

June 28, 2001

Mr. Robert E. Denton  
President and Chief Executive Officer  
Constellation Nuclear, LLC  
P.O. Box 1475  
Baltimore, MD 21203-1475

Mr. John H. Mueller  
Chief Nuclear Officer  
Niagara Mohawk Power Corporation  
Operations Building, Second Floor  
Lycoming, NY 13093

Mr. Jeffrey K. Smith  
Senior Vice President  
New York State Electric & Gas Corporation  
P.O. Box 5224  
Binghamton, NY 13902-5224

Mr. Paul Wilkens  
Senior Vice President - Generation  
Rochester Gas and Electric Corporation  
89 East Avenue  
Rochester, NY 14649

Mr. Arthur R. Upright  
Senior Vice President  
Central Hudson Gas & Electric Corporation  
284 South Avenue  
Poughkeepsie, NY 12601

SUBJECT: NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2 - CORRECTION  
OF ERROR IN ORDER AND ASSOCIATED DOCUMENTS APPROVING  
TRANSFERS OF LICENSES (TAC NOS. MB0878 AND MB0879)

Dear Sirs:

On June 22, 2001, the NRC staff issued an Order approving the direct transfer of Facility Operating Licenses Nos. DPR-63 and NPF-69, for the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, to Nine Mile Point Nuclear Station, LLC (NMP LLC), indirect transfers pertaining to the associated corporate structure changes of NMP LLC's corporate parent, and conforming amendments. Subsequently, the staff noted that the Order contains an inadvertent error, in that the wording - "as required under 10 CFR 50.75(f)(1), unless otherwise approved by the NRC" - should not have been included in condition (2) (on page 5 of the Order). Accordingly, the staff has issued a corrected page 5 (enclosed).

The associated safety evaluation (SE) and the approved conforming amendments also contain the same error. Accordingly, the staff has also issued and enclosed a corrected page 12 of the SE, a corrected page 6 of the Unit 1 license and a corrected page 6 of the Unit 2 license.

R. E. Denton, et al.

- 2 -

We apologize for any inconvenience this error may have caused you. Please call me if you have any questions.

Sincerely,

**/RA/**

Peter S. Tam, Senior Project Manager, Section 1  
Project Directorate I  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-220 and 50-410

Enclosures: 

1. Corrected page 5 of Order
2. Corrected page 12 of SE
3. Corrected page 6 of Unit 1 license
4. Corrected page 6 of Unit 2 license

cc w/encls: See next 2 pages

Nine Mile Point Nuclear Station  
Unit Nos. 1 and 2

Mr. Jim Rettberg  
New York State Electric & Gas Corporation  
Corporate Drive  
Kirkwood Industrial Park  
P.O. Box 5224  
Binghamton, NY 13902-5224

Supervisor  
Town of Scriba  
Route 8, Box 382  
Oswego, NY 13126

Mr. John V. Vinquist, MATS Inc.  
P.O. Box 63  
Lycoming, NY 13093

Daniel F. Stenger, Esquire  
Foley & Lardner  
888 16<sup>th</sup> St., NW  
Washington, D.C. 20006

Mary A. Murphy, Esquire  
LeBoeuf, Lamb, Greene and MacRae, LLP  
1875 Connecticut Ave.  
Suite 1200  
Washington, D.C. 20009

Mr. Paul D. Eddy  
Electric Division  
NYS Department of Public Service  
Agency Building 3  
Empire State Plaza  
Albany, NY 12223

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

C. Adrienne Rhodes  
Chairman and Executive Director  
State Consumer Protection Board  
5 Empire State Plaza, Suite 2101  
Albany, NY 12223-1556

Mark J. Wetterhahn, Esquire  
Winston & Strawn  
1400 L Street, NW  
Washington, DC 20005-3502

Gary D. Wilson, Esquire  
Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, NY 13202

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

Robert J. Glasser and Bo Hong, Esquires  
Gould & Wilkie, LLP  
One Chase Manhattan Plaza  
58<sup>th</sup> Floor  
New York, NY 10005

Nine Mile Point Nuclear Station  
Unit Nos. 1 and 2

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

Resident Inspector  
U.S. Nuclear Regulatory Commission  
P.O. Box 126  
Lycoming, NY 13093

Jay E. Silberg, Esquire  
Shaw Pittman  
2300 N Street, N.W.  
Washington D.C. 20037

Ronald D. Byrd, Esq.  
Associate General Counsel  
Constellation Energy Group  
39 West Lexington Street  
Baltimore MD 21201

Constance Smith, Esq.  
Associate General Counsel  
Constellation Energy Group  
250 West Pratt Street  
Baltimore MD 21201

R. E. Denton, et al.

- 2 -

We apologize for any inconvenience this error may have caused you. Please call me if you have any questions.

