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(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEENTH STREET, N. W., WASHINGTON, D.C. 20006-4103 (202) 835-8000
FAX (202) 835-8136
INTERNET http://www.hopsut.com

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4209
DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48083-1220

DANIEL F. STENGER
202-835-8185
Direct Fax: 202-835-8136
E-Mail: DStenger@hopsut.com

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October 20, 1999

VIA HAND-DELIVERY

The Honorable Annette Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Attn: Rulemakings and Adjudications Staff

Re: *Niagara Mohawk Power Corporation, et al.*
(Nine Mile Point Nuclear Station, Units 1 and 2),
Docket Nos. 50-220 and 50-410, Notice of Consideration of Approval of Transfer of Facility Operating License (64 Fed. Reg. 52798)

Dear Ms. Vietti-Cook:

Enclosed, in hard copy form, are the original and two conformed copies of the Petition of Central Hudson Gas & Electric Corporation, Long Island Power Authority, and Rochester Gas and Electric Corporation for Leave to Intervene, and Request for Hearing. The Petition was filed and served today by e-mail delivery. Because the Petition includes some information claimed to be proprietary by the applicants, we enclose an additional copy with proprietary information redacted. The redacted version can be placed in the NRC Public Document Room.

Should you have any questions, please contact me. Thank you for your assistance.

Sincerely,

Daniel F. Stenger

DFS:dhr
Enclosures
cc: All Parties

SECY-037

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Contains Proprietary Information
Exempt from Public Disclosure

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	
Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, and AmerGen Energy Company, LLC (Nine Mile Point, Units 1 & 2)	**Docket Nos. 50-220 & 50-410**

PETITION OF CENTRAL HUDSON GAS & ELECTRIC CORPORATION, LONG ISLAND POWER AUTHORITY, AND ROCHESTER GAS AND ELECTRIC CORPORATION FOR LEAVE TO INTERVENE, AND REQUEST FOR HEARING

I. INTRODUCTION

Pursuant to Subpart M of the Nuclear Regulatory Commission's ("NRC") Rules of Practice and Procedure, and specifically 10 C.F.R. § 2.1306, Central Hudson Gas & Electric Corporation ("Central Hudson"), Long Island Power Authority ("LIPA," as successor to Long Island Lighting Company), and Rochester Gas and Electric Corporation ("RG&E") (collectively referred to as "Co-tenants") hereby petition for leave to intervene in the above-captioned license transfer proceeding and request a hearing.

In this proceeding, Niagara Mohawk Power Corporation ("NMPC") and New York State Electric and Gas Corporation ("NYSEG") seek NRC authorization to transfer the authority to possess, use and operate Nine Mile Point Nuclear Station Unit 1 ("NMP 1") and Unit 2 ("NMP 2") from NMPC and NYSEG to AmerGen Energy Company, LLC ("AmerGen")(collectively "Applicants"). AmerGen is a limited liability company formed by PECO Energy Company and British Energy, plc. Application at 6.

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II. PRELIMINARY STATEMENT

The proposed license transfer presents a number of significant issues that must be carefully considered by the NRC. In this preliminary statement, Co-tenants highlight some of the policy issues raised, and describe the State proceedings that are currently underway to address whether the proposed sale of NMP is in the public interest. In view of the ongoing State proceedings, the Co-tenants suggest that the NRC hearings be deferred. Should hearings go forward, the Co-tenants suggest that the Commission should exercise its discretion under Subpart M to establish additional hearing procedures to address certain issues raised by this proposed license transfer. In the following sections of this petition, Co-tenants establish their standing to intervene in this proceeding (Section III) and identify the issues Co-tenants seek to raise in hearings on this transfer application (Section IV).

A. Significant Policy Issues are Raised by the NMP Transfer

Under Section 184 of the Atomic Energy Act and 10 C.F.R. § 50.80, the Applicants have the burden of demonstrating that AmerGen is financially and technically qualified to be licensed to own and operate the NMP facility. The NRC, in turn, is charged with the responsibility to review the qualifications of the proposed new licensee to ensure that adequate protection of public health and safety will be provided. The NRC's review is particularly important in this case since the proposed new licensee, AmerGen, is a newly-formed entity organized as a limited liability company with few tangible assets of its own.

Indeed, the proposed transfer of the NMP operating licenses to AmerGen presents a number of fundamental policy questions, some of which are matters of first impression for the NRC. These policy questions include NRC consideration of: (1) the impact on co-owners of designating a limited liability company as the licensed facility

operator; (2) the change in management of a co-owned facility when minority interests are shifted to create a new majority owner/operator; and (3) public policy and decision-making in collateral State proceedings.

At the outset, in should be clearly understood that the proposed license transfer for NMP is significantly different from the transfer to AmerGen of the operating license for Three Mile Island Unit 1 ("TMI-1"). Unlike the TMI-1 case, the NMP transfer has a substantial impact on utility co-owners who possess a significant portion of the facility, both individually and collectively (41%), and who stand to suffer economic harm in the event of default by AmerGen, a limited liability company.

Moreover, the proposed NMP transfer will have a direct impact on the operation of the facility. At present, the operation of NMP 2 is governed by the 1993 Operating Agreement among all the co-tenants, including NMPC and NYSEG, where no single co-tenant has a majority interest in decision-making regarding the management of NMP 2. Under the current Operating Agreement, the Co-tenants have the right to a representative vote on major management decisions affecting the unit. The current Operating Agreement would be effectively abrogated by the transfer of a majority interest (59%) in NMP 2 to AmerGen. As a result, a new operating agreement for NMP 2 will have to be established by the parties.

The proposed transfer also raises issues of public policy. Unlike the situation in Pennsylvania, the State of New York has not enacted legislation governing the restructuring of the electric utility industry in the state. As recognized by the Applicants, the sale of NMP is contingent on approval by the New York State Public Service Commission ("NYPSC") as well as the Federal Energy Regulatory Commission. Application at 34. Unless and until the sale has been approved by the NYPSC as

consistent with the public interest, it is not clear whether the proposed transfer will occur and, if so, on what terms.

B. The NRC Review Should be Deferred

Contested proceedings are currently in progress in the NYPSC, pursuant to Section 70 of the New York Public Service Law, to consider the proposed sale of NMP. Under Section 70, no utility may transfer a generating plant without prior approval of the NYPSC. The NYPSC will not approve a transfer unless it finds the transfer to be in the public interest. The Section 70 proceeding has generated substantial public involvement and serious concerns, not only by the Co-tenants, but also by the affected customers of NMPC and NYSEG, state agencies and environmental groups. Discovery is currently in progress, and hearings are not expected to begin until late December at the earliest.

Many of the issues that will be of concern to the NRC will also be issues in the NYPSC proceeding. For example, the NYPSC is expected to perform a thorough examination of the adequacy of decommissioning funding, the adequacy of AmerGen's financial resources both to operate the plant and for its other responsibilities, the extent of AmerGen's qualifications to operate nuclear plants, and the existence of an operating agreement sufficient to protect the rights of the non-selling Co-tenants and customers if the plant is transferred to a non-utility, majority owner-operator. In addition, the NYPSC will concern itself with such issues as retail rate impacts. The NYPSC is also expected to consider placing appropriate conditions on the transfer. Until the NYPSC has completed its review and found the transfer to be in the public interest, it would appear premature for the NRC to act on the Application.

An additional reason that the NRC should defer a hearing in this matter is that the Co-tenants have a right of first refusal, by which they are entitled to make a

preemptive offer to purchase NMPC's and NYSEG's shares of NMP 2 upon terms at least as favorable as those contained in a bona fide third-party offer. The right of first refusal continues for 180 days from the date of receipt of the bona fide offer by the Co-tenants. For example, RG&E's right of first refusal does not expire until January 4, 2000, at the earliest. At this time, the Co-tenants are actively evaluating whether to exercise the right of first refusal. Until the right of first refusal has expired or been expressly waived by the Co-tenants, it would be premature for the NRC to act on AmerGen's Application.

For these reasons, Co-tenants submit that the NRC should defer the hearing on the Application until completion of the NYPSC Section 70 proceeding. In this way, the NRC will conserve agency resources until such time as this application is ripe for NRC review. Such a deferral will also lessen the burden on all interested parties. At present, the Co-tenants must participate actively on four fronts -- the right of first refusal, the NYPSC, the NRC and FERC – to protect their interests and those of their customers and other stakeholders. It is a tremendous burden on the interested parties to have to litigate simultaneously in more than one forum. The NRC should coordinate with the NYPSC by deferring any action until the NYPSC has had an opportunity to complete its review of the transaction, or, in the alternative, until the Co-tenants' right of first refusal has expired.

C. Hearing Procedures Should Permit Full Review of Issues of First Impression

If the hearing in this matter is not deferred, Co-tenants suggest that the issues identified herein be set for a full evidentiary hearing. Pursuant to 10 C.F.R. § 2.1322(d), the Commission has discretion to use additional hearing procedures in a license transfer case, such as direct and cross-examination, or to convene a formal

hearing under Subpart G of the Rules of Practice on specific and substantial disputes of fact that cannot be resolved with sufficient accuracy except in a formal hearing.[1]

It is significant to note that the Subpart M hearing process did not contemplate the issues raised in this license transfer application. This is not merely a proposed change of partial ownership at the corporate level, or the transfer of the ownership interests from two minority owners. Significantly, this proposed sale would create a new majority ownership interest in the facility not contemplated when the facility was licensed. Moreover, as the Commission recognized when it promulgated Subpart M, the Subpart M procedures are appropriate in cases where the proposed license transfer does not involve changes to plant operations.[2] See 63 Fed. Reg. 66721 (Dec. 3, 1998). As detailed below, clearly this is not the case with the proposed transfer of the license for NMP 2. Certain key questions central to the operation of the facility would benefit from a review by a multi-disciplined Atomic Safety and Licensing Board, historically used by the Commission in hearings on initial licensing or license amendments that substantially affect operations. See 63 Fed. Reg. at 66722.

As will be seen, the issues raised by the proposed transfer of NMP to AmerGen are of significant public importance and have a direct and substantial impact on the interests of the Co-tenants and their customers. These issues warrant a full airing to

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1 The Co-tenants note the prohibition in Section 2.1322(d) regarding formal motions from parties requesting special procedures or formal hearings. It is not our intent to bypass this prohibition. Rather the Co-tenants raise these concerns regarding the adequacy of the hearing process for specific issues in this case as a suggestion to aid the Commission in deciding whether to exercise its discretion, prior to initiating a hearing and granting any person status as a party.

2 Certain restrictions in Subpart M, appropriate for routine license transfers, are inappropriate in the present case. For example, the limitation in 10 C.F.R. § 2.1305(b) on the scope of review of a license amendment associated with the proposed transfer is inappropriate where questions are raised as a result of that amendment regarding the safe operation of the facility.

ensure development of a complete record that will promote public confidence in whatever decision the Commission ultimately reaches. The issues are also factually and legally complex and do not lend themselves to being addressed primarily through submission of written testimony as Subpart M contemplates. Instead, discovery and cross-examination are required to ensure full development of a record upon which the Commission can make its determination.

Accordingly, it is appropriate for the Commission to exercise its discretion pursuant to 10 C.F.R. § 2.1322(d) to set some or all of the issues presented below for hearing in accordance with Subpart G.[3] For example, serious questions exist as to AmerGen's financial qualifications for operations and its ability to maintain safety in the event of an extended shutdown of NMP. These questions require an examination of AmerGen's initial capitalization, its policy for the distribution of profits to its parent companies, and the precise terms of the parent company guarantees being offered. Discovery and cross-examination, as permitted by Subpart G, would be needed to ensure a full airing of these matters.

III. INTERVENTION

Petitioners readily satisfy the requirements for standing. The Co-tenants own a combined 41% interest in NMP 2 as tenants-in-common with the other owners (NMPC and NYSEG), and are licensed by the NRC to possess but not operate that unit. As co-

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[3] In stating this position in this case, Co-tenants hasten to add that we fully support the policy behind the Commission's reform of the NRC hearing process for license transfers as embodied in Subpart M. The Co-tenants applaud the Commission's effort to streamline the process. The vast majority of license transfers are uncontested and often involve corporate reorganizations that do not have any real impact on the licensed operator of the facility. The process of Subpart M is certainly appropriate in those cases. Our suggestion that Subpart G procedures are appropriate here is limited strictly to the facts presented in this case.

owners and co-licensees of NMP 2, the Co-tenants have a vital property interest in the safe operation of and eventual decommissioning liability for NMP 2. The Co-tenants also have responsibilities for the management of NMP 2, as defined in the current Operating Agreement.

Co-tenants' interest also concerns the right to continued participation in management decisions affecting NMP 2 and the right to receive appropriately detailed assurances of AmerGen's financial ability to operate and decommission the facility safely. These rights fall squarely within the "zone of interests" protected by the Atomic Energy Act. Should AmerGen prove materially deficient in these areas, the NRC's denial of the transfer would protect Petitioners' rights under the current license.

"To intervene as of right in a Commission licensing proceeding, a petitioner must demonstrate that its 'interest may be affected by the proceeding,' or in common parlance, it must demonstrate 'standing.'" *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 N.R.C. 201, 214 (1999). The criteria for standing are enumerated in 10 C.F.R. § 2.1308(a).[4] As co-owners and co-licensees of NMP 2, the Co-tenants readily satisfy the judicial concepts of standing that are applied in NRC license transfer proceedings.

Section 189a(1) of the Atomic Energy Act provides, in pertinent part:

> In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or

[4] As summarized by the NRC, "a petitioner must (1) identify an interest in the proceeding by, (a) alleging a concrete and particularized injury (actual or threatened) that, (b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and (c) is likely to be redressed by a favorable decision . . . (d) lies arguably within the 'zone of interests' protected by the governing statute(s) [and] (2) specify the facts pertaining to that interest." *North Atlantic*, 49 N.R.C. at 214-25. In making a standing determination, the Presiding Officer must "construe the [intervention] petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

> construction permit, or application to transfer control, ... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

42 U.S.C. § 2239(a)(1). The NRC has noted that the AEA "protects not only human health and safety from radiologically caused injury, but also the owners' property interests in their facilities." *North Atlantic*, CLI-99-6, 49 N.R.C. at 216; *see also Gulf States Utilities Co.* (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31, 37-38, *aff'd.*, CLI-94-10, 40 NRC 43, 47-48 (1994) (interest in protecting property from radiological hazards sufficient for standing). It is for this reason that the NRC routinely grants intervention by "[p]ersons or entities who own (or co-own) an NRC-licensed facility [because they] plainly have an AEA-protected interest in licensing proceedings involving their facility." *North Atlantic*, CLI-99-6, 49 N.R.C. at 216.

As the non-selling co-tenants and co-licensees of NMP 2, Petitioners have a substantial interest in the qualifications of AmerGen to meet its obligations for safe operation and eventual decommissioning. Of principal concern is the potential for AmerGen, a limited liability company, to default on its requirements with respect to operational and decommissioning funding. If AmerGen is unable to meet these obligations, for instance to finance an extended outage or shutdown at NMP, the costs would likely be borne by Co-tenants or ratepayers in order to fulfill AmerGen's commitments.

Co-tenants also have a vital interest in preserving their right to participate in management decision-making to assure the continued safety of NMP 2, particularly in the area of budget and personnel decisions. Since AmerGen would become a majority owner/operator following the proposed transfer, the question immediately arises whether the NRC's proposal to "preserve AmerGen's decision-making authority over

safety issues," 64 Fed. Reg. 52798–52799 (Sept. 30, 1999), as a license condition in its approval of the proposed transfer application would abrogate certain rights and responsibilities that are governed by the existing Operating Agreement.

Co-tenants also make the required showing of injury in fact redressable in the present proceedings. Any financial incapacity of AmerGen to operate NMP 2 safely would subject the Co-tenants to the risk of being forced to assume a greater-than-expected share of NMP 2 operating and decommissioning costs. *Gulf States*, LBP-94-3, 39 N.R.C. at 36 (lack of adequate funding sufficient allegation of injury in fact for co-owner to intervene). These impacts could be avoided by the NRC's disapproval of the proposed transfer or by imposing appropriate conditions. *See North Atlantic*, CLI 99-6, 49 N.R.C. at 215 ("The threatened injury is fairly traceable to the challenged action [here the grant of the license transfer application] because the alleged increase in risk associated with Little Bay taking over Montaup's interest could not occur without Commission approval of the application.").

Co-tenants may also suffer concrete and particularized harm through a diminution of their decision-making rights under the Operating Agreement. The proposed transfer would create in AmerGen a majority owner/operator that would control all decisions that now require majority vote in accordance with the Operating Agreement. This would substantially shift the allocation of risk relative to the currently apportioned operational control. *See Gulf States*, LBP-94-3, 39 N.R.C. at 36 (Atomic Safety and Licensing Board noting Staff's conclusion that petitioner may suffer injury in fact "if the proposed amendment would cause a lessening of [petitioner's] influence, as an owner, to see that the plant is safely maintained and operated."). The potential injuries identified above can clearly be redressed by the NRC making a

decision that protects public health and safety and the Co-tenants' vital property interests. Thus intervention by the Co-tenants is clearly appropriate.

Pursuant to 10 C.F.R. § 2.708(e) and 2.1306(b)(1), the following are designated as the persons on whom service of the pleadings and other papers in this proceeding should be made:

Daniel F. Stenger, Esq.
HOPKINS & SUTTER
888 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 835-8185
(202) 835-8136 (facsimile)
dstenger@hopsut.com (e-mail)

James M. D'Andrea, Esq.
KEYSPAN ENERGY
175 E. Old Country Road
Hicksville, NY 11801
(516) 545-4529
(516) 545-5029 (facsimile)
jdandrea@keyspanenergy.com (e-mail)

Robert J. Glasser, Esq.
GOULD & WILKIE, LLP
One Chase Manhattan Plaza
New York, NY 10005
(212) 820-0109
(212) 809-6890 (facsimile)
bobglasser@gouldwilkie.com (e-mail)

Thomas W. Yurik
ROCHESTER GAS AND ELECTRIC CORP.
89 East Avenue
Rochester, NY 14649
(716) 771-2116
(716) 724-8405 (facsimile)
tom_yurik@rge.com (e-mail)

IV. ISSUES FOR HEARING

In order to approve the transfer of an operating license pursuant to 10 C.F.R. § 50.80, the NRC must determine that the proposed transferee is qualified to be the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. 10 C.F.R. § 50.80(c)(1) and (2). The Commission has described the scope of its review of a proposed license transfer as follows:

> The NRC will continue to review transfers to determine their potential impact on the licensee's ability to maintain adequate technical qualifications and organizational control and authority over the facility and to provide adequate funds for safe operation and decommissioning. Such consent is clearly required when a corporate entity seeks to transfer a license it holds to a different corporate entity.

Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44071, 44077 (August 19, 1997)(hereinafter cited as "Policy Statement on Restructuring").

In reviewing a proposed license transfer, then, the NRC considers (1) the financial qualifications of the proposed transferee related to both funding for plant operations and decommissioning funding assurance; (2) the technical qualifications of the proposed transferee; (3) the organizational control and authority over the facility; and (4) other technical issues such as the provision of off-site power to the facility, emergency planning support, exclusion area control, and insurance coverage. See 10 C.F.R. §§ 50.33(f) and 50.34.[5]

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[5] Until recently, the NRC also performed an antitrust review in connection with proposed transfers of operating licenses that had been issued under Section 103 of the Atomic Energy Act. In *Kansas Gas & Electric Co. et al.*, CLI-99- 19 (Jun. 18, 1999), the NRC ruled that it would no longer conduct general post-operating license antitrust reviews in connection with proposed license transfers.

Pursuant to 10 C.F.R. § 2.1306(b)(2), the Co-tenants request that the issues described below be set for oral hearing.[6] In brief, these issues are as follows:

1. Whether the Application is sufficient for filing.

2. Whether AmerGen has demonstrated adequate financial qualifications to ensure safe operation of NMP.

3. Whether AmerGen has demonstrated adequate financial assurance to ensure safe decommissioning of the site.

4. Whether AmerGen has demonstrated adequate technical qualifications to own and operate NMP.

5. Whether adequate provisions have been made for ensuring an available source of off-site power to the facility.

Each of these issues is within the scope of the proceeding on a license transfer as defined by the Commission, and each is relevant to the determination the NRC must make to approve the transfer under 10 C.F.R. § 50.80. In accordance with 10 C.F.R. § 2.1306(b)(2), each of the issues is set forth in turn below. A concise statement is provided of the alleged facts or expert opinions which support the Co-tenants' position and on which Co-tenants intend to rely at hearing, together with references to supporting sources and documents.[7]

Issue 1: Sufficiency of the Application

Under 10 C.F.R. § 50.80, an application for transfer of a license must include as much of the information described in 10 C.F.R. §§ 50.33 and 50.34 with respect to the identity and technical and financial qualifications of the proposed transferee as

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[6] As noted above, the Co-tenants believe that it is appropriate for the Commission to exercise its discretion under Section 2.1322(d) to establish additional hearing procedures to govern this case in view of the unique issues presented.

[7] At hearing, the Co-tenants will be prepared to provide additional support through testimony of experts and company witnesses to the extent necessary.

would be required if the application were for an initial license. In several respects, the Application is insufficient as a matter of law and should be rejected by the NRC:

A. The Application incorrectly represents the scope of authority possessed by the Applicants. According to the Application (at page 1), AmerGen and NMPC are acting "as agent for the other co-owners of NMP 2" in seeking the proposed transfer. Under the current operating license for NMP 2, the Co-tenants are licensed to possess but not operate the facility, and NMPC is licensed to operate the facility. Facility Operating License No. NPF-69 for Nine Mile Point Nuclear Station, Unit 2, at section 2.B.(2). NMPC may act as the agent for the non-operating owners in seeking certain regulatory approvals, *e.g.*, amendments to the Technical Specifications. However, contrary to the statement in the Application, the Co-tenants have not authorized the Applicants to act as agent on their behalf in this matter or otherwise consented to the proposed transfer. Appropriate conditions on the transfer should be imposed to restrict the authority of AmerGen to act as agent for the Co-tenants.

B. The Application is deficient in that information of substantial public interest has been withheld from public disclosure as proprietary without adequate basis. This includes information on decommissioning funding and financial projections related to AmerGen's financial qualifications under 10 C.F.R. §§ 50.33 and 50.75.

C. The Application is *ultra vires* in that it would effectively abrogate the current Operating Agreement for NMP 2 without the consent of the Co-tenants. The Operating Agreement (copy enclosed as Exhibit A) provides a framework for joint oversight of NMP 2 by all the co-owners according to their ownership

shares, with no one party holding a controlling interest (greater than 50%). See Statement of Intent at page 1 of the Operating Agreement and Section 3.2.a., Management Committee, Voting. To this end, the Operating Agreement provides substantial rights to the Co-tenants, including the right to vote on major management decisions affecting the plant. These rights are generally exercised through the Management Committee established pursuant to Article 3 of the Operating Agreement and include:

- The right to approve the annual budgets and annual plans for the facility, which shall include annual operating goals and objectives for operation and maintenance of the Unit (Statement of Intent and Article 3, section 3.3.b).
- The right to consult on the appointment or removal of the chief nuclear officer (section 3.3.c).
- The right to review annually the performance of key executives responsible for operation of the Unit (section 3.3.f).

The license transfer would effectively abrogate the Co-tenants' rights to participate in the oversight of NMP 2 and protect their interests in the facility. Further, since AmerGen would possess a 59% ownership share of NMP 2, it would gain control over all decisions that require a majority vote in accordance with Article 3 of the Operating Agreement. Unless and until a new operating agreement adequate to protect the rights of the Co-tenants has been established by the parties, the Application is deficient.

D. The Application is *ultra vires* in that it effectively abrogates the Co-tenants' right of first refusal under the Basic Agreement in effect for NMP 2. Under Sections 13.04 and 13.05 of the Basic Agreement, dated September 25, 1975 (excerpts enclosed as Exhibit B), the Co-tenants have a right of first refusal, by which they may make a preemptive offer to purchase NMPC's and NYSEG's shares of NMP 2 upon terms at least as favorable as those

contained in a bona fide third-party offer. The right of first refusal continues for 180 days from the date of receipt of the bona fide offer by the Co-tenants. For example, RG&E's, right of first refusal extends at least until January 4, 2000. The Co-tenants are actively evaluating whether to exercise the right of first refusal. Until the right of first refusal has expired or been expressly waived, the Application is premature.

Issue 2: Financial Qualifications for Operations

Under 10 C.F.R. § 50.80, AmerGen is required to demonstrate that it is financially qualified to be licensed to own and operate NMP. In the Application, AmerGen does not claim that it qualifies for exemption from financial qualification review as an "electric utility" within the NRC's definition of that term in 10 C.F.R. § 50.2. See Application at 15 (noting that the NRC concluded in the TMI-1 case that AmerGen did not qualify as an "electric utility"). Thus, in accordance with 10 C.F.R. §§ 50.80 and 50.33(f)(2), AmerGen must submit information that demonstrates that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the licenses for NMP 1 and 2. In addition, it must submit estimated total annual operating costs for the first five years of operation and indicate the source of funds to cover these costs.[8]

As a newly-formed entity organized for the primary purpose of operating a facility, AmerGen is further required to submit information showing: (1) the legal and financial relationships it has with or proposes to have with its owners; (2) its financial ability to meet any contractual obligation to its owners which it has incurred or proposed to incur; and (3) any other information considered necessary by the

[8] Additional guidance on the information necessary to establish financial qualifications is presented in Appendix C to 10 C.F.R. Part 50.

Commission to enable it to determine AmerGen's financial qualifications. 10 C.F.R. § 50.33(f)(3).

In several respects, AmerGen has failed to demonstrate the requisite financial qualifications to own and operate NMP 1 and 2 as required by 10 C.F.R. § 50.33(f):

A. The Application does not provide sufficient information to demonstrate that AmerGen has adequate funding to ensure safe operation for the period of the licenses for NMP 1 and NMP 2. Contrary to 10 C.F.R. § 50.33(f)(2), AmerGen has not provided a projected income statement or other projection of costs and revenues for the period through the end of the current NMP 1 license in August 2009 and the end of the current NMP 2 license in October 2026. The only projected income statement submitted (Enclosure 6 of the Application) is for the period through 2004 only.

B. In further support of its claim of adequate financial qualifications, AmerGen has provided a proprietary version of its projected opening balance sheet, showing its anticipated assets, liabilities, and capital as of the closing date. Enclosure 6A of the Application. In several respects, the opening balance sheet fails to demonstrate sufficient tangible assets to ensure safe operation:

   1. The Application does not explain what level of capital contribution, if any, will be made by AmerGen's parent companies, including the contribution of any funds to enable AmerGen to make the payments that will be due at closing. The Application also does not explain the source of working capital for AmerGen.

   2. AmerGen has failed to submit a forward balance sheet or other documentation (*e.g.*, a basic business plan) showing the disposition of retained earnings from operation of NMP. The Application provides

only a projected opening balance sheet (Enclosure 6). Basic questions remain such as whether AmerGen will "retain" its earnings, or whether earnings will simply be siphoned off as dividends to the two parent companies. See Declaration of John J. Reed (Exhibit C hereto). In this connection, the Application states (at page 20): "*All* or some portion of AmerGen's earnings will be available for distribution to PECO Energy and British Energy in years in which it has operating surpluses." Emphasis added.[9] Without an understanding of how distributions of earnings will be made to the parent companies, it is not possible to determine whether AmerGen's revenues will be adequate to cover its costs. Under the Power Purchase Agreements with NMPC and NYSEG, AmerGen would apparently receive no revenue if the plants are not operating. Thus, in years with a low capacity factor, AmerGen might not have sufficient revenues, especially if it had not accumulated adequate retained earnings. AmerGen should be required to provide a forward balance sheet or other documentation by which the parties can ascertain the degree to which earnings will be retained, so that the NRC can assess the adequacy of its operating revenues and the need for any appropriate conditions to preserve AmerGen's assets.

