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DOCKETED
November 1, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 NOV -2 P4:43

OFFICE OF SECRETARY
PUBLIC AFFAIRS
ADJUDICATION STAFF

In the Matter of:

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

Docket Nos. 50-220-LT
50-410-LT

NIAGARA MOHAWK POWER CORPORATION'S AND NEW YORK STATE
ELECTRIC & GAS CORPORATION'S ANSWER TO PETITION OF ATTORNEY
GENERAL OF NEW YORK STATE FOR LEAVE TO INTERVENE

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.1307(a), Niagara Mohawk Power Corporation ("Niagara Mohawk") and New York State Electric & Gas Corporation ("NYSEG"), licensees in the captioned matter, hereby file their answer to the petition for leave to intervene ("Petition") filed on October 20, 1999, by Eliot Spitzer, Attorney General of the State of New York ("Petitioner"). The Petition responds to the "Notice of Consideration of Approval of Transfer of Operating Licenses and Conforming Amendments, and Opportunity for a Hearing," published in the *Federal Register* on September 30, 1999 (64 Fed. Reg. 52798) ("Notice"). The Notice concerns the proposal to transfer to AmerGen Energy Company, LLC ("AmerGen"), Facility Operating License No. DPR-63 for Nine Mile Point Nuclear Station, Unit 1 ("NMP1"), and the respective ownership shares of Niagara Mohawk and NYSEG and the operating authority of Niagara Mohawk under Facility Operating License No. NPF-69 for Nine Mile Point Nuclear Station, Unit 2 ("NMP2") (hereinafter, Niagara Mohawk, NYSEG, and AmerGen are referred to

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collectively as "Applicants"). As discussed below, the Petitioner has not satisfied the Commission's requirements for intervention. Therefore, under 10 C.F.R. § 2.1308, the Petition should be denied.

II. BACKGROUND

A. The Approval at Issue

Niagara Mohawk is currently the sole owner and operator of NMP1. The transfer of the license for NMP1 would be to AmerGen. Niagara Mohawk currently holds a 41% undivided ownership interest in NMP2, is its exclusive licensed operator, and acts as agent for its other co-owners before the NRC. The other current co-owners, who may possess but not operate NMP2, are NYSEG with an 18% interest, Long Island Power Authority ("LIPA," as successor to Long Island Lighting Company)¹ with an 18% interest, Rochester Gas and Electric Corporation ("RG&E") with a 14% interest, and the Central Hudson Gas & Electric Corporation ("Central Hudson") with a 9% interest (hereinfter, LILCO, RG&E, and Central Hudson are collectively referred to as "Co-tenants"). Under the proposed transfer for NMP2, Niagara Mohawk's and NYSEG's possessory interests, and Niagara Mohawk's operating authority under the license for NMP2, would be transferred to AmerGen.

Accordingly, following the proposed transfers, AmerGen would become the licensed operator of both NMP units, the sole owner of NMP1, and a 59% co-owner of NMP2. Under the proposed transfers, AmerGen would be authorized to possess, use, and operate NMP1 and NMP2 under essentially the same conditions and authorizations included in the existing licenses. No physical changes would be made to either NMP1 or NMP2 as a result of the

¹ LILCO remains the licensed entity.

proposed transfer, and there would be no significant changes in the day-to-day operations of either unit.

B. The Right to Intervene in a Subpart M Licensing Proceeding

To intervene in a Commission licensing proceeding under 10 C.F.R. Part 2, Subpart M, which governs license transfer hearings, a petitioner must:²

1. set forth the issues (factual and/or legal) that petitioner seeks to raise;
2. demonstrate that those issues fall within the scope of the proceeding;
3. demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application;
4. show that a genuine dispute exists with the applicant regarding the issues; and
5. provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

See 10 C.F.R. §§ 2.1306(b)(2) and 2.1308; North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201, 215 (1999). See generally Baltimore Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348-49 (1998).

III. DISCUSSION

Here, Petitioner has failed to raise an issue sufficient for hearing. As Subpart M regulations make clear, an "issue" sufficient to justify a hearing cannot be a mere recitation of a licensing topic, but must bring into sharper prose "a concise statement of the alleged facts or expert opinions which support the Petitioner's position on the issues and on which the Petitioner

² A petitioner must also demonstrate that its interest may be affected by an order granting the requested transfer, often referred to as "standing." 10 C.F.R. § 2.1308(a)(1-3). See the Atomic Energy Act of 1954, as amended ("AEA"), § 189a, 42 U.S.C. § 2239(a). Under the standard recently set forth in North Atlantic Energy Service Corp., 49 NRC 201, Niagara Mohawk and NYSEG adopt the arguments on standing advanced by AmerGen.

intends to rely at hearing.” 10 C.F.R. § 2.1306(b)(2)(iii). Moreover, this focused issue must include “references to the specific sources and documents on which the Petitioner intends to rely to support it’s position.” Id. Finally, the issue must be defined by “sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.” 10 C.F.R. § 2.1307(b)(iv). The Commissioner’s Subpart M rulemaking demonstrates quite clearly that these heightened requirements for a hearing consciously and deliberately imposed upon Petitioner a duty to present well-developed issues in contrast to general topics whose contentions are merely in formative stages.

