

July 19, 1998

Ms. Ellen Ahearn
Corporate Secretary
Central Hudson Gas &
Electric Corporation
284 South Avenue
Poughkeepsie, NY 12601-4879

SUBJECT: ORDER APPROVING APPLICATION REGARDING RESTRUCTURING OF
CENTRAL HUDSON GAS & ELECTRIC CORPORATION BY ESTABLISHMENT
OF A HOLDING COMPANY AFFECTING LICENSE NO. NPF-69, NINE MILE
POINT NUCLEAR STATION, UNIT NO. 2 (TAC NO. MA1727)

Dear Ms. Ahearn:

The enclosed Order responds to your application dated April 8, 1998, as resubmitted June 8, 1998, and supplemented by letters dated April 22, and July 9, 1998, on behalf of Central Hudson Gas & Electric Corporation (Applicant). 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. NPF-69, to the extent it is held by Applicant, to an unnamed holding company to be created over Applicant 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 has been forwarded to the Office of the Federal Register for publication.

Sincerely,

Original Signed by:

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

Docket No. 50-410

Enclosures: 1. Order
2. Safety Evaluation

cc w/encls: See next page

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FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed by:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 19th day of July 1998.

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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

July 19, 1998

Ms. Ellen Ahearn
Corporate Secretary
Central Hudson Gas &
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284 South Avenue
Poughkeepsie, NY 12601-4879

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The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script that reads "Darl S. Hood".

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

Docket No. 50-410

Enclosures: 1. Order
2. Safety Evaluation

cc w/encs: See next page

Ms. Ellen Ahearn

cc:

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Nine Mile Point Nuclear Station
Unit No. 2

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Chief Nuclear Officer
Niagara Mohawk Power Corporation
Nine Mile Point Nuclear Station
Operations Building, Second Floor
Lycoming, NY 13093

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
CENTRAL HUDSON GAS & ELECTRIC CORPORATION)	Docket No. 50-410
)	
(Nine Mile Point Nuclear Station Unit No. 2))	

ORDER APPROVING APPLICATION REGARDING RESTRUCTURING OF
CENTRAL HUDSON GAS & ELECTRIC CORPORATION BY ESTABLISHMENT
OF A HOLDING COMPANY AFFECTING LICENSE NO. NPF-69, NINE MILE
POINT NUCLEAR STATION, UNIT NO. 2

I.

Central Hudson Gas & Electric Corporation (Applicant) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to own and possess a 9-percent interest in Nine Mile Point Nuclear Station, Unit 2 (NMP2), under Facility Operating License No. NPF-69, issued by the Commission on July 2, 1987. In addition to Applicant, the other owners who may possess, but not operate, NMP2 are New York State Electric & Gas Corporation with an 18-percent interest, Long Island Lighting Company with an 18-percent interest, and Rochester Gas and Electric Corporation with a 14-percent interest. Niagara Mohawk Power Corporation (NMPC) owns a 41-percent interest in NMP2, is authorized to act as agent for the other owners, and has exclusive responsibility and control over the operation and maintenance of NMP2. NMP2 is located in the town of Scriba, Oswego County, New York.

II.

Under cover of a letter dated April 8, 1998, as resubmitted June 8, 1998, and supplemented April 22, and July 9, 1998, Applicant submitted an application for consent by the Commission, pursuant to 10 CFR 50.80, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating license for NMP2 to the extent it is held by Applicant. As a result of the proposed restructuring, Applicant would establish a new holding company and become a subsidiary of the new holding company, not yet named, to be created in accordance with an "Amended and Restated Settlement Agreement" dated January 2, 1998; as modified and approved by the New York State Public Service Commission's (PSC's) "Order Adopting Terms of Settlement Subject to Modifications and Conditions" (issued and effective February 19, 1998) in Case 96-E-0909, and further modified in the PSC's "Modifications to Amended and Restated Settlement Agreement," dated February 26, 1998 (hereafter collectively known as "Settlement Agreement"). These documents constituting the Settlement Agreement were included with the application dated April 8, 1998.