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[9] In a response to a Request for Additional Information from the NRC Staff in the TMI-1 License Transfer Proceeding, AmerGen said only that it plans "to retain a *portion* of [AmerGen's] net income to fund working capital requirements. Beyond such amounts, earnings will be distributed to PECO and British Energy." Response of GPUN and AmerGen to NRC Request for Additional Information dated December 21, 1998. AmerGen also stated that any shortfalls in revenue will be obtained from "PECO Energy and British Energy or other sources (*e.g.*, commercial lenders), *if available.*" *Ibid.* (emphasis added.)

3. A substantial portion of AmerGen's assets is attributable to "goodwill" – specifically, in the amount of [**$127.8 million**]. See Enclosure 6A of the Application.[10] No substantiation for the amount of goodwill is provided. AmerGen also does not explain under what accounting standard this asset has been established. For a newly-formed entity, a substantial question exists as to whether the NRC should recognize goodwill as an acceptable asset and, if so, in what amount. NRC regulations in 10 C.F.R. § 50.33 and Appendix C to Part 50 do not appear specifically to contemplate the inclusion of goodwill on the balance sheet for a new entity.

C. The Application fails to demonstrate that AmerGen possesses adequate resources to cover the costs of an extended outage at NMP. For a newly-formed non-utility such as AmerGen, the NRC's Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1, requires a demonstration of available cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least six months. SRP at section III.1.b. In connection with AmerGen's purchase of TMI-1, the NRC sought and approved a $65 million guarantee by PECO and British Energy to be used in the event that AmerGen's revenues were insufficient to cover operating costs, or in the event of an accident or extended outage at the single TMI-1 unit.[11] For NMP, AmerGen has proposed a $110 million parent

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10 Information shown in bold type was claimed to be proprietary by the Applicants.

11 See Safety Evaluation Review for Transfer of Facility Operating License from GPUN Inc. et al. to AmerGen Energy Company, LLC and Approval of Conforming

Footnote continued . . .

guarantee (apparently in place of the $65 million guarantee which was meant to be exclusively available to TMI-1), with the understanding that the $110 million is available for any and all AmerGen facilities, including TMI-1, NMP 1 and 2 (if approved), Clinton, Oyster Creek, Vermont Yankee, and any future AmerGen purchases. See Application at 18. In several respects, this proposed funding arrangement appears inadequate:

1. Fixed operating costs of a six-month outage at NMP would be at least approximately **[$135]** million, based on the Applicant's own estimate of average O&M costs in the range of **[$270]** million per year. See Application at Enclosure 6A. Accordingly, the proposed $110 million guarantee which is available for all AmerGen plants would not be sufficient on its face to cover the costs of a six-month outage at NMP. In this connection, it should be noted that the $65 million parent guarantee accepted by the NRC for the single-unit TMI-1 transfer was explicitly "subject to the understanding that PECO Energy and British Energy shall have the right to demand that AmerGen permanently cease TMI-1 operations . . . ." TMI-1 Safety Evaluation at 7. AmerGen proposes that this same limitation apply to the funding arrangement in this case. See Application at 20. In the case of NMP 2, however, it is disputed whether AmerGen's parent companies would have the unilateral right to demand that the plant permanently

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Amendment, Three Mile Island Nuclear Station, Unit 1, at 7 (hereinafter cited as "NRC TMI-1 Safety Evaluation").

cease operations. Under the current Operating Agreement, the Co-tenants would have the right to participate in any such decision.

2. The Application does not provide sufficient assurance regarding the availability of the guaranteed funds. There is no explanation of who is responsible for the $110 million fund, how the funds are held, whether these funds can be reached in the event of default or bankruptcy, and whether these funds would be replenished in the event some or all of the funds were used for one of the AmerGen plants. Furthermore, the relationship between the supplemental $110 million guarantee and the $65 million guarantee pledged in the TMI-1 case is not clear from the Application. If these amounts are somehow commingled as part of the same fund or same guarantee, it would appear that AmerGen may have diminished the commitment made in the TMI-1 case. Such a result would appear to be contrary to the condition imposed by the NRC in approving the TMI-1 transfer that AmerGen "shall take no action to cause PECO or British Energy, plc, to void, cancel or diminish the $65 million contingency commitment . . . ." See Order Approving Transfer of Operating License at 6. Accordingly, at a minimum, the NRC should require that AmerGen guarantee six months' outage funding on a unit-specific basis.

3. AmerGen does not provide a demonstration that the level of the parent guarantee would suffice for the owner of multiple plants, some of which are or have been poor or marginal performers. The Clinton station remained in shutdown under an NRC Confirmatory Action Letter for a 29-month period from November 1996 to April 1999. PECO Energy, a 50 percent partner in the AmerGen venture, has recently announced a merger with Unicom, the parent company of Commonwealth Edison – owner of the Dresden, LaSalle, Quad Cities, and Zion nuclear units – which have experienced significant historical performance difficulties.[12] The collective operating (and shutdown) experience of these plants suggests that it can easily take more than six months to address performance issues. For these reasons, in accordance with the NRC SRP on financial qualifications, the NRC should require that AmerGen demonstrate that it possesses financial resources to cover the cost of a dual-unit outage at NMP through financial resources dedicated to NMP of at least **[$135]** million. See SRP at section III.1.b.

D. AmerGen's corporate structure, as a limited liability company, is not sufficiently explained or documented to demonstrate the requisite financial qualifications of the new entity to be licensed to own and operate NMP. Under 10 C.F.R. § 50.33(f)(3), AmerGen must submit information showing the legal and financial relationships with its owners. See also Appendix C of 10 CFR Part 50. AmerGen has not submitted sufficient information as to its

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12 See NRC dedicated website at http://www.nrc.gov/OPA/reports/comed.htm.

10 CFR Part 50. AmerGen has not submitted sufficient information as to its proposed financial and legal relationships with its owners to demonstrate that its corporate structure would provide adequate protection of public health and safety in the event of a radiological accident or premature shutdown.

1. AmerGen, as a limited liability company, has a corporate structure that presumptively cannot be breached in the event of financial problems or bankruptcy. AmerGen is 50 percent owned by British Energy Inc. (BE Inc.), a wholly owned subsidiary of British Energy plc (British Energy), a Scottish corporation, and 50 percent owned by PECO Energy Company (PECO Energy), a Pennsylvania corporation. Application at 6-7. British Energy plc is a "public limited company," a corporate structure used in the United Kingdom but not the United States. A "plc" is publicly traded and the owners have limited liability. The Application fails to provide adequate assurances that AmerGen's parents would be financially responsible for covering any shortfall in resources needed to ensure the safety of the plant or adequate funds for decommissioning in the event of premature shutdown. Section 50.33(f)(4) specifies that the NRC may request additional financial assurance information when necessary. Accordingly, a condition should be imposed requiring AmerGen to obtain guarantees from its parent companies, in a form acceptable to the NRC, that:

- In all events, the parents will be financially responsible for providing whatever funds are necessary to provide reasonable assurance of public health and safety.
- In the event that available decommissioning funds are inadequate at the time of permanent shutdown to meet NRC minimum funding requirements, the parent companies will be financially responsible for providing whatever funds are necessary to cover any shortfall.

2. In contrast to the limited liability of AmerGen, the Co-tenants are potentially subject to joint and several liability under current NRC policy.[13] Through its corporate structure, AmerGen has effectively put itself in a position of financial gain without accepting any of the related financial risk, instead creating a situation wherein the Co-tenants could be forced to compensate for any financial shortfall AmerGen might experience. Accordingly, the transfer should be conditioned on AmerGen's obtaining written consent by its parent companies to be subject to potential joint and several liability to the same extent as any other co-owners of NMP 2 under NRC policy. In the alternative, the NRC should declare that the Co-tenants' total liability is limited to $110 million or whatever guarantee is required from AmerGen.

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[13] The NRC's Policy Statement on Restructuring provides that the NRC "reserves the right, in highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners of more than *de minimis* shares when one or more co-owners have defaulted." 62 Fed. Reg. at 44074.

E. The Application fails to address the impact of foreign participation in AmerGen on the latter's financial qualifications. As a foreign entity, British Energy, plc, itself a form of limited liability company, is less stringently obligated than a domestic utility would be to fulfill its obligations in the United States. Under the Limited Liability Company Agreement of AmerGen, dated August 18, 1997, Article 8, British Energy and PECO Energy may dissolve the venture. If AmerGen were to seek dissolution due to financial concerns or other reasons, there would be no meaningful recourse the NRC could take against it for any of its financial responsibilities arising out of the operation of NMP. The Application does not explain how the public would be protected in the event of dissolution of AmerGen. Before the transfer could be approved, AmerGen should be required to provide satisfactory information on the assets of British Energy, plc and British Energy Inc. ("BE Inc.") in the United States. Appropriate conditions should be imposed in any order approving the requested transfer to protect the NRC's right to hold British Energy and BE Inc. liable for any financial responsibility arising out of operation of NMP.

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[14] British Energy, plc, is a "public limited company," a form of a limited liability company used in the United Kingdom, though not in the United States.

[15] In a response to a Request for Additional Information from the NRC Staff in the TMI-1 License Transfer Proceeding, AmerGen said only that it plans "to retain a *portion* of [AmerGen's] net income to fund working capital requirements. Beyond such amounts, earnings will be distributed to PECO and British Energy." Response of GPUN and AmerGen to NRC Request for Additional Information, dated January 11, 1999. AmerGen also stated that any shortfalls in revenue will be obtained from

Footnote continued . . .

Issue 3: Decommissioning Funding Assurance

Pursuant to 10 C.F.R. § 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 formulas in 10 C.F.R. § 50.75(c)(1) and (2). Furthermore, pursuant to Section 50.75(b), a licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 C.F.R. § 50.75(e), as determined to be acceptable by the NRC. In adopting its decommissioning rule, the NRC found that the requirement to provide assurance of decommissioning funding is necessary to ensure adequate protection of public health and safety. See 53 Fed. Reg. 24049 (June 27, 1988). For the following reasons, the Application fails to demonstrate that AmerGen meets the NRC decommissioning funding requirements:

A. The Application fails to demonstrate that decommissioning funding assurance will be provided in an adequate amount.[16] According to the Application (at page 22), the "decommissioning trust fund for NMP 1 will be fully prepaid, and the fund for NMP 2 will be essentially prepaid with additional financial assurances being provided to make up any shortfall." In Enclosure 11A to the Application, the Applicants provide a proprietary projection of available decommissioning funds through the period of the current licenses. The projection for NMP 2 shows a disparity between the fund balance and the NRC minimum formula amount over this 26-year period. Indeed, a shortfall would exist even at the end of the current NMP 2 license period in 2026, which AmerGen would make up with the "additional

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"PECO Energy and British Energy or other sources (*e.g.*, commercial lenders), *if available.*" *Ibid.* (emphasis added.)

financial assurances" in the form of [**a proposed parent company guarantee**] (see Enclosure 8 and 8A of the Application). For NMP 2, it is evident that AmerGen is proposing to provide total funding for all decommissioning activities (including spent fuel storage), at best, only up to the NRC minimum funding amount, and even that amount is not being provided in cash or cash equivalents, but rather requires additional assurance. Even assuming *arguendo* that this approach meets the NRC minimum requirements, it should not be acceptable in the case of AmerGen, where the risk of premature shutdown and a funding shortfall is demonstrably higher than with a regulated utility licensee with an ongoing source of revenue. In the TMI-1 transfer, the NRC accepted AmerGen's proposed decommissioning funding amount based on the fact that it was in excess of the NRC minimum formula amount ($303 million versus the formula amount of $269 million). See TMI-1 Safety Evaluation at 9. In fact, the NRC imposed a condition on the transfer requiring AmerGen to provide decommissioning funding assurance of no less than $303 million, after payment of any taxes. *Ibid.* A similar condition should be imposed in this case requiring AmerGen to provide additional decommissioning funding assurance for NMP 2 in an amount to be determined after hearing. As a condition of the transfer, the NRC should, however, compel AmerGen to make up for the shortfall projected in the NMP 2 fund through an additional top-off prepayment. See Declaration of John J. Reed (Exhibit C hereto).

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16 See, generally, Declaration of John J. Reed, Exhibit C.

B. The Application also fails to demonstrate that the decommissioning funding mechanism proposed by AmerGen is adequate under 10 C.F.R. § 50.75(e). AmerGen has proposed to use a combination of the prepayment method under Section 50.75(e)(1)(i), coupled with an external trust fund and a form of **[parent company guarantee]** to make up the expected shortfall in available decommissioning funds. The Co-tenants submit that the bare-bones decommissioning funding proposed by AmerGen for NMP 2, with a **[parent company guarantee]** to cover the expected shortfall, is unacceptable in view of AmerGen's tenuous financial resources and the risk of premature shutdown. Accordingly, as noted above, AmerGen should be compelled pursuant to 10 C.F.R. § 50.75(e)(2) to provide additional assurance of adequate decommissioning funding through providing additional top-off prepayments to eliminate any expected shortfall below the NRC minimum.

C. **[Under Section 50.75(e)(1)(iii), a parent company guarantee is permissible if the guarantor is shown to meet the financial test contained in Appendix C to 10 C.F.R. Part 30. Enclosure 8A to the Application, which was withheld from public disclosure, provides some information relevant to the analysis of whether the proposed parent company guarantee for decommissioning is satisfactory under the required financial test of Part 30, Appendix C. One element of the financial test is to demonstrate that the guarantor has assets located in the United States of at least 90 percent of its total assets or at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof that it owns. 10 C.F.R. Part 30, Appendix**

C, II.A(2). Enclosure 8A of the Application implies that the U.S. asset requirement would be satisfied for British Energy (one of the proposed guarantors) only if the NMP assets are counted after the sale of NMP has closed. No calculation is provided to show this, and, in any event, such a bootstrapping approach does not appear to meet the financial test of Appendix C.]

D. AmerGen has demonstrated an inequitable approach to decommissioning funding for the two NMP units. For NMP 1, of which AmerGen would be sole owner, the planned decommissioning funding levels are far above NRC minimum requirements. In contrast, for NMP 2, of which AmerGen would own 59% and the Co-tenants 41%, AmerGen does not propose to meet the NRC minimum funding requirements with cash or liquid assets. This approach poses a significant financial risk to the Co-tenants in the event of premature shutdown of NMP 2. The NRC should prohibit AmerGen from withdrawing any decommissioning trust funds until all NMP decommissioning is complete on both NMP Units 1 and 2.

E. There remains the question of the tax consequences of the transfer of the nuclear decommissioning fund, qualified under Section 468A of the Internal Revenue Code, from NMPC to AmerGen and the resulting impact on the level of available decommissioning funding. If the fund transfer is not ruled a tax-neutral event by the Internal Revenue Service ("IRS"), there would be gain realized by both NMPC and AmerGen, and significant tax liability incurred. As a result, the funds available for decommissioning would be reduced. The Co-tenants understand that AmerGen has applied to the IRS for a letter ruling that the fund transfer is exempt them taxation. The NRC

should include in any Order approving the requested transfer a condition that the level of decommissioning funding deemed acceptable by the NRC be maintained after payment of any taxes. The NRC's Order approving the transfer of the TMI-1 license included such a condition. Order Approving Transfer of Operating License at 4.

Issue 4: Technical Qualifications

Pursuant to 10 C.F.R. §§ 50.80 and 50.34, an applicant for transfer of license must demonstrate adequate technical qualifications to ensure safe operations. The Co-tenants certainly do not dispute the technical qualifications of PECO Energy as an NRC licensee, and have no reason to dispute those of British Energy. However, from the information supplied in the Application, AmerGen itself has not been shown to possess the requisite technical qualifications. The facts supporting this position are as follows:

A. The Applicants have failed to demonstrate that AmerGen possesses a substantial corporate organization capable of providing effective technical and managerial oversight for NMP, along with the other nuclear plants that AmerGen has acquired or is seeking to acquire.[17]

1. With respect to AmerGen's organization, the Application contains only a one-page Organizational Chart (Enclosure 5) depicting the post-acquisition reporting chain for the most senior AmerGen management. The Application also describes the AmerGen Management Committee which is responsible for managing the "business and affairs" of the limited liability company, and identifies

[17] AmerGen has acquired or is seeking to acquire TMI-1, Clinton, Oyster Creek, Vermont Yankee, NMP 1 and a 59% interest in NMP 2.

the principal executives and officers of AmerGen. Application at 7-9. Apart from the Management Committee, no information is provided on whether AmerGen has any substantial corporate organization, including managers and technical staff. While AmerGen proposes to acquire the existing NMP site organization substantially intact (see Application at page 12), no demonstration has been made that AmerGen, the proposed licensee, possesses a corporate organization capable of providing technical and management oversight for NMP and the other AmerGen sites.

2. In response to an Interrogatory in the NYPSC proceeding, AmerGen stated that "PECO and British Energy will provide certain management and administrative services to AmerGen in connection with NMP-1 and 2. These services may include human resources, legal, accounting, engineering, operation and maintenance, information technology and laboratory analysis services. AmerGen, however, will have responsibility for the management and operation of the units, and will manage operations with on-site employees."[18] This information was not included in the Application before the NRC. AmerGen appears to be relying on "management" services and services related to plant operations, engineering and maintenance – which comprise virtually the entire range of critical functions at a nuclear plant site – to be supplied by PECO and British Energy. If this is the case, it is incumbent upon AmerGen to disclose the nature

[18] Response to Co-tenants' Information Request No. 42-a, PSC Case No. 99-E-0933.

and extent of those services, the qualifications and affiliations of the personnel providing the services, and the degree of commitment provided by PECO and British Energy to maintain these services.

3. The Co-tenants have concerns regarding whether AmerGen's technical resources will be sufficient not only for the NMP units, along with TMI-1, Clinton, Oyster Creek and Vermont Yankee, but also in light of the proposed PECO Energy–Unicom merger. These acquisitions and mergers would result in AmerGen/PECO Energy having an interest in almost one quarter of the countries' nuclear plants. Significantly, however, most of these plants have not performed in the upper quartile. Aside from the two PECO Energy sites and Unicom's Byron and Braidwood sites, many of the plants that AmerGen/PECO Energy–Unicom would be operating are in need of significant management oversight to improve or maintain plant performance. For these reasons, the Co-tenants request that the NRC carefully review the technical resources that AmerGen will commit to the safe operation of NMP.

B. The Application does not explain what experience AmerGen itself possesses with respect to operating nuclear generating facilities. From the discussion at page 7 of the Application, AmerGen's past performance appears to be derived only from its Member companies. According to the Application (at page 6), PECO Energy and BE Inc. are Members of AmerGen. While the Application describes the nuclear operating experience of PECO Energy and British Energy, it does not provide any information on the organization,

technical capabilities or past operational performance of BE Inc., the actual Member of AmerGen.

Issue 5: Provision of Off-Site Power

NRC regulations require adequate assurance of the availability of off-site power and grid stability. More specifically, an applicant for transfer of an operating license must demonstrate that adequate provisions for off-site power are made to satisfy General Design Criterion 17 ("GDC-17") of 10 C.F.R. Part 50, Appendix A and the NRC's station blackout rule, 10 C.F.R. § 50.63. The Application does not provide sufficient information to demonstrate compliance with these requirements, based on the following:

A. As indicated by the NRC Staff for the AmerGen purchase of TMI-1, the interconnection agreement is important to the license transfer process. An Interconnection Agreement (ICA) has been executed for NMP 1; however, no final ICA has been executed for NMP 2. See Application at p. 28. In fact, in its filing before the NYPSC, AmerGen indicated that there is only a commitment by the "parties" to reach such an agreement. As a result, the details of interconnection for NMP 2, provisions for off-site power under GDC-17 and the ownership of the interconnection facilities remain unclear. Until a properly executed ICA has been submitted to the NRC for review and approval, the Application is deficient.

B. The current Operating Agreement indicates that Niagara Mohawk has exclusive control over operations and maintenance activities for NMP 2. However, other important activities, such as the terms and conditions of a satisfactory ICA, are within the decision-making authority of the Management Committee. To represent that it is acting as the agent for the

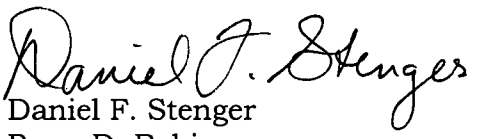
Co-tenants concerning the NMP 2 ICA, as the Applicants seem to do, effectively abrogates the Co-tenants' rights under the Operating Agreement. The Co-tenants have not authorized the Applicants to act as their agent in connection with the ICA or otherwise approved the terms of an ICA for NMP 2. Moreover, if the transfer is allowed without proper up front review and approval of the NMP 2 ICA, AmerGen's resulting 59% ownership could lead to the unilateral sale or disposition of interconnection facilities or changes to the ICA. This, in turn, could jeopardize the long-term reliability of the off-site power to NMP 2. These issues necessitate careful scrutiny and, if necessary, appropriate license conditions to ensure reliable off-site power availability. Thus, the Application is deficient without the details of an ICA for NMP 2.

V. CONCLUSION

The proposed transfer of the NMP operating license to AmerGen raises a host of significant issues that deserve full and deliberate consideration. The Co-tenants should be granted leave to intervene in this proceeding and the request for hearing should be granted, with all the issues set forth herein admitted for hearing. Because the NYPSC is expected to review many of the issues of concern to the NRC, and in the interest of conserving the resources of the NRC and the parties, the Commission should defer the hearing in this case until completion of the NYPSC's review or, in the alternative, until the Co-tenants' right of first refusal expires. In view of the complexity of the issues and their significant public importance, if such a deferral

cannot be granted, the Commission should exercise its discretion to establish a full evidentiary hearing under Subpart G to govern some or all of the issues in this case.

Respectfully submitted,



Daniel F. Stenger
Perry D. Robinson
Robert K. Temple
Walter C. Hazlitt, Jr.
HOPKINS & SUTTER
888 16th Street, N.W.
Washington, D.C. 20006

Attorneys for CENTRAL HUDSON GAS & ELECTRIC CORPORATION, LONG ISLAND POWER AUTHORITY, AND ROCHESTER GAS AND ELECTRIC CORPORATION

October 20, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Niagara Mohawk Power Corporation,	)	
New York State Electric & Gas Corporation,	)	
And	)	Docket Nos. 50-220 & 50-410
AmerGen Energy Company, LLC	)	
(Nine Mile Point, Units 1 & 2)	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing PETITION OF CENTRAL HUDSON GAS & ELECTRIC CORPORATION, LONG ISLAND POWER AUTHORITY, AND ROCHESTER GAS AND ELECTRIC CORPORATION FOR LEAVE TO INTERVENE, AND REQUEST FOR HEARING were served upon the following persons by e-mail in accordance with the requirements of 10 C.F.R. § 2.1313:

Mark J. Wetterhahn, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Secretary of the Commission
Attn: Rulemaking and
Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Samuel Behrends IV, Esq.
LeBoeuf, Lamb Greene & MacRae, L.L.P.
1875 Connecticut Avenue, Suite 1200
Washington, D.C. 20009-5728

Kevin P. Gallen
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869

General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dated at Washington, D.C. this 20th day of October, 1999

Daniel F. Stenger

Daniel Stenger, Esq.
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006

12/21/92

EXHIBIT A

NINE MILE POINT NUCLEAR STATION UNIT 2

OPERATING AGREEMENT

TABLE OF CONTENTS

NINE MILE POINT NUCLEAR STATION UNIT 2
OPERATING AGREEMENT

Pursuant to Section 6.01 of the Basic Agreement, Niagara Mohawk Power Corporation (Niagara Mohawk), Long Island Lighting Company (LILCO), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), and Central Hudson Gas & Electric Corporation (Central Hudson) agree as follows with respect to the operation and maintenance of the Nine Mile Point Unit 2, and all activities and facilities supporting or otherwise relating to the plant (sometimes hereinafter collectively referred to as the "Unit" or the "Plant").

The term "Parties" as used herein shall refer to all the parties to this Agreement. The term "Non-Operating Owners" as used herein shall refer to LILCO, NYSEG, RG&E and Central Hudson collectively.

STATEMENT OF INTENT

It is the intent of the Parties to assure the safe, efficient and reliable operation of the Unit consistent with the goals and commitments specified in Sections 2.1 and 2.2 herein. It is the intent hereof that Niagara Mohawk shall have exclusive operational control of the operation and maintenance of the Unit. It is the further intent of the Parties to establish a framework for oversight by the Management Committee of the policy making, planning, budgeting, and operational decisions of Niagara Mohawk related to the Unit. In addition, as more fully explained in Section 2.3 and Article 3, the Non-Operating Owners shall have

the right to approve or disapprove the annual budgets and annual plans (which shall include annual operating goals and objectives for the Unit) and any significant changes in either of them. To the extent any ambiguity arises as to the roles and responsibilities of Niagara Mohawk, the Non-Operating Owners, and the Management Committee hereunder, the provisions of this Agreement shall be construed consistent with the intent herein expressed.

ARTICLE 1 - EFFECTIVE DATE OF AGREEMENT

1.1 Effective Date of Agreement

This Agreement shall be effective as of January 1, 1993 and shall inure to, bind, and be for the benefit of the Parties, their successors, and assigns.

1.2 Operating Period; Deactivation; Purchase Option

The Parties agree to operate the Plant for the applicable license period granted by the United States Nuclear Regulatory Commission (the "NRC" or the "Commission") or any successor agency having jurisdiction over the operation of nuclear power plants. The Parties shall meet five years prior to the expiration of an operating license, or sooner if required by any inability to operate the Plant on a permanent basis, to agree upon any further operating period, or upon a schedule for deactivation and decommissioning of the Plant. Niagara Mohawk, as agent for and on behalf of the Parties, shall maintain the Plant to the date that the Plant has been fully decommissioned inaccordance with all applicable laws or regulations then in effect.

The cost of deactivation, discontinuance, dismantling, and continuing surveillance of the Plant shall be shared by the Parties in accordance with their Respective Percentages and the Parties each agree to establish appropriate reserves and/or take such other action as may be necessary to provide for the cost of such deactivation, discontinuance and dismantling. Prior to, or upon completion of deactivation, discontinuance and dismantling of the Plant, the Nuclear Plant Site may, at Niagara Mohawk's election, be conveyed to Niagara Mohawk at a price to be established by a recognized independent appraiser of land selected by all the Parties.

Unless all the Parties, their successors and ~~assigns,~~ determine to retain their Respective Percentages and to continue to operate and maintain the Plant as is herein provided, Niagara Mohawk shall have the option to purchase the Nuclear Plant Site and the Plant at a price to be agreed to by the Parties, and if they are unable to agree, at a price to be established by a recognized independent firm of appraisers with substantial experience in appraising the value of utility plants selected by all the Parties.

The Parties contemplate that, in any disposition of the Nuclear Plant Site and Plant, the operation and maintenance thereof as is herein provided, subject to the provisions of Section 1.3 hereof, may require the authority and consent of governmental bodies then having jurisdiction. Accordingly, it shall be a condition to the completion of any disposition or continued operation and maintenance, agreed to by the Parties hereto, that such authority and consent be first obtained.