In contradiction of this regulatory requirement, Petitioner merely notes that the proposed license transfer “raises important issues,” such as reasonable assurance that AmerGen will have sufficient funds to pay the operations and maintenance expenses during simultaneous six-month outages at each unit, the proposed decommissioning funding mechanism, and AmerGen’s qualifications to operate the plants. Petition at 3. Petitioner indicates that he has petitioned for leave to intervene “to review the evidence and develop recommendations to the NRC regarding these and similar issues.”³ Id.

Petitioner’s general description of “important issues” and his desire to review the evidence and develop recommendations fails to satisfy the 10 C.F.R. § 2.1308 requirement for admissibility that a petitioner “set forth the issues (factual and/or legal) that petitioner seeks to

³ Unlike Subpart G, Subpart M lacks a provision equivalent to 10 C.F.R. § 2.715(c), which allows “representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue.”

raise.” Moreover, Petitioner has failed to provide a concise statement of the alleged facts or expert opinions supporting Petitioner’s position on the issues, together with references to the sources and documents on which petitioner intends to reply. Finally, Petitioner, by failing to assert any position on his recitation of “important issues,” other than they should be considered, fails to show that a genuine dispute exists with the applicant regarding these “issues.”

“Subpart M, like its counterparts applicable to other types of Commission Proceedings (e.g., 10 C.F.R. § 2.714), does not permit ‘the filing of a vague, unparticularized contention,’ unsupported by affidavit, expert, or documentary support.” Seabrook, 49 NRC at 219 (citing Calvert Cliffs, 48 NRC at 349). See 10 C.F.R. § 2.1306. “Nor does [NRC] practice permit ‘notice and pleading,’ with details to be filled in later. Instead, [the NRC] require[s] parties to come forward at the outset with sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them.” Seabrook, 49 NRC at 219. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 n.7 (1996). Mere reference to documents, as Petitioner has done here, does not provide an adequate basis for a contention. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989). This absence of specificity and support is, without more, a sufficient ground for rejecting contentions. See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 144 (1993) (petitioner did not comply with requirement for pleading specificity where petitioner “failed to describe the matters to which Staff questions are addressed or why they might constitute a defect in the Environmental Report”). Moreover, “[n]either Section 189a of the Atomic Energy Act nor § 2.714 . . . permits the filing of a vague, unparticularized contention.” See Final Rule, “Rules of Practice for

Domestic Licensing Proceedings — Procedural Changes in the Hearing Process,” 54 Fed. Reg. 33168, 33170 (Aug. 11, 1989).

The petitioner has failed to meet the standards for a single admissible contention and his petition must therefore be denied.⁴

⁴ This failure still leaves the Attorney General a forum in which to raise issues concerning whether the proposed sale is in the public interest. The Attorney General is a party in a proceeding before the New York State Public Service Commission (“PSC”), which is considering this question. The PSC’s approval of the transaction is required as a condition of closing.

IV. CONCLUSION

For reasons set forth above, Petitioner's request for leave to intervene does not satisfy the requirements of 10 C.F.R. §§ 2.1306 and 1308. Accordingly, the Petition should be denied.

Respectfully submitted,



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Gary D. Wilson
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ATTORNEYS FOR NEW YORK STATE
ELECTRIC & GAS CORPORATION

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'99 NOV -2 P4:43

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

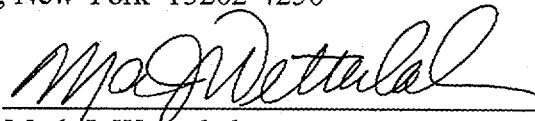
Docket Nos. 50-220-LT
50-410-LT

OFFICE OF SECRETARY
FOR REGULATORY AND
ADJUDICATIVE AFFAIRS

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Syracuse, New York 13202-4250



Dated at Washington, District of Columbia
this 1st day of November 1999

Mark J. Wetterhahn

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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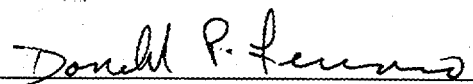
OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

Docket Nos. 50-220-LT
50-410-LT

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Donald P. Ferraro

Dated at Washington, District of Columbia
this 1st day of November 1999

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OFFICE OF STAFF COUNSEL
RULES, PRACTICE AND
ADJUDICATION DIVISION

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Counsel for New York State Electric
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OFFICE OF SECRETARY
RULEMAKING AND
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Docket Nos. 50-220-LT
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NOTICE OF APPEARANCE

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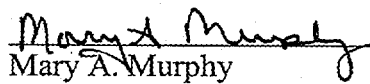
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November 1, 1999

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Docket Nos. 50-220-LT
50-410-LT

CERTIFICATE OF SERVICE

I hereby certify that copies of the following documents in the captioned proceeding, have been served on the following by electronic mail, this 1st day of November 1999:

1. Niagara Mohawk Power Corporation's and New York State Electric & Gas Corporation's Answer to Petition of Attorney General of New York State for Leave to Intervene,
2. Niagara Mohawk Power Corporation's and New York State Electric & Gas Corporation's Answer to Petition of Central Hudson Gas & Electric Corporation, Long Island Power Authority, and Rochester Gas and Electric Corporation for Leave to Intervene,
3. Notice of Appearance for Mark J. Wetterhahn,
4. Notice of Appearance for Donald P. Ferraro,
5. Notice of Appearance for Mary A. Murphy, and
6. Notice of Appearance for Samuel Behrends IV.

In addition, courtesy copies have been provided to the following this same date by deposit in the United States mail, first class.

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