



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO PROPOSED RESTRUCTURING

NEW YORK STATE ELECTRIC & GAS CORPORATION

NINE MILE POINT NUCLEAR STATION, UNIT NO. 2

DOCKET NO. 50-410

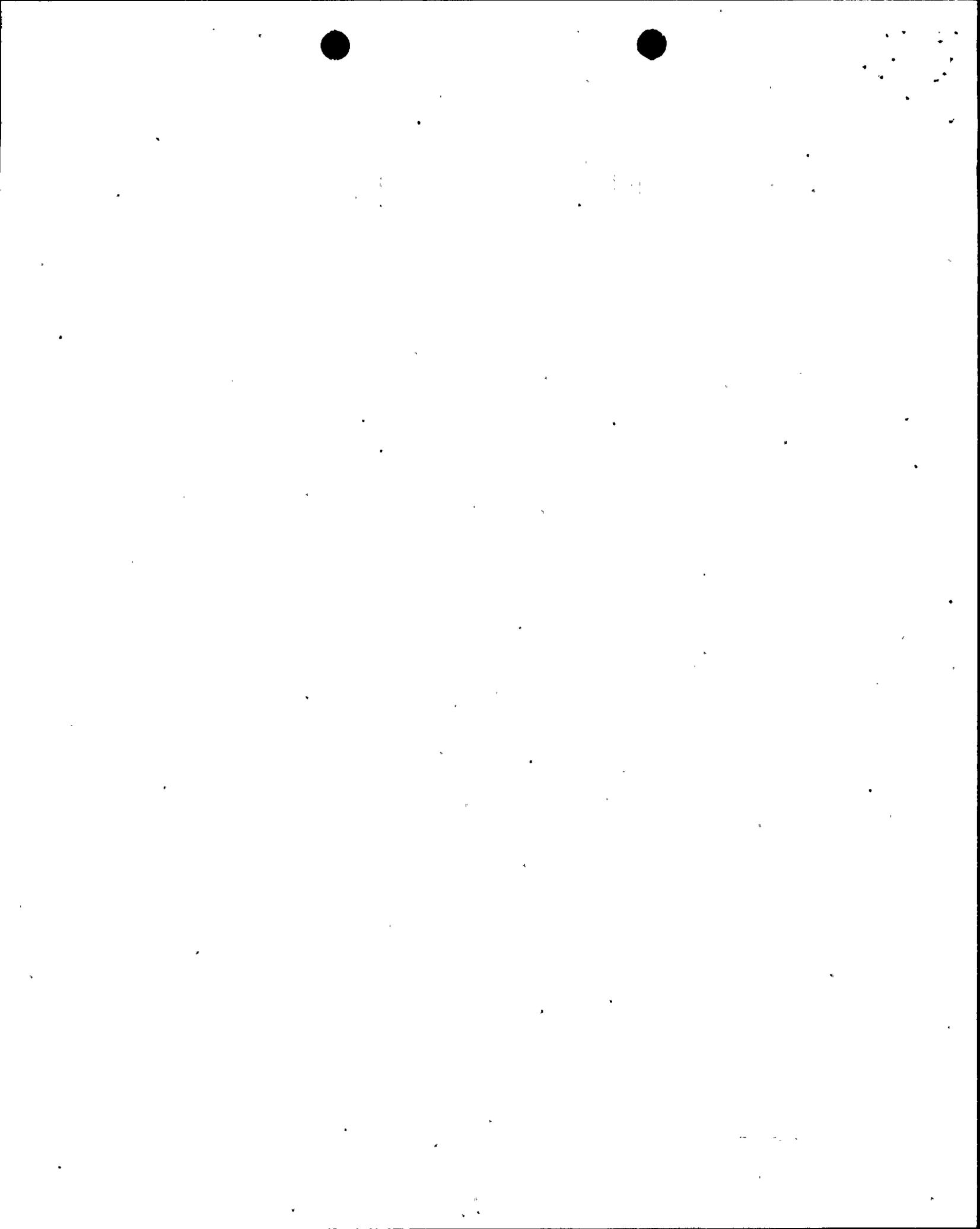
1.0 INTRODUCTION

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

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

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

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Pursuant to 10 CFR 50.80, the Commission may approve the transfer of the control of a license, after notice to interested persons. Such action is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

2.0 FINANCIAL QUALIFICATIONS ANALYSIS

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

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

Central Hudson Gas & Electric Corporation (Applicant) agrees to provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Applicant to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Applicant's consolidated net utility plant, as recorded on Applicant's book of accounts.

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

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

3.0 TECHNICAL QUALIFICATIONS

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



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4.0 ANTITRUST

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

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

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

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

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

6.0 ENVIRONMENTAL CONSIDERATION

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

7.0 CONCLUSION

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

Principal Contributors: M. Davis
D. Hood

Date: July 19, 1998



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