Any conveyance of a Respective Percentage contemplated by this Section 1.2 shall follow the relevant procedures for the original conveyance set forth in Article II of the Basic Agreement, and an appropriate release in form for recording from any indenture of mortgage of the Party making the conveyance which is a lien on the Nuclear Plant Site must be obtained and delivered by that Party to the acquiring Party or Parties.

The costs of any appraisals accomplished under this Section 1.2 shall be shared by the Parties in accordance with their Respective Percentages.

1.3 Amending the Agreement

This Agreement shall be revised from time to time if necessary so that it will not be in conflict with any rule, regulation, or order of any regulatory or governmental body having jurisdiction. Such amendment shall not be required during the pendency of any legal action which any Party hereto has commenced in good faith to contest the validity of any such rule, regulation or order, provided that the operation of the Plant will not be curtailed by such action.

ARTICLE 2 - GENERAL ORGANIZATION

2.1 Commitment to Safe Operation

Activities in relation to the Unit shall be conducted in such a way as to assure safe operation in accordance with all applicable nuclear safety requirements. To that end, the Unit shall be operated in strict compliance with the technical specifications and other terms and conditions of the operating license issued by the NRC, the regulations of the Commission and

any applicable orders or directives issued by it. The parties further recognize that the Party licensed by the NRC to operate the Plant is responsible for safe operation of the Plant in accordance with these requirements. Niagara Mohawk, as agent for and on behalf of the Parties, shall operate the facility for the mutual benefit of the Parties in full accordance with that responsibility. Accordingly, the Parties agree and declare that no other provision of this Operating Agreement may be interpreted as contrary to, or in conflict with, this fundamental principle.

2.2 Unit Goals

Within the requirements specified in Section 2.1, Unit operation and maintenance plans shall be designed to achieve these basic goals:

(a) uniformly high standards of safety for the protection of workers at the Unit as well as for the welfare of the general public;

(b) consistently reliable performance with a superior level of availability and minimal outage incidents and duration;

(c) conformity with all applicable regulatory requirements and industry standards; and

(d) consistent with goals (a), (b) and (c), a busbar cost as low as reasonably possible through careful control of operating and maintenance expenses and restraint in the commitment of capital funds to necessary projects with clearly positive benefit/cost relationships.

2.3 Policies and Plans

Niagara Mohawk shall develop and, as necessary, update its annual budgets and annual plans, which shall include unit operating goals and objectives, to guide its management of the Unit. All such plans and budgets shall be shared with the Non-Operating Cotenants and subject to their critical review to which Niagara Mohawk shall make reasonable response. Such plans and budgets shall be subject to the approval of the Non-Operating Cotenants, as set forth in Article 3.

2.4 Operational Control

Niagara Mohawk shall have exclusive control of the operation and maintenance of the Unit. That control shall be exercised in a manner consistent with the requirements, goals, policies, plans and budgets it has developed as modified in light of the critical review of the Non-Operating Cotenants and in the interest of all the Parties.

2.5 Informational Responsibility

Through committees and other groups established under Article 3, Niagara Mohawk shall keep the Parties regularly and fully advised of the manner in which it discharges its responsibilities under Section 2.4.

ARTICLE 3 - MANAGEMENT COMMITTEE

3.1 Establishment of Management Committee

a. Each Chief Executive Officer of a Party shall designate a member and an alternate to serve on the Management Committee at the pleasure of such Chief Executive Officer. Each Chief Executive Officer shall notify the others of the names of

the individuals so appointed and of any change in appointments.

b. The Chief Executive Officers shall select a member of the Management Committee as its Chair. The Chair shall be rotated among the Non-Operating Parties annually unless the Chief Executive Officers shall otherwise determine by unanimous vote.

c. Each non-operating party shall bear the salaries and expenses of its member and alternate on the Management Committee, unless the Management Committee shall otherwise determine. Niagara Mohawk shall be responsible for the salaries and expenses of its member or alternate on the Management Committee except to the extent such members or alternates are ordinarily dedicated to the operations of the Unit. If the Management Committee determines that a salary or an expense should be shared by the Parties in proportion to their Respective Percentages, the Party incurring such salary or expense in the first instance shall, at the end of each calendar month in which such salary or expense is so incurred, furnish to Niagara Mohawk a statement thereof in reasonable detail. Any such amount shall be paid to the appropriate Party as provided in Article 5.

3.2 Meetings, Agendas and Voting, Etc.

a. Meetings. The Management Committee shall meet monthly, normally in person, according to a schedule established by the Chair. Any member may call a meeting to convene sooner than the next regularly scheduled meeting. Such a meeting may be in person, by conference call or partly in person and partly by conference call.

b. Notice. Notice of regularly scheduled meetings shall be deemed given when circulation is made of minutes

containing the meeting schedule. For any other meeting, all other members and alternates shall receive notice from the member calling the meeting at least five business days prior to the meeting, which notice the Management Committee may waive by unanimous consent of its members.

c. Agendas. The agenda for a regularly scheduled meeting of the Management Committee shall be prepared by the Chair and received by members not fewer than five business days before the meeting, unless waived by the unanimous consent of the members of the Management Committee. The purpose of any other meeting shall be made known with the notice of meeting; its agenda shall be prepared by the member calling the meeting and received as much in advance of the meeting as is practical.

d. Quorum. A quorum shall be deemed present when at least four owners are represented, in person or by conference call, either by a member or by an alternate, except no quorum shall be deemed present in the absence of a member or alternate from Niagara Mohawk. Niagara Mohawk shall use its best efforts to attend any meeting of the Management Committee.

e. Voting. The Management Committee shall endeavor to conduct its business upon unanimous consent, but the Committee may take action if members representing Respective Percentages totaling in excess of 50 percent concur.

f. Minutes. The Management Committee shall provide for the preparation of minutes of its meetings and the retention of any reports, reviews or evaluations prepared for it by any team, subcommittee or task force.

3.3 Responsibilities of the Management Committee

a. Consistent with the commitment of the Parties in Section 2.1 to safe operation, the goals stated in Section 2.2, and Niagara Mohawk's operational control provided in Section 2.4, Niagara Mohawk shall operate and maintain the Unit and shall report the status thereof to the Management Committee.

b. The Management Committee shall critically review as appropriate the annual budgets and plans, which shall include annual operating goals and objectives for operation and maintenance of the Unit, developed by Niagara Mohawk. Niagara Mohawk will respond to any such critical review either with an appropriate modification of any of the above or with a reasonable explanation of why a modification is not appropriate. The Management Committee shall review and, when satisfied, approve the annual plans and the overall levels of the annual budgets for the Unit. The Management Committee, if it reasonably believes that the annual budgets or annual plans are not being met, may require Niagara Mohawk's senior nuclear officer to develop and implement appropriate corrective action.

c. Niagara Mohawk shall inform and consult with the CEOs before appointing, relieving or declining to reappoint its senior nuclear officer. Niagara Mohawk's senior nuclear officer will be relieved by Niagara Mohawk if it is requested to do so in writing by the CEOs of all four of the Non-Operating Cotenants.

d. When useful to the discharge of its responsibilities under Article 3, the Management Committee may review any developments of significance concerning cost, operations, scheduling, performance objectives, work force

organization, regulatory concerns and other matters affecting or affected by Unit operation and maintenance. These matters may come to the Management Committee's attention from various sources including, but not limited to, Niagara Mohawk or the Owners' Representative On-site described in Section 3.7.

e. Niagara Mohawk shall keep the Management Committee informed of regulatory proceedings regarding operation of the Unit, especially those which may result in any penalty, fine or assessment being imposed on the Unit or on any of the Parties. With respect to State regulatory proceedings involving a potential penalty, fine or assessment for imprudent management, whether to defend against such imposition, the overall defense to be mounted and any settlement thereof shall be decisions made by the Management Committee. However, it is the intent of the parties that Niagara Mohawk shall have the primary responsibility for the conduct of all regulatory proceedings. Representation by counsel of any Party in any regulatory proceeding involving the Unit will not be used by any other Party as the basis to seek disqualification of that counsel in any action brought by one Party against another.

f. The Management Committee shall annually review the performance of key executives (including salary levels), as designated by Niagara Mohawk's senior nuclear officer, who are responsible for the operation of the Unit. This review shall be conducted in executive session before the principal executive members of the Management Committee.

g. The Management Committee shall require the preparation of a charter by each of the Audit, Fuel, and Finance

Committees specifying, among other things, the function, responsibilities and reporting requirements of the Committee. Said charters shall be reviewed and approved by the Management Committee. The Management Committee may from time to time require the amendment or modification of the committee charters to address changing needs and requirements.

3.4 Annual Plan and Budget

a. Niagara Mohawk shall annually prepare, on or before August 1,

i. a proposed plan, which shall include annual Unit operating goals and objectives, as well as budgets for the succeeding year (Year I) and

ii. a preliminary plan and financial forecasts for the two following years (Years 2 and 3).

Each annual budget or financial forecast, to the extent feasible, shall comprehensively address all expenditures for the Unit in the following categories: Fuel, Capital, Operations and Maintenance and Other.

b. On or before September 15 of each year, the Management Committee shall complete preliminary review of the documents submitted to it under subsection (a) and provide Niagara Mohawk with its comments.

c. Following timely revision by Niagara Mohawk responsive to the comments of the Management Committee, the Management Committee shall, on or before October 15 of each year,

i) approve plans, which shall include annual Unit operating goals and annual objectives, and the

overall level of the budgets for the following year and

ii) give preliminary approval to the preliminary plan and financial forecasts for Years 2 and 3.

d. The Management Committee may from time to time review the planning and budget process and Niagara Mohawk will respond to any comments or criticisms of that process.

3.5 Variances

a. The approved plans, which shall include annual operating goals and annual objectives, and budget shall form the basis upon which Unit operation and maintenance are conducted during the plan and budget year. The Management Committee may from time to time approve revisions in the plan and budget, whereupon Unit operation and maintenance shall conform to revised plan and budget.

b. Niagara Mohawk shall report at each regularly scheduled meeting of the Management Committee on the status of current and projected spending in relation to the capital and operating budgets. As part of this report (but sooner if circumstances require), Niagara Mohawk shall identify:

i) significant expenditures it proposes to make not within the approved budget,

ii) withholding of significant expenditures within the approved budget it proposes to make, or

iii) if it has reason to believe that spending associated with a budgeted amount is (or will be) exceeding or underrunning the budget by a significant amount.

c. Niagara Mohawk shall provide a detailed budget variance and forecast report on a monthly basis including explanation for each budget item exhibiting significant variance.

d. If the total level of expenditures for any budget category (Fuel, Capital, Operation and Maintenance, and Other) is expected to exceed the budget by more than $1.0 million, Niagara Mohawk will inform the Management Committee and seek approval from the Management Committee for such increase in the total budgets; such approval shall not be unreasonably withheld.

e. Notwithstanding the preceding paragraph, the Parties shall be liable to the extent of their Respective Percentages

i) for any expenditure which Niagara Mohawk reasonably believes is required for compliance with the terms and conditions of the NRC Facility Operating License, its Technical Specifications and Environmental Protection Plan, the regulations of the Commission and any applicable orders or directives issued by it, and

ii) for any expenditure which, in Niagara Mohawk's judgment, is essential for safe operation of the Plant.

f. If the level of expenditure, or expenditures, described in the preceding paragraph is expected to result in the exceeding of an approved budget, Niagara Mohawk shall promptly so inform the Management Committee. Time permitting, Niagara Mohawk will review such expenditures with the Management Committee in advance. In any event, Niagara Mohawk will make every reasonable

effort to offset such expenditures, and avoid increases in the currently approved budget amounts, through reduction or elimination of corresponding amounts of discretionary expenditures.

3.6 Circumstances Requiring Immediate Action

a. Whenever circumstances require that action normally subject to Management Committee review and approval be taken before that Committee can be convened in person or telephonically, Niagara Mohawk shall (1) make reasonable efforts to so inform both the Owners' Representative On-site and Management Committee members or their alternates and (2) take such action as it deems appropriate having due regard for (a) the safeguarding of personnel and equipment, (b) the maintaining of the Unit in operable condition, (c) the ensuring of regulatory compliance, and (d) the interests of all the Parties.

b. As soon as possible but not later than 24 hours after so acting, Niagara Mohawk shall report and explain its action to the Management Committee and shall recommend any follow-up action it deems appropriate.

3.7 Owners' Representative On-site

a. Those members of the Management Committee designated by Chief Executive Officers of Non-Operating Owners may collectively retain a person or an organization (the Owners' Representative On-site) to monitor activities related to the Unit and to provide them with assessments thereof. The Owners' Representative On-site shall report to the Chair of the Management Committee or the Chair's designee.

b. The Owners' Representative On-site shall coordinate the on-site activities of employees and agents of the Non-Operating Owners and shall, should the Non-Operating Owner members of the Management Committee so designate, represent the interests of those owners to Niagara Mohawk management and to those Niagara Mohawk managers exercising operational control under Section 2.4. In addition, the Owners' Representative On-Site shall inform in a timely fashion the Niagara Mohawk officer who directs operational control of the operation and maintenance of the Unit as to his observations and assessments concerning the operation and maintenance of the Unit.

c. Niagara Mohawk may designate an individual for assignment as part of the Owners' Representative On-site.

3.8 Representation on Unit Committees, Task Forces and SRAB

The Non-Operating Owners may have representation on all operation and engineering committees as well as task forces which are established from time to time by Niagara Mohawk to inquire into various questions and/or problems relating to the Unit. Niagara Mohawk shall make reasonable efforts to keep Owners' Representative On-Site informed regarding dates and times for regularly or periodically scheduled meetings of such committees and task forces so as to facilitate the representation provided for in this Section 3.8. The Non-Operating Owner members of the Management Committee may collectively designate one individual to be a member of the Safety Review and Audit Board and one individual to be a member of the Capital Review Committee.

3.9 Rights and Responsibilities of On-site Representative and Other Owner Personnel

a. The Owners' Representative On-site shall have reasonable access to Niagara Mohawk corporate management and to those Niagara Mohawk managers exercising operational control under Section 2.4. The Owners' Representative On-site and all other employees and agents of the Non-Operating Owners whose activities on-site are coordinated by the Owners' Representative On-site shall have reasonable access to all Unit-related correspondence, records, reports, and other information within the control of Niagara Mohawk wherever located, and shall have access to the Unit at all times subject to security and safety requirements comparable to those applied to Niagara Mohawk personnel. Niagara Mohawk shall provide the organization of the Owners' Representative On-site with suitable and sufficient office space at the Plant Site, facilities, equipment and supplies.

b. The On-site Representative will be responsible to the Chair of the Management Committee for reporting on the operation and maintenance of the Unit. Such reports will have the purpose of providing oversight and assessment as determined by the Management Committee and of helping Niagara Mohawk achieve all of the goals for operation and maintenance of the Unit set forth in Article 2. To that end, both the On-site Representative and the appropriate Niagara Mohawk personnel responsible for operation and maintenance of the Unit will seek to achieve a cooperative working relationship, and will among other things, inform each other at the earliest practical time of any perceived

deficiencies in the operation or maintenance of the Unit and of any suggested solutions.

ARTICLE 4 - SERVICES TO BE PROVIDED

4.1 List of Services

Niagara Mohawk agrees, subject to the provisions of Article 3, that it will:

a. Make decisions respecting the operation and maintenance of the Unit and carry out improvements to the Unit;

b. Select, hire, control and (when it deems such action appropriate) discharge personnel as required in the performance of this Agreement, such personnel to be employees solely of Niagara Mohawk and subject to the terms of any labor agreements to which Niagara Mohawk is a party pertaining to such employees and to such standards relating to compensation, benefits and terms of employment specified for Niagara Mohawk employees;

c. purchase operating and maintenance materials, supplies, and services;

d. perform or contract for maintenance, renewals and replacements required to protect the Unit and to keep it in safe and efficient operating condition and prepare and submit to the other Parties normal operating schedules for the Unit;

e. engage legal, engineering, auditing and other consulting services related to the Unit;

f. perform such accounting as is required for the Unit and furnish reports with respect thereto to the other Parties which will enable each Party to meet its accounting and

statistical requirements, including the requirements of any regulatory bodies having jurisdiction over such Party;

g. appoint, as Niagara Mohawk's member of the Management Committee, one of its two most senior officers or an officer who has authority, either in that officer's position or delegated from another officer with such authority, to direct both Unit operations and such engineering, licensing and other services as are necessary to support those operations;

h. place all orders and contracts pertaining to operation and maintenance of the Unit in the name of Niagara Mohawk on behalf of the Parties hereto. The Parties hereto authorize Niagara Mohawk to sign such orders and contracts on their behalf. No party hereto will assume any liability under or by reason of any such orders or contracts except to the extent of its Respective Percentage;

i. prepare bills in reasonable detail to the Parties for costs incurred hereunder;

j. assist the Parties in regulatory proceedings and other contested matters (including, but not limited to, any action by any shareholders of any of the Parties) relative to the Unit, including the provision of witnesses and current and accurate Unit data; and

k. support the timely preparation of Unit plans and budgets, as described in Section 3.4, with sufficient supervision, staffing and organization.

ARTICLE 5 - PAYMENTS

5.1 Operating Costs

Subject to the provisions of Article 3, it is agreed that the Parties shall share in the costs of operation, maintenance and replacements including Niagara Mohawk's overhead (including services and expenses of regular personnel, executive officers and supervisors, to the extent that such services pertain to operations and maintenance of the Unit) applicable to the performance of this Agreement, in their respective Percentages.

5.2 Operating Account

Niagara Mohawk shall establish and maintain for purposes of this Agreement a special bank account or accounts, in a New York State bank designated by Niagara Mohawk, entitled "Niagara Mohawk Power Corporation, as Agent - Nine Mile Point Nuclear Station Unit 2 Nuclear Operating Account", with funds supplied by the Parties in accordance with their Respective Percentages. Each Party pursuant to written notice by Niagara Mohawk and in accordance with its Respective Percentage will deliver to Niagara Mohawk funds for the replenishment of the bank account or accounts by the Parties. In determining the dates and amounts of such replenishments, the Parties shall endeavor to avoid carrying in the bank account or accounts funds ill excess of a reasonable minimum balance for periods of time longer than necessary to provide for the orderly payment of invoices and payroll and other charges. Any income resulting from the investment of excess funds and the cost of funds required to be borrowed will accrue to the account of each co-tenant in their

respective ownership percentages. All invoices or charges in connection with the performance of this Agreement shall be paid by Niagara Mohawk from the aforesaid account or accounts.

5.3 Failure to Advance Funds

If at any time any party fails to advance funds owing under this Agreement when Niagara Mohawk requests it to do so, Niagara Mohawk may (unless it is clear that the failure will be promptly remedied) require all Parties to advance funds in proportion to their Respective Percentages to cover the shortfall for as long as may be required, but not longer than three months. A Party failing to advance funds whenever so required shall remain fully liable therefore under the Basic Agreement and this Operating Agreement and shall promptly tender the delinquent funds together with interest at the prime rate or an equivalent reference rate as may be established from time to time by The Chase Manhattan Bank N.A., at New York, New York. Niagara Mohawk shall accept and apply such tendered sums to eliminate or reduce the next succeeding request or requests for funds from those Parties covering the shortfall.

Promptly upon the occurrence of the event described in the preceding paragraph, Niagara Mohawk shall notify all Parties of it and a meeting shall be convened to decide as promptly as possible on a longer-term course of action responsive to the particular circumstances.

This Section shall not in any way restrict or limit the right of the non-defaulting Party (Parties) against the defaulting Party (Parties).

ARTICLE 6 - AUDITS

6.1 Audit Committee; Inspection of Records

The Audit Committee, consisting of a representative of each of the Parties, has previously been organized by the Parties and shall continue to exist. The members of such Committee shall consist of one representative appointed by each of the Chief Executive Officers of the Parties. The Chair of the Audit Committee shall be appointed by the Chief Executive Officers voting in accordance with their companies' Respective Shares. A vote representing more than 50 percent of the ownership interest in the Unit is required to appoint a Chair. The Audit Committee shall:

a. report to the Chief Executive Officers collectively;

b. plan the amount of audit effort to be expended on the Plant; the Audit Committee will also determine how the manpower will be provided in order to meet its commitments;

c. determine specific areas for audit and develop the scope and objectives for each audit;

d. perform the audits and discuss preliminary findings/ corrective actions with Niagara Mohawk Management;

e. review audit results and submit draft reports to the Management Committee for comments and report final audit results to the Chief Executive Officers; and

f. review the results of any Niagara Mohawk Internal Audit Reports of Unit Two activities.

The scope of the Audit Committee shall be understood to include all costs relating to the Plant. The costs of all audits by the Audit Committee or by any independent certified public

accountants retained by it shall be borne by the Owners in accord with their Respective Percentages.

The correspondence, records, vouchers and books of account of Niagara Mohawk pertaining to all costs incurred for the account of the Parties under this Agreement shall be examined annually by a firm of independent certified public accountants in connection with the annual examination of Niagara Mohawk's accounts and records, and such firm will report to the Parties with respect to operation under this Agreement. The costs of such examination shall be borne by the Owners in accord with their Respective Percentages.

The Parties or any individual Party shall have the right, during the term of this Agreement and for a period of two years after final payment, to inspect all correspondence, records, vouchers and books of account of Niagara Mohawk pertaining to work done or disbursements made for the account of the Party or Parties under this Agreement. This review may be performed by the Party's auditors, or a firm of independent certified public accountants retained by any Party or Parties.

6.2 Inspection Costs; Inspection Report

If an inspection or review is requested or undertaken by fewer than four of the Parties, the Party or Parties requesting or undertaking such inspection or audit shall be responsible for the cost thereof. The reports of inspection, review or audits pursuant to this section shall be provided to the Audit Committee. The Party or Parties undertaking the audit shall report the results to the Chief Executive Officers of all the Parties who shall in turn advise Niagara Mohawk within three

(3) months of receipt of such report, of any items that require adjustment or corrective action.

6.3 Adjustments or Corrective Action

Niagara Mohawk shall permit such inspection, reviews or audits and make appropriate adjustments or take corrective action as may be required to reflect the results thereof.

ARTICLE 7 - FUEL

7.1 Fuel Committee; Meetings, Agenda and Minutes

A Fuel Committee has previously been organized and shall continue to exist. Each member of the Management Committee shall designate a representative to serve at the member's pleasure. The Chair shall be appointed by the Management Committee voting in accordance with their companies' Respective Shares. A vote representing more than SO percent of the ownership interest in the Unit is required to appoint a Chair. The Committee shall meet on a quarterly basis, or upon the request of any Party. The Chair shall, at least ten (10) days in advance of each such regular meeting, provide each Party with a written agenda of the pertinent items to be discussed at the meeting relevant or material to nuclear fuel provisions for the Unit. Minutes of such meetings shall be prepared by the Chair and distributed to the Parties for correction or clarification. Comments of the Parties at a meeting or with regard to the minutes shall be considered and addressed by Niagara Mohawk.

7.2 Fuel Supply

Subject to approvals of the Management Committee as provided in Article 3, Niagara Mohawk, as agent, shall continue

to manage the fuel supply and make decisions in connection therewith, keeping the Parties informed of its actions. Each Party may elect to provide its own share of uranium and/or conversion services on the condition that such share will be made available pursuant to an agreed upon schedule for reload and to the extent that such commitments have not already been made by Niagara Mohawk as agent. However, Niagara Mohawk, acting as an individual Party, shall be limited to providing no more than seventy-five percent of its individual share for any one reload. The remaining amount required for Niagara Mohawk as an individual Party shall be provided as part of its overall procurement strategy acting as agent for all the Parties. (Niagara Mohawk controlled sources shall not be eligible to bid these latter procurements.)

7.3 Fuel Pricing Accounts.

Each Party will maintain its own separate nuclear fuel pricing accounts, but all individual accounts shall be merged as a composite for New York Power Pool (NYPP) dispatch purposes.

7.4 Spent Fuel

Subject to the approval of the Management Committee as provided in Article 3, Niagara Mohawk will continue to operate and manage all on-site and off-site spent fuel storage, reprocessing or permanent disposal of recovered fuel and waste products, as agent of the parties, with all costs, benefits and liabilities distributed among the Parties in accordance with the Respective Percentages.

7.5 Separate Activities for Units 1 and 2

It is agreed that Niagara Mohawk will maintain entirely separate procurement, inventory accounting and disposal actions for Units 1 and 2.

ARTICLE 8 - FINANCE AND ACCOUNTING

The Finance Committee, consisting of a representative of each of the Parties, has been previously organized by the Parties and shall continue to exist. Each member of the Management Committee shall designate a representative to serve at the member's pleasure. The Parties may designate additional Finance Committee meeting attendees; however, only the designated representative or a designated alternate shall vote on behalf of the Party. The Chair of the Finance Committee shall be appointed by the Management Committee voting in accordance with their companies' Respective Shares. A vote representing more than 50 percent of the ownership interest in the unit is required to appoint a Chair. The Committee shall meet at the request of any Party for the purpose of addressing common financial issues related to the operation of NMP2. In addition, the Finance Committee shall oversee and direct the activities of the Accounting Committee which has been previously formed to establish and review accounting policy and procedures as they relate to the Unit.

ARTICLE 9 - INSURANCE AND INDEMNITY

9.1 Compensation Withholdings

Niagara Mohawk shall have sole responsibility for

withholding from the compensation of its employees engaged in performing the services under this Agreement any taxes or contributions which are required by law to be withheld, and sole responsibility for paying such withheld amount and taxes applicable to the compensation of such employees imposed by law upon Niagara Mohawk to the proper governmental authority, and shall defend, indemnify and save harmless the Parties hereto from and against any liability on account thereof.

9.2 Workers' Compensation and Employers' Liability Insurance

Niagara Mohawk shall provide workers' compensation and employers' liability insurance for its employees engaged in performing the services under this Agreement in accordance with the laws of the State of New York. The policy shall contain a subrogation waiver to the effect that the insurance company shall not proceed against any of the Parties hereto for recovery of any loss or losses paid under the policy even though due to the negligence of any Party or Parties. With respect to any claims made or any suits brought by Niagara Mohawk employees engaged in performing the services under this Agreement against LILCO, NYSEG, RG&E, or Central Hudson or any of them, and such claims or suits do not arise out of acts or omissions of LILCO, NYSEG, RG&E, or Central Hudson, and are not covered by insurance provided under Section 9.3 hereof, Niagara Mohawk agrees to defend, indemnify, and hold harmless LILCO, NYSEG, RG&E, or Central Hudson.

9.3 Comprehensive General Liability Insurance Policy

Through the life of this Agreement, Niagara Mohawk shall maintain liability insurance for the account and in the name of the Parties hereto by securing a standard Comprehensive General Liability Insurance Policy on a primary coverage basis toinsure the Parties and their agents against liability except for the nuclear risk, for bodily injury including personal injury to or death of any one or more persons and damage to property arising out of the operation of the Unit. Such insurance shall include a waiver of the insurer's right of subrogation against any of the Parties for such loss or damage even though due to the negligence of any of the Parties.

Niagara Mohawk shall also maintain insurance in accord with the requirements of the United States Nuclear Regulatory Commission pursuant to the Commission's authority under 42 U.S.C. Section 2210 et seq. and the license issued by the United States Nuclear Regulatory Commission for the Unit. In the event the requirements of 42 U.S.C. Section 2210 et seq. are revised or terminated, Niagara Mohawk shall obtain and maintain such insurance and indemnification as is available for the nuclear risk on reasonable terms, subject to the consent of the Parties hereto.

