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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED CORPORATE RESTRUCTURING

OF NIAGARA MOHAWK POWER CORPORATION

DOCKET NOS. 50-220 AND 50-410

NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 & 2

1.0 INTRODUCTION

Under cover of a letter dated July 21, 1998, Niagara Mohawk Power Corporation (NMPC) submitted an application, which was supplemented by letter dated October 23, 1998, for consent by the U.S. Nuclear Regulatory Commission (NRC or the Commission), pursuant to 10 CFR 50.80, regarding a proposed restructuring action that would result in the indirect transfer of the operating licenses for Nine Mile Point Nuclear Station, Units Nos. 1 and 2 (NMP1 and NMP2, or collectively, the facility), to the extent held by NMPC. The restructuring action would result in NMPC becoming a wholly-owned subsidiary of Niagara Mohawk Holdings, Inc., a New York State corporation. In addition, certain of NMPC's non-utility subsidiaries would be transferred to the holding company. NMPC fully owns NMP1, is a 41-percent owner of NMP2, and acts as agent for the other NMP2 co-owners. NMPC maintains and operates both units. The other co-owners of NMP2--Central Hudson Gas & Electric Corporation, Rochester Gas & Electric Corporation, New York State Electric & Gas Corporation, and Long Island Lighting Company--are not involved in the proposed restructuring of NMPC.

The proposed restructuring is consistent with a Settlement Agreement with the New York State Public Service Commission (PSC Case Nos. 94-E-0098 and 94-E-0099) dated October 10, 1997, and revised March 19, 1998, regarding implementation of the state's restructuring goals. Under the proposed restructuring plan, the outstanding shares of NMPC common stock will be exchanged on a share-for-share basis for holding company common stock, such that all the outstanding common stock of NMPC will be owned by the holding company. No exchange of NMPC's outstanding preferred stock is planned. After the restructuring, NMPC will continue to be an electric utility as defined in 10 CFR 50.2, according to the application, providing the same utility services as it did prior to the restructuring. The Settlement Agreement calls for NMPC to divest itself of its fossil and hydro generation assets. NMP1 and NMP2 will remain part of NMPC's regulated business.

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 of control 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

NMPC states in its application that following the proposed restructuring NMPC will continue to be an electric utility engaged in transmission, distribution, and through NMP1 and NMP2, the generation of electricity. NMPC will continue to be the owner of NMP1, a co-owner of NMP2, and the operator of both NMP1 and NMP2. NMPC will continue to recover the costs of owning and operating the facility through competitive transition charges. Wholesale and retail rates will continue to be regulated by the New York State Public Service Commission and the Federal Energy Regulatory Commission.

The application states that the proposed restructuring will not adversely affect the ability of NMPC to meet (1) its financial obligations with respect to future operating and capital requirements, or (2) its funding obligations with respect to decommissioning funding. As an electric utility, NMPC is exempt from further financial qualifications review, pursuant to 10 CFR 50.33(f). However, in view of the NRC's concern that restructuring can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear facilities, it is the NRC's practice to condition license transfer approvals upon a requirement that a licensee not transfer significant assets from itself to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that the licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facilities. To this end, NMPC has submitted the following statement by letter dated October 23, 1998:

> NMPC will provide the Director of the 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 NMPC 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 ten percent (10%) of NMPC's consolidated net utility plant as recorded on NMPC's book of accounts.

With the foregoing a condition of approval, the NRC staff finds that NMPC will remain financially qualified to hold the facility licenses following the proposed restructuring.

3.0 TECHNICAL QUALIFICATIONS

NMPC stated in its application that the new holding company structure will not affect the management of nuclear operations or NMPC's technical qualifications. NMPC will remain as a discrete and separate entity under the new holding company structure and will continue to be responsible for facility operations and meeting the technical qualifications requirements of the operating licenses. No NMPC nuclear management positions will be changed as a prerequisite or direct result of the corporate restructuring. Accordingly, the NRC staff concludes that the proposed restructuring will not impact the technical qualifications of NMPC.

4.0 ANTITRUST

Section 105c of the Atomic Energy Act of 1954, as amended (the Act), requires the Commission to conduct an antitrust review in connection with an application for a license to construct or operate a facility under Section 103. NMP1 was licensed under Section 104b and,

as a result, is not subject to an antitrust review by the NRC staff in connection with the application regarding the proposed restructuring.

NMP2 was licensed under Section 103 of the Act. However, although the proposed new holding company may indirectly acquire control of the facility licenses, it 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. Therefore, there is no need to conduct any antitrust review at this time.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

NMPC states in its application for consent that the current holders of NMPC common stock will become holders of the common stock of its proposed parent, Niagara Mohawk Holdings, Inc., on a share-for-share basis. Therefore, by reason of the restructuring, there will be no change in the owners or percentage of shares owned. NMPC states that shares of common stock currently held in foreign accounts represent less than 0.1 percent of the total outstanding shares. Also, all members of the Boards of Directors of NMPC and Niagara Mohawk Holdings, Inc. are U.S. citizens. According to the application, NMPC is not now, and following 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 will result in NMPC 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 September 23, 1998 (63 FR 50931).

7.0 CONCLUSIONS

In view of the foregoing, the NRC staff concludes that the proposed restructuring of NMPC by creation of a holding company will not adversely affect the financial or technical qualifications of NMPC with respect to the operation and decommissioning of NMP1 or NMP2. Also, there do not appear to be any problematic antitrust or foreign ownership considerations that would arise from the proposed restructuring. Thus, the proposed restructuring will not affect the qualifications of NMPC as the holder of the license for NMP1 and co-holder of the license for NMP2 and the transfer of control of the licenses, 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: December 11, 1998