



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED CORPORATE REORGANIZATION
OF ROCHESTER GAS AND ELECTRIC CORPORATION

DOCKET NO. 50-410

NINE MILE POINT NUCLEAR STATION, UNIT NO. 2

1.0 INTRODUCTION

By application dated July 31, 1998, as supplemented August 18 and September 14, 1998, Rochester Gas and Electric Corporation (RG&E), informed the U.S. Nuclear Regulatory Commission (NRC) that a corporate restructuring is proposed that will result in the creation of a holding company (Holdco), of which RG&E would become a subsidiary. In addition, non-utility unregulated businesses of RG&E would also become subsidiaries of Holdco. RG&E is a 14-percent co-owner of Nine Mile Point Nuclear Station Unit 2 (NMP2). The authority to operate under the operating license for NMP2 is held by another co-owner, Niagara Mohawk Power Corporation (NMPC), which is not involved in the proposed restructuring. The other co-owners of Nine Mile Point Unit 2, Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation and Long Island Lighting Company, are similarly not involved in the proposed restructuring of RG&E.

The proposed restructuring is in accordance with policy direction from the New York State Public Service Commission (NYSPSC) implementing the state's restructuring goals. Under the restructuring plan, the outstanding shares of RG&E's common stock are to be exchanged on a share-for-share basis for common stock of Holdco, such that all of the outstanding common stock of RG&E will be owned by Holdco, subject to the exercise of any shareholder of dissenters' rights. After the restructuring, RG&E will continue to be an electric utility as defined in 10 CFR 50.2, and will continue to be engaged in the business of generating, transmitting, and distributing electric power. RG&E will retain its ownership interest in Nine Mile Point Unit 2 and will continue to be a licensee. No direct transfer of the operating license or ownership interests in the station will result from this restructuring.

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 the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

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2.0 FINANCIAL QUALIFICATIONS ANALYSIS

Rochester Gas & Electric Corporation states in the application that following the proposed restructuring RG&E will continue to be an electric utility as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy. Wholesale and retail rates will continue to be regulated by the Federal Energy Regulatory Commission and the New York State Public Service Commission.

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 on 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, RG&E 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 power plant, the NRC's practice has been to condition license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following should be made a condition of the order approving the application regarding the proposed restructuring:

Rochester Gas and Electric Corporation shall 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 RG&E 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 RG&E's consolidated net utility plant as recorded on RG&E's book of accounts.

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.

4.0 ANTITRUST REVIEW

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 will create 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.



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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

The application from RG&E states that its current holders of common stock will become holders of the common stock of Holdco on a share-for-share basis. Therefore, immediately following the reorganization, the common stock of Holdco 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 of RG&E are currently held by foreign persons or entities. According to the application, RG&E is not now, and will not be following the proposed restructuring, owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The staff has no reason to believe otherwise.

6.0 CONCLUSIONS

In view of the foregoing, the NRC staff concludes that the proposed restructuring of RG&E by creation of a holding company will not adversely affect the financial qualifications of RG&E with respect to the operation and decommissioning of Nine Mile Point Unit 2. Also, there do not appear to be any problematic antitrust or foreign ownership considerations that would result from the proposed restructuring. Thus, the proposed restructuring will not affect the qualifications of RG&E as a licensed non-operating co-owner of 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 pursuant thereto. Accordingly, the NRC should approve the application regarding the proposed restructuring, subject to the condition discussed above concerning significant asset transfers.

Principal Contributor: M. Davis

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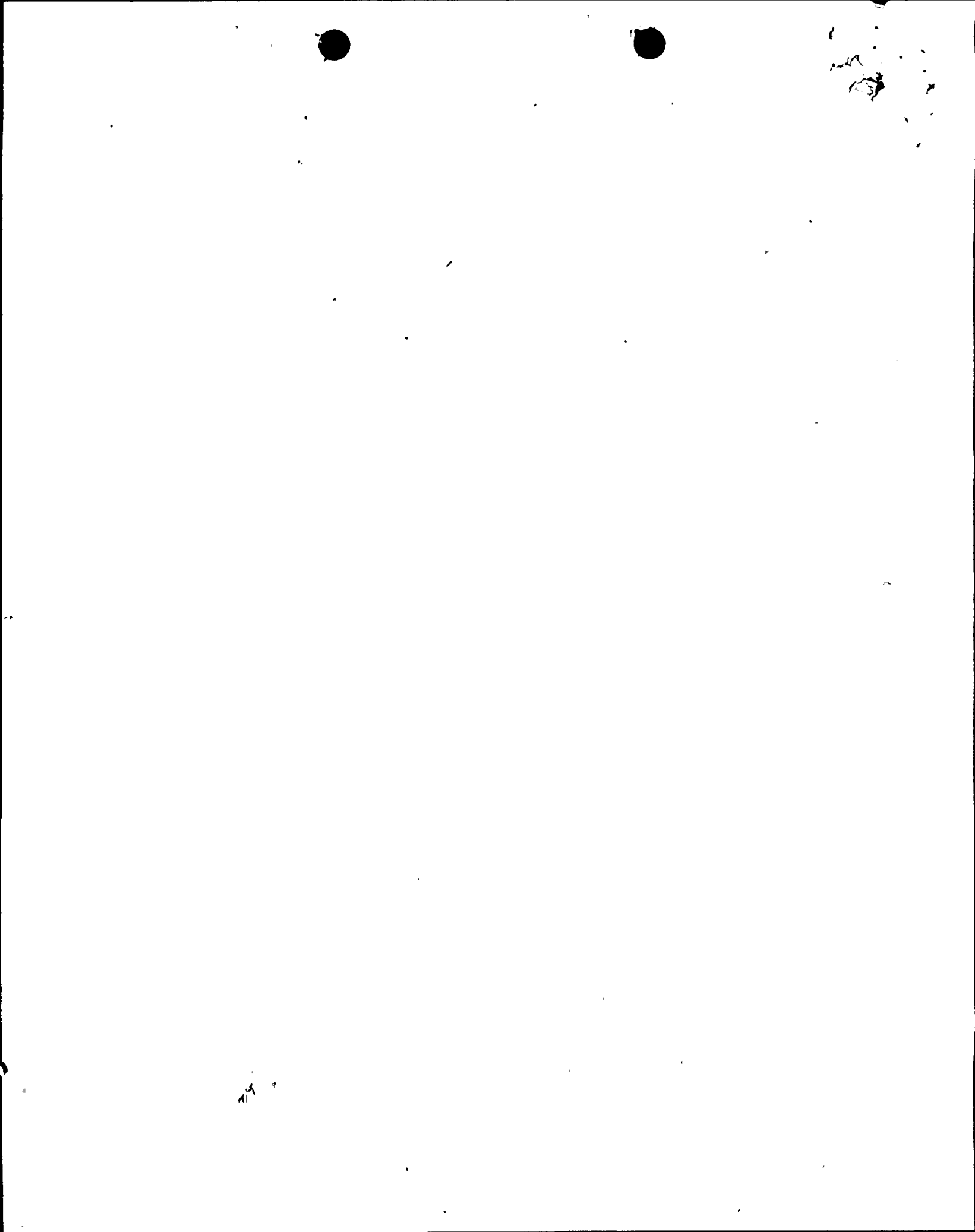
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