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November 1, 1999

OFFICE
ADMINISTRATIVE

VIA HAND DELIVERY & E-MAIL

Honorable Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Docket Nos. 50-220 and 50-410 -- Niagara Mohawk Power Corporation, et al.

Dear Secretary Cook:

Enclosed for filing in the above-referenced proceeding is an original copy of the "Comments of Multiple Intervenors." A copy of these Comments has been served upon the parties set forth on the Certificate of Service.

Very truly yours,

COUCH WHITE, LLP



James S. King

JSK/ama
Enclosures
cc: Service List (via overnight mail; w/encl.)

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**UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION**

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

COMMENTS OF MULTIPLE INTERVENORS

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, page 52798, Multiple Intervenors, an unincorporated association of 65 large commercial and industrial customers located throughout New York State, including the Niagara Mohawk Power Corporation ("Niagara Mohawk") and New York State Electric & Gas Corporation ("NYSEG") service territories,¹ hereby submits its comments in the above-referenced dockets.

¹ Members of Multiple Intervenors also are located within the service territories of co-tenants Rochester Gas & Electric and Central Hudson Electric & Gas.

I.

PERSONS TO BE SERVED

Responses to these Comments should be addressed to the following persons:

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II.

PROCEDURAL HISTORY

On September 10, 1999, Niagara Mohawk Power Corporation ("Niagara Mohawk"), New York State Electric & Gas Corporation ("NYSEG") and AmerGen Energy Company, LLC ("AmerGen") (collectively "Applicants") filed an application with the Nuclear Regulatory Commission ("NRC" or "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 ("Application"). 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.

The Application was filed in conjunction with the proposed sale and transfer of Niagara Mohawk's 100% ownership interest in Nine Mile 1 and Niagara Mohawk's 41%

ownership interest and NYSEG's 18% ownership interest in Nine Mile 2 to AmerGen. The Applicants previously filed a petition under Section 70 of the New York Public Service Law with the New York State Public Service Commission ("NYPSC") seeking approval to transfer these facilities to AmerGen under the terms of the proposed sale. The Section 70 Petition is currently undergoing intense scrutiny in a proceeding before the NYPSC. The NYPSC is not expected to act on the Petition until Spring 2000.

III.

COMMENTS

Members of Multiple Intervenors have paid capital costs associated with the Nine Mile Point units since their inception. As such, Multiple Intervenors supports the continued operation of the Nine Mile Point units. The continued operation will help ensure that ratepayers that have paid for, and may continue to pay high fixed costs associated with these units will be able to directly reap the benefits of the low operating cost of nuclear power.

In the Application, the Applicants state that AmerGen intends to continue to operate Nine Mile 1 and 2 under the same conditions and authorizations included in the existing NRC licenses for these facilities. (Application at 1.) However, as demonstrated below, the Applicants have not provided adequate financial assurances that the continued operation and eventual end-of-license decommissioning of Nine Mile 1 and 2 by AmerGen is feasible. Accordingly, to ensure the continued safe operation and ultimate decommissioning of the Nine

Mile units, the Commission should require further financial guaranties from AmerGen and its parent companies.

THE COMMISSION SHOULD REQUIRE AMERGEN AND ITS PARENT COMPANIES TO PROVIDE ADDITIONAL FINANCIAL GUARANTIES

A. AmerGen Fails to Demonstrate Adequate Funding for Operating Costs of the Nine Mile Units Through the End of License

In the Application, the Applicants claim that AmerGen is financially qualified to own and operate Nine Mile 1 and 2. (Application at 15.) 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...” (*Id.*) However, despite their bald assertions, the Applicants have failed to demonstrate that AmerGen meets the requisite financial standards necessary to operate the Nine Mile 1 and 2 nuclear units.

1. The Applicants Fail to Meet the Requirements of the Code of Federal Regulations

Pursuant to 10 C.F.R. §§50.80 and 50.33(f)(2) (1999), as a condition of license transfer, AmerGen is required to demonstrate that it “possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license.”

AmerGen also is required to submit estimates for total annual operating costs for the first five years of operation and the source of funds to cover such costs. See 10 C.F.R. §§50.80, 50.33.

