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November 1, 1999

ADJ

VIA HAND DELIVERY & E-MAIL

Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and
Adjudications Staff

Re: In the Matter of Niagara Mohawk Power Corporation, New York State Electric
& Gas Corporation and AmerGen Energy Company, LLC
(Nine Mile Point, Units 1 and 2)
Docket Nos. 50-220 and 50-410

Ladies and Gentlemen:

Pursuant to Rule 1305 of the Commission's Rules, enclosed for filing in the above-referenced proceedings are the "Comments of Oswego County and the Oswego City School District." A copy of these Comments has been served on the parties that are set forth on the Certificate of Service.

Kindly date stamp the additional copy of these Comments enclosed herein and return it to our messenger.

Very truly yours,

COUCH WHITE, LLP

Doreen Unis Saia /JSK

Doreen Unis Saia

DUS/ama

Enclosures

cc: Official Service List (via Overnight Mail, w/encl.)

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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In the Matter of

Niagara Mohawk Power Corporation,) Docket Nos. 50-220 & 50-410
New York State Electric & Gas Corporation)
and)
AmerGen Energy Company L.L.C.)
(Nine Mile Point, Units 1 & 2))

**COMMENTS OF OSWEGO COUNTY AND
THE OSWEGO CITY SCHOOL DISTRICT**

Pursuant to Rule 1305 of the Nuclear Regulatory Commission's ("NRC" or "Commission") Rules of Practice and Procedure, 10 C.F.R. Section 2.1305 (1999), and the Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments issued in the Federal Register on September 30, 1999, 62 Fed. Reg. 52,798 (1999), Oswego County and the Oswego City School District hereby submit their comments in the above-referenced proceedings.

I.

PERSONS TO BE SERVED

Responses by the Applicants to these Comments, if any, should be addressed to the following persons:

Algird F. White, Jr., Esq.
Doreen Unis Saia, Esq.
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Attorneys for Oswego County and the
Oswego City School District
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II.

STATEMENT OF FACTS

On September 10, 1999, Niagara Mohawk Power Corporation ("Niagara Mohawk"), New York State Electric & Gas Corporation ("NYSEG") and AmerGen Energy Company, LLC ("AmerGen") filed an application with this Commission seeking authority to transfer Facility Operating License No. DRP-63 for Nine Mile Point Nuclear Station Unit 1 ("Nine Mile 1") and Facility Operating License No. NPF-69 for Nine Mile Point Nuclear Station Unit 2 ("Nine Mile 2") to AmerGen.¹ Currently, Niagara Mohawk is the sole owner and operator of Nine Mile 1. Niagara Mohawk also is the exclusive operator of Nine Mile 2 and possesses a

¹Niagara Mohawk, NYSEG and AmerGen are referred to collectively as the "Applicants" herein.

41% ownership interest therein. NYSEG possesses an 18% ownership interest in Nine Mile 2. The licenses to operate Nine Mile 1 and Nine Mile 2 currently are scheduled to expire on August 12, 2009 and October 31, 2026, respectively.

This proceeding has been commenced in connection with the proposed sale of Niagara Mohawk's ownership interest in Nine Mile 1 and Niagara Mohawk's and NYSEG's ownership interests in Nine Mile 2 to AmerGen. A petition under Section 70 of the New York Public Service Law seeking to transfer these facilities to AmerGen currently remains pending before the New York Public Service Commission ("NYPSC"). If the NYPSC petition and this Application are approved, AmerGen will operate both Nine Mile 1 and Nine Mile 2, it will own Nine Mile 1 outright and it will hold a 59% ownership interest in Nine Mile 2.

Nine Mile 1 and Nine Mile 2 share the same site on the southeast shore of Lake Ontario in Oswego County. Oswego County is a primarily rural community located in central New York State. Due to the close proximity of these plants to their families, homes and businesses, the residents of Oswego County have a strong interest in the continued safe operation of these facilities.