9.4 Property Insurance

Niagara Mohawk shall maintain for the account of the Parties in the name and on behalf of the Parties, property insurance as shall normally be provided by nuclear property insurance underwriters. Such insurance shall include a waiver of the insurer's right of subrogation against any of the Parties for

such loss or damage even though due to the negligence of any of the Parties. Niagara Mohawk shall arrange with the insurers for any inspections necessitated thereby and shall promptly reportany losses to each Party, and shall assist and cooperate in the adjustment and settlement thereof.

9.5 Employees' Fidelity Bond

Niagara Mohawk shall maintain such employee's fidelity bond coverage as it deems necessary.

9.6 Liability for Loss, Expense or Damage Not Covered by Insurance

It is the intent of this Agreement that, insofar as practicable, all liabilities or losses in favor of third parties shall be covered by insurance; nonetheless, the Parties hereto hereby agree to share (including deductibles and retainages under policies of insurance as well as attorney's fees) in any loss, liability, expense, or damage (including personal injury, death or damage to property) of any kind whatsoever arising out of or connected with the design, construction, maintenance and operation of the Nine Mile Point Nuclear Station Unit 2, in accordance with their Respective Percentages (hereafter referred to as "Shared Liability") and hereby agree to indemnify and hold each other harmless with respect to any excess amount beyond the share contributed by each in accordance with their Respective Percentages, provided that no Party is required to participate in Shared Liability for any claim, loss, expense, or damage that is payable as a result of any settlement or compromise thereof unless all the Parties hereto shall have consented to such settlement or compromise. Shared Liability as to third parties,

as set forth above, shall apply irrespective of the nature of the allegations of wrongdoing on the part of the Party(ies) hereto against whom recovery is being sought, whether pertaining to non-feasance, misfeasance, malfeasance or violations of statute or regulation, including, but not limited to (to the extent not prohibited by law) all claims and judgments against any such Party(ies). In no event shall any of the Parties be liable to any other Party, except to the extent of its Shared Liability, for consequential damages to third parties (including, but not limited to, loss of profits or revenue, loss of use of equipment, cost of capital, cost of substitute equipment, facilities, or services, down-time costs, cost of replacement or purchased power, or claims of customers) or punitive damages to third parties resulting from uninsured losses occurring as aforesaid.

9.7 Amount of Coverage; Modifications

Any insurance arranged for or placed by Niagara Mohawk hereunder shall be for such amounts and with such deductibles as Niagara Mohawk, considering the nature of the risks and current insurance practices, shall determine. Such coverage and deductibles, however, shall satisfy the requirements of each Party hereto. To the extent that Niagara Mohawk places or arranges for insurance for the Parties as herein provided, the Parties will not obtain or provide such insurance, except that any Party may for its own account and at its own expense obtain or provide separate or excess liability coverage.

During the life of this Agreement, from time to time, Niagara Mohawk may modify insurance coverages both as to type and amount and deductibles to conform to its own corporate practices

and practices generally accepted in the utility industry. All Parties shall be notified of any change.

Copies of any insurance policies placed or arranged for hereunder shall be furnished to all Parties.

Notwithstanding any provision of this Article 9, Niagara Mohawk shall secure and maintain for the Unit an insruance program affording liability and property damage coverage which meets regulatory requirements.

9.8 Insurance Premiums

All premiums for insurance maintained by Niagara Mohawk hereunder with respect to the Unit shall be included in the cost of operations and maintenance.

9.9 Sharing of Regulatory Penalty and Breach of This Agreement

a. Except as this Section otherwise provides, each Party does hereby release each of the other Parties from all liability, causes of action, claims and judgments (hereinafter collectively referred to in this Section 9.9 as "Claims") in excess of each Party's Respective Percentage for actions or omissions occurring subsequent to the effective date of this Agreement and arising out of operation, maintenance, modification (including design thereof), or ownership of the Unit.

b. Unless otherwise directed by the regulatory agency, the Parties shall share in accordance with their Respective Percentages any penalty, fine or assessment (hereinafter "Regulatory Penalty") imposed by a regulatory agency for actions or omissions

i) arising from operation, maintenance, modification

(including design thereof), or ownership of the Unit and

ii) occurring subsequent to the effective date of this Agreement.

In such circumstances, no Party will advocate any sharing of a Regulatory Penalty in any manner other than in accordance with the Respective Percentages before any regulatory body or court in which the manner of sharing of a Regulatory Penalty is at issue, including in an appeal from a regulatory body or court. If the Regulatory Penalty results directly from acts, omissions or circumstances constituting a Party's breach of this Agreement, that portion of the penalty that results directly from such acts, omissions or circumstances shall be borne by the Party in breach and the balance shall be allocated according to the Parties' Respective Percentages. As used in this Section 9.9, the term breach of this Agreement excludes circumstances described in (1) through (4) of paragraph (e) below so long as conditions (i) through (ii) therein are met.

c. A party shall not be entitled to the release provided in paragraph (a) above for those Claims based upon acts, omissions or circumstances for which it is responsible that both (1) result directly in the Claims for which it seeks release and (2) constitute a breach of this Agreement which breach is not cured.

d. A Party in breach of this Agreement shall have a continuing obligation to cure it. If a Claim for monetary damages does not lie under paragraph (c) above, any other Party may insist that the obligation be honored, may demand specific

performance and may seek to enjoin any act or omission constituting the breach.

e. It is not the intent of this Agreement to hold any Party responsible beyond its Respective Percentage for the economic or financial consequences of the failures of performance or achievement described in (1) through (4) below so long as conditions (i) through (ii) below are met. A Party shall not be deemed in breach of this Agreement by reason of

1) any failure of the Unit to perform to a generally accepted industry standard,

2) any failure of the Unit to achieve (despite Unit's plans being designed to attain them) specific goal or objective outlined in this Agreement or in Unit operation and maintenance plans and budgets,

3) any failure by the Party to achieve conformance with the approved annual operating plan or

4) any failure to comply with the technical specifications and other terms and conditions of the operating license issued by the NRC, the regulations of the Commission and any applicable orders or directives issued by it

so long as

i) such failure is not willful and

ii) the Party has acted in good faith in all respects, including with respect to its obligations under this Agreement.

9.10 Meaning of Section 6 in September 22, 1975 Operating Agreement Among the Parties (the 1975 Operating Agreement)

The Parties agree that in any action before any court or administrative agency, or any appeal thereof, in which the meaning of Section 6 in the 1975 Operating Agreement is at issue no Party will use or cite the language of Sections 9.9 and 9.6 herein in any explication of, or argument as to, the meaning of Section 6 in the 1975 Operating Agreement, nor shall the current Sections 9.6 and 9.9 be construed to have any bearing on the meaning of Section 6 of the 1975 Operating Agreement.

ARTICLE 10 - MEASUREMENT

10.1 Output Measurement

Net output of the Unit shall be measured by suitable meters located at the Unit. Hourly production for Niagara Mohawk, LILCO, NYSEG, RG&E and Central Hudson shall be metered at Scriba Station and allocated to the nearest MWH in accordance with each Party's Respective Percentage or each Party's scheduled requirement for that hour. The Scriba Station meter shall also be used as the basis for cotenant energy accounting.

10.2 Periodic Testing of Meters

Niagara Mohawk shall test the meters at regular intervals and at other times when any Party hereto has reason to believe that any meter is not registering accurately, and will notify LILCO, NYSEG, RG&E and Central Hudson when such tests are to be made in order that they may have a representative present during the test.

ARTICLE 11 - GENERAL

11.1 Non-Waiver of Provisions

The failure of the Parties to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of any rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

11.2 Procedure for Appeal of Management Committee Decision

Any member may appeal a decisions of the Management committee to the Chief Executive Officers collectively within 10 days of the meeting at which such decisions is made. The member appealing shall describe the issue to be decided and submit a short, objective statement of the facts and reasoning supporting the member's positions and that of the Management Committee. Any non-appealing member of the Management Committee may supplement or respond to the statement within 10 days.

In the event a matter is referred to the Chief Executive Officers after inability of the Management Committee to resolve a questions under Section 3.2, the Chair of the Management Committee shall describe the issue to be decided and submit a short, objective statement supporting alternative resolutions of that issue. Any other member of the Management Committee may supplement that statement within 10 days.

11.3 Procedure for Resolution of Appeal

The Chief Executive Officers shall resolve any issue appealed or referred from the Management Committee by a vote representing greater than 50 percent of the interest in the Unit

within 60 days after receipt of the appeal and any responding or supplementary statements.

11.4 Conflict with Basic Agreement

To the extent any provision of the Basic Agreement conflicts with provisions of this Operating Agreement, notwithstanding the provisions of Article XIV of the Basic Agreement, the provisions of this Agreement shall control.

11.5 Independence of Settlement Agreement

This Agreement does not supersede paragraph 6 or any other provision of the September 3, 1985 document entitled "Specification of Terms and Conditions of Offer of Settlement" to which representatives of Niagara Mohawk and Staff of the PSC subscribed and to which the non-operating owners later consented.

ARTICLE 12 - EFFECTIVE DATE, TERM AND TERMINATION

12.1 Effective Date

This Agreement shall be effective on January 1, 1993, upon the expiration of the most recent extension of the Interim Operating Agreement, dated February 21, 1992. It being the intention of the Parties that there be no lapse between the expiration of the Interim Operating Agreement and the effectiveness of this Agreement.

12.2 Term

The term of this Agreement shall be 24 months from its effective date. Thereafter, this Agreement shall be extended and remain in full force and effect until terminated pursuant to Section 12.3.

12.3 Termination

Any Party may terminate this Agreement by providing to all of the other Parties a written Notice of Termination at any time after expiration of 18 months of the term set forth in Section 12.2. Such Notice of Termination shall take effect 6 months after it has been received by all Parties.

ARTICLE 13 - OPERATING COMPANY FORMATION

13.1 Evaluation

The Parties have been evaluating the possibility of creating a corporate entity ("Operating Company") to operate and maintain the Unit. Although they have decided not to create an Operating Company at this time, the Parties agree to vigorously pursue and complete the evaluation during the term of this Agreement.

The operating agreement among the parties dated September 22, 1975, comprising Appendix B to the Basic Agreement of the same date, is hereby amended in its entirety with, and replaced by, this Nine Mile Point Nuclear Station Unit 2 Operating Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: R W Endries DATED: December 22, 1992

ITS: President

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: Anthony F. Earley, Jr. DATED: 12/20/92

ITS: President

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: Jack H. Roskos DATED: 12/22/92

Jack H. Roskos

ITS: Sr. Vice President
Electric Business Unit

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: Roger W. Kober DATED: 12-28-92

ITS: Chairman, Pres. CEO

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: Robert Grossi DATED: 12/21/92

ITS: President

BASIC AGREEMENT

THIS AGREEMENT made as of Sept. 22 , 1975, by and among NIAGARA MOHAWK POWER CORPORATION (Niagara Mohawk), a New York corporation, having an office at 300 Erie Boulevard West, Syracuse, New York, 13202, LONG ISLAND LIGHTING COMPANY (LILCO), a New York corporation, having an office at 250 Old Country Road, Mineola, New York, 11501, NEW YORK STATE ELECTRIC & GAS CORPORATION (NYSEG), a New York corporation, having an office at 4500 Vestal Parkway East, Binghamton, New York, 13902, ROCHESTER GAS & ELECTRIC CORPORATION (RG&E), a New York corporation, having an office at 89 East Avenue, Rochester, New York, 14604, and CENTRAL HUDSON GAS & ELECTRIC CORPORATION (Central Hudson), a New York corporation, having an office at 284 South Avenue, Poughkeepsie, New York, 12602, hereinafter collectively referred to as the "Parties" or the "Tenants in Common" or, in the singular, the "Party".

WITNESSETH THAT

WHEREAS, Niagara Mohawk has acquired and is developing in the Town of Scriba, County of Oswego, and State of New York, land for the location of Electric Generating Facilities (the "Site"), a portion of which land (the "Nuclear Plant Site") has been designated for the location of a Nuclear Power Electric Generating Plant to be known as Nine Mile Point Nuclear Station Unit #2 (the "Plant");

WHEREAS, each of the Parties is desirous of securing additional

must be sufficiently flexible so as to permit implementation of a Party's financing program, and in this regard, it is recognized that in order to finance a Respective Percentage a variety and/or a combination of financing transactions may have to be entered into and that partial and/or proportionate assignments or transfers with respect to a Party's Respective Percentage may have to be made in connection therewith. Accordingly, the Parties hereto agree that any such partial and/or proportionate assignments by any Party may be made without the consent of the other Parties solely for the purposes of effecting the above financial program.

Section 13.04. Should LILCO, NYSEG, RG&E or Central Hudson or their respective successors hereto desire to assign or transfer its or their Respective Percentage(s), other than pursuant to the provisions of Article VIII and Sections 13.02 and 13.03 of this Basic Agreement and Section 1.2 of the Operating Agreement (Appendix B), during the term of this Basic Agreement, they may do so without the consent of the other remaining Parties hereto, but subject to the following provisions of this Section 13.04:

(a) (i) A Party desiring to assign or transfer its Respective Percentage to the other Parties hereto shall notify the other Parties hereto of its desire one (1) year prior to the effective date of assignment or transfer and shall set forth in writing and deliver to each of them the terms of the offer for the sale of its Respective Percentage.

The priorities and procedures set out in (c) below shall then be applicable.

(ii) A Party desiring to assign or transfer its Respective Percentage shall not be obligated to keep its offer to sell open beyond one hundred and eighty (180) days after the date of its offer to sell and; (1) if there is acceptance by the offeree or offerees within that time period, the transfer shall take place no later than one year from the date of the offer to sell; or (2) if there has been no acceptance of such offer to sell within the one hundred eighty (180) day period, the offer to sell shall be deemed withdrawn, unless such time period shall be extended by the Party desiring to assign or transfer its Respective Percentage. The Party desiring to assign or transfer its Respective Percentage may withdraw its offer to sell at any time before acceptance should it decide to retain its Respective Percentage.

(b) (i) Upon receipt of a bona fide offer to purchase from a third party, that offer shall be transmitted in writing to the other Parties and the other Parties in accordance with the priorities and procedures set forth in (c) below shall have the right, within one hundred eighty (180) days

from the date of transmittal of such bona fide third party offer (whether or not there is an outstanding offer pursuant to (a) above) to make an offer to purchase the subject Respective Percentage upon terms at least as favorable as those contained in the bona fide third party offer.

(ii) Upon failure to offer to purchase upon financial terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period or earlier notification that no offer will be forthcoming, the Party assigning or transferring its Respective Percentage shall be free to sell its Respective Percentage to such third party pursuant to the terms set forth in the bona fide offer made by such third party.

(iii) Upon an offer at terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period, the Party assigning or transferring its Respective Percentage shall accept same, unless it decides to retain its Respective Percentage. The transfer shall take place no later than one year from the date of the transmittal of the third party offer to the other Parties.

(c) (i) If Niagara Mohawk is still a Party hereto, Niagara Mohawk

shall have the first right to accept an offer to sell pursuant to subsection (a) or to make an offer to purchase pursuant to subsection (b) and to purchase all or any portion of the subject Respective Percentage. Niagara Mohawk, at its option, may exercise this right solely or in concert with the remaining original Tenants in Common. If Niagara Mohawk decides to accept or make such purchase offer in concert with the remaining original Tenants in Common, then each of those Parties shall have the right to purchase under the terms of such purchase offer, a percentage of the Respective Percentage not purchased or accepted by Niagara Mohawk to be assigned or transferred equal to the percentage that its Respective Percentage bears to the total of the Respective Percentages of all Parties other than the prospective transferor. If the remaining original Tenants in Common do not wish to participate in the offer on the aforesaid basis, but do wish to participate in the offer to sell or the purchase offer to the extent of a greater or lesser percentage of the Respective Percentage to be assigned or transferred, Niagara Mohawk may accept such participation on that basis, or may solicit participation by any other party.

(ii) If Niagara Mohawk does not wish to participate in the offer, the remaining original Tenants in Common or any of them shall have the right to purchase the Respective Percentage to be assigned or transferred equal to the percentage that its Respective Percentage bears to the total of the respective percentages of all remaining Tenants in Common who so elect to purchase the Respective Percentage to be assigned or transferred.

(iii) If Niagara Mohawk transfers its Respective Percentage and attendant obligations, as agent for the Tenants in Common, of construction, operation and maintenance of the Nuclear Plant Site and the Plant, then that successor shall also succeed to Niagara Mohawk's right of first refusal as expressed in (c) (i) above. If, however, the successor to Niagara Mohawk does not assume those obligations, the right of first refusal shall lapse, and the Tenants in Common, including the successors of any original Tenants in Common shall each have the right to purchase such portion of the offered Respective Percentage as its ownership interest in the Nuclear Plant Site and the Plant shall bear to the corresponding ownership interest of the other Tenants in Common, other than the prospective

Section 13.05. Should Niagara Mohawk or its successor hereto desire to assign or transfer its Respective Percentage, other than pursuant to the provisions of Article VIII and Sections 13.02 or 13.03 of this Basic Agreement and Section 1.2 of the Operating Agreement (Appendix B), during the term of this Basic Agreement, it may do so without the consent of the other remaining Parties hereto, but subject to the following provisions of this Section 13.05:

(a) (i) If Niagara Mohawk or its successor desires to assign or transfer its Respective Percentage to the other Parties hereto, it shall notify the other Parties hereto of its desire one (1) year prior to the effective date of assignment or transfer and shall set forth in writing and deliver to each of them the terms of the offer for the sale of its Respective Percentage. The priorities and procedures set out in subsection (c) below shall then be applicable.

(ii) Niagara Mohawk or its successor shall not be obligated to keep its offer to sell open beyond one hundred and eighty (180) days after the date of its offer to sell and (1) if there is acceptance by the offeree(s) within that time period, the transfer shall take place within the one year period of the date of the offer to sell; or (2) if there has been no acceptance of such offer to sell

within the one hundred and eighty (180) day period, the offer to sell shall be deemed withdrawn, unless such time period shall be extended by Niagara Mohawk. Niagara Mohawk may withdraw its offer to sell at any time before acceptance should it decide to retain its Respective Percentage.

(b) (i) Upon receipt of a bona fide offer to purchase from a third party, that offer shall be transmitted in writing to the other Parties and the other Parties in accordance with the priorities and procedures set forth in subsection (c) below shall have the right within one hundred and eighty (180) days from the date of transmittal of such bona fide third party offer (whether or not there is an outstanding offer pursuant to (a) above) to make an offer to purchase the Niagara Mohawk Respective Percentage upon terms at least as favorable as those contained in the bona fide third party offer.

(ii) Upon failure to offer to purchase upon financial terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period or earlier notification that no offer will be forthcoming, Niagara Mohawk shall be free to sell its Respective Percentage to such third party pursuant to the

terms set forth in the bona fide offer made by such third party.

(iii) Upon an offer on financial terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period, Niagara Mohawk shall accept same, unless it decides to retain its Respective Percentage. The transfer shall take place no later than one year from the date of the transmittal of the third party offer to the other Parties.

(c) (i) If LILCO, NYSEG, RG&E or Central Hudson, or any of them, still are Parties hereto, they shall each have the right to accept an offer to sell pursuant to subsection (a) or to make an offer to purchase pursuant to subsection (b) and each shall have the right to purchase a percentage of the Respective Percentage to be assigned to transferred which is equal to the percentage that such Party's Respective Percentage bears to the total of the remaining Parties' Respective Percentages (other than the transferor). If any of the remaining original Parties do not wish to participate in the offer on the aforesaid basis, but do wish to participate in the offer to sell or the purchase offer to the extent of a greater or lesser percentage of the Respective Percentage to be assigned or transferred,

Niagara Mohawk or its successor may accept such participation on that basis, or may solicit participation by any other Party.

Section 13.06. Upon an assignment or transfer of a Respective Percentage under this Article XIII, except for Section 13.03, the successor party must assume in writing to the other Parties hereto, all of the obligations of the Party assigning or transferring a Respective Percentage.

It shall be a condition to the completion of any assignment or transfer of a Respective Percentage under this Article XIII that the transferring Party shall have paid its share of all costs or liabilities as provided herein to the date of transfer, and that any necessary authority and consent from the Public Service Commission of the State of New York, the Federal Power Commission, the United States Nuclear Regulatory Commission and any other governmental bodies having jurisdiction be first obtained.

A conveyance of a Respective Percentage in the Nuclear Plant Site under an assignment or transfer of a Respective Percentage shall follow the relevant procedures for the original conveyance set forth in Article II hereof and an appropriate release in form for recording from any indenture of mortgage of the Party assigning or transferring its Respective Percentage which is a lien on the Nuclear Plant Site must be obtained and delivered by that Party to the acquiring party or parties.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
NIAGARA MOHAWK POWER CORPORATION,	)	
NEW YORK STATE ELECTRIC & GAS CORPORATION,	)	Docket Nos. 50-220 & 50-410
And	)	
AMERGEN ENERGY COMPANY, LLC	)	
(NINE MILE POINT, UNITS 1 & 2)	)	
	)	

DECLARATION OF JOHN J. REED

I, John J. Reed, state under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

I am founder of Reed Consulting Group (REED) and Executive Managing Director of the Management Consulting practice of Navigant Consulting, Inc. ("NCI"). The Management Consulting practice of NCI provides services to utilities, energy producers, major energy consumers, project developers, and governmental authorities throughout the United States, Canada, Australia, and New Zealand. We have a staff of approximately 550 people. I concentrate my practice on providing a wide array of consulting services, including financial services (which includes merger, acquisition and divestiture engagements), technical services (which includes engineering and design), and management and operation services (which includes energy delivery, customer care, organizational and market analysis engagements). I have advised numerous clients, both domestically and internationally, on all facets of asset acquisition and divestiture transactions.

I am familiar with AmerGen's License Transfer Application (the "Application") submitted to the Nuclear Regulatory Commission ("NRC") for Nine Mile Point ("NMP") Units 1 and 2. I am similarly familiar with Niagara Mohawk Power Corporation's ("NMPC") and New York State Electric & Gas Corporation's ("NYSEG") petition before the New York State Public Service Commission ("NYPSC") for approval to transfer the NMP generating assets to AmerGen Energy Company, LLC. I have also reviewed relevant documents supplied to me by counsel for the Co-tenants (Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation and Long Island Power Authority). Based on my review of the information submitted to date, it is my opinion that, in certain respects, AmerGen has not provided an adequate demonstration of its financial ability to operate NMP 1 and 2 and to provide adequate assurance of decommissioning funding.

AmerGen has provided a five-year cost/revenue projection for the purpose of showing that it will have sufficient funds to cover the costs of safe operation. The adequacy of AmerGen's cost/revenue projection to provide adequate financial assurance for safe operations cannot be determined without knowing AmerGen's policy on paying dividends or profits to its parent companies. The Limited Liability Company Agreement of AmerGen Energy Company, LLC, dated as of August 18, 1997 (the "LLC Agreement"), provides in Article 4 that "It shall be the policy of the Company [AmerGen], and the Members [PECO Energy and BE Inc.] shall direct their respective Representatives on the Management Committee to cause the Company, to distribute Distributable Cash to the Members quarterly." Under the LLC Agreement, it appears that all or a significant portion of AmerGen's profits may be distributed to its parent companies on a quarterly basis. During any period in which NMP economic performance is low (for example, due to a higher-than-expected forced outage rate and

lower capacity factor), AmerGen could experience a shortfall in its revenues compared with fixed operating costs and may not have sufficient retained earnings to cover the shortfall.

In this regard, AmerGen has provided a proprietary version of its projected opening balance sheet, showing its anticipated assets, liabilities, and capital as of the closing date. Enclosure 6A of the Application. The opening balance sheet does not show how retained earnings will be accumulated. The opening balance sheets also does not show what level of capital contribution, if any, will be made by AmerGen's parent companies, including the contribution of any funds to enable AmerGen to make the payments that will be due at closing. A substantial portion of AmerGen's assets is attributable to "goodwill" – specifically, [**$127.8 million**]. No substantiation for the amount of goodwill is provided. AmerGen also does not explain under what accounting standard this asset has been established.

The Application fails to demonstrate that AmerGen possesses adequate resources to cover the costs of an extended outage at NMP. For a newly-formed entity such as AmerGen, the NRC's Standard Review Plan on Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1, requires a demonstration of available cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least six months. SRP at section III.1.b. In the Application, AmerGen has proposed a $110 million parent guarantee, with the understanding that the $110 million is available for all AmerGen facilities. See Application at 18. In several respects, this proposed funding arrangement appears inadequate:

- Operating costs for six months at NMP would appear to be at least approximately [**$135 million**], based on the Applicant's own estimate of average

O&M costs in the range of [**$270 million**] per year. See Application at Enclosure 6A. Accordingly, it is not clear whether the proposed $110 million guarantee, which is available for all AmerGen plants, would be sufficient to cover the costs of a six-month outage at NMP.

- The Application does not provide sufficient assurance regarding the availability of the guaranteed funds for NMP. There is no explanation of who is responsible for the $110 million fund, how the funds are held, and whether these funds can be reached in the event of default or bankruptcy. The funds do not appear to be replenished if they are used for one or more of AmerGen's plants. Because of the number of plants that AmerGen is seeking to acquire, including Clinton, TMI-1, Oyster Creek, and Vermont Yankee in addition to NMP, a single fund of $110 million available for all AmerGen plants is insufficient. In addition, AmerGen's proposal in this regard is inconsistent with the NRC's prior requirements in the case of TMI-1 and Pilgrim for the buyers in those cases to maintain a dedicated fund at least equal to six months of projected O&M expenses.

  The Application also fails to demonstrate that decommissioning funding assurance will be provided in an adequate amount. According to the Application (at page 22), the "decommissioning trust fund for NMP 1 will be fully prepaid, and the fund for NMP 2 will be essentially prepaid with additional financial assurances being provided to make up any shortfall." In Enclosure 11A to the Application, the Applicants provide a proprietary projection of available decommissioning funds through the period of the current licenses. The projection for NMP 2 shows a disparity between the fund balance and the NRC minimum formula amount over this 26-year period. Indeed, a shortfall

would exist even at the end of the current NMP 2 license period in 2026, which AmerGen would make up with the "additional financial assurances" (see Enclosure 8 and 8A of the Application).

For NMP 2, it is questionable whether AmerGen's proposed decommissioning funding is sufficient to meet the NRC minimum funding amount. The current funding level after transfer for NMP 2, even with any top-off payment, would not result in full funding to the minimum formula amount by the end of the license period.

Even if AmerGen's approach were deemed to meet the NRC's minimum requirements, this approach has significant risk for the non-selling Co-tenants in the case of AmerGen. The risk of a premature shutdown and a funding shortfall is far higher for AmerGen than for a regulated utility licensee with an ongoing source of revenue. There is also inherent unfairness in limiting AmerGen's liability and that of its parent companies, while the Co-tenants may potentially be subject to joint and several liability for any decommissioning shortfall under current NRC policy. In the TMI-1 transfer, the NRC accepted AmerGen's proposed decommissioning funding amount based on the fact that it was in excess of the NRC minimum formula amount ($303 million versus the formula amount of $269 million). See TMI-1 Safety Evaluation at 9. The NRC imposed a condition on the transfer requiring AmerGen to provide decommissioning funding assurance of no less than $303 million, after payment of any taxes. The instant application does not appear to provide this same level of assurance for decommissioning funding.