In their Application, the Applicants fail to adequately demonstrate that AmerGen has the funds necessary to continue the safe operation of Nine Mile 1 and 2 through the end of license. Ignoring 10 C.F.R. §50.33(f)(2), the Applicants only provide Projected Income Statements (“Income Statements”) that only cover a five-year period from January 1, 2000 through December 31, 2004. Relying on the Income Statements, the Applicants assert that operating costs for the five-year period will be funded through operating revenues. (Application at 16.) However, even if the Applicants assertions are valid, the Application still fails to demonstrate that AmerGen possesses adequate funding for Nine Mile 1 and 2 through their end of license. Therefore, in accordance with 10 C.F.R. §§50.80 and 50.33, the Commission should require the Applicants to supplement their filing to provide documentation of funding through the end of license for both Nine Mile 1 and 2.

2. The Applicants Fail to Demonstrate the Availability of Funding During an Extended Outage

In their Application, the Applicants fail to demonstrate that AmerGen possesses adequate funding to meet the costs of an extended outage at one or both of the Nine Mile Point nuclear units. In the Application, the Applicants state that PECO Energy Company (“PECO Energy”) and British Energy plc (“British Energy”) have entered into funding agreements to make a total of \$110 million available to AmerGen to meet expenses associated with all the plants

owned and operated by AmerGen. (Application at 18.) However, given the growing number of nuclear units purchased by AmerGen (i.e., Clinton, Oyster Creek, Vermont Yankee, Three Mile Island) the \$110 million fund may not be adequate.

The potential inadequacy of the \$110 million fund is even more alarming given the fact that \$65 million of the fund is exclusively available for use at AmerGen's Three Mile Island unit ("TMI-1"). This Commission expressly directed AmerGen to "take no action to cause PECO or British Energy plc, to void, cancel or diminish the \$65 million contingency commitment . . ." See Docket No. 50-289, In the Matter of GPU Nuclear, Inc., "Order Approving Transfer of License and Conforming Amendment" (issued April 12, 1999) at 6. As such, AmerGen only has access to \$55 million to cover operating expenses at all of its other nuclear units.

In light of the above, in order to ensure the continued safe operation of the Nine Mile units, the Commission should require AmerGen and its parent companies to guaranty and document six months of outage funding for each nuclear unit owned by AmerGen.

B. The NRC Should Require AmerGen and its Parent Companies to Provide Additional Financial Guaranties for Decommissioning

In their Application, the Applicants assert that the transfer of pre-paid decommissioning funds for Nine Mile 1 and 2 to AmerGen as part of the proposed sale of the units provides adequate funding to decommission the units.² However, despite their assurances,

² AmerGen's financial assurances for decommissioning were withheld from public disclosure.

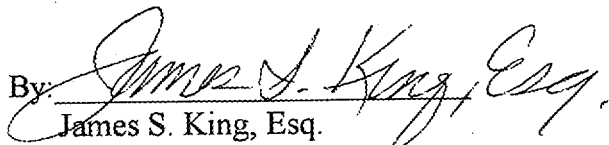
the Applicants fail to guarantee that AmerGen will retain responsibility for decommissioning of the units or possess sufficient funding for that purpose, in the event AmerGen's decommissioning cost estimates prove to be inaccurately low. Therefore, in order to ensure the adequate protection of public safety and health, and to shield New York ratepayers from any future, unanticipated decommissioning cost exposure, the Commission should require AmerGen and its parent companies to guaranty that they will assume full financial and legal responsibility for decommissioning Nine Mile 1 and 2.

CONCLUSION

For the foregoing reasons, Multiple Intervenors respectfully requests that the Commission require additional financial guaranties by AmerGen and its parent companies as a condition of approval of the Application.

Dated: November 1, 1999
Albany, New York

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the Comments of Multiple Intervenors were served

upon the following persons via overnight mail and e-mail:

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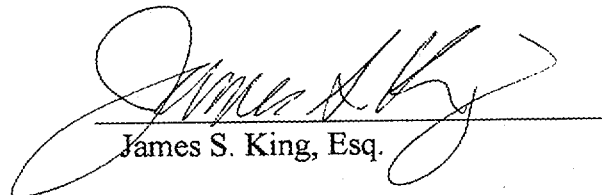
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Dated at Washington, D.C. this 1st day of November, 1999.


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