According to the application, the outstanding shares of Applicant's common stock would be exchanged on a share-for-share basis for common stock of the proposed new holding company, such that the holding company would own all of the outstanding common stock of Applicant. Also under the proposed restructuring, Applicant would sell at auction some of its fossil-fueled generating assets, but would continue to be an "electric utility" as defined in 10 CFR 50.2, providing the same utility services as it did before the restructuring. In addition, certain subsidiaries of Applicant would become subsidiaries of the new holding company. Applicant would retain its ownership interest in NMP2 and would continue to be a licensee. No direct transfer of the operating license or interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of NMPC, which has exclusive responsibility under the

operating license for operating and maintaining NMP2 and which is not involved in the proposed restructuring of Applicant.

Notice of the application for approval was published in the FEDERAL REGISTER on June 2, 1998 (63 FR 30025), and an Environmental Assessment and Finding of No Significant Impact was published in the FEDERAL REGISTER on June 25, 1998 (63 FR 34667).

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 April 8, 1998, as resubmitted June 8, 1998, and supplemented by submittals dated April 22, and July 9, 1998, the NRC staff has determined that the restructuring of Applicant by establishment of a holding company will not affect the qualifications of Applicant as a holder of the license, and that the transfer of control of the license for NMP2, to the extent effected by the 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 July 19, 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 Applicant by the establishment of a holding company, subject to the following: (1) Applicant shall provide the Director, 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 Applicant 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 Applicant's consolidated net utility plant, as recorded on Applicant's books of

account, and (2) should the restructuring of Applicant not be completed by July 19, 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 August 19, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of the hearing.


The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. Ellen Ahearn, Corporate Secretary, Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12601-4879.

For further details with respect to this Order, see the application for approval dated April 8, 1998, as resubmitted under cover of a letter dated June 8, 1998, and supplemented by letters dated April 22, June 8, and July 9, 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.

FOR THE NUCLEAR REGULATORY COMMISSION


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 19th day of July 1998.



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO PROPOSED RESTRUCTURING

NEW YORK STATE ELECTRIC & GAS CORPORATION

NINE MILE POINT NUCLEAR STATION, UNIT NO. 2

DOCKET NO. 50-410

1.0 INTRODUCTION

Under cover of a letter dated April 8, 1998, as resubmitted June 8, 1998, and supplemented April 22 and July 9, 1998, an application for consent by the U.S. Nuclear Regulatory Commission (NRC or Commission) was submitted by Central Hudson Gas & Electric Corporation (Applicant), pursuant to 10 CFR 50.80, regarding a proposed restructuring action that would result in the indirect transfer of the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), to the extent it is held by Applicant. Applicant is licensed by the NRC to own and possess a 9-percent interest in NMP2. The restructuring action would result in, among other things, the creation of a holding company, to be named later, of which Applicant would become a subsidiary.

The proposed restructuring action is in accordance with an "Amended and Restated Settlement Agreement" dated January 2, 1998; as modified and approved by the New York State Public Service Commission's (PSC's) "Order Adopting Terms of Settlement Subject to Modifications and Conditions" (issued and effective February 19, 1998) in Case 96-E-0909; and further modified in the PSC's "Modifications to Amended and Restated Settlement Agreement," dated February 26, 1998; hereafter collectively known as "Settlement Agreement." These documents constituting the Settlement Agreement were included with the application dated April 8, 1998.

The application indicates that under the restructuring, the outstanding shares of Applicant's common stock would be exchanged on a share-for-share basis for common stock of the holding company, such that all of the outstanding common stock of the Applicant would be owned by the holding company. After the restructuring, Applicant would continue to be an "electric utility" as defined in 10 CFR 50.2, providing the same electric utility services it provided before the restructuring. Applicant would sell at auction some of its fossil-fueled generating assets (i.e., its Danskammer Steam Generating Plant and its 35% interest in the Roseton Electric Generation Plant, both located in Roseton, New York). In addition, certain subsidiaries of Applicant would become subsidiaries of the new holding company. However, Applicant would retain its ownership interest in NMP2 and would continue to be a licensee. No direct transfer of the operating license or ownership interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which has exclusive responsibility under the operating license for operating and maintaining NMP2 and which is not involved in the proposed restructuring of Applicant.