It should also be noted that a disparity exists in the decommissioning funding levels for NMP 1 and 2. Because of this disparity, it is possible that excess

funds could be available on NMP 1 while a shortfall exists for NMP 2. Obviously, this situation presents significant issues for the Co-tenants, since, without remedial action by the NRC, the surplus funds at NMP 1 would not be available to meet the decommissioning requirements of NMP 2.

John J. Reed
Executive Managing Director
Navigant Consulting, Inc.

STATE OF Massachusetts
COUNTY OF Middlesex

Subscribed and sworn to before me, a Notary Public for the County and State above named, this 20th day of October, 1999.

My Commission Expires: March 31, 2003

P25569-1

Redacted Copy
Available for Public Disclosure

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Niagara Mohawk Power Corporation,	)	
New York State Electric & Gas	)	
Corporation,	)	**Docket Nos. 50-220 & 50-410**
And	)	
AmerGen Energy Company, LLC	)	
(Nine Mile Point, Units 1 & 2)	)	
	)	

PETITION OF CENTRAL HUDSON GAS & ELECTRIC CORPORATION, LONG ISLAND POWER AUTHORITY, AND ROCHESTER GAS AND ELECTRIC CORPORATION FOR LEAVE TO INTERVENE, AND REQUEST FOR HEARING

I. INTRODUCTION

Pursuant to Subpart M of the Nuclear Regulatory Commission's ("NRC") Rules of Practice and Procedure, and specifically 10 C.F.R. § 2.1306, Central Hudson Gas & Electric Corporation ("Central Hudson"), Long Island Power Authority ("LIPA," as successor to Long Island Lighting Company), and Rochester Gas and Electric Corporation ("RG&E") (collectively referred to as "Co-tenants") hereby petition for leave to intervene in the above-captioned license transfer proceeding and request a hearing.

In this proceeding, Niagara Mohawk Power Corporation ("NMPC") and New York State Electric and Gas Corporation ("NYSEG") seek NRC authorization to transfer the authority to possess, use and operate Nine Mile Point Nuclear Station Unit 1 ("NMP 1") and Unit 2 ("NMP 2") from NMPC and NYSEG to AmerGen Energy Company, LLC ("AmerGen")(collectively "Applicants"). AmerGen is a limited liability company formed by PECO Energy Company and British Energy, plc. Application at 6.

II. PRELIMINARY STATEMENT

The proposed license transfer presents a number of significant issues that must be carefully considered by the NRC. In this preliminary statement, Co-tenants highlight some of the policy issues raised, and describe the State proceedings that are currently underway to address whether the proposed sale of NMP is in the public interest. In view of the ongoing State proceedings, the Co-tenants suggest that the NRC hearings be deferred. Should hearings go forward, the Co-tenants suggest that the Commission should exercise its discretion under Subpart M to establish additional hearing procedures to address certain issues raised by this proposed license transfer. In the following sections of this petition, Co-tenants establish their standing to intervene in this proceeding (Section III) and identify the issues Co-tenants seek to raise in hearings on this transfer application (Section IV).

A. Significant Policy Issues are Raised by the NMP Transfer

Under Section 184 of the Atomic Energy Act and 10 C.F.R. § 50.80, the Applicants have the burden of demonstrating that AmerGen is financially and technically qualified to be licensed to own and operate the NMP facility. The NRC, in turn, is charged with the responsibility to review the qualifications of the proposed new licensee to ensure that adequate protection of public health and safety will be provided. The NRC's review is particularly important in this case since the proposed new licensee, AmerGen, is a newly-formed entity organized as a limited liability company with few tangible assets of its own.

Indeed, the proposed transfer of the NMP operating licenses to AmerGen presents a number of fundamental policy questions, some of which are matters of first impression for the NRC. These policy questions include NRC consideration of: (1) the impact on co-owners of designating a limited liability company as the licensed facility

operator; (2) the change in management of a co-owned facility when minority interests are shifted to create a new majority owner/operator; and (3) public policy and decision-making in collateral State proceedings.

At the outset, in should be clearly understood that the proposed license transfer for NMP is significantly different from the transfer to AmerGen of the operating license for Three Mile Island Unit 1 ("TMI-1"). Unlike the TMI-1 case, the NMP transfer has a substantial impact on utility co-owners who possess a significant portion of the facility, both individually and collectively (41%), and who stand to suffer economic harm in the event of default by AmerGen, a limited liability company.

Moreover, the proposed NMP transfer will have a direct impact on the operation of the facility. At present, the operation of NMP 2 is governed by the 1993 Operating Agreement among all the co-tenants, including NMPC and NYSEG, where no single co-tenant has a majority interest in decision-making regarding the management of NMP 2. Under the current Operating Agreement, the Co-tenants have the right to a representative vote on major management decisions affecting the unit. The current Operating Agreement would be effectively abrogated by the transfer of a majority interest (59%) in NMP 2 to AmerGen. As a result, a new operating agreement for NMP 2 will have to be established by the parties.

The proposed transfer also raises issues of public policy. Unlike the situation in Pennsylvania, the State of New York has not enacted legislation governing the restructuring of the electric utility industry in the state. As recognized by the Applicants, the sale of NMP is contingent on approval by the New York State Public Service Commission ("NYPSC") as well as the Federal Energy Regulatory Commission. Application at 34. Unless and until the sale has been approved by the NYPSC as

consistent with the public interest, it is not clear whether the proposed transfer will occur and, if so, on what terms.

B. The NRC Review Should be Deferred

Contested proceedings are currently in progress in the NYPSC, pursuant to Section 70 of the New York Public Service Law, to consider the proposed sale of NMP. Under Section 70, no utility may transfer a generating plant without prior approval of the NYPSC. The NYPSC will not approve a transfer unless it finds the transfer to be in the public interest. The Section 70 proceeding has generated substantial public involvement and serious concerns, not only by the Co-tenants, but also by the affected customers of NMPC and NYSEG, state agencies and environmental groups. Discovery is currently in progress, and hearings are not expected to begin until late December at the earliest.

Many of the issues that will be of concern to the NRC will also be issues in the NYPSC proceeding. For example, the NYPSC is expected to perform a thorough examination of the adequacy of decommissioning funding, the adequacy of AmerGen's financial resources both to operate the plant and for its other responsibilities, the extent of AmerGen's qualifications to operate nuclear plants, and the existence of an operating agreement sufficient to protect the rights of the non-selling Co-tenants and customers if the plant is transferred to a non-utility, majority owner-operator. In addition, the NYPSC will concern itself with such issues as retail rate impacts. The NYPSC is also expected to consider placing appropriate conditions on the transfer. Until the NYPSC has completed its review and found the transfer to be in the public interest, it would appear premature for the NRC to act on the Application.

An additional reason that the NRC should defer a hearing in this matter is that the Co-tenants have a right of first refusal, by which they are entitled to make a

preemptive offer to purchase NMPC's and NYSEG's shares of NMP 2 upon terms at least as favorable as those contained in a bona fide third-party offer. The right of first refusal continues for 180 days from the date of receipt of the bona fide offer by the Co-tenants. For example, RG&E's right of first refusal does not expire until January 4, 2000, at the earliest. At this time, the Co-tenants are actively evaluating whether to exercise the right of first refusal. Until the right of first refusal has expired or been expressly waived by the Co-tenants, it would be premature for the NRC to act on AmerGen's Application.

For these reasons, Co-tenants submit that the NRC should defer the hearing on the Application until completion of the NYPSC Section 70 proceeding. In this way, the NRC will conserve agency resources until such time as this application is ripe for NRC review. Such a deferral will also lessen the burden on all interested parties. At present, the Co-tenants must participate actively on four fronts -- the right of first refusal, the NYPSC, the NRC and FERC – to protect their interests and those of their customers and other stakeholders. It is a tremendous burden on the interested parties to have to litigate simultaneously in more than one forum. The NRC should coordinate with the NYPSC by deferring any action until the NYPSC has had an opportunity to complete its review of the transaction, or, in the alternative, until the Co-tenants' right of first refusal has expired.

C. Hearing Procedures Should Permit Full Review of Issues of First Impression

If the hearing in this matter is not deferred, Co-tenants suggest that the issues identified herein be set for a full evidentiary hearing. Pursuant to 10 C.F.R. § 2.1322(d), the Commission has discretion to use additional hearing procedures in a license transfer case, such as direct and cross-examination, or to convene a formal

hearing under Subpart G of the Rules of Practice on specific and substantial disputes of fact that cannot be resolved with sufficient accuracy except in a formal hearing.[1]

It is significant to note that the Subpart M hearing process did not contemplate the issues raised in this license transfer application. This is not merely a proposed change of partial ownership at the corporate level, or the transfer of the ownership interests from two minority owners. Significantly, this proposed sale would create a new majority ownership interest in the facility not contemplated when the facility was licensed. Moreover, as the Commission recognized when it promulgated Subpart M, the Subpart M procedures are appropriate in cases where the proposed license transfer does not involve changes to plant operations.[2] See 63 Fed. Reg. 66721 (Dec. 3, 1998). As detailed below, clearly this is not the case with the proposed transfer of the license for NMP 2. Certain key questions central to the operation of the facility would benefit from a review by a multi-disciplined Atomic Safety and Licensing Board, historically used by the Commission in hearings on initial licensing or license amendments that substantially affect operations. See 63 Fed. Reg. at 66722.

As will be seen, the issues raised by the proposed transfer of NMP to AmerGen are of significant public importance and have a direct and substantial impact on the interests of the Co-tenants and their customers. These issues warrant a full airing to

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[1] The Co-tenants note the prohibition in Section 2.1322(d) regarding formal motions from parties requesting special procedures or formal hearings. It is not our intent to bypass this prohibition. Rather the Co-tenants raise these concerns regarding the adequacy of the hearing process for specific issues in this case as a suggestion to aid the Commission in deciding whether to exercise its discretion, prior to initiating a hearing and granting any person status as a party.

[2] Certain restrictions in Subpart M, appropriate for routine license transfers, are inappropriate in the present case. For example, the limitation in 10 C.F.R. § 2.1305(b) on the scope of review of a license amendment associated with the proposed transfer is inappropriate where questions are raised as a result of that amendment regarding the safe operation of the facility.

ensure development of a complete record that will promote public confidence in whatever decision the Commission ultimately reaches. The issues are also factually and legally complex and do not lend themselves to being addressed primarily through submission of written testimony as Subpart M contemplates. Instead, discovery and cross-examination are required to ensure full development of a record upon which the Commission can make its determination.

Accordingly, it is appropriate for the Commission to exercise its discretion pursuant to 10 C.F.R. § 2.1322(d) to set some or all of the issues presented below for hearing in accordance with Subpart G.[3] For example, serious questions exist as to AmerGen's financial qualifications for operations and its ability to maintain safety in the event of an extended shutdown of NMP. These questions require an examination of AmerGen's initial capitalization, its policy for the distribution of profits to its parent companies, and the precise terms of the parent company guarantees being offered. Discovery and cross-examination, as permitted by Subpart G, would be needed to ensure a full airing of these matters.

III. INTERVENTION

Petitioners readily satisfy the requirements for standing. The Co-tenants own a combined 41% interest in NMP 2 as tenants-in-common with the other owners (NMPC and NYSEG), and are licensed by the NRC to possess but not operate that unit. As co-

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[3] In stating this position in this case, Co-tenants hasten to add that we fully support the policy behind the Commission's reform of the NRC hearing process for license transfers as embodied in Subpart M. The Co-tenants applaud the Commission's effort to streamline the process. The vast majority of license transfers are uncontested and often involve corporate reorganizations that do not have any real impact on the licensed operator of the facility. The process of Subpart M is certainly appropriate in those cases. Our suggestion that Subpart G procedures are appropriate here is limited strictly to the facts presented in this case.

owners and co-licensees of NMP 2, the Co-tenants have a vital property interest in the safe operation of and eventual decommissioning liability for NMP 2. The Co-tenants also have responsibilities for the management of NMP 2, as defined in the current Operating Agreement.

Co-tenants' interest also concerns the right to continued participation in management decisions affecting NMP 2 and the right to receive appropriately detailed assurances of AmerGen's financial ability to operate and decommission the facility safely. These rights fall squarely within the "zone of interests" protected by the Atomic Energy Act. Should AmerGen prove materially deficient in these areas, the NRC's denial of the transfer would protect Petitioners' rights under the current license.

"To intervene as of right in a Commission licensing proceeding, a petitioner must demonstrate that its 'interest may be affected by the proceeding,' or in common parlance, it must demonstrate 'standing.'" *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 N.R.C. 201, 214 (1999). The criteria for standing are enumerated in 10 C.F.R. § 2.1308(a).[4] As co-owners and co-licensees of NMP 2, the Co-tenants readily satisfy the judicial concepts of standing that are applied in NRC license transfer proceedings.

Section 189a(1) of the Atomic Energy Act provides, in pertinent part:

> In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or

[4] As summarized by the NRC, "a petitioner must (1) identify an interest in the proceeding by, (a) alleging a concrete and particularized injury (actual or threatened) that, (b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and (c) is likely to be redressed by a favorable decision . . . (d) lies arguably within the 'zone of interests' protected by the governing statute(s) [and] (2) specify the facts pertaining to that interest." *North Atlantic*, 49 N.R.C. at 214-25. In making a standing determination, the Presiding Officer must "construe the [intervention] petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

> construction permit, or application to transfer control, ... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

42 U.S.C. § 2239(a)(1). The NRC has noted that the AEA "protects not only human health and safety from radiologically caused injury, but also the owners' property interests in their facilities." *North Atlantic*, CLI-99-6, 49 N.R.C. at 216; *see also Gulf States Utilities Co.* (River Bend Station, Unit 1), LBP-94-3, 39 NRC 31, 37-38, *aff'd.*, CLI-94-10, 40 NRC 43, 47-48 (1994) (interest in protecting property from radiological hazards sufficient for standing). It is for this reason that the NRC routinely grants intervention by "[p]ersons or entities who own (or co-own) an NRC-licensed facility [because they] plainly have an AEA-protected interest in licensing proceedings involving their facility." *North Atlantic*, CLI-99-6, 49 N.R.C. at 216.

As the non-selling co-tenants and co-licensees of NMP 2, Petitioners have a substantial interest in the qualifications of AmerGen to meet its obligations for safe operation and eventual decommissioning. Of principal concern is the potential for AmerGen, a limited liability company, to default on its requirements with respect to operational and decommissioning funding. If AmerGen is unable to meet these obligations, for instance to finance an extended outage or shutdown at NMP, the costs would likely be borne by Co-tenants or ratepayers in order to fulfill AmerGen's commitments.

Co-tenants also have a vital interest in preserving their right to participate in management decision-making to assure the continued safety of NMP 2, particularly in the area of budget and personnel decisions. Since AmerGen would become a majority owner/operator following the proposed transfer, the question immediately arises whether the NRC's proposal to "preserve AmerGen's decision-making authority over

safety issues," 64 Fed. Reg. 52798–52799 (Sept. 30, 1999), as a license condition in its approval of the proposed transfer application would abrogate certain rights and responsibilities that are governed by the existing Operating Agreement.

Co-tenants also make the required showing of injury in fact redressable in the present proceedings. Any financial incapacity of AmerGen to operate NMP 2 safely would subject the Co-tenants to the risk of being forced to assume a greater-than-expected share of NMP 2 operating and decommissioning costs. *Gulf States*, LBP-94-3, 39 N.R.C. at 36 (lack of adequate funding sufficient allegation of injury in fact for co-owner to intervene). These impacts could be avoided by the NRC's disapproval of the proposed transfer or by imposing appropriate conditions. *See North Atlantic*, CLI 99-6, 49 N.R.C. at 215 ("The threatened injury is fairly traceable to the challenged action [here the grant of the license transfer application] because the alleged increase in risk associated with Little Bay taking over Montaup's interest could not occur without Commission approval of the application.").

Co-tenants may also suffer concrete and particularized harm through a diminution of their decision-making rights under the Operating Agreement. The proposed transfer would create in AmerGen a majority owner/operator that would control all decisions that now require majority vote in accordance with the Operating Agreement. This would substantially shift the allocation of risk relative to the currently apportioned operational control. *See Gulf States*, LBP-94-3, 39 N.R.C. at 36 (Atomic Safety and Licensing Board noting Staff's conclusion that petitioner may suffer injury in fact "if the proposed amendment would cause a lessening of [petitioner's] influence, as an owner, to see that the plant is safely maintained and operated."). The potential injuries identified above can clearly be redressed by the NRC making a

decision that protects public health and safety and the Co-tenants' vital property interests. Thus intervention by the Co-tenants is clearly appropriate.

Pursuant to 10 C.F.R. § 2.708(e) and 2.1306(b)(1), the following are designated as the persons on whom service of the pleadings and other papers in this proceeding should be made:

Daniel F. Stenger, Esq.
HOPKINS & SUTTER
888 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 835-8185
(202) 835-8136 (facsimile)
dstenger@hopsut.com (e-mail)

James M. D'Andrea, Esq.
KEYSPAN ENERGY
175 E. Old Country Road
Hicksville, NY 11801
(516) 545-4529
(516) 545-5029 (facsimile)
jdandrea@keyspanenergy.com (e-mail)

Robert J. Glasser, Esq.
GOULD & WILKIE, LLP
One Chase Manhattan Plaza
New York, NY 10005
(212) 820-0109
(212) 809-6890 (facsimile)
bobglasser@gouldwilkie.com (e-mail)

Thomas W. Yurik
ROCHESTER GAS AND ELECTRIC CORP.
89 East Avenue
Rochester, NY 14649
(716) 771-2116
(716) 724-8405 (facsimile)
tom_yurik@rge.com (e-mail)

IV. ISSUES FOR HEARING

In order to approve the transfer of an operating license pursuant to 10 C.F.R. § 50.80, the NRC must determine that the proposed transferee is qualified to be the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. 10 C.F.R. § 50.80(c)(1) and (2). The Commission has described the scope of its review of a proposed license transfer as follows:

> The NRC will continue to review transfers to determine their potential impact on the licensee's ability to maintain adequate technical qualifications and organizational control and authority over the facility and to provide adequate funds for safe operation and decommissioning. Such consent is clearly required when a corporate entity seeks to transfer a license it holds to a different corporate entity.

Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44071, 44077 (August 19, 1997)(hereinafter cited as "Policy Statement on Restructuring").

In reviewing a proposed license transfer, then, the NRC considers (1) the financial qualifications of the proposed transferee related to both funding for plant operations and decommissioning funding assurance; (2) the technical qualifications of the proposed transferee; (3) the organizational control and authority over the facility; and (4) other technical issues such as the provision of off-site power to the facility, emergency planning support, exclusion area control, and insurance coverage. See 10 C.F.R. §§ 50.33(f) and 50.34.[5]

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[5] Until recently, the NRC also performed an antitrust review in connection with proposed transfers of operating licenses that had been issued under Section 103 of the Atomic Energy Act. In *Kansas Gas & Electric Co. et al.*, CLI-99- 19 (Jun. 18, 1999), the NRC ruled that it would no longer conduct general post-operating license antitrust reviews in connection with proposed license transfers.

Pursuant to 10 C.F.R. § 2.1306(b)(2), the Co-tenants request that the issues described below be set for oral hearing.[6] In brief, these issues are as follows:

1. Whether the Application is sufficient for filing.

2. Whether AmerGen has demonstrated adequate financial qualifications to ensure safe operation of NMP.

3. Whether AmerGen has demonstrated adequate financial assurance to ensure safe decommissioning of the site.

4. Whether AmerGen has demonstrated adequate technical qualifications to own and operate NMP.

5. Whether adequate provisions have been made for ensuring an available source of off-site power to the facility.

Each of these issues is within the scope of the proceeding on a license transfer as defined by the Commission, and each is relevant to the determination the NRC must make to approve the transfer under 10 C.F.R. § 50.80. In accordance with 10 C.F.R. § 2.1306(b)(2), each of the issues is set forth in turn below. A concise statement is provided of the alleged facts or expert opinions which support the Co-tenants' position and on which Co-tenants intend to rely at hearing, together with references to supporting sources and documents.[7]

Issue 1: Sufficiency of the Application

Under 10 C.F.R. § 50.80, an application for transfer of a license must include as much of the information described in 10 C.F.R. §§ 50.33 and 50.34 with respect to the identity and technical and financial qualifications of the proposed transferee as

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[6] As noted above, the Co-tenants believe that it is appropriate for the Commission to exercise its discretion under Section 2.1322(d) to establish additional hearing procedures to govern this case in view of the unique issues presented.

[7] At hearing, the Co-tenants will be prepared to provide additional support through testimony of experts and company witnesses to the extent necessary.

would be required if the application were for an initial license. In several respects, the Application is insufficient as a matter of law and should be rejected by the NRC:

A. The Application incorrectly represents the scope of authority possessed by the Applicants. According to the Application (at page 1), AmerGen and NMPC are acting "as agent for the other co-owners of NMP 2" in seeking the proposed transfer. Under the current operating license for NMP 2, the Co-tenants are licensed to possess but not operate the facility, and NMPC is licensed to operate the facility. Facility Operating License No. NPF-69 for Nine Mile Point Nuclear Station, Unit 2, at section 2.B.(2). NMPC may act as the agent for the non-operating owners in seeking certain regulatory approvals, *e.g.*, amendments to the Technical Specifications. However, contrary to the statement in the Application, the Co-tenants have not authorized the Applicants to act as agent on their behalf in this matter or otherwise consented to the proposed transfer. Appropriate conditions on the transfer should be imposed to restrict the authority of AmerGen to act as agent for the Co-tenants.

B. The Application is deficient in that information of substantial public interest has been withheld from public disclosure as proprietary without adequate basis. This includes information on decommissioning funding and financial projections related to AmerGen's financial qualifications under 10 C.F.R. §§ 50.33 and 50.75.

C. The Application is *ultra vires* in that it would effectively abrogate the current Operating Agreement for NMP 2 without the consent of the Co-tenants. The Operating Agreement (copy enclosed as Exhibit A) provides a framework for joint oversight of NMP 2 by all the co-owners according to their ownership

shares, with no one party holding a controlling interest (greater than 50%). See Statement of Intent at page 1 of the Operating Agreement and Section 3.2.a., Management Committee, Voting. To this end, the Operating Agreement provides substantial rights to the Co-tenants, including the right to vote on major management decisions affecting the plant. These rights are generally exercised through the Management Committee established pursuant to Article 3 of the Operating Agreement and include:

- The right to approve the annual budgets and annual plans for the facility, which shall include annual operating goals and objectives for operation and maintenance of the Unit (Statement of Intent and Article 3, section 3.3.b).
- The right to consult on the appointment or removal of the chief nuclear officer (section 3.3.c).
- The right to review annually the performance of key executives responsible for operation of the Unit (section 3.3.f).

The license transfer would effectively abrogate the Co-tenants' rights to participate in the oversight of NMP 2 and protect their interests in the facility. Further, since AmerGen would possess a 59% ownership share of NMP 2, it would gain control over all decisions that require a majority vote in accordance with Article 3 of the Operating Agreement. Unless and until a new operating agreement adequate to protect the rights of the Co-tenants has been established by the parties, the Application is deficient.

D. The Application is *ultra vires* in that it effectively abrogates the Co-tenants' right of first refusal under the Basic Agreement in effect for NMP 2. Under Sections 13.04 and 13.05 of the Basic Agreement, dated September 25, 1975 (excerpts enclosed as Exhibit B), the Co-tenants have a right of first refusal, by which they may make a preemptive offer to purchase NMPC's and NYSEG's shares of NMP 2 upon terms at least as favorable as those

contained in a bona fide third-party offer. The right of first refusal continues for 180 days from the date of receipt of the bona fide offer by the Co-tenants. For example, RG&E's, right of first refusal extends at least until January 4, 2000. The Co-tenants are actively evaluating whether to exercise the right of first refusal. Until the right of first refusal has expired or been expressly waived, the Application is premature.

Issue 2: Financial Qualifications for Operations

Under 10 C.F.R. § 50.80, AmerGen is required to demonstrate that it is financially qualified to be licensed to own and operate NMP. In the Application, AmerGen does not claim that it qualifies for exemption from financial qualification review as an "electric utility" within the NRC's definition of that term in 10 C.F.R. § 50.2. See Application at 15 (noting that the NRC concluded in the TMI-1 case that AmerGen did not qualify as an "electric utility"). Thus, in accordance with 10 C.F.R. §§ 50.80 and 50.33(f)(2), AmerGen must submit information that demonstrates that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the licenses for NMP 1 and 2. In addition, it must submit estimated total annual operating costs for the first five years of operation and indicate the source of funds to cover these costs.[8]

As a newly-formed entity organized for the primary purpose of operating a facility, AmerGen is further required to submit information showing: (1) the legal and financial relationships it has with or proposes to have with its owners; (2) its financial ability to meet any contractual obligation to its owners which it has incurred or proposed to incur; and (3) any other information considered necessary by the

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[8] Additional guidance on the information necessary to establish financial qualifications is presented in Appendix C to 10 C.F.R. Part 50.

Commission to enable it to determine AmerGen's financial qualifications. 10 C.F.R. § 50.33(f)(3).

In several respects, AmerGen has failed to demonstrate the requisite financial qualifications to own and operate NMP 1 and 2 as required by 10 C.F.R. § 50.33(f):

A. The Application does not provide sufficient information to demonstrate that AmerGen has adequate funding to ensure safe operation for the period of the licenses for NMP 1 and NMP 2. Contrary to 10 C.F.R. § 50.33(f)(2), AmerGen has not provided a projected income statement or other projection of costs and revenues for the period through the end of the current NMP 1 license in August 2009 and the end of the current NMP 2 license in October 2026. The only projected income statement submitted (Enclosure 6 of the Application) is for the period through 2004 only.

B. In further support of its claim of adequate financial qualifications, AmerGen has provided a proprietary version of its projected opening balance sheet, showing its anticipated assets, liabilities, and capital as of the closing date. Enclosure 6A of the Application. In several respects, the opening balance sheet fails to demonstrate sufficient tangible assets to ensure safe operation:

   1. The Application does not explain what level of capital contribution, if any, will be made by AmerGen's parent companies, including the contribution of any funds to enable AmerGen to make the payments that will be due at closing. The Application also does not explain the source of working capital for AmerGen.

   2. AmerGen has failed to submit a forward balance sheet or other documentation (*e.g.*, a basic business plan) showing the disposition of retained earnings from operation of NMP. The Application provides

only a projected opening balance sheet (Enclosure 6). Basic questions remain such as whether AmerGen will "retain" its earnings, or whether earnings will simply be siphoned off as dividends to the two parent companies. See Declaration of John J. Reed (Exhibit C hereto). In this connection, the Application states (at page 20): "*All* or some portion of AmerGen's earnings will be available for distribution to PECO Energy and British Energy in years in which it has operating surpluses." Emphasis added.[9] Without an understanding of how distributions of earnings will be made to the parent companies, it is not possible to determine whether AmerGen's revenues will be adequate to cover its costs. Under the Power Purchase Agreements with NMPC and NYSEG, AmerGen would apparently receive no revenue if the plants are not operating. Thus, in years with a low capacity factor, AmerGen might not have sufficient revenues, especially if it had not accumulated adequate retained earnings. AmerGen should be required to provide a forward balance sheet or other documentation by which the parties can ascertain the degree to which earnings will be retained, so that the NRC can assess the adequacy of its operating revenues and the need for any appropriate conditions to preserve AmerGen's assets.