Moreover, as Oswego County and the Oswego City School District have demonstrated in proceedings that are currently pending before the NYPSC, these facilities are the largest taxpayers and the largest private employers in Oswego County and the Oswego City School District. Because the revenues received from the Nine Mile 1 and Nine Mile 2 nuclear facilities have been, and will continue to be, critical to their continued financial viability, Oswego

County and the Oswego City School District have a strong interest in the continued operation of these facilities until the end of their respective license terms.

III.

COMMENTS

In their Application, the Applicants state that they are seeking the NRC's authorization for AmerGen "to possess, use and operate [Nine Mile 1 and Nine Mile 2]." (See Application at 1.) The Applicants further state that, if approved, AmerGen, a limited liability company, will assume Niagara Mohawk's and NYSEG's responsibility for the operation, maintenance and eventual decommissioning of both Nine Mile 1 and Nine Mile 2. (Id. at 4, 6.) However, as demonstrated, infra, this Commission should condition approval of the Application upon adequate financial commitments to safely operate and maintain these facilities going forward.

A. This Commission Must Require AmerGen and Its Parent Companies To Provide Adequate Financial Guaranties

In their Application, the Applicants assert that "AmerGen possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license..." (See Application at 15.) Pointing to the Projected Income Statements, the Applicants assert that the source of funds to cover the operating costs of Nine Mile 1 and a

59% ownership interest in Nine Mile 2 will be the operating revenues of these facilities.² (Id.) In addition, the Applicants state that AmerGen's parent companies, PECO Energy Company ("PECO") and British Energy plc ("BE"), have executed supplemental funding agreements to make a total of \$110 million available to AmerGen to meet the ongoing operating expenses of all plants that are owned and operated by AmerGen ("Agreements"). (Id. at 18.) However, contrary to the Applicants' assertions, these funding commitments, in fact, may not be sufficient to meet AmerGen's operating expenses going forward, particularly if AmerGen proceeds with its announced business plan to acquire additional nuclear facilities.

Specifically, as the Applicants acknowledge in their Application, PECO and BE originally executed letter agreements to give AmerGen access to up to \$65 million to meet its operating expenses at the Three Mile Island 1 nuclear facility ("TMI-1"). (Id. at 19.) Indeed, in approving the operating license transfer to AmerGen in the TMI-1 proceeding, this Commission relied on this funding commitment, expressly proscribing AmerGen from taking any action to cause PECO or BE "to void, cancel or diminish the \$65 million contingency fund commitment from PECO and BE for TMI-1."³

The Application establishes that this funding amount now has been supplemented to make a total of \$110 million available to AmerGen for the operating expenses of all of its

² Because the Projected Income Statements were deemed to be confidential by the Applicants and were redacted from the Application, Oswego County and the Oswego City School District take no position on the sufficiency of these facilities' operating revenues.

³ See Docket No. 50-289, In the Matter of GPU Nuclear, Inc., "Order Approving Transfer of License and Conforming Amendment" (issued April 12, 1999).

plants. (Id.) However, while the Application states that these funds are sufficient to address a six-month, simultaneous outage of both Nine Mile units, no funds remain to ensure that AmerGen also will have sufficient funds if it simultaneously is experiencing difficulties at its TMI-1 plant. In effect, by adding the Nine Mile facilities to its operating fleet but only increasing the Agreements to a level sufficient to address a simultaneous outage at the Nine Mile facilities, the funding commitment for TMI-1 has been eliminated entirely. Thus, absent additional guaranties from both parents, the Agreements fall short of providing sufficient funding to address all of AmerGen's currently proposed commitments.