Sincerely,  
**/RA/**

Peter S. Tam, Senior Project Manager, Section 1  
Project Directorate I  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-220 and 50-410

- Enclosures:
1. Corrected page 5 of Order
  2. Corrected page 12 of SE
  3. Corrected page 6 of Unit 1 license
  4. Corrected page 6 of Unit 2 license

cc w/encls: See next 2 pages

**DISTRIBUTION:**

PUBLIC	SHom	MEvans, RI	
PDI-1/RF	OGC	WCook, RI	
PTam	SCollins	WBeckner	VDricks
RCorreia	EAdensam	MDusaniwskyj	SECY
SLittle	ACRS	CCarpenter	JShea, EDO
GHill (6)	BPlatcheck, RI		

**ADAMS ACCESSION NUMBER: ML011800363**

OFFICE	PDI-1:PM	PDI-1:LA	OGC	SC:PDI-1	
NAME	PTam:cn	SLittle	SHom	RCorreia	
DATE	6/28/01	6/28/01	6/28/01	6/28/01	/ /01

Official Record Copy

for NMP1 and NMP2, respectively, and (2) receive [a] parent company guarantee[s] pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in [an] amount[s] which, when combined with the decommissioning trust funds for NMP1 and NMP2, equals or exceeds the total amounts required for NMP1 and NMP2, respectively, pursuant to 10 CFR 50.75(b) and (c).

- (3) The master decommissioning trust agreement for NMP1 and NMP2, at the time the direct transfers are effected and thereafter, is subject to the following:
- a. The decommissioning trust agreement must be in a form acceptable to the NRC.
  - b. With respect to the decommissioning trust funds, investments in the securities or other obligations of CEG Inc., New Controlled, or their affiliates, successors, or assigns, are and shall be prohibited. 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 and shall be prohibited.
  - c. The decommissioning trust agreement must provide that no disbursements or payments from the trusts, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of the payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

amount for NMP2 is approximately \$345.5 million. The NRC staff has reviewed the calculations provided with the Application and accepts the results as accurate.

The Application estimates that the amounts in the decommissioning trusts that will be transferred to NMP LLC on the closing date will be \$266 million for NMP1 and \$176 million for NMP2. Therefore, according to the application, additional funding assurance of approximately \$55 million for NMP1 and approximately \$34 million for the 82% interest in NMP2 is required. The additional funding assurance will be provided by a parent company guarantee. The Application contains, at Exhibit 15A of the February 1, 2001, submittal, the calculations of the additional funding assurance needed. In accordance with 10 CFR 50.75(e), credit for a 2% annual real-rate of return for the remaining term of the operating licenses - 8 years and 25 years, respectively was taken in calculating the amounts required for the parent company guarantee. The staff has reviewed the calculations in Exhibit 15A and finds them to be accurate.

In conformance with 10 CFR Part 30, Appendix A, the demonstration of the financial assurance test for a parent company guarantee by CEG Inc. was provided in the February 1, 2001, submittal as Exhibit 13A. The NRC staff has reviewed the information and has confirmed that CEG Inc. has passed the financial assurance test, i.e., CEG Inc. has fulfilled the requirements of 10 CFR Part 30, Appendix A, for the financial assurance test for a corporate parent guarantee.

#### 4.2 NRC Staff's Conclusion on Decommissioning Funds

The NRC staff concludes that NMP LLC has complied with the requirements of 10 CFR 50.75 with respect to the amount of decommissioning funding it must certify that it will provide. The amount that the transferors propose to have placed in the decommissioning trust funds, factoring in a 2% annual real rate of return, in combination with a parent company guarantee pursuant to 10 CFR 50.75(e)(a)(iii) in the amount of \$55 million and \$35 million for NMP1 and NMP2, respectively, will equal the amount calculated using the generic formulas in 10 CFR 50.75(c), and provide reasonable assurance of adequate decommissioning funding. The form or provisions of the parent company guarantee while the guarantee is in effect should be consistent with NRC regulatory guidance applicable during such time.