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[9] In a response to a Request for Additional Information from the NRC Staff in the TMI-1 License Transfer Proceeding, AmerGen said only that it plans "to retain a *portion* of [AmerGen's] net income to fund working capital requirements. Beyond such amounts, earnings will be distributed to PECO and British Energy." Response of GPUN and AmerGen to NRC Request for Additional Information dated December 21, 1998. AmerGen also stated that any shortfalls in revenue will be obtained from "PECO Energy and British Energy or other sources (*e.g.*, commercial lenders), *if available.*" *Ibid.* (emphasis added.)

3. A substantial portion of AmerGen's assets is attributable to "goodwill" – specifically, in the amount of [$]. See Enclosure 6A of the Application.[10] No substantiation for the amount of goodwill is provided. AmerGen also does not explain under what accounting standard this asset has been established. For a newly-formed entity, a substantial question exists as to whether the NRC should recognize goodwill as an acceptable asset and, if so, in what amount. NRC regulations in 10 C.F.R. § 50.33 and Appendix C to Part 50 do not appear specifically to contemplate the inclusion of goodwill on the balance sheet for a new entity.

C. The Application fails to demonstrate that AmerGen possesses adequate resources to cover the costs of an extended outage at NMP. For a newly-formed non-utility such as AmerGen, the NRC's Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1, requires a demonstration of available cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least six months. SRP at section III.1.b. In connection with AmerGen's purchase of TMI-1, the NRC sought and approved a $65 million guarantee by PECO and British Energy to be used in the event that AmerGen's revenues were insufficient to cover operating costs, or in the event of an accident or extended outage at the single TMI-1 unit.[11] For NMP, AmerGen has proposed a $110 million parent

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10 Information shown in bold type was claimed to be proprietary by the Applicants.

11 See Safety Evaluation Review for Transfer of Facility Operating License from GPUN Inc. et al. to AmerGen Energy Company, LLC and Approval of Conforming

Footnote continued . . .

guarantee (apparently in place of the $65 million guarantee which was meant to be exclusively available to TMI-1), with the understanding that the $110 million is available for any and all AmerGen facilities, including TMI-1, NMP 1 and 2 (if approved), Clinton, Oyster Creek, Vermont Yankee, and any future AmerGen purchases. See Application at 18. In several respects, this proposed funding arrangement appears inadequate:

1. Fixed operating costs of a six-month outage at NMP would be at least approximately [ ] million, based on the Applicant's own estimate of average O&M costs in the range of [ ] million per year. See Application at Enclosure 6A. Accordingly, the proposed $110 million guarantee which is available for all AmerGen plants would not be sufficient on its face to cover the costs of a six-month outage at NMP. In this connection, it should be noted that the $65 million parent guarantee accepted by the NRC for the single-unit TMI-1 transfer was explicitly "subject to the understanding that PECO Energy and British Energy shall have the right to demand that AmerGen permanently cease TMI-1 operations . . . ." TMI-1 Safety Evaluation at 7. AmerGen proposes that this same limitation apply to the funding arrangement in this case. See Application at 20. In the case of NMP 2, however, it is disputed whether AmerGen's parent companies would have the unilateral right to demand that the plant permanently

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Amendment, Three Mile Island Nuclear Station, Unit 1, at 7 (hereinafter cited as "NRC TMI-1 Safety Evaluation").

cease operations. Under the current Operating Agreement, the Co-tenants would have the right to participate in any such decision.

2. The Application does not provide sufficient assurance regarding the availability of the guaranteed funds. There is no explanation of who is responsible for the $110 million fund, how the funds are held, whether these funds can be reached in the event of default or bankruptcy, and whether these funds would be replenished in the event some or all of the funds were used for one of the AmerGen plants. Furthermore, the relationship between the supplemental $110 million guarantee and the $65 million guarantee pledged in the TMI-1 case is not clear from the Application. If these amounts are somehow commingled as part of the same fund or same guarantee, it would appear that AmerGen may have diminished the commitment made in the TMI-1 case. Such a result would appear to be contrary to the condition imposed by the NRC in approving the TMI-1 transfer that AmerGen "shall take no action to cause PECO or British Energy, plc, to void, cancel or diminish the $65 million contingency commitment . . . ." See Order Approving Transfer of Operating License at 6. Accordingly, at a minimum, the NRC should require that AmerGen guarantee six months' outage funding on a unit-specific basis.

3. AmerGen does not provide a demonstration that the level of the parent guarantee would suffice for the owner of multiple plants, some of which are or have been poor or marginal performers. The Clinton station remained in shutdown under an NRC Confirmatory Action Letter for a 29-month period from November 1996 to April 1999. PECO Energy, a 50 percent partner in the AmerGen venture, has recently announced a merger with Unicom, the parent company of Commonwealth Edison – owner of the Dresden, LaSalle, Quad Cities, and Zion nuclear units – which have experienced significant historical performance difficulties.[12] The collective operating (and shutdown) experience of these plants suggests that it can easily take more than six months to address performance issues. For these reasons, in accordance with the NRC SRP on financial qualifications, the NRC should require that AmerGen demonstrate that it possesses financial resources to cover the cost of a dual-unit outage at NMP through financial resources dedicated to NMP of at least [ ] million. See SRP at section III.1.b.

D. AmerGen's corporate structure, as a limited liability company, is not sufficiently explained or documented to demonstrate the requisite financial qualifications of the new entity to be licensed to own and operate NMP. Under 10 C.F.R. § 50.33(f)(3), AmerGen must submit information showing the legal and financial relationships with its owners. See also Appendix C of 10 CFR Part 50. AmerGen has not submitted sufficient information as to its

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12 See NRC dedicated website at http://www.nrc.gov/OPA/reports/comed.htm.

proposed financial and legal relationships with its owners to demonstrate that its corporate structure would provide adequate protection of public health and safety in the event of a radiological accident or premature shutdown.

1. AmerGen, as a limited liability company, has a corporate structure that presumptively cannot be breached in the event of financial problems or bankruptcy. AmerGen is 50 percent owned by British Energy Inc. (BE Inc.), a wholly owned subsidiary of British Energy plc (British Energy), a Scottish corporation, and 50 percent owned by PECO Energy Company (PECO Energy), a Pennsylvania corporation. Application at 6-7. British Energy plc is a "public limited company," a corporate structure used in the United Kingdom but not the United States. A "plc" is publicly traded and the owners have limited liability. The Application fails to provide adequate assurances that AmerGen's parents would be financially responsible for covering any shortfall in resources needed to ensure the safety of the plant or adequate funds for decommissioning in the event of premature shutdown. Section 50.33(f)(4) specifies that the NRC may request additional financial assurance information when necessary. Accordingly, a condition should be imposed requiring AmerGen to obtain guarantees from its parent companies, in a form acceptable to the NRC, that:

    - In all events, the parents will be financially responsible for providing whatever funds are necessary to provide reasonable assurance of public health and safety.

- In the event that available decommissioning funds are inadequate at the time of permanent shutdown to meet NRC minimum funding requirements, the parent companies will be financially responsible for providing whatever funds are necessary to cover any shortfall.

2. In contrast to the limited liability of AmerGen, the Co-tenants are potentially subject to joint and several liability under current NRC policy.[13] Through its corporate structure, AmerGen has effectively put itself in a position of financial gain without accepting any of the related financial risk, instead creating a situation wherein the Co-tenants could be forced to compensate for any financial shortfall AmerGen might experience. Accordingly, the transfer should be conditioned on AmerGen's obtaining written consent by its parent companies to be subject to potential joint and several liability to the same extent as any other co-owners of NMP 2 under NRC policy. In the alternative, the NRC should declare that the Co-tenants' total liability is limited to $110 million or whatever guarantee is required from AmerGen.

E. The Application fails to address the impact of foreign participation in AmerGen on the latter's financial qualifications. As a foreign entity, British

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[13] The NRC's Policy Statement on Restructuring provides that the NRC "reserves the right, in highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners of more than *de minimis* shares when one or more co-owners have defaulted." 62 Fed. Reg. at 44074.

Energy, plc, itself a form of limited liability company, is less stringently obligated than a domestic utility would be to fulfill its obligations in the United States. Under the Limited Liability Company Agreement of AmerGen, dated August 18, 1997, Article 8, British Energy and PECO Energy may dissolve the venture. If AmerGen were to seek dissolution due to financial concerns or other reasons, there would be no meaningful recourse the NRC could take against it for any of its financial responsibilities arising out of the operation of NMP. The Application does not explain how the public would be protected in the event of dissolution of AmerGen. Before the transfer could be approved, AmerGen should be required to provide satisfactory information on the assets of British Energy, plc and British Energy Inc. ("BE Inc.") in the United States. Appropriate conditions should be imposed in any order approving the requested transfer to protect the NRC's right to hold British Energy and BE Inc. liable for any financial responsibility arising out of operation of NMP.

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[14] British Energy, plc, is a "public limited company," a form of a limited liability company used in the United Kingdom, though not in the United States.

[15] In a response to a Request for Additional Information from the NRC Staff in the TMI-1 License Transfer Proceeding, AmerGen said only that it plans "to retain a *portion* of [AmerGen's] net income to fund working capital requirements. Beyond such amounts, earnings will be distributed to PECO and British Energy." Response of GPUN and AmerGen to NRC Request for Additional Information, dated January 11, 1999. AmerGen also stated that any shortfalls in revenue will be obtained from "PECO Energy and British Energy or other sources (*e.g.*, commercial lenders), *if available.*" *Ibid.* (emphasis added.)

Issue 3: Decommissioning Funding Assurance

Pursuant to 10 C.F.R. § 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 formulas in 10 C.F.R. § 50.75(c)(1) and (2). Furthermore, pursuant to Section 50.75(b), a licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 C.F.R. § 50.75(e), as determined to be acceptable by the NRC. In adopting its decommissioning rule, the NRC found that the requirement to provide assurance of decommissioning funding is necessary to ensure adequate protection of public health and safety. See 53 Fed. Reg. 24049 (June 27, 1988). For the following reasons, the Application fails to demonstrate that AmerGen meets the NRC decommissioning funding requirements:

A. The Application fails to demonstrate that decommissioning funding assurance will be provided in an adequate amount.[16] According to the Application (at page 22), the "decommissioning trust fund for NMP 1 will be fully prepaid, and the fund for NMP 2 will be essentially prepaid with additional financial assurances being provided to make up any shortfall." In Enclosure 11A to the Application, the Applicants provide a proprietary projection of available decommissioning funds through the period of the current licenses. The projection for NMP 2 shows a disparity between the fund balance and the NRC minimum formula amount over this 26-year period. Indeed, a shortfall would exist even at the end of the current NMP 2 license period in 2026, which AmerGen would make up with the "additional financial assurances" in the form of [ ] (see Enclosure

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16 See, generally, Declaration of John J. Reed, Exhibit C.

8 and 8A of the Application). For NMP 2, it is evident that AmerGen is proposing to provide total funding for all decommissioning activities (including spent fuel storage), at best, only up to the NRC minimum funding amount, and even that amount is not being provided in cash or cash equivalents, but rather requires additional assurance. Even assuming *arguendo* that this approach meets the NRC minimum requirements, it should not be acceptable in the case of AmerGen, where the risk of premature shutdown and a funding shortfall is demonstrably higher than with a regulated utility licensee with an ongoing source of revenue. In the TMI-1 transfer, the NRC accepted AmerGen's proposed decommissioning funding amount based on the fact that it was in excess of the NRC minimum formula amount ($303 million versus the formula amount of $269 million). See TMI-1 Safety Evaluation at 9. In fact, the NRC imposed a condition on the transfer requiring AmerGen to provide decommissioning funding assurance of no less than $303 million, after payment of any taxes. *Ibid.* A similar condition should be imposed in this case requiring AmerGen to provide additional decommissioning funding assurance for NMP 2 in an amount to be determined after hearing. As a condition of the transfer, the NRC should, however, compel AmerGen to make up for the shortfall projected in the NMP 2 fund through an additional top-off prepayment. See Declaration of John J. Reed (Exhibit C hereto).

B. The Application also fails to demonstrate that the decommissioning funding mechanism proposed by AmerGen is adequate under 10 C.F.R. § 50.75(e). AmerGen has proposed to use a combination of the prepayment method under Section 50.75(e)(1)(i), coupled with an external trust fund and a form

of [ ] to make up the expected shortfall in available decommissioning funds. The Co-tenants submit that the bare-bones decommissioning funding proposed by AmerGen for NMP 2, with a [_____] to cover the expected shortfall, is unacceptable in view of AmerGen's tenuous financial resources and the risk of premature shutdown. Accordingly, as noted above, AmerGen should be compelled pursuant to 10 C.F.R. § 50.75(e)(2) to provide additional assurance of adequate decommissioning funding through providing additional top-off prepayments to eliminate any expected shortfall below the NRC minimum.

C. [Alleged proprietary information redacted.

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D. AmerGen has demonstrated an inequitable approach to decommissioning funding for the two NMP units. For NMP 1, of which AmerGen would be sole owner, the planned decommissioning funding levels are far above NRC minimum requirements. In contrast, for NMP 2, of which AmerGen would own 59% and the Co-tenants 41%, AmerGen does not propose to meet the NRC minimum funding requirements with cash or liquid assets. This approach poses a significant financial risk to the Co-tenants in the event of premature shutdown of NMP 2. The NRC should prohibit AmerGen from withdrawing any decommissioning trust funds until all NMP decommissioning is complete on both NMP Units 1 and 2.

E. There remains the question of the tax consequences of the transfer of the nuclear decommissioning fund, qualified under Section 468A of the Internal Revenue Code, from NMPC to AmerGen and the resulting impact on the level of available decommissioning funding. If the fund transfer is not ruled a tax-neutral event by the Internal Revenue Service ("IRS"), there would be gain realized by both NMPC and AmerGen, and significant tax liability incurred. As a result, the funds available for decommissioning would be reduced. The Co-tenants understand that AmerGen has applied to the IRS for a letter ruling that the fund transfer is exempt them taxation. The NRC should include in any Order approving the requested transfer a condition that the level of decommissioning funding deemed acceptable by the NRC be maintained after payment of any taxes. The NRC's Order approving the

transfer of the TMI-1 license included such a condition. Order Approving Transfer of Operating License at 4.

Issue 4: Technical Qualifications

Pursuant to 10 C.F.R. §§ 50.80 and 50.34, an applicant for transfer of license must demonstrate adequate technical qualifications to ensure safe operations. The Co-tenants certainly do not dispute the technical qualifications of PECO Energy as an NRC licensee, and have no reason to dispute those of British Energy. However, from the information supplied in the Application, AmerGen itself has not been shown to possess the requisite technical qualifications. The facts supporting this position are as follows:

A. The Applicants have failed to demonstrate that AmerGen possesses a substantial corporate organization capable of providing effective technical and managerial oversight for NMP, along with the other nuclear plants that AmerGen has acquired or is seeking to acquire.[17]

1. With respect to AmerGen's organization, the Application contains only a one-page Organizational Chart (Enclosure 5) depicting the post-acquisition reporting chain for the most senior AmerGen management. The Application also describes the AmerGen Management Committee which is responsible for managing the "business and affairs" of the limited liability company, and identifies the principal executives and officers of AmerGen. Application at 7-9. Apart from the Management Committee, no information is provided on whether AmerGen has any substantial corporate organization,

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[17] AmerGen has acquired or is seeking to acquire TMI-1, Clinton, Oyster Creek, Vermont Yankee, NMP 1 and a 59% interest in NMP 2.

including managers and technical staff. While AmerGen proposes to acquire the existing NMP site organization substantially intact (see Application at page 12), no demonstration has been made that AmerGen, the proposed licensee, possesses a corporate organization capable of providing technical and management oversight for NMP and the other AmerGen sites.

2. In response to an Interrogatory in the NYPSC proceeding, AmerGen stated that "PECO and British Energy will provide certain management and administrative services to AmerGen in connection with NMP-1 and 2. These services may include human resources, legal, accounting, engineering, operation and maintenance, information technology and laboratory analysis services. AmerGen, however, will have responsibility for the management and operation of the units, and will manage operations with on-site employees."[18] This information was not included in the Application before the NRC. AmerGen appears to be relying on "management" services and services related to plant operations, engineering and maintenance – which comprise virtually the entire range of critical functions at a nuclear plant site – to be supplied by PECO and British Energy. If this is the case, it is incumbent upon AmerGen to disclose the nature and extent of those services, the qualifications and affiliations of the personnel providing the services, and the degree of commitment provided by PECO and British Energy to maintain these services.

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[18] Response to Co-tenants' Information Request No. 42-a, PSC Case No. 99-E-0933.

3. The Co-tenants have concerns regarding whether AmerGen's technical resources will be sufficient not only for the NMP units, along with TMI-1, Clinton, Oyster Creek and Vermont Yankee, but also in light of the proposed PECO Energy–Unicom merger. These acquisitions and mergers would result in AmerGen/PECO Energy having an interest in almost one quarter of the countries' nuclear plants. Significantly, however, most of these plants have not performed in the upper quartile. Aside from the two PECO Energy sites and Unicom's Byron and Braidwood sites, many of the plants that AmerGen/PECO Energy–Unicom would be operating are in need of significant management oversight to improve or maintain plant performance. For these reasons, the Co-tenants request that the NRC carefully review the technical resources that AmerGen will commit to the safe operation of NMP.

B. The Application does not explain what experience AmerGen itself possesses with respect to operating nuclear generating facilities. From the discussion at page 7 of the Application, AmerGen's past performance appears to be derived only from its Member companies. According to the Application (at page 6), PECO Energy and BE Inc. are Members of AmerGen. While the Application describes the nuclear operating experience of PECO Energy and British Energy, it does not provide any information on the organization, technical capabilities or past operational performance of BE Inc., the actual Member of AmerGen.

Issue 5: Provision of Off-Site Power

NRC regulations require adequate assurance of the availability of off-site power and grid stability. More specifically, an applicant for transfer of an operating license must demonstrate that adequate provisions for off-site power are made to satisfy General Design Criterion 17 ("GDC-17") of 10 C.F.R. Part 50, Appendix A and the NRC's station blackout rule, 10 C.F.R. § 50.63. The Application does not provide sufficient information to demonstrate compliance with these requirements, based on the following:

A. As indicated by the NRC Staff for the AmerGen purchase of TMI-1, the interconnection agreement is important to the license transfer process. An Interconnection Agreement (ICA) has been executed for NMP 1; however, no final ICA has been executed for NMP 2. See Application at p. 28. In fact, in its filing before the NYPSC, AmerGen indicated that there is only a commitment by the "parties" to reach such an agreement. As a result, the details of interconnection for NMP 2, provisions for off-site power under GDC-17 and the ownership of the interconnection facilities remain unclear. Until a properly executed ICA has been submitted to the NRC for review and approval, the Application is deficient.

B. The current Operating Agreement indicates that Niagara Mohawk has exclusive control over operations and maintenance activities for NMP 2. However, other important activities, such as the terms and conditions of a satisfactory ICA, are within the decision-making authority of the Management Committee. To represent that it is acting as the agent for the Co-tenants concerning the NMP 2 ICA, as the Applicants seem to do, effectively abrogates the Co-tenants' rights under the Operating Agreement.

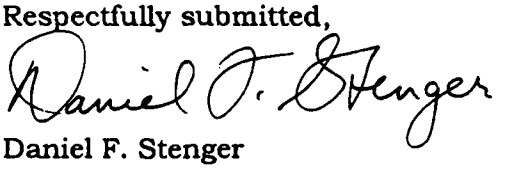
The Co-tenants have not authorized the Applicants to act as their agent in connection with the ICA or otherwise approved the terms of an ICA for NMP 2. Moreover, if the transfer is allowed without proper up front review and approval of the NMP 2 ICA, AmerGen's resulting 59% ownership could lead to the unilateral sale or disposition of interconnection facilities or changes to the ICA. This, in turn, could jeopardize the long-term reliability of the off-site power to NMP 2. These issues necessitate careful scrutiny and, if necessary, appropriate license conditions to ensure reliable off-site power availability. Thus, the Application is deficient without the details of an ICA for NMP 2.

V. CONCLUSION

The proposed transfer of the NMP operating license to AmerGen raises a host of significant issues that deserve full and deliberate consideration. The Co-tenants should be granted leave to intervene in this proceeding and the request for hearing should be granted, with all the issues set forth herein admitted for hearing. Because the NYPSC is expected to review many of the issues of concern to the NRC, and in the interest of conserving the resources of the NRC and the parties, the Commission should defer the hearing in this case until completion of the NYPSC's review or, in the alternative, until the Co-tenants' right of first refusal expires. In view of the complexity of the issues and their significant public importance, if such a deferral

cannot be granted, the Commission should exercise its discretion to establish a full evidentiary hearing under Subpart G to govern some or all of the issues in this case.

Respectfully submitted,



Daniel F. Stenger
Perry D. Robinson
Robert K. Temple
Walter C. Hazlitt, Jr.
HOPKINS & SUTTER
888 16th Street, N.W.
Washington, D.C. 20006

Attorneys for CENTRAL HUDSON GAS & ELECTRIC CORPORATION, LONG ISLAND POWER AUTHORITY, AND ROCHESTER GAS AND ELECTRIC CORPORATION

October 20, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Niagara Mohawk Power Corporation,	)	
New York State Electric & Gas Corporation,	)	
And	)	Docket Nos. 50-220 & 50-410
AmerGen Energy Company, LLC	)	
(Nine Mile Point, Units 1 & 2)	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing PETITION OF CENTRAL HUDSON GAS & ELECTRIC CORPORATION, LONG ISLAND POWER AUTHORITY, AND ROCHESTER GAS AND ELECTRIC CORPORATION FOR LEAVE TO INTERVENE, AND REQUEST FOR HEARING were served upon the following persons by e-mail in accordance with the requirements of 10 C.F.R. § 2.1313:

Mark J. Wetterhahn, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Secretary of the Commission
Attn: Rulemaking and
Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Samuel Behrends IV, Esq.
LeBoeuf, Lamb Greene & MacRae, L.L.P.
1875 Connecticut Avenue, Suite 1200
Washington, D.C. 20009-5728

Kevin P. Gallen
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869

General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dated at Washington, D.C. this 20th day of October, 1999

Daniel F. Stenger

Daniel Stenger, Esq.
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006

P25686-1

12/21/92

EXHIBIT A

NINE MILE POINT NUCLEAR STATION UNIT 2

OPERATING AGREEMENT

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NINE MILE POINT NUCLEAR STATION UNIT 2
OPERATING AGREEMENT

Pursuant to Section 6.01 of the Basic Agreement, Niagara Mohawk Power Corporation (Niagara Mohawk), Long Island Lighting Company (LILCO), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), and Central Hudson Gas & Electric Corporation (Central Hudson) agree as follows with respect to the operation and maintenance of the Nine Mile Point Unit 2, and all activities and facilities supporting or otherwise relating to the plant (sometimes hereinafter collectively referred to as the "Unit" or the "Plant").

The term "Parties" as used herein shall refer to all the parties to this Agreement. The term "Non-Operating Owners" as used herein shall refer to LILCO, NYSEG, RG&E and Central Hudson collectively.

STATEMENT OF INTENT

It is the intent of the Parties to assure the safe, efficient and reliable operation of the Unit consistent with the goals and commitments specified in Sections 2.1 and 2.2 herein. It is the intent hereof that Niagara Mohawk shall have exclusive operational control of the operation and maintenance of the Unit. It is the further intent of the Parties to establish a framework for oversight by the Management Committee of the policy making, planning, budgeting, and operational decisions of Niagara Mohawk related to the Unit. In addition, as more fully explained in Section 2.3 and Article 3, the Non-Operating Owners shall have

the right to approve or disapprove the annual budgets and annual plans (which shall include annual operating goals and objectives for the Unit) and any significant changes in either of them. To the extent any ambiguity arises as to the roles and responsibilities of Niagara Mohawk, the Non-Operating Owners, and the Management Committee hereunder, the provisions of this Agreement shall be construed consistent with the intent herein expressed.

ARTICLE 1 - EFFECTIVE DATE OF AGREEMENT

1.1 Effective Date of Agreement

This Agreement shall be effective as of January 1, 1993 and shall inure to, bind, and be for the benefit of the Parties, their successors, and assigns.

1.2 Operating Period; Deactivation; Purchase Option

The Parties agree to operate the Plant for the applicable license period granted by the United States Nuclear Regulatory Commission (the "NRC" or the "Commission") or any successor agency having jurisdiction over the operation of nuclear power plants. The Parties shall meet five years prior to the expiration of an operating license, or sooner if required by any inability to operate the Plant on a permanent basis, to agree upon any further operating period, or upon a schedule for deactivation and decommissioning of the Plant. Niagara Mohawk, as agent for and on behalf of the Parties, shall maintain the Plant to the date that the Plant has been fully decommissioned inaccordance with all applicable laws or regulations then in effect.

The cost of deactivation, discontinuance, dismantling, and continuing surveillance of the Plant shall be shared by the Parties in accordance with their Respective Percentages and the Parties each agree to establish appropriate reserves and/or take such other action as may be necessary to provide for the cost of such deactivation, discontinuance and dismantling. Prior to, or upon completion of deactivation, discontinuance and dismantling of the Plant, the Nuclear Plant Site may, at Niagara Mohawk's election, be conveyed to Niagara Mohawk at a price to be established by a recognized independent appraiser of land selected by all the Parties.

Unless all the Parties, their successors and ~~assigns,~~ determine to retain their Respective Percentages and to continue to operate and maintain the Plant as is herein provided, Niagara Mohawk shall have the option to purchase the Nuclear Plant Site and the Plant at a price to be agreed to by the Parties, and if they are unable to agree, at a price to be established by a recognized independent firm of appraisers with substantial experience in appraising the value of utility plants selected by all the Parties.

The Parties contemplate that, in any disposition of the Nuclear Plant Site and Plant, the operation and maintenance thereof as is herein provided, subject to the provisions of Section 1.3 hereof, may require the authority and consent of governmental bodies then having jurisdiction. Accordingly, it shall be a condition to the completion of any disposition or continued operation and maintenance, agreed to by the Parties hereto, that such authority and consent be first obtained.

Any conveyance of a Respective Percentage contemplated by this Section 1.2 shall follow the relevant procedures for the original conveyance set forth in Article II of the Basic Agreement, and an appropriate release in form for recording from any indenture of mortgage of the Party making the conveyance which is a lien on the Nuclear Plant Site must be obtained and delivered by that Party to the acquiring Party or Parties.

The costs of any appraisals accomplished under this Section 1.2 shall be shared by the Parties in accordance with their Respective Percentages.

1.3 Amending the Agreement

This Agreement shall be revised from time to time if necessary so that it will not be in conflict with any rule, regulation, or order of any regulatory or governmental body having jurisdiction. Such amendment shall not be required during the pendency of any legal action which any Party hereto has commenced in good faith to contest the validity of any such rule, regulation or order, provided that the operation of the Plant will not be curtailed by such action.