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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 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 FINANCIAL QUALIFICATIONS ANALYSIS

In its application for consent, the Applicant states that it is, and will continue to be, an "electric utility" as defined by NRC regulation, 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy, and a gas utility involved in the transmission and distribution of natural gas. Wholesale and retail rates will continue to be regulated by the Federal Energy Regulatory Commission and the PSC.

The application states that the reorganization will not have an adverse impact on the Applicant's ability to fulfill its responsibilities under its NRC possessory license. There will be no adverse effect upon the ability of the Applicant to meet its financial obligations with respect to future operating and capital requirements for NMP2 or to meet its decommissioning funding obligations. As an electric utility, Applicant is exempt from further financial qualifications review, pursuant to 10 CFR 50.33(f). However, in view of the NRC's concern that a merger or restructuring could lead to a diminution of assets necessary for the safe operation and eventual decommissioning of a licensee's nuclear power plant, it is NRC practice to condition approvals of transfers of control of licenses involving mergers and restructuring actions upon a requirement that the subject licensee not transfer significant assets to an affiliate without first notifying the NRC. Applicant addresses this NRC concern in the supplement to the application for consent, dated July 9, 1998, by providing the following statement:

Central Hudson Gas & Electric Corporation (Applicant) agrees to provide the Director, 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 Applicant 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 Applicant's consolidated net utility plant, as recorded on Applicant's book of accounts.

The foregoing incorporated as a condition to the NRC's approval of the indirect license transfer application, will assist the NRC in assuring that Applicant will continue to maintain adequate resources to contribute to the safe operation and decommissioning of the facility.

Based on the above information, the NRC staff finds that Applicant will remain financially qualified to hold the license for NMP2 following the proposed restructuring action.

3.0 TECHNICAL QUALIFICATIONS

As stated earlier, NMPC, the licensed operator of the facility, is not involved in the proposed restructuring action and thus will undergo no changes regarding its technical qualifications, as a result of the proposed restructuring action. Applicant is a possessory licensee only, and after formation of the holding company, will continue to participate in only non-operational decision making with respect to NMP2. Therefore, the NRC staff concludes that the proposed restructuring will not impact site technical qualifications.

4.0 ANTITRUST

Section 105c of the Atomic Energy Act of 1954, as amended (the Act), which provides for antitrust reviews to be conducted by the NRC, applies to an application for a license to construct or operate a facility under Section 103 of the Act. Although the proposed restructuring action creates a holding company of an NMP2 licensee, i.e., the holding company may indirectly acquire control of the license, the holding company will not be performing activities for which a license is needed.

Since approval of the application would not involve the issuance of a license, the procedures under Section 105c do not apply, including the making of any "significant changes" determination. Accordingly, no antitrust review is necessary in connection with this application.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Applicant indicated in its application for consent that after the restructuring is implemented, the current holders of Applicant's common stock will become holders of the common stock of the holding company on a share-for-share basis. Thus, the common stock of the holding company will be owned by the previous holders of the Applicant's common stock in substantially the same proportions in which they held Applicant's common stock. Less than one percent of the total outstanding shares are currently held in foreign accounts.

In the application, Applicant states that it is not now, and after the proposed restructuring, will not be owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe that the proposed restructuring action will result in Applicant being owned, controlled, or dominated by foreign interests.

6.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21 and 51.35, an environmental assessment and finding of no significant impact was published in the Federal Register on June 25, 1998 (63 FR 34667).

7.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed action will not adversely affect the financial qualifications of Applicant with respect to the operation and decommissioning of NMP2. Also, there do not appear to be any problematic antitrust or foreign ownership considerations related to the NMP2 license that would result from the restructuring. Thus, the proposed restructuring action will not affect the qualifications of Applicant as a holder of the license for NMP2, 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. Accordingly, with the condition discussed above relating to significant asset transfers, the proposed action should be approved.

Principal Contributors: M. Davis
D. Hood

Date: July 19, 1998