

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of )  
 )  
Niagara Mohawk Power Corporation, )  
New York State Electric & Gas )  
Corporation )  
and )  
AmerGen Energy Company, LLC )  
(Nine Mile Point, Units 1 & 2) )

Docket Nos. 50-220 & 50-410

COMMENTS OF THE  
PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK

Pursuant to 10 CFR section 2.1305 and the Nuclear Regulatory Commission's (NRC, Commission) September 30, 1999 notice (64 Fed. Reg. 52798-52799), the New York State Public Service Commission (NYPSC) hereby submits its comments in the above-captioned proceedings. Copies of all documents and correspondence should be sent to:

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On September 10, 1999, Niagara Mohawk Power Corporation (NMPC) requested permission from the NRC to transfer its license to operate the Nine Mile Point 1 nuclear power plant to AmerGen Energy Company (AmerGen). Moreover, NMPC and the New York State Gas & Electric Company (NYSEG), as two of five co-owners,

requested permission to transfer their interests in, and NMPC's operating authority over, Nine Mile Point 2.

The NYPSC is currently examining the proposed asset transfer to AmerGen pursuant to New York State Public Service Law section 70 and expects to reach a conclusion in 2000. The purpose of these comments is to alert the Commission to specific concerns the NYPSC will address in its own proceeding, which the NRC may also wish to consider.

#### I. Financial Assurances

Philadelphia Energy Company (PECO) and British Energy (BE), as owners of AmerGen, structured AmerGen as a corporation with limited financial liability. While the financial obligations between AmerGen, PECO and BE have not been fully ascertained, it appears that there may be limitations on how much funding the parent companies will provide to AmerGen. According to letter agreements dated July 22, 1999 between PECO and AmerGen and BE and AmerGen, the parents have committed a total of \$110 million in financial security to be used when AmerGen faces unexpected financial commitments associated with its operation of Three Mile Island, NMP1, NMP2, Clinton, Vermont Yankee and all other future nuclear plant acquisitions. NRC Filing, p. 18. The NYPSC is reviewing whether \$110 million is sufficient, especially if AmerGen experiences simultaneous multi-unit outages. On a broader scale, the question before the NRC is whether the parental financial commitments are sufficient to cover the costs of all of AmerGen's nuclear acquisitions.

A. Plant-Specific Financial Commitments

A related area of concern is that the \$110 million commitment is not designated for any particular plant or plants. Thus, the NYPSC will examine the impact on NMP1 and NMP2 if the \$110 million is exhausted on expenditures related to other plants and whether AmerGen should be required to make a financial commitment specifically associated with NMP1 and NMP2, if the transfer is otherwise found to be in the public interest.

B. Termination of Financial Commitments

In its NRC filing, AmerGen explains that its parent companies' financial commitments will terminate upon receipt of the NRC's consent or when AmerGen certifies to the NRC that it has permanently removed fuel from all of the reactors it owns. NRC Filing, pp. 19-20. It is unclear, based on this language, what happens from the time the fuel is removed from the reactors until title to it is transferred to the United States Department of Energy. The NYPSC will examine whether and to what extent AmerGen will have sufficient funding or other financial assurances to safely and adequately monitor the pre-transfer storage of spent nuclear fuel.

II. Decommissioning Trust Funds

In its filing to the NYPSC, AmerGen asserts that ultimately it intends to restore the NMP1 and NMP2 to greenfield status. It further asserts that the decommissioning funds it receives from NMPC and NYSEG (including top-up funds) will be sufficient to cover the costs of dismantlement, removal of radioactivity and full site restoration. However, in its NRC

filing, it appears that AmerGen's decommissioning funding commitments will encompass only NRC decommissioning requirements. Given these seemingly different positions, the NYPSC will carefully examine exactly what AmerGen's decommissioning intentions are and whether it will have sufficient funds to accomplish both NRC requirements and additional New York conditions.

### III. Decommissioning Liability

In its Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Industry (62 Fed. Reg. 44071, 44074 (1997), 19 CFR Part 50), the NRC stated that it may, in some situations, impose joint and several liability for the financial obligations of a defaulting co-owner of a nuclear power plant on the remaining co-owners.<sup>1</sup> Given that three of the co-owners of NMP2 have decided not to sell their interests to AmerGen (two of which are regulated by the NYPSC), NYPSC's economic regulation extends to the issue of joint and several liability for decommissioning between AmerGen and the non-selling co-owners; therefore, the NYPSC will address this issue as well. The NRC may want to examine whether AmerGen has adequate financial protection either in the form of parent-company guarantees, insurance or some other financial mechanism so that the co-owners are not placed at a financial disadvantage or are required to shoulder additional responsibilities.

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<sup>1</sup> As the NYPSC has stated in previous rulemakings, federal actions must not supersede state ratemaking. See, e.g., Docket No. RIN 3150-AF41, submitted June 25, 1996.

the co-owners are not placed at a financial disadvantage or are required to shoulder additional responsibilities.

CONCLUSION

The transfers of the NMP1 and NMP2 operating licenses to AmerGen raise important state and federal concerns. The NYPSA will keep the NRC apprised of its actions.

Sincerely,

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New York State Public  
Service Commission

Diane Dean  
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Dated: November 1, 1999  
Albany, New York