Moreover, once the funding level is supplemented to address AmerGen's TMI-1 obligation as well as its Nine Mile obligations, this Commission should not permit PECO and BE to freeze these funding levels going forward. Over the last few months, AmerGen has announced that it has reached agreements to purchase the Vermont Yankee, Oyster Creek and Clinton nuclear plants.⁴ If acquired, these plants will contribute significantly to AmerGen's total operating expenses. However, unless PECO and BE are required to supplement the Agreements to keep in step with the incremental operating expenses associated with these additional plants, a shortfall once again will exist. Thus, at a minimum, the Commission should predicate approval of the Application upon the requirement that PECO and BE must provide financial guaranties

⁴ See, e.g. "AmerGen Agrees to Buy Illinois Power's 950-MW Nuclear Plant for \$20 Million," Electric Utility Week (July 12, 1999); "Amergen To Buy N.J. Nuclear Plant, 619 MW, from GPU for \$10 Million," Northeast Power Report (September 24, 1999); Bazlichuk, "Pa. Outfit To Buy Vt. Yankee Plant," The Burlington Free Press (October 16, 1999).

that, in the aggregate, currently are, and will continue to be, sufficient to meet the total average operating cost over a six-month period of all plants purchased by AmerGen.⁵

B. The Continued Safe Operation of Nine Mile 1 and Nine Mile 2 Must Be Ensured

In their Application, the Applicants assert that AmerGen's technical qualifications to satisfy its responsibilities under the Nine Mile operating licenses "will meet or exceed the existing technical qualifications of the current licensees." (See Application at 11.) Pointing to this Commission's proceeding concerning the TMI-1 transaction, the Applicants further state that the NRC Staff has recognized that AmerGen is technically qualified to operate a nuclear power plant. (Id.) However, if the Application is approved, this Commission must ensure that AmerGen will continue to have sufficient management and operating resources to run Nine Mile 1 and Nine Mile 2 safely going forward.

The Application establishes that the plant staff, including senior managers, will be essentially unchanged. (Id. at 12.) It further establishes that AmerGen will introduce an additional layer of management comprised of AmerGen executive officers and managers. (Id. at 13.) However, as set forth, supra, in addition to its TMI-1 acquisition and the acquisition of

⁵ The Agreements further provide that either BE or PECO can demand that AmerGen permanently cease operations at any plant rather than use funds available thereunder for continued operations. In the event that this right is exercised, this Commission must require BE or PECO to provide financial guaranties that they will fund any decommissioning shortfalls that result from this action. In addition, to ensure that adequate decommissioning funds are available at the end of the Nine Mile 2 license, this Commission should require AmerGen to hold any funds remaining after the decommissioning of Nine Mile 1 in a trust until the completion of the decommissioning of Nine Mile 2.

the Nine Mile facilities, AmerGen has established that it has reached agreements to purchase three other nuclear facilities. In addition, AmerGen has stated that it currently is negotiating to buy several other, as yet unnamed, nuclear plants.⁶

In the event that its acquisitions grow, AmerGen's management capabilities may become over-committed and strained. However, at a minimum, this Commission must require AmerGen to maintain sufficient management and operating capabilities to ensure the continued safe operation of all of its plants. Thus, this Commission should predicate approval of the Application upon the requirement that AmerGen must submit a business plan for each successive proposed acquisition demonstrating that it will continue to have sufficient management and operating capabilities to operate the Nine Mile facilities and all of its other plants safely.

⁶“AmerGen To Buy N.J. Nuclear Plant, 619 MW, from GPU for \$10 Million,” Northeast Power Report (September 24, 1999).

CONCLUSION

For the foregoing reasons, Oswego County and the Oswego City School District respectfully request that this Commission predicate approval of the Application upon: (i) adequate financial guaranties from AmerGen and its parent companies to meet the total operating expenses for all of AmerGen's plants over a six-month period; and (ii) adequate management and operating resources to ensure the continued safe operation of the Nine Mile facilities together with all other facilities acquired by AmerGen in the future.

Dated: November 1, 1999
Albany, New York

Respectfully submitted,

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CERTIFICATE OF SERVICE

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In addition to the filing made to the Nuclear Regulatory Commission via hand delivery on this date, I hereby certify that true and correct copies of the foregoing "Comments of Oswego County and the Oswego City School District" were served upon the following persons via overnight delivery and e-mail:

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Dated at Albany, New York, this 1st day of November, 1999.

Doreen Unis Saia, Esq. / GSK
Doreen Unis Saia, Esq.