BEFORE THE
Nuclear Regulatory Commission
Washington, D.C.

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In the Matter of)
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Policy Statement Concerning)
Safety Impacts of Economic)
Performance Incentive Programs)

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE
ON DRAFT POLICY STATEMENT

On October 26, 1990 the United States Nuclear Regulatory Commission (NRC) issued a Draft Policy Statement on the possible safety impacts of economic performance incentive programs established by state commissions regulating electric utilities. The Policy Statement expresses the NRC's concern that certain forms of economic performance incentive regulation have the potential of adversely affecting nuclear power plant operation and public health and safety. The NRC will continue to monitor state regulatory approaches, and in the proposed policy statements asks that state regulators and licensees voluntarily inform the NRC of new incentive programs or changes in existing programs.

As a threshold matter, all economic regulation creates incentives affecting utility operating pr tices. State review of the economics of nuclear plant operations is firmly established, Pacific Gas & Electric v. Energy Resources Commission, 461 U.S. 190, 205-216 (1983), and as the regulators charged with overseeing the economics of utility operations we have the clear responsibility to design reasonable economic incentive programs for all utility operations, including nuclear power plants.

Furthermore, rationally based incentive programs established by state commissions do not adversely affect nuclear power plant

operation and public health and safety. Economic penalties associated with nuclear down time are so substantial under existing regulation that a utility unwise enough to cut corners has ample reason to try. Making the incentives to efficient operation more predictable and rational will focus more attention on maintenance and less on ad hoc gambling. State review of economic regulation is thus directed at finding a more effective means of encouraging efficient nuclear power plant operations.

Recently, the staff of the State of New York Department of Public Service reached an agreement in principle with Niagara Mohawk Power Corporation regarding the potential economic rewards and penalties associated with the operation and maintenance of Niagara Mohawk Power Corporation's Nine Mile Point I plant. Although this agreement has not yet been reviewed in detail or approved by the New York Public Service Commission because it is part of a major Niagara Mohawk Power Corporation management and financial improvement program to be presented to the Commission next year, it provides an excellent example of the trend in economic regulation of nuclear power plant operations and the increased sensitivity of regulators to the types of actions their economic incentives encourage.

The Niagara Mohawk Power Corporation plan rests on the assumption that ratepayers and shareholders have a right to expect that a nuclear power plant will operate at least as well as the average of plants of similar design and vintage and that it will provide power more economically than the next available source. The utility will not be rewarded or penalized for operating at or close to the industry average capacity factor. And, rather than severely penalizing or rewarding the utility for any deviation from the target,

a sliding scale is proposed.[1] Inherent in this approach is the realization that there are levels of performance over which the company exercises greater or lesser controls and as the plant operates further and further from the average, management, in all likelihood, plays a significant role in the results. Only if the plant operates significantly worse than similarly situated plants (more than three standard deviations from the mean), will the company be liable for the entire cost of replacement power within that range, unless it can prove that its operations at such a low level were prudent. For performance far superior to the average (above three standard deviations), the company will retain the profits attributed to this level of performance.

Furthermore, performance will be evaluated over the long-term (two fuel cycles or approximately four years) rather than over the short-term.[2] Since poor performance over a short period of time can be offset by better than average operations in another period, the utility has the opportunity to correct its operations without fear of substantial penalty. As proposed, the utility will not be rewarded in one year and penalized in the next because the outcome of the results in either year could be due to factors beyond its control. Over the long-term, however, performance that deviates significantly from the norm can be assumed to relate to management actions.

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[1] If the utility performs within one standard deviation of the industry average, ratepayers fund 70% of the replacement power costs (or receive 70% of the benefits) and the company pays (or receives) the remainder. For performance falling within two standard deviations from the industry average, ratepayers would be responsible for 60%, and within three standard deviations a fifty-fifty sharing would exist.

[2] We generally agree with the NRC that economic regulation of nuclear power plants should consider long-term rather than short-term performance standards, and that economic rewards and penalties should not be based upon SALP ratings.

While we share the NRC's concern that economic regulation and safety must go hand-in-hand, recent state regulatory actions, such as the approach to Nine Mile Point I, are designed to foster both economic efficiency and safe operations. In any event, the NRC may inspect and require changes in operations that threaten safety, and as in the past, we expect to continue to exchange information on the most effective means of insuring economical and safe operation of nuclear power plants.

CONCLUSION

Continuing examination of incentives underlying economic regulation of nuclear power plant operations can only result in more efficient and safe nuclear operations. We are convinced that those attributes that lead to efficient and economic operations and which state incentive programs act to maximize are the very same attributes that lead to safe operations. Thus, properly designed programs encourage rather than interfere with the NRC's mandate, but recognizing the NRC's concerns, we welcome the opportunity to continue sharing information.

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