September 14, 1998, Rochester Gas and Electric Corporation (RG&E), informed the U.S. Nuclear Regulatory Commission (NRC) that a corporate restructuring is proposed that will result in the creation of a holding company (Holdco), of which RG&E would become a subsidiary. In addition, unregulated businesses of RG&E would also become subsidiaries of Holdco. RG&E is the sole owner and operator of the R. E. Ginna Nuclear Power Plant.

The proposed restructuring is in accordance with policy direction from the New York State Public Service Commission implementing the state's restructuring goals. Under the restructuring plan, the outstanding shares of RG&E's common stock are to be exchanged on a share-for-share basis for common stock of Holdco, such that all of the outstanding common stock of RG&E will be owned by Holdco, subject to the exercise of any shareholder's dissenters' rights. After the restructuring, RG&E will continue to be an electric utility as defined in 10 CFR 50.2, and will continue to be engaged in the business of generating, transmitting, and distributing electric power. RG&E will remain the sole owner and operator of Ginna. No direct transfer of the operating license or ownership interest in the station will result from this restructuring.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of the control of a license, after notice to interested persons. Such action is contingent upon the Commission's determination that the holder of the license following the transfer of control is qualified to hold the license and the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

2.0 FINANCIAL QUALIFICATIONS ANALYSIS

Rochester Gas & Electric Corporation states in the application that following the proposed restructuring RG&E will continue to be an electric utility as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy. Wholesale and retail rates will continue to be regulated by the Federal Energy Regulatory Commission and the New York State Public Service Commission.

The application states that the reorganization will not have an adverse impact on RG&E's ability to fulfill its responsibilities under its NRC license. There will be no adverse effect on the ability of the Applicant to meet its financial obligations with respect to future operating and capital requirements for Ginna or to meet its decommissioning funding obligations. As an electric utility, RG&E is exempt from further financial qualifications review, pursuant to 10 CFR 50.33(f). However, in view of the NRC's concern that restructuring can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC's practice has been to condition license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following should be made a condition of the order approving the application regarding the proposed restructuring:

Rochester Gas and Electric Corporation shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from RG&E to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of RG&E's consolidated net utility plant as recorded on RG&E's book of accounts.

3.0 TECHNICAL QUALIFICATIONS

RG&E stated in its application that the new holding company structure will not affect the management of nuclear operations or RG&E's technical qualifications. RG&E will remain as a discrete and separate entity under the new holding company structure and will continue to be responsible for facility operations and meeting the technical qualifications requirements of the operating licenses. No RG&E nuclear management positions will be changed as a prerequisite or direct result of the corporate restructuring. Accordingly, the NRC staff concludes that the proposed restructuring will not impact the technical qualifications of RG&E.

4.0 ANTITRUST REVIEW

Section 105 of the Atomic Energy Act of 1954, as amended (the Act), requires the Commission to conduct an antitrust review in connection with an application for a license to construct or operate a facility under Section 103. The R.E. Ginna Nuclear Power Plant was licensed under Section 104b and, as a result, is not subject to an antitrust review by the staff in connection with the application regarding the proposed creation of a holding company.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The application from RG&E states that its current holders of common stock will become holders of the common stock of Holdco on a share-for-share basis. Therefore, immediately following the reorganization, the common stock of Holdco will be owned by the previous holders of RG&E's common stock in substantially the same proportions in which they held

RG&E's common stock. Less than one percent of the total outstanding shares are currently held by foreign persons or entities. According to the application, RG&E is not now, and will not be following the proposed restructuring, owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The staff has no reason to believe otherwise.

6.0 CONCLUSIONS

In view of the foregoing, the NRC staff concludes that the proposed restructuring of RG&E by creation of a holding company will not adversely affect the financial or technical qualifications of RG&E with respect to the operation and decommissioning of the R.E. Ginna Nuclear Power Plant. Also there do not appear to be any problematic antitrust or foreign ownership considerations that would result from the proposed restructuring. Thus, the proposed restructuring will not affect the qualifications of RG&E as a licensed owner and operator of Ginna, and the transfer of control of the license, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. Accordingly, the NRC should approve the application regarding the proposed restructuring, subject to the condition discussed above concerning significant asset transfers.

Principal Contributor: M. Davis

Date: December 14, 1998