

NUCLEAR REGULATORY COMMISSION
DOCKET NO. 50-410A
NIAGARA MOHAWK POWER CORPORATION ET AL
NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGES
AND TIME FOR FILING REQUESTS FOR REEVALUATION

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 2 of the Nine Mile Point Nuclear Power Station. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director of the Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Nine Mile Point Unit 2 construction permit to Niagara Mohawk Power Corporation, et al., the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation, and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

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"In reaching this conclusion, the staff considered the structure of the electric utility industry in the state of New York, the events relevant to the Nine Mile Point, Unit 2 construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

"The conclusion of the staff's analysis is as follows:

'Nine Mile Point Nuclear Station, Unit 2 (NMP 2) is to be jointly owned by five investor owned utilities in New York as follows:

Niagara Mohawk Power Corporation	41%
Long Island Lighting Company	18%
New York State Electric and Gas Corporation	18%
Rochester Gas and Electric Corporation	14%
Central Hudson Gas and Electric Corporation	9%

'The five co-owners of NMP 2 received antitrust reviews by the Department of Justice with respect to their participation in NMP 2 and in various other planned nuclear generating plants during the period from 1972 through 1978. The Attorney General, in his antitrust advice letters to the Nuclear Regulatory Commission, expressed concern only with respect to Niagara. One concern was that Niagara might not be willing to wheel power for



the Jamestown municipal electric system if Jamestown decided to purchase at wholesale all of its electric power requirements. The other concern regarded Niagara's continuing opposition to the efforts of the town of Messena to establish a municipal electric system. Although the Attorney General did not recommend a hearing, he did advise the Commission to monitor the subsequent activities of Niagara with respect to these two issues.

'Subsequently, Jamestown decided to install electrostatic precipitators on its coal fired plants rather than purchase its total power requirements. Also, Messena has established a distribution system, and Niagara has agreed to wheel power to Messena. Thus, the two concerns expressed by the Attorney General have been resolved.

'Staff's review of changes in load forecasts, capacity expansion programs, and rate schedules does not suggest any anticompetitive effects. New York State Electric and Gas Corporation's acquisition of the Peach Lake system did not significantly alter regional market concentration and was a business transaction with no apparent consumer or regulatory opposition.

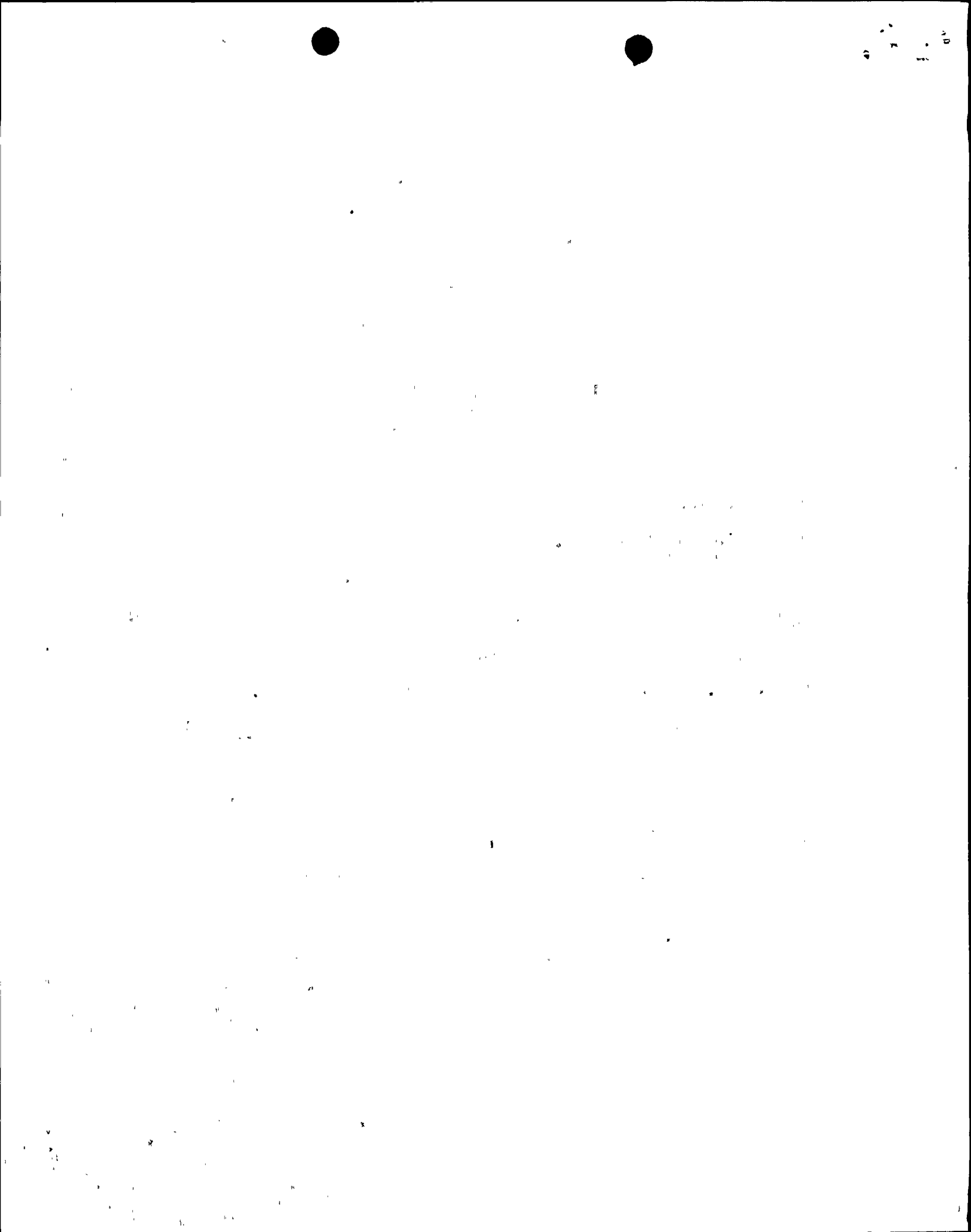
'In light of the Commission's guiding criteria, none of the changes which have been surfaced in this review can be considered "significant", and therefore, staff does not recommend a finding of "significant change."'

"Based on the staff's analysis, it is my finding that a formal operating license antitrust review of Nine Mile Point, Unit 2 is not required."

Signed on February 6, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 for 30 days from the date of the publication of the Federal Register notice.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such



as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed by
Jesse Funches

Jesse L. Funches, Director
Planning and Program Analysis Staff
Office of Nuclear Reactor Regulation

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