ARTICLE 2 - GENERAL ORGANIZATION

2.1 Commitment to Safe Operation

Activities in relation to the Unit shall be conducted in such a way as to assure safe operation in accordance with all applicable nuclear safety requirements. To that end, the Unit shall be operated in strict compliance with the technical specifications and other terms and conditions of the operating license issued by the NRC, the regulations of the Commission and

any applicable orders or directives issued by it. The parties further recognize that the Party licensed by the NRC to operate the Plant is responsible for safe operation of the Plant in accordance with these requirements. Niagara Mohawk, as agent for and on behalf of the Parties, shall operate the facility for the mutual benefit of the Parties in full accordance with that responsibility. Accordingly, the Parties agree and declare that no other provision of this Operating Agreement may be interpreted as contrary to, or in conflict with, this fundamental principle.

2.2 Unit Goals

Within the requirements specified in Section 2.1, Unit operation and maintenance plans shall be designed to achieve these basic goals:

(a) uniformly high standards of safety for the protection of workers at the Unit as well as for the welfare of the general public;

(b) consistently reliable performance with a superior level of availability and minimal outage incidents and duration;

(c) conformity with all applicable regulatory requirements and industry standards; and

(d) consistent with goals (a), (b) and (c), a busbar cost as low as reasonably possible through careful control of operating and maintenance expenses and restraint in the commitment of capital funds to necessary projects with clearly positive benefit/cost relationships.

2.3 Policies and Plans

Niagara Mohawk shall develop and, as necessary, update its annual budgets and annual plans, which shall include unit operating goals and objectives, to guide its management of the Unit. All such plans and budgets shall be shared with the Non-Operating Cotenants and subject to their critical review to which Niagara Mohawk shall make reasonable response. Such plans and budgets shall be subject to the approval of the Non-Operating Cotenants, as set forth in Article 3.

2.4 Operational Control

Niagara Mohawk shall have exclusive control of the operation and maintenance of the Unit. That control shall be exercised in a manner consistent with the requirements, goals, policies, plans and budgets it has developed as modified in light of the critical review of the Non-Operating Cotenants and in the interest of all the Parties.

2.5 Informational Responsibility

Through committees and other groups established under Article 3, Niagara Mohawk shall keep the Parties regularly and fully advised of the manner in which it discharges its responsibilities under Section 2.4.

ARTICLE 3 - MANAGEMENT COMMITTEE

3.1 Establishment of Management Committee

a. Each Chief Executive Officer of a Party shall designate a member and an alternate to serve on the Management Committee at the pleasure of such Chief Executive Officer. Each Chief Executive Officer shall notify the others of the names of

the individuals so appointed and of any change in appointments.

b. The Chief Executive Officers shall select a member of the Management Committee as its Chair. The Chair shall be rotated among the Non-Operating Parties annually unless the Chief Executive Officers shall otherwise determine by unanimous vote.

c. Each non-operating party shall bear the salaries and expenses of its member and alternate on the Management Committee, unless the Management Committee shall otherwise determine. Niagara Mohawk shall be responsible for the salaries and expenses of its member or alternate on the Management Committee except to the extent such members or alternates are ordinarily dedicated to the operations of the Unit. If the Management Committee determines that a salary or an expense should be shared by the Parties in proportion to their Respective Percentages, the Party incurring such salary or expense in the first instance shall, at the end of each calendar month in which such salary or expense is so incurred, furnish to Niagara Mohawk a statement thereof in reasonable detail. Any such amount shall be paid to the appropriate Party as provided in Article 5.

3.2 Meetings, Agendas and Voting, Etc.

a. Meetings. The Management Committee shall meet monthly, normally in person, according to a schedule established by the Chair. Any member may call a meeting to convene sooner than the next regularly scheduled meeting. Such a meeting may be in person, by conference call or partly in person and partly by conference call.

b. Notice. Notice of regularly scheduled meetings shall be deemed given when circulation is made of minutes

containing the meeting schedule. For any other meeting, all other members and alternates shall receive notice from the member calling the meeting at least five business days prior to the meeting, which notice the Management Committee may waive by unanimous consent of its members.

c. Agendas. The agenda for a regularly scheduled meeting of the Management Committee shall be prepared by the Chair and received by members not fewer than five business days before the meeting, unless waived by the unanimous consent of the members of the Management Committee. The purpose of any other meeting shall be made known with the notice of meeting; its agenda shall be prepared by the member calling the meeting and received as much in advance of the meeting as is practical.

d. Quorum. A quorum shall be deemed present when at least four owners are represented, in person or by conference call, either by a member or by an alternate, except no quorum shall be deemed present in the absence of a member or alternate from Niagara Mohawk. Niagara Mohawk shall use its best efforts to attend any meeting of the Management Committee.

e. Voting. The Management Committee shall endeavor to conduct its business upon unanimous consent, but the Committee may take action if members representing Respective Percentages totaling in excess of 50 percent concur.

f. Minutes. The Management Committee shall provide for the preparation of minutes of its meetings and the retention of any reports, reviews or evaluations prepared for it by any team, subcommittee or task force.

3.3 Responsibilities of the Management Committee

a. Consistent with the commitment of the Parties in Section 2.1 to safe operation, the goals stated in Section 2.2, and Niagara Mohawk's operational control provided in Section 2.4, Niagara Mohawk shall operate and maintain the Unit and shall report the status thereof to the Management Committee.

b. The Management Committee shall critically review as appropriate the annual budgets and plans, which shall include annual operating goals and objectives for operation and maintenance of the Unit, developed by Niagara Mohawk. Niagara Mohawk will respond to any such critical review either with an appropriate modification of any of the above or with a reasonable explanation of why a modification is not appropriate. The Management Committee shall review and, when satisfied, approve the annual plans and the overall levels of the annual budgets for the Unit. The Management Committee, if it reasonably believes that the annual budgets or annual plans are not being met, may require Niagara Mohawk's senior nuclear officer to develop and implement appropriate corrective action.

c. Niagara Mohawk shall inform and consult with the CEOs before appointing, relieving or declining to reappoint its senior nuclear officer. Niagara Mohawk's senior nuclear officer will be relieved by Niagara Mohawk if it is requested to do so in writing by the CEOs of all four of the Non-Operating Cotenants.

d. When useful to the discharge of its responsibilities under Article 3, the Management Committee may review any developments of significance concerning cost, operations, scheduling, performance objectives, work force

organization, regulatory concerns and other matters affecting or affected by Unit operation and maintenance. These matters may come to the Management Committee's attention from various sources including, but not limited to, Niagara Mohawk or the Owners' Representative On-site described in Section 3.7.

e. Niagara Mohawk shall keep the Management Committee informed of regulatory proceedings regarding operation of the Unit, especially those which may result in any penalty, fine or assessment being imposed on the Unit or on any of the Parties. With respect to State regulatory proceedings involving a potential penalty, fine or assessment for imprudent management, whether to defend against such imposition, the overall defense to be mounted and any settlement thereof shall be decisions made by the Management Committee. However, it is the intent of the parties that Niagara Mohawk shall have the primary responsibility for the conduct of all regulatory proceedings. Representation by counsel of any Party in any regulatory proceeding involving the Unit will not be used by any other Party as the basis to seek disqualification of that counsel in any action brought by one Party against another.

f. The Management Committee shall annually review the performance of key executives (including salary levels), as designated by Niagara Mohawk's senior nuclear officer, who are responsible for the operation of the Unit. This review shall be conducted in executive session before the principal executive members of the Management Committee.

g. The Management Committee shall require the preparation of a charter by each of the Audit, Fuel, and Finance

Committees specifying, among other things, the function, responsibilities and reporting requirements of the Committee. Said charters shall be reviewed and approved by the Management Committee. The Management Committee may from time to time require the amendment or modification of the committee charters to address changing needs and requirements.

3.4 Annual Plan and Budget

a. Niagara Mohawk shall annually prepare, on or before August 1,

i. a proposed plan, which shall include annual Unit operating goals and objectives, as well as budgets for the succeeding year (Year I) and

ii. a preliminary plan and financial forecasts for the two following years (Years 2 and 3).

Each annual budget or financial forecast, to the extent feasible, shall comprehensively address all expenditures for the Unit in the following categories: Fuel, Capital, Operations and Maintenance and Other.

b. On or before September 15 of each year, the Management Committee shall complete preliminary review of the documents submitted to it under subsection (a) and provide Niagara Mohawk with its comments.

c. Following timely revision by Niagara Mohawk responsive to the comments of the Management Committee, the Management Committee shall, on or before October 15 of each year,

i) approve plans, which shall include annual Unit operating goals and annual objectives, and the

overall level of the budgets for the following year and

ii) give preliminary approval to the preliminary plan and financial forecasts for Years 2 and 3.

d. The Management Committee may from time to time review the planning and budget process and Niagara Mohawk will respond to any comments or criticisms of that process.

3.5 Variances

a. The approved plans, which shall include annual operating goals and annual objectives, and budget shall form the basis upon which Unit operation and maintenance are conducted during the plan and budget year. The Management Committee may from time to time approve revisions in the plan and budget, whereupon Unit operation and maintenance shall conform to revised plan and budget.

b. Niagara Mohawk shall report at each regularly scheduled meeting of the Management Committee on the status of current and projected spending in relation to the capital and operating budgets. As part of this report (but sooner if circumstances require), Niagara Mohawk shall identify:

i) significant expenditures it proposes to make not within the approved budget,

ii) withholding of significant expenditures within the approved budget it proposes to make, or

iii) if it has reason to believe that spending associated with a budgeted amount is (or will be) exceeding or underrunning the budget by a significant amount.

c. Niagara Mohawk shall provide a detailed budget variance and forecast report on a monthly basis including explanation for each budget item exhibiting significant variance.

d. If the total level of expenditures for any budget category (Fuel, Capital, Operation and Maintenance, and Other) is expected to exceed the budget by more than $1.0 million, Niagara Mohawk will inform the Management Committee and seek approval from the Management Committee for such increase in the total budgets; such approval shall not be unreasonably withheld.

e. Notwithstanding the preceding paragraph, the Parties shall be liable to the extent of their Respective Percentages

i) for any expenditure which Niagara Mohawk reasonably believes is required for compliance with the terms and conditions of the NRC Facility Operating License, its Technical Specifications and Environmental Protection Plan, the regulations of the Commission and any applicable orders or directives issued by it, and

ii) for any expenditure which, in Niagara Mohawk's judgment, is essential for safe operation of the Plant.

f. If the level of expenditure, or expenditures, described in the preceding paragraph is expected to result in the exceeding of an approved budget, Niagara Mohawk shall promptly so inform the Management Committee. Time permitting, Niagara Mohawk will review such expenditures with the Management Committee in advance. In any event, Niagara Mohawk will make every reasonable

effort to offset such expenditures, and avoid increases in the currently approved budget amounts, through reduction or elimination of corresponding amounts of discretionary expenditures.

3.6 Circumstances Requiring Immediate Action

a. Whenever circumstances require that action normally subject to Management Committee review and approval be taken before that Committee can be convened in person or telephonically, Niagara Mohawk shall (1) make reasonable efforts to so inform both the Owners' Representative On-site and Management Committee members or their alternates and (2) take such action as it deems appropriate having due regard for (a) the safeguarding of personnel and equipment, (b) the maintaining of the Unit in operable condition, (c) the ensuring of regulatory compliance, and (d) the interests of all the Parties.

b. As soon as possible but not later than 24 hours after so acting, Niagara Mohawk shall report and explain its action to the Management Committee and shall recommend any follow-up action it deems appropriate.

3.7 Owners' Representative On-site

a. Those members of the Management Committee designated by Chief Executive Officers of Non-Operating Owners may collectively retain a person or an organization (the Owners' Representative On-site) to monitor activities related to the Unit and to provide them with assessments thereof. The Owners' Representative On-site shall report to the Chair of the Management Committee or the Chair's designee.

b. The Owners' Representative On-site shall coordinate the on-site activities of employees and agents of the Non-Operating Owners and shall, should the Non-Operating Owner members of the Management Committee so designate, represent the interests of those owners to Niagara Mohawk management and to those Niagara Mohawk managers exercising operational control under Section 2.4. In addition, the Owners' Representative On-Site shall inform in a timely fashion the Niagara Mohawk officer who directs operational control of the operation and maintenance of the Unit as to his observations and assessments concerning the operation and maintenance of the Unit.

c. Niagara Mohawk may designate an individual for assignment as part of the Owners' Representative On-site.

3.8 Representation on Unit Committees, Task Forces and SRAB

The Non-Operating Owners may have representation on all operation and engineering committees as well as task forces which are established from time to time by Niagara Mohawk to inquire into various questions and/or problems relating to the Unit. Niagara Mohawk shall make reasonable efforts to keep Owners' Representative On-Site informed regarding dates and times for regularly or periodically scheduled meetings of such committees and task forces so as to facilitate the representation provided for in this Section 3.8. The Non-Operating Owner members of the Management Committee may collectively designate one individual to be a member of the Safety Review and Audit Board and one individual to be a member of the Capital Review Committee.

3.9 Rights and Responsibilities of On-site Representative and Other Owner Personnel

a. The Owners' Representative On-site shall have reasonable access to Niagara Mohawk corporate management and to those Niagara Mohawk managers exercising operational control under Section 2.4. The Owners' Representative On-site and all other employees and agents of the Non-Operating Owners whose activities on-site are coordinated by the Owners' Representative On-site shall have reasonable access to all Unit-related correspondence, records, reports, and other information within the control of Niagara Mohawk wherever located, and shall have access to the Unit at all times subject to security and safety requirements comparable to those applied to Niagara Mohawk personnel. Niagara Mohawk shall provide the organization of the Owners' Representative On-site with suitable and sufficient office space at the Plant Site, facilities, equipment and supplies.

b. The On-site Representative will be responsible to the Chair of the Management Committee for reporting on the operation and maintenance of the Unit. Such reports will have the purpose of providing oversight and assessment as determined by the Management Committee and of helping Niagara Mohawk achieve all of the goals for operation and maintenance of the Unit set forth in Article 2. To that end, both the On-site Representative and the appropriate Niagara Mohawk personnel responsible for operation and maintenance of the Unit will seek to achieve a cooperative working relationship, and will among other things, inform each other at the earliest practical time of any perceived

deficiencies in the operation or maintenance of the Unit and of any suggested solutions.

ARTICLE 4 - SERVICES TO BE PROVIDED

4.1 List of Services

Niagara Mohawk agrees, subject to the provisions of Article 3, that it will:

a. Make decisions respecting the operation and maintenance of the Unit and carry out improvements to the Unit;

b. Select, hire, control and (when it deems such action appropriate) discharge personnel as required in the performance of this Agreement, such personnel to be employees solely of Niagara Mohawk and subject to the terms of any labor agreements to which Niagara Mohawk is a party pertaining to such employees and to such standards relating to compensation, benefits and terms of employment specified for Niagara Mohawk employees;

c. purchase operating and maintenance materials, supplies, and services;

d. perform or contract for maintenance, renewals and replacements required to protect the Unit and to keep it in safe and efficient operating condition and prepare and submit to the other Parties normal operating schedules for the Unit;

e. engage legal, engineering, auditing and other consulting services related to the Unit;

f. perform such accounting as is required for the Unit and furnish reports with respect thereto to the other Parties which will enable each Party to meet its accounting and

statistical requirements, including the requirements of any regulatory bodies having jurisdiction over such Party;

g. appoint, as Niagara Mohawk's member of the Management Committee, one of its two most senior officers or an officer who has authority, either in that officer's position or delegated from another officer with such authority, to direct both Unit operations and such engineering, licensing and other services as are necessary to support those operations;

h. place all orders and contracts pertaining to operation and maintenance of the Unit in the name of Niagara Mohawk on behalf of the Parties hereto. The Parties hereto authorize Niagara Mohawk to sign such orders and contracts on their behalf. No party hereto will assume any liability under or by reason of any such orders or contracts except to the extent of its Respective Percentage;

i. prepare bills in reasonable detail to the Parties for costs incurred hereunder;

j. assist the Parties in regulatory proceedings and other contested matters (including, but not limited to, any action by any shareholders of any of the Parties) relative to the Unit, including the provision of witnesses and current and accurate Unit data; and

k. support the timely preparation of Unit plans and budgets, as described in Section 3.4, with sufficient supervision, staffing and organization.

ARTICLE 5 - PAYMENTS

5.1 Operating Costs

Subject to the provisions of Article 3, it is agreed that the Parties shall share in the costs of operation, maintenance and replacements including Niagara Mohawk's overhead (including services and expenses of regular personnel, executive officers and supervisors, to the extent that such services pertain to operations and maintenance of the Unit) applicable to the performance of this Agreement, in their respective Percentages.

5.2 Operating Account

Niagara Mohawk shall establish and maintain for purposes of this Agreement a special bank account or accounts, in a New York State bank designated by Niagara Mohawk, entitled "Niagara Mohawk Power Corporation, as Agent - Nine Mile Point Nuclear Station Unit 2 Nuclear Operating Account", with funds supplied by the Parties in accordance with their Respective Percentages. Each Party pursuant to written notice by Niagara Mohawk and in accordance with its Respective Percentage will deliver to Niagara Mohawk funds for the replenishment of the bank account or accounts by the Parties. In determining the dates and amounts of such replenishments, the Parties shall endeavor to avoid carrying in the bank account or accounts funds ill excess of a reasonable minimum balance for periods of time longer than necessary to provide for the orderly payment of invoices and payroll and other charges. Any income resulting from the investment of excess funds and the cost of funds required to be borrowed will accrue to the account of each co-tenant in their

respective ownership percentages. All invoices or charges in connection with the performance of this Agreement shall be paid by Niagara Mohawk from the aforesaid account or accounts.

5.3 Failure to Advance Funds

If at any time any party fails to advance funds owing under this Agreement when Niagara Mohawk requests it to do so, Niagara Mohawk may (unless it is clear that the failure will be promptly remedied) require all Parties to advance funds in proportion to their Respective Percentages to cover the shortfall for as long as may be required, but not longer than three months. A Party failing to advance funds whenever so required shall remain fully liable therefore under the Basic Agreement and this Operating Agreement and shall promptly tender the delinquent funds together with interest at the prime rate or an equivalent reference rate as may be established from time to time by The Chase Manhattan Bank N.A., at New York, New York. Niagara Mohawk shall accept and apply such tendered sums to eliminate or reduce the next succeeding request or requests for funds from those Parties covering the shortfall.

Promptly upon the occurrence of the event described in the preceding paragraph, Niagara Mohawk shall notify all Parties of it and a meeting shall be convened to decide as promptly as possible on a longer-term course of action responsive to the particular circumstances.

This Section shall not in any way restrict or limit the right of the non-defaulting Party (Parties) against the defaulting Party (Parties).

ARTICLE 6 - AUDITS

6.1 Audit Committee; Inspection of Records

The Audit Committee, consisting of a representative of each of the Parties, has previously been organized by the Parties and shall continue to exist. The members of such Committee shall consist of one representative appointed by each of the Chief Executive Officers of the Parties. The Chair of the Audit Committee shall be appointed by the Chief Executive Officers voting in accordance with their companies' Respective Shares. A vote representing more than 50 percent of the ownership interest in the Unit is required to appoint a Chair. The Audit Committee shall:

a. report to the Chief Executive Officers collectively;

b. plan the amount of audit effort to be expended on the Plant; the Audit Committee will also determine how the manpower will be provided in order to meet its commitments;

c. determine specific areas for audit and develop the scope and objectives for each audit;

d. perform the audits and discuss preliminary findings/ corrective actions with Niagara Mohawk Management;

e. review audit results and submit draft reports to the Management Committee for comments and report final audit results to the Chief Executive Officers; and

f. review the results of any Niagara Mohawk Internal Audit Reports of Unit Two activities.

The scope of the Audit Committee shall be understood to include all costs relating to the Plant. The costs of all audits by the Audit Committee or by any independent certified public

accountants retained by it shall be borne by the Owners in accord with their Respective Percentages.

The correspondence, records, vouchers and books of account of Niagara Mohawk pertaining to all costs incurred for the account of the Parties under this Agreement shall be examined annually by a firm of independent certified public accountants in connection with the annual examination of Niagara Mohawk's accounts and records, and such firm will report to the Parties with respect to operation under this Agreement. The costs of such examination shall be borne by the Owners in accord with their Respective Percentages.

The Parties or any individual Party shall have the right, during the term of this Agreement and for a period of two years after final payment, to inspect all correspondence, records, vouchers and books of account of Niagara Mohawk pertaining to work done or disbursements made for the account of the Party or Parties under this Agreement. This review may be performed by the Party's auditors, or a firm of independent certified public accountants retained by any Party or Parties.

6.2 Inspection Costs; Inspection Report

If an inspection or review is requested or undertaken by fewer than four of the Parties, the Party or Parties requesting or undertaking such inspection or audit shall be responsible for the cost thereof. The reports of inspection, review or audits pursuant to this section shall be provided to the Audit Committee. The Party or Parties undertaking the audit shall report the results to the Chief Executive Officers of all the Parties who shall in turn advise Niagara Mohawk within three

(3) months of receipt of such report, of any items that require adjustment or corrective action.

6.3 Adjustments or Corrective Action

Niagara Mohawk shall permit such inspection, reviews or audits and make appropriate adjustments or take corrective action as may be required to reflect the results thereof.

ARTICLE 7 - FUEL

7.1 Fuel Committee; Meetings, Agenda and Minutes

A Fuel Committee has previously been organized and shall continue to exist. Each member of the Management Committee shall designate a representative to serve at the member's pleasure. The Chair shall be appointed by the Management Committee voting in accordance with their companies' Respective Shares. A vote representing more than SO percent of the ownership interest in the Unit is required to appoint a Chair. The Committee shall meet on a quarterly basis, or upon the request of any Party. The Chair shall, at least ten (10) days in advance of each such regular meeting, provide each Party with a written agenda of the pertinent items to be discussed at the meeting relevant or material to nuclear fuel provisions for the Unit. Minutes of such meetings shall be prepared by the Chair and distributed to the Parties for correction or clarification. Comments of the Parties at a meeting or with regard to the minutes shall be considered and addressed by Niagara Mohawk.

7.2 Fuel Supply

Subject to approvals of the Management Committee as provided in Article 3, Niagara Mohawk, as agent, shall continue

to manage the fuel supply and make decisions in connection therewith, keeping the Parties informed of its actions. Each Party may elect to provide its own share of uranium and/or conversion services on the condition that such share will be made available pursuant to an agreed upon schedule for reload and to the extent that such commitments have not already been made by Niagara Mohawk as agent. However, Niagara Mohawk, acting as an individual Party, shall be limited to providing no more than seventy-five percent of its individual share for any one reload. The remaining amount required for Niagara Mohawk as an individual Party shall be provided as part of its overall procurement strategy acting as agent for all the Parties. (Niagara Mohawk controlled sources shall not be eligible to bid these latter procurements.)

7.3 Fuel Pricing Accounts.

Each Party will maintain its own separate nuclear fuel pricing accounts, but all individual accounts shall be merged as a composite for New York Power Pool (NYPP) dispatch purposes.

7.4 Spent Fuel

Subject to the approval of the Management Committee as provided in Article 3, Niagara Mohawk will continue to operate and manage all on-site and off-site spent fuel storage, reprocessing or permanent disposal of recovered fuel and waste products, as agent of the parties, with all costs, benefits and liabilities distributed among the Parties in accordance with the Respective Percentages.

7.5 Separate Activities for Units 1 and 2

It is agreed that Niagara Mohawk will maintain entirely separate procurement, inventory accounting and disposal actions for Units 1 and 2.

ARTICLE 8 - FINANCE AND ACCOUNTING

The Finance Committee, consisting of a representative of each of the Parties, has been previously organized by the Parties and shall continue to exist. Each member of the Management Committee shall designate a representative to serve at the member's pleasure. The Parties may designate additional Finance Committee meeting attendees; however, only the designated representative or a designated alternate shall vote on behalf of the Party. The Chair of the Finance Committee shall be appointed by the Management Committee voting in accordance with their companies' Respective Shares. A vote representing more than 50 percent of the ownership interest in the unit is required to appoint a Chair. The Committee shall meet at the request of any Party for the purpose of addressing common financial issues related to the operation of NMP2. In addition, the Finance Committee shall oversee and direct the activities of the Accounting Committee which has been previously formed to establish and review accounting policy and procedures as they relate to the Unit.

ARTICLE 9 - INSURANCE AND INDEMNITY

9.1 Compensation Withholdings

Niagara Mohawk shall have sole responsibility for

withholding from the compensation of its employees engaged in performing the services under this Agreement any taxes or contributions which are required by law to be withheld, and sole responsibility for paying such withheld amount and taxes applicable to the compensation of such employees imposed by law upon Niagara Mohawk to the proper governmental authority, and shall defend, indemnify and save harmless the Parties hereto from and against any liability on account thereof.

9.2 Workers' Compensation and Employers' Liability Insurance

Niagara Mohawk shall provide workers' compensation and employers' liability insurance for its employees engaged in performing the services under this Agreement in accordance with the laws of the State of New York. The policy shall contain a subrogation waiver to the effect that the insurance company shall not proceed against any of the Parties hereto for recovery of any loss or losses paid under the policy even though due to the negligence of any Party or Parties. With respect to any claims made or any suits brought by Niagara Mohawk employees engaged in performing the services under this Agreement against LILCO, NYSEG, RG&E, or Central Hudson or any of them, and such claims or suits do not arise out of acts or omissions of LILCO, NYSEG, RG&E, or Central Hudson, and are not covered by insurance provided under Section 9.3 hereof, Niagara Mohawk agrees to defend, indemnify, and hold harmless LILCO, NYSEG, RG&E, or Central Hudson.

9.3 Comprehensive General Liability Insurance Policy

Through the life of this Agreement, Niagara Mohawk shall maintain liability insurance for the account and in the name of the Parties hereto by securing a standard Comprehensive General Liability Insurance Policy on a primary coverage basis toinsure the Parties and their agents against liability except for the nuclear risk, for bodily injury including personal injury to or death of any one or more persons and damage to property arising out of the operation of the Unit. Such insurance shall include a waiver of the insurer's right of subrogation against any of the Parties for such loss or damage even though due to the negligence of any of the Parties.

Niagara Mohawk shall also maintain insurance in accord with the requirements of the United States Nuclear Regulatory Commission pursuant to the Commission's authority under 42 U.S.C. Section 2210 et seq. and the license issued by the United States Nuclear Regulatory Commission for the Unit. In the event the requirements of 42 U.S.C. Section 2210 et seq. are revised or terminated, Niagara Mohawk shall obtain and maintain such insurance and indemnification as is available for the nuclear risk on reasonable terms, subject to the consent of the Parties hereto.

9.4 Property Insurance

Niagara Mohawk shall maintain for the account of the Parties in the name and on behalf of the Parties, property insurance as shall normally be provided by nuclear property insurance underwriters. Such insurance shall include a waiver of the insurer's right of subrogation against any of the Parties for

such loss or damage even though due to the negligence of any of the Parties. Niagara Mohawk shall arrange with the insurers for any inspections necessitated thereby and shall promptly reportany losses to each Party, and shall assist and cooperate in the adjustment and settlement thereof.

9.5 Employees' Fidelity Bond

Niagara Mohawk shall maintain such employee's fidelity bond coverage as it deems necessary.

