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November 15, 1999
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE
GENERAL COUNSEL
ADJUTANT GENERAL

In the Matter of)
)
)
Niagara Mohawk Power Corporation, New)
York State Electric & Gas Corporation,)
and)
AmerGen Energy Company, LLC)
(Nine Mile Point Nuclear Station, Units 1)
and 2))
_____)

Docket Nos. 50-220-LT
50-410-LT

**NIAGARA MOHAWK POWER CORPORATION'S RESPONSE
TO THE COMMENTS SUBMITTED BY THE
PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK**

On November 1, 1999, pursuant to 10 C.F.R. § 2.1305 and the Nuclear Regulatory Commission's ("NRC") September 30, 1999 Notice,¹ the New York State Public Service Commission ("NYPSC") submitted comments in the captioned proceeding. Niagara Mohawk Power Corporation ("Niagara Mohawk"), one of the applicants to transfer its operating authority and ownership interest in Nine Mile Point 1 and 2 to AmerGen Energy, LLC ("AmerGen") in the captioned matter, submits this response to the comments of the NYPSC.

Niagara Mohawk recognizes the jurisdiction of the NYPSC to determine whether the transaction is in the public interest. It believes that it will be able to make the required showing before that agency. Niagara Mohawk is participating in that agency's Section 70

¹ Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments (62 Fed. Reg. 52,798 (September 30, 1999)).

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proceeding and cooperating to assure the NYPSC has an adequate record from which to make a decision.

With regard to financial assurance, the NYPSC raises a question of whether the financial commitment of the Members of AmerGen in the event of exhaustion of that entity's funds in case of an extended shutdown is sufficient in that the NYPSC hypothesizes that it could be exhausted in expenditures related to other plants. The NYPSC asserts that AmerGen should be required to make a financial commitment specifically associated with Nine Mile Point Units 1 and 2. Inasmuch as the financial commitment made by AmerGen meets or exceeds NRC requirements, the NRC should not impose a greater commitment or require multiple commitments applicable to each plant.

The NYPSC indicates that AmerGen's filing explains that its parent companies' financial commitments will terminate when AmerGen certifies to the NRC that it has permanently removed fuel from all of the reactors it owns, citing the Application² at pp. 19-20. The NYPSC states, however, that it is unclear what happens from the time the fuel is removed from the reactors until title to it is transferred to the United States Department of Energy and states the NYPSC will examine whether and to what extent AmerGen will have sufficient funding of other financial assurances to safely and adequately monitor the pretransfer storage of spent nuclear fuel.

With regard to the NRC proceeding, regulatory requirements cover the postulated situation. In this regard, 10 C.F.R. Section 50.54(bb) states:

(bb) For nuclear power reactors licensed by the NRC, the licensee shall, within 2 years following permanent cessation of

² NRC License Transfer Application (September 10, 1999).

operation of the reactor or 5 years before expiration of the reactor operating license, whichever occurs first, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository.

Final Commission review will be undertaken as part of any proceeding for continued licensing under part 50 or part 72 of this chapter. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions requires NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC or any significant changes in the proposed waste management program as described in the initial notification.

Thus, the NRC has already considered this question and no further Commission action need be taken at this time.

With regard to decommissioning, the NYPSC points to an alleged inconsistency in filings before the NYPSC and the NRC. Inasmuch as the alleged inconsistency is related to achieving greenfield status, that issue is not one before the NRC which is only statutorily required to make findings with regard to radioactive decommissioning. Since the NYPSC states it will carefully examine this greenfielding issue, no further action by the NRC is required.

With regard to decommissioning liability, the NYPSC states that the NRC may want to examine whether AmerGen has adequate financial protection either in the form of parent-company guarantees, insurance or some other financial mechanism so that the co-owners

are not placed at a financial disadvantage or are required to shoulder additional responsibilities. Clearly, the NRC does examine the ability of a licensee to provide reasonable assurance of having the available funds for radiological decommissioning during its consent review.³ Its rules give a number of options available to licensees to demonstrate that assurance.⁴ In the application, AmerGen has described its ability to meet NRC requirements and no deficiency is shown by the NYPSC.

In summary, no further action need be taken by the NRC as a result of the comments of the NYPSC.

Respectfully submitted,



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ATTORNEYS FOR NIAGARA MOHAWK
POWER CORPORATION

Dated in Washington, D.C.
this 15th day of November 1999

³ Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors, August 1990.

⁴ 10 C.F.R. § 50.75(e)(1) gives some available options.

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NUCLEAR REGULATORY COMMISSION

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OFFICE OF THE
RULEMAKING AND
ADJUDICATIONS STAFF

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Niagara Mohawk Power Corporation, New)
York State Electric & Gas Corporation,)
and)
AmerGen Energy Company, LLC)
(Nine Mile Point Nuclear Station, Units 1)
and 2))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the following documents in the captioned proceeding, have been served on the following by electronic mail, this 15th day of November 1999:

1. Niagara Mohawk Power Corporation's Response to the Comments Submitted by the Public Service Commission of the State of New York,
2. Niagara Mohawk Power Corporation's Response to the Comments of Oswego County and the Oswego City School District,
3. Niagara Mohawk Power Corporation's Response to Comments Submitted by Multiple Intervenors, and
4. Notice of Appearance for Gary D. Wilson.

In addition, courtesy copies have been provided to the following this same date by deposit in the United States mail, first class.

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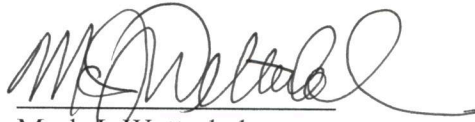
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November 15, 1999