To ensure the transfer of decommissioning funds as stated in the Application, the NRC staff concludes that a condition of approval of the direct transfer and conforming license condition is appropriate, essentially as follows:

On the closing date of the transfer of NMP1 and NMP2 to it, NMP LLC shall: (1) obtain from the transferors all of their accumulated decommissioning trust funds for NMP1 and NMP2, respectively, and (2) receive [a] parent company guarantee[s] pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in [an] amount[s] which, when combined with the decommissioning trust funds for NMP1 and NMP2, equals or exceeds the total amounts required for NMP1 and NMP2, respectively, pursuant to 10 CFR 50.75(b) and (c).

The staff has also determined that certain decommissioning trust agreement conditions are necessary to provide reasonable assurance of decommissioning funding in the case of unregulated non-electric utility entities such as NMP LLC, which are not subject to traditional State controls on decommissioning funding. Accordingly, the provisions below must be

Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

(8) Hot Process Pipe Penetrations

Hot Process Pipe Penetrations in the Emergency Condenser Steam Supply (2 each), Main Steam (2 each), Feedwater (2 each), Cleanup Suction (1 each), and Cleanup Return (1 each) piping systems have been identified as not fully in conformance with FSAR design criteria. This anomaly in design condition from the original design is approved for the duration of Cycle 8 or until March 31, 1986, whichever occurs first, subject to the following conditions:

- (a) An unidentified leakage limit of a change of 1 gallon per minute in 24 hours to permit operation will be imposed by administrative control (Standing Order) at the facility for the interim period.
- (b) The licensee shall restore the facility to a condition consistent with the FSAR or provide a change to the FSAR criteria for staff review and approval prior to restart from the forthcoming Cycle 8 outage.

(9) On the closing date of the transfer of Nine Mile Point Nuclear Station, Unit No. 1 (Unit 1) to it, NMP LLC shall: (1) obtain from the transferor all of its accumulated decommissioning trust funds for Unit 1, and (2) receive a parent company guarantee pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in an amount which, when combined with the decommissioning trust funds for Unit 1, equals or exceeds the total amount required for Unit 1 pursuant to 10 CFR 50.75(b) and (c).

(10) The decommissioning trust agreement for Unit 1, at the time the transfer of Unit 1 to NMP LLC is effected and thereafter, is subject to the following:

- a. The decommissioning trust agreement must be in a form acceptable to the NRC.
- b. With respect to the decommissioning trust funds, investments in the securities or other obligations of Constellation Energy Group, Inc., New Controlled, or their affiliates, successors, or assigns, are and shall be prohibited. 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 and shall be prohibited.
- c. The decommissioning trust agreement must provide that no disbursements or payments from the trusts, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written

Amendment No.

(11) Additional Condition 2

The schedule for performing Surveillance Requirements (SRs) that are new or revised in Amendment No. 91 shall be as follows:

For SRs that are new in this amendment, the first performance is due at the end of the first surveillance interval that begins on the date of implementation of this amendment.

For SRs that existed prior to this amendment whose intervals of performance are being reduced, the first reduced surveillance interval begins upon completion of the first surveillance performed after implementation of this amendment.

For SRs that existed prior to this amendment that have modified acceptance criteria, the first performance is due at the end of the first surveillance interval that began on the date the surveillance was last performed prior to the implementation of this amendment.

For SRs that existed prior to this amendment whose intervals of performance are being extended, the first extended surveillance interval begins upon completion of the last surveillance performed prior to the implementation of this amendment.

- (12) On the closing date of the transfer of Nine Mile Point Nuclear Station, Unit No. 2 (Unit 2) to it, NMP LLC shall: (1) obtain from the transferors all of their accumulated decommissioning trust funds for Unit 2, and (2) receive a parent company guarantee pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in an amount which, when combined with the decommissioning trust funds for Unit 2, equals or exceeds the total amount required for Unit 2 pursuant to 10 CFR 50.75(b) and (c).

- (13) The decommissioning trust agreement for Unit 2, at the time the transfer of Unit 2 to NMP LLC is effected and thereafter, is subject to the following:

- a. The decommissioning trust agreement must be in a form acceptable to the NRC.
- b. With respect to the decommissioning trust funds, investments in the securities or other obligations of Constellation Energy Group, Inc., New Controlled, or their affiliates, successors, or assigns, are and shall be prohibited. 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 and shall be prohibited.
- c. The decommissioning trust agreement must provide that no

Amendment No. ~~91~~,