9.6 Liability for Loss, Expense or Damage Not Covered by Insurance

It is the intent of this Agreement that, insofar as practicable, all liabilities or losses in favor of third parties shall be covered by insurance; nonetheless, the Parties hereto hereby agree to share (including deductibles and retainages under policies of insurance as well as attorney's fees) in any loss, liability, expense, or damage (including personal injury, death or damage to property) of any kind whatsoever arising out of or connected with the design, construction, maintenance and operation of the Nine Mile Point Nuclear Station Unit 2, in accordance with their Respective Percentages (hereafter referred to as "Shared Liability") and hereby agree to indemnify and hold each other harmless with respect to any excess amount beyond the share contributed by each in accordance with their Respective Percentages, provided that no Party is required to participate in Shared Liability for any claim, loss, expense, or damage that is payable as a result of any settlement or compromise thereof unless all the Parties hereto shall have consented to such settlement or compromise. Shared Liability as to third parties,

as set forth above, shall apply irrespective of the nature of the allegations of wrongdoing on the part of the Party(ies) hereto against whom recovery is being sought, whether pertaining to non-feasance, misfeasance, malfeasance or violations of statute or regulation, including, but not limited to (to the extent not prohibited by law) all claims and judgments against any such Party(ies). In no event shall any of the Parties be liable to any other Party, except to the extent of its Shared Liability, for consequential damages to third parties (including, but not limited to, loss of profits or revenue, loss of use of equipment, cost of capital, cost of substitute equipment, facilities, or services, down-time costs, cost of replacement or purchased power, or claims of customers) or punitive damages to third parties resulting from uninsured losses occurring as aforesaid.

9.7 Amount of Coverage; Modifications

Any insurance arranged for or placed by Niagara Mohawk hereunder shall be for such amounts and with such deductibles as Niagara Mohawk, considering the nature of the risks and current insurance practices, shall determine. Such coverage and deductibles, however, shall satisfy the requirements of each Party hereto. To the extent that Niagara Mohawk places or arranges for insurance for the Parties as herein provided, the Parties will not obtain or provide such insurance, except that any Party may for its own account and at its own expense obtain or provide separate or excess liability coverage.

During the life of this Agreement, from time to time, Niagara Mohawk may modify insurance coverages both as to type and amount and deductibles to conform to its own corporate practices

and practices generally accepted in the utility industry. All Parties shall be notified of any change.

Copies of any insurance policies placed or arranged for hereunder shall be furnished to all Parties.

Notwithstanding any provision of this Article 9, Niagara Mohawk shall secure and maintain for the Unit an insruance program affording liability and property damage coverage which meets regulatory requirements.

9.8 Insurance Premiums

All premiums for insurance maintained by Niagara Mohawk hereunder with respect to the Unit shall be included in the cost of operations and maintenance.

9.9 Sharing of Regulatory Penalty and Breach of This Agreement

a. Except as this Section otherwise provides, each Party does hereby release each of the other Parties from all liability, causes of action, claims and judgments (hereinafter collectively referred to in this Section 9.9 as "Claims") in excess of each Party's Respective Percentage for actions or omissions occurring subsequent to the effective date of this Agreement and arising out of operation, maintenance, modification (including design thereof), or ownership of the Unit.

b. Unless otherwise directed by the regulatory agency, the Parties shall share in accordance with their Respective Percentages any penalty, fine or assessment (hereinafter "Regulatory Penalty") imposed by a regulatory agency for actions or omissions

i) arising from operation, maintenance, modification

(including design thereof), or ownership of the Unit and

ii) occurring subsequent to the effective date of this Agreement.

In such circumstances, no Party will advocate any sharing of a Regulatory Penalty in any manner other than in accordance with the Respective Percentages before any regulatory body or court in which the manner of sharing of a Regulatory Penalty is at issue, including in an appeal from a regulatory body or court. If the Regulatory Penalty results directly from acts, omissions or circumstances constituting a Party's breach of this Agreement, that portion of the penalty that results directly from such acts, omissions or circumstances shall be borne by the Party in breach and the balance shall be allocated according to the Parties' Respective Percentages. As used in this Section 9.9, the term breach of this Agreement excludes circumstances described in (1) through (4) of paragraph (e) below so long as conditions (i) through (ii) therein are met.

c. A party shall not be entitled to the release provided in paragraph (a) above for those Claims based upon acts, omissions or circumstances for which it is responsible that both (1) result directly in the Claims for which it seeks release and (2) constitute a breach of this Agreement which breach is not cured.

d. A Party in breach of this Agreement shall have a continuing obligation to cure it. If a Claim for monetary damages does not lie under paragraph (c) above, any other Party may insist that the obligation be honored, may demand specific

performance and may seek to enjoin any act or omission constituting the breach.

e. It is not the intent of this Agreement to hold any Party responsible beyond its Respective Percentage for the economic or financial consequences of the failures of performance or achievement described in (1) through (4) below so long as conditions (i) through (ii) below are met. A Party shall not be deemed in breach of this Agreement by reason of

1) any failure of the Unit to perform to a generally accepted industry standard,

2) any failure of the Unit to achieve (despite Unit's plans being designed to attain them) specific goal or objective outlined in this Agreement or in Unit operation and maintenance plans and budgets,

3) any failure by the Party to achieve conformance with the approved annual operating plan or

4) any failure to comply with the technical specifications and other terms and conditions of the operating license issued by the NRC, the regulations of the Commission and any applicable orders or directives issued by it

so long as

i) such failure is not willful and

ii) the Party has acted in good faith in all respects, including with respect to its obligations under this Agreement.

9.10 Meaning of Section 6 in September 22, 1975 Operating Agreement Among the Parties (the 1975 Operating Agreement)

The Parties agree that in any action before any court or administrative agency, or any appeal thereof, in which the meaning of Section 6 in the 1975 Operating Agreement is at issue no Party will use or cite the language of Sections 9.9 and 9.6 herein in any explication of, or argument as to, the meaning of Section 6 in the 1975 Operating Agreement, nor shall the current Sections 9.6 and 9.9 be construed to have any bearing on the meaning of Section 6 of the 1975 Operating Agreement.

ARTICLE 10 - MEASUREMENT

10.1 Output Measurement

Net output of the Unit shall be measured by suitable meters located at the Unit. Hourly production for Niagara Mohawk, LILCO, NYSEG, RG&E and Central Hudson shall be metered at Scriba Station and allocated to the nearest MWH in accordance with each Party's Respective Percentage or each Party's scheduled requirement for that hour. The Scriba Station meter shall also be used as the basis for cotenant energy accounting.

10.2 Periodic Testing of Meters

Niagara Mohawk shall test the meters at regular intervals and at other times when any Party hereto has reason to believe that any meter is not registering accurately, and will notify LILCO, NYSEG, RG&E and Central Hudson when such tests are to be made in order that they may have a representative present during the test.

ARTICLE 11 - GENERAL

11.1 Non-Waiver of Provisions

The failure of the Parties to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of any rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

11.2 Procedure for Appeal of Management Committee Decision

Any member may appeal a decisions of the Management committee to the Chief Executive Officers collectively within 10 days of the meeting at which such decisions is made. The member appealing shall describe the issue to be decided and submit a short, objective statement of the facts and reasoning supporting the member's positions and that of the Management Committee. Any non-appealing member of the Management Committee may supplement or respond to the statement within 10 days.

In the event a matter is referred to the Chief Executive Officers after inability of the Management Committee to resolve a questions under Section 3.2, the Chair of the Management Committee shall describe the issue to be decided and submit a short, objective statement supporting alternative resolutions of that issue. Any other member of the Management Committee may supplement that statement within 10 days.

11.3 Procedure for Resolution of Appeal

The Chief Executive Officers shall resolve any issue appealed or referred from the Management Committee by a vote representing greater than 50 percent of the interest in the Unit

within 60 days after receipt of the appeal and any responding or supplementary statements.

11.4 Conflict with Basic Agreement

To the extent any provision of the Basic Agreement conflicts with provisions of this Operating Agreement, notwithstanding the provisions of Article XIV of the Basic Agreement, the provisions of this Agreement shall control.

11.5 Independence of Settlement Agreement

This Agreement does not supersede paragraph 6 or any other provision of the September 3, 1985 document entitled "Specification of Terms and Conditions of Offer of Settlement" to which representatives of Niagara Mohawk and Staff of the PSC subscribed and to which the non-operating owners later consented.

ARTICLE 12 - EFFECTIVE DATE, TERM AND TERMINATION

12.1 Effective Date

This Agreement shall be effective on January 1, 1993, upon the expiration of the most recent extension of the Interim Operating Agreement, dated February 21, 1992. It being the intention of the Parties that there be no lapse between the expiration of the Interim Operating Agreement and the effectiveness of this Agreement.

12.2 Term

The term of this Agreement shall be 24 months from its effective date. Thereafter, this Agreement shall be extended and remain in full force and effect until terminated pursuant to Section 12.3.

12.3 Termination

Any Party may terminate this Agreement by providing to all of the other Parties a written Notice of Termination at any time after expiration of 18 months of the term set forth in Section 12.2. Such Notice of Termination shall take effect 6 months after it has been received by all Parties.

ARTICLE 13 - OPERATING COMPANY FORMATION

13.1 Evaluation

The Parties have been evaluating the possibility of creating a corporate entity ("Operating Company") to operate and maintain the Unit. Although they have decided not to create an Operating Company at this time, the Parties agree to vigorously pursue and complete the evaluation during the term of this Agreement.

The operating agreement among the parties dated September 22, 1975, comprising Appendix B to the Basic Agreement of the same date, is hereby amended in its entirety with, and replaced by, this Nine Mile Point Nuclear Station Unit 2 Operating Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: December 22, 1992

ITS: President

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: Anthony J. Earley, Jr. DATED: 12/20/92

ITS: President

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: Jack H. Roskoz DATED: 12/22/92

Jack H. Roskoz

ITS: Sr. Vice President
Electric Business Unit

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: Roger W. Kober DATED: 12-28-92

ITS: Chairman, Pres. CEO

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

IN WITNESS WHEREOF, the parties have duly executed this Operating Agreement by their duly authorized officers as of the date written opposite their names.

NIAGARA MOHAWK POWER CORPORATION

BY: _____ DATED: _____

ITS: _____

LONG ISLAND LIGHTING COMPANY

BY: _____ DATED: _____

ITS: _____

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY: _____ DATED: _____

ITS: _____

ROCHESTER GAS AND ELECTRIC CORPORATION

BY: _____ DATED: _____

ITS: _____

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

BY: _____ DATED: 12/21/92

ITS: PRESIDENT

BASIC AGREEMENT

THIS AGREEMENT made as of Sept. 22 , 1975, by and among NIAGARA MOHAWK POWER CORPORATION (Niagara Mohawk), a New York corporation, having an office at 300 Erie Boulevard West, Syracuse, New York, 13202, LONG ISLAND LIGHTING COMPANY (LILCO), a New York corporation, having an office at 250 Old Country Road, Mineola, New York, 11501, NEW YORK STATE ELECTRIC & GAS CORPORATION (NYSEG), a New York corporation, having an office at 4500 Vestal Parkway East, Binghamton, New York, 13902, ROCHESTER GAS & ELECTRIC CORPORATION (RG&E), a New York corporation, having an office at 89 East Avenue, Rochester, New York, 14604, and CENTRAL HUDSON GAS & ELECTRIC CORPORATION (Central Hudson), a New York corporation, having an office at 284 South Avenue, Poughkeepsie, New York, 12602, hereinafter collectively referred to as the "Parties" or the "Tenants in Common" or, in the singular, the "Party".

WITNESSETH THAT

WHEREAS, Niagara Mohawk has acquired and is developing in the Town of Scriba, County of Oswego, and State of New York, land for the location of Electric Generating Facilities (the "Site"), a portion of which land (the "Nuclear Plant Site") has been designated for the location of a Nuclear Power Electric Generating Plant to be known as Nine Mile Point Nuclear Station Unit #2 (the "Plant");

WHEREAS, each of the Parties is desirous of securing additional

must be sufficiently flexible so as to permit implementation of a Party's financing program, and in this regard, it is recognized that in order to finance a Respective Percentage a variety and/or a combination of financing transactions may have to be entered into and that partial and/or proportionate assignments or transfers with respect to a Party's Respective Percentage may have to be made in connection therewith. Accordingly, the Parties hereto agree that any such partial and/or proportionate assignments by any Party may be made without the consent of the other Parties solely for the purposes of effecting the above financial program.

Section 13.04. Should LILCO, NYSEG, RG&E or Central Hudson or their respective successors hereto desire to assign or transfer its or their Respective Percentage(s), other than pursuant to the provisions of Article VIII and Sections 13.02 and 13.03 of this Basic Agreement and Section 1.2 of the Operating Agreement (Appendix B), during the term of this Basic Agreement, they may do so without the consent of the other remaining Parties hereto, but subject to the following provisions of this Section 13.04:

(a) (i) A Party desiring to assign or transfer its Respective Percentage to the other Parties hereto shall notify the other Parties hereto of its desire one (1) year prior to the effective date of assignment or transfer and shall set forth in writing and deliver to each of them the terms of the offer for the sale of its Respective Percentage.

The priorities and procedures set out in (c) below shall then be applicable.

(ii) A Party desiring to assign or transfer its Respective Percentage shall not be obligated to keep its offer to sell open beyond one hundred and eighty (180) days after the date of its offer to sell and; (1) if there is acceptance by the offeree or offerees within that time period, the transfer shall take place no later than one year from the date of the offer to sell; or (2) if there has been no acceptance of such offer to sell within the one hundred eighty (180) day period, the offer to sell shall be deemed withdrawn, unless such time period shall be extended by the Party desiring to assign or transfer its Respective Percentage. The Party desiring to assign or transfer its Respective Percentage may withdraw its offer to sell at any time before acceptance should it decide to retain its Respective Percentage.

(b) (i) Upon receipt of a bona fide offer to purchase from a third party, that offer shall be transmitted in writing to the other Parties and the other Parties in accordance with the priorities and procedures set forth in (c) below shall have the right, within one hundred eighty (180) days

from the date of transmittal of such bona fide third party offer (whether or not there is an outstanding offer pursuant to (a) above) to make an offer to purchase the subject Respective Percentage upon terms at least as favorable as those contained in the bona fide third party offer.

(ii) Upon failure to offer to purchase upon financial terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period or earlier notification that no offer will be forthcoming, the Party assigning or transferring its Respective Percentage shall be free to sell its Respective Percentage to such third party pursuant to the terms set forth in the bona fide offer made by such third party.

(iii) Upon an offer at terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period, the Party assigning or transferring its Respective Percentage shall accept same, unless it decides to retain its Respective Percentage. The transfer shall take place no later than one year from the date of the transmittal of the third party offer to the other Parties.

(c) (i) If Niagara Mohawk is still a Party hereto, Niagara Mohawk

shall have the first right to accept an offer to sell pursuant to subsection (a) or to make an offer to purchase pursuant to subsection (b) and to purchase all or any portion of the subject Respective Percentage. Niagara Mohawk, at its option, may exercise this right solely or in concert with the remaining original Tenants in Common. If Niagara Mohawk decides to accept or make such purchase offer in concert with the remaining original Tenants in Common, then each of those Parties shall have the right to purchase under the terms of such purchase offer, a percentage of the Respective Percentage not purchased or accepted by Niagara Mohawk to be assigned or transferred equal to the percentage that its Respective Percentage bears to the total of the Respective Percentages of all Parties other than the prospective transferor. If the remaining original Tenants in Common do not wish to participate in the offer on the aforesaid basis, but do wish to participate in the offer to sell or the purchase offer to the extent of a greater or lesser percentage of the Respective Percentage to be assigned or transferred, Niagara Mohawk may accept such participation on that basis, or may solicit participation by any other party.

(ii) If Niagara Mohawk does not wish to participate in the offer, the remaining original Tenants in Common or any of them shall have the right to purchase the Respective Percentage to be assigned or transferred equal to the percentage that its Respective Percentage bears to the total of the respective percentages of all remaining Tenants in Common who so elect to purchase the Respective Percentage to be assigned or transferred.

(iii) If Niagara Mohawk transfers its Respective Percentage and attendant obligations, as agent for the Tenants in Common, of construction, operation and maintenance of the Nuclear Plant Site and the Plant, then that successor shall also succeed to Niagara Mohawk's right of first refusal as expressed in (c) (i) above. If, however, the successor to Niagara Mohawk does not assume those obligations, the right of first refusal shall lapse, and the Tenants in Common, including the successors of any original Tenants in Common shall each have the right to purchase such portion of the offered Respective Percentage as its ownership interest in the Nuclear Plant Site and the Plant shall bear to the corresponding ownership interest of the other Tenants in Common, other than the prospective

Section 13.05. Should Niagara Mohawk or its successor hereto desire to assign or transfer its Respective Percentage, other than pursuant to the provisions of Article VIII and Sections 13.02 or 13.03 of this Basic Agreement and Section 1.2 of the Operating Agreement (Appendix B), during the term of this Basic Agreement, it may do so without the consent of the other remaining Parties hereto, but subject to the following provisions of this Section 13.05:

(a) (i) If Niagara Mohawk or its successor desires to assign or transfer its Respective Percentage to the other Parties hereto, it shall notify the other Parties hereto of its desire one (1) year prior to the effective date of assignment or transfer and shall set forth in writing and deliver to each of them the terms of the offer for the sale of its Respective Percentage. The priorities and procedures set out in subsection (c) below shall then be applicable.

(ii) Niagara Mohawk or its successor shall not be obligated to keep its offer to sell open beyond one hundred and eighty (180) days after the date of its offer to sell and (1) if there is acceptance by the offeree(s) within that time period, the transfer shall take place within the one year period of the date of the offer to sell; or (2) if there has been no acceptance of such offer to sell

within the one hundred and eighty (180) day period, the offer to sell shall be deemed withdrawn, unless such time period shall be extended by Niagara Mohawk. Niagara Mohawk may withdraw its offer to sell at any time before acceptance should it decide to retain its Respective Percentage.

(b) (i) Upon receipt of a bona fide offer to purchase from a third party, that offer shall be transmitted in writing to the other Parties and the other Parties in accordance with the priorities and procedures set forth in subsection (c) below shall have the right within one hundred and eighty (180) days from the date of transmittal of such bona fide third party offer (whether or not there is an outstanding offer pursuant to (a) above) to make an offer to purchase the Niagara Mohawk Respective Percentage upon terms at least as favorable as those contained in the bona fide third party offer.

(ii) Upon failure to offer to purchase upon financial terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period or earlier notification that no offer will be forthcoming, Niagara Mohawk shall be free to sell its Respective Percentage to such third party pursuant to the

terms set forth in the bona fide offer made by such third party.

(iii) Upon an offer on financial terms at least as favorable as those contained in the bona fide third party offer within the above prescribed time period, Niagara Mohawk shall accept same, unless it decides to retain its Respective Percentage. The transfer shall take place no later than one year from the date of the transmittal of the third party offer to the other Parties.

(c) (i) If LILCO, NYSEG, RG&E or Central Hudson, or any of them, still are Parties hereto, they shall each have the right to accept an offer to sell pursuant to subsection (a) or to make an offer to purchase pursuant to subsection (b) and each shall have the right to purchase a percentage of the Respective Percentage to be assigned to transferred which is equal to the percentage that such Party's Respective Percentage bears to the total of the remaining Parties' Respective Percentages (other than the transferor). If any of the remaining original Parties do not wish to participate in the offer on the aforesaid basis, but do wish to participate in the offer to sell or the purchase offer to the extent of a greater or lesser percentage of the Respective Percentage to be assigned or transferred,

Niagara Mohawk or its successor may accept such participation on that basis, or may solicit participation by any other Party.

Section 13.06. Upon an assignment or transfer of a Respective Percentage under this Article XIII, except for Section 13.03, the successor party must assume in writing to the other Parties hereto, all of the obligations of the Party assigning or transferring a Respective Percentage.

It shall be a condition to the completion of any assignment or transfer of a Respective Percentage under this Article XIII that the transferring Party shall have paid its share of all costs or liabilities as provided herein to the date of transfer, and that any necessary authority and consent from the Public Service Commission of the State of New York, the Federal Power Commission, the United States Nuclear Regulatory Commission and any other governmental bodies having jurisdiction be first obtained.

A conveyance of a Respective Percentage in the Nuclear Plant Site under an assignment or transfer of a Respective Percentage shall follow the relevant procedures for the original conveyance set forth in Article II hereof and an appropriate release in form for recording from any indenture of mortgage of the Party assigning or transferring its Respective Percentage which is a lien on the Nuclear Plant Site must be obtained and delivered by that Party to the acquiring party or parties.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
NIAGARA MOHAWK POWER CORPORATION,	)	
NEW YORK STATE ELECTRIC & GAS CORPORATION,	)	Docket Nos. 50-220 & 50-410
And	)	
AMERGEN ENERGY COMPANY, LLC	)	
(NINE MILE POINT, UNITS 1 & 2)	)	
	)	

DECLARATION OF JOHN J. REED

I, John J. Reed, state under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

I am founder of Reed Consulting Group (REED) and Executive Managing Director of the Management Consulting practice of Navigant Consulting, Inc. ("NCI"). The Management Consulting practice of NCI provides services to utilities, energy producers, major energy consumers, project developers, and governmental authorities throughout the United States, Canada, Australia, and New Zealand. We have a staff of approximately 550 people. I concentrate my practice on providing a wide array of consulting services, including financial services (which includes merger, acquisition and divestiture engagements), technical services (which includes engineering and design), and management and operation services (which includes energy delivery, customer care, organizational and market analysis engagements). I have advised numerous clients, both domestically and internationally, on all facets of asset acquisition and divestiture transactions.

I am familiar with AmerGen's License Transfer Application (the "Application") submitted to the Nuclear Regulatory Commission ("NRC") for Nine Mile Point ("NMP") Units 1 and 2. I am similarly familiar with Niagara Mohawk Power Corporation's ("NMPC") and New York State Electric & Gas Corporation's ("NYSEG") petition before the New York State Public Service Commission ("NYPSC") for approval to transfer the NMP generating assets to AmerGen Energy Company, LLC. I have also reviewed relevant documents supplied to me by counsel for the Co-tenants (Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation and Long Island Power Authority). Based on my review of the information submitted to date, it is my opinion that, in certain respects, AmerGen has not provided an adequate demonstration of its financial ability to operate NMP 1 and 2 and to provide adequate assurance of decommissioning funding.

AmerGen has provided a five-year cost/revenue projection for the purpose of showing that it will have sufficient funds to cover the costs of safe operation. The adequacy of AmerGen's cost/revenue projection to provide adequate financial assurance for safe operations cannot be determined without knowing AmerGen's policy on paying dividends or profits to its parent companies. The Limited Liability Company Agreement of AmerGen Energy Company, LLC, dated as of August 18, 1997 (the "LLC Agreement"), provides in Article 4 that "It shall be the policy of the Company [AmerGen], and the Members [PECO Energy and BE Inc.] shall direct their respective Representatives on the Management Committee to cause the Company, to distribute Distributable Cash to the Members quarterly." Under the LLC Agreement, it appears that all or a significant portion of AmerGen's profits may be distributed to its parent companies on a quarterly basis. During any period in which NMP economic performance is low (for example, due to a higher-than-expected forced outage rate and

lower capacity factor), AmerGen could experience a shortfall in its revenues compared with fixed operating costs and may not have sufficient retained earnings to cover the shortfall.

In this regard, AmerGen has provided a proprietary version of its projected opening balance sheet, showing its anticipated assets, liabilities, and capital as of the closing date. Enclosure 6A of the Application. The opening balance sheet does not show how retained earnings will be accumulated. The opening balance sheets also does not show what level of capital contribution, if any, will be made by AmerGen's parent companies, including the contribution of any funds to enable AmerGen to make the payments that will be due at closing. A substantial portion of AmerGen's assets is attributable to "goodwill" – specifically, . No substantiation for the amount of goodwill is provided. AmerGen also does not explain under what accounting standard this asset has been established.

The Application fails to demonstrate that AmerGen possesses adequate resources to cover the costs of an extended outage at NMP. For a newly-formed entity such as AmerGen, the NRC's Standard Review Plan on Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1, requires a demonstration of available cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least six months. SRP at section III.1.b. In the Application, AmerGen has proposed a $110 million parent guarantee, with the understanding that the $110 million is available for all AmerGen facilities. See Application at 18. In several respects, this proposed funding arrangement appears inadequate:

- Operating costs for six months at NMP would appear to be at least approximately , based on the Applicant's own estimate of average

O&M costs in the range of per year. See Application at Enclosure 6A. Accordingly, it is not clear whether the proposed $110 million guarantee, which is available for all AmerGen plants, would be sufficient to cover the costs of a six-month outage at NMP.

- The Application does not provide sufficient assurance regarding the availability of the guaranteed funds for NMP. There is no explanation of who is responsible for the $110 million fund, how the funds are held, and whether these funds can be reached in the event of default or bankruptcy. The funds do not appear to be replenished if they are used for one or more of AmerGen's plants. Because of the number of plants that AmerGen is seeking to acquire, including Clinton, TMI-1, Oyster Creek, and Vermont Yankee in addition to NMP, a single fund of $110 million available for all AmerGen plants is insufficient. In addition, AmerGen's proposal in this regard is inconsistent with the NRC's prior requirements in the case of TMI-1 and Pilgrim for the buyers in those cases to maintain a dedicated fund at least equal to six months of projected O&M expenses.

The Application also fails to demonstrate that decommissioning funding assurance will be provided in an adequate amount. According to the Application (at page 22), the "decommissioning trust fund for NMP 1 will be fully prepaid, and the fund for NMP 2 will be essentially prepaid with additional financial assurances being provided to make up any shortfall." In Enclosure 11A to the Application, the Applicants provide a proprietary projection of available decommissioning funds through the period of the current licenses. The projection for NMP 2 shows a disparity between the fund balance and the NRC minimum formula amount over this 26-year period. Indeed, a shortfall

would exist even at the end of the current NMP 2 license period in 2026, which AmerGen would make up with the "additional financial assurances" (see Enclosure 8 and 8A of the Application).

For NMP 2, it is questionable whether AmerGen's proposed decommissioning funding is sufficient to meet the NRC minimum funding amount. The current funding level after transfer for NMP 2, even with any top-off payment, would not result in full funding to the minimum formula amount by the end of the license period.

Even if AmerGen's approach were deemed to meet the NRC's minimum requirements, this approach has significant risk for the non-selling Co-tenants in the case of AmerGen. The risk of a premature shutdown and a funding shortfall is far higher for AmerGen than for a regulated utility licensee with an ongoing source of revenue. There is also inherent unfairness in limiting AmerGen's liability and that of its parent companies, while the Co-tenants may potentially be subject to joint and several liability for any decommissioning shortfall under current NRC policy. In the TMI-1 transfer, the NRC accepted AmerGen's proposed decommissioning funding amount based on the fact that it was in excess of the NRC minimum formula amount ($303 million versus the formula amount of $269 million). See TMI-1 Safety Evaluation at 9. The NRC imposed a condition on the transfer requiring AmerGen to provide decommissioning funding assurance of no less than $303 million, after payment of any taxes. The instant application does not appear to provide this same level of assurance for decommissioning funding.

It should also be noted that a disparity exists in the decommissioning funding levels for NMP 1 and 2. Because of this disparity, it is possible that excess

funds could be available on NMP 1 while a shortfall exists for NMP 2. Obviously, this situation presents significant issues for the Co-tenants, since, without remedial action by the NRC, the surplus funds at NMP 1 would not be available to meet the decommissioning requirements of NMP 2.

John J. Reed
Executive Managing Director
Navigant Consulting, Inc.

STATE OF Massachusetts
COUNTY OF Middlesex

Subscribed and sworn to before me, a Notary Public for the County and State above named, this 20th day of October 1999.

My Commission Expires: March 31, 2003

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