

October 30, 2001

Mr. Robert E. Denton
President and Chief Executive Officer
Constellation Nuclear, LLC
P.O. Box 1475
Baltimore, MD 21203-1475

Mr. John H. Mueller
Chief Nuclear Officer
Niagara Mohawk Power Corporation
Operations Building, Second Floor
Lycoming, NY 13093

Mr. Arthur R. Upright
Senior Vice President
Central Hudson Gas & Electric Corporation
284 South Avenue
Ploughkeepsie, NY 12601

Mr. Paul Wilkens
Senior Vice President - Generation
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

Mr. Jeffrey K. Smith
Senior Vice President
New York State Electric & Gas Corporation
P.O. Box 5224
Birmingham, NY 13902-5224

SUBJECT: NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2 -
SUPPLEMENTAL ORDER REGARDING APPROVAL OF TRANSFER OF
LICENSES TO NINE MILE POINT NUCLEAR STATION, LLC, AND
APPROVING CONFORMING AMENDMENT (TAC NOS. MB2860 AND MB2861)

Dear Sirs:

On June 22, 2001, the U.S. Nuclear Regulatory Commission (NRC) staff issued an Order to Constellation Nuclear, LLC, Niagara Mohawk Power Corporation (NMPC), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), and Central Hudson Gas & Electric Corporation (CHGEC). The Order approved the direct transfer of Facility Operating Licenses Nos. DPR-63 and NPF-69, for the Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP-1 and NMP-2), to Nine Mile Point Nuclear Station, LLC (NMP LLC), an indirect subsidiary of Constellation Nuclear, LLC. The Order also approved indirect transfers pertaining to the associated corporate structure changes proposed for Constellation Energy Group, Inc., the current parent of Constellation Nuclear, LLC, and pertaining to Virgo Holdings, Inc. acquiring up to a 17.5% voting interest in the ultimate parent of NMP LLC, coupled with a distribution of the voting shares of such parent to the current shareholders of Constellation Energy Group, Inc.

By a letter dated September 10, 2001, Constellation Nuclear, LLC, NMPC, RG&E and CHGEC provided supplemental information and requested NRC to authorize phased direct transfers if NYSEG is not able to transfer its ownership interest in NMP-2 to NMP LLC on the same schedule as the other transferors. The September 10, 2001, letter was supplemented by a letter dated September 26, 2001, from Constellation Nuclear, LLC and NMPC, and a letter dated September 28, 2001, from J. E. Silberg, Esq., counsel to Constellation Nuclear, LLC. The enclosed Supplemental Order supplements the June 22, 2001, Order and expressly allows the approved transfer of the

license for NMP-2, to the extent it is held by NMPC, RG&E, CHGEC and NYSEG to occur in two phases. The Supplemental Order also approves the enclosed conforming amendment, reflecting the first phase of the direct transfer of the NMP-2 license involving the transfer of the interests of NMPC, RG&E, and CHGEC, to be issued and made effective when such transfer is complete.

The NRC staff's related supplemental safety evaluation is also enclosed. The Supplemental Order has been forwarded to the Office of the Federal Register for publication. The Supplemental Order and associated documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and will be accessible electronically through the Agency-wide Documents Access and Management System's Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov>.

Sincerely,

\RA

Peter S. Tam, Senior Project Manager, Section 1
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-220 and 50-410

Enclosures: 1. Supplemental Order
2. Conforming Amendment for NMP-2
3. Supplemental Safety Evaluation

cc w/encls: See next 2 pages

Nine Mile Point Nuclear Station
Unit Nos. 1 and 2

Mr. Jim Rettberg
New York State Electric & Gas Corporation
Corporate Drive
Kirkwood Industrial Park
P.O. Box 5224
Binghamton, NY 13902-5224

Supervisor
Town of Scriba
Route 8, Box 382
Oswego, NY 13126

Mr. John V. Vinquist, MATS Inc.
P.O. Box 63
Lycoming, NY 13093

Daniel F. Stenger, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
601 13th St., NW,
Suite 1000 South
Washington, D.C. 20005

Mary A. Murphy, Esquire
LeBoeuf, Lamb, Greene and MacRae, LLP
1875 Connecticut Ave.
Suite 1200
Washington, D.C. 20009

Mr. Paul D. Eddy
Electric Division
NYS Department of Public Service
Agency Building 3
Empire State Plaza
Albany, NY 12223

Charles Donaldson, Esquire
Assistant Attorney General
New York Department of Law
120 Broadway
New York, NY 10271

C. Adrienne Rhodes
Chair and Executive Director
State Consumer Protection Board
5 Empire State Plaza, Suite 2101
Albany, NY 12223-1556

Mark J. Wetterhahn, Esquire
Winston & Strawn
1400 L Street, NW
Washington, DC 20005-3502

Gary D. Wilson, Esquire
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, NY 13202

Mr. F. William Valentino, President
New York State Energy, Research,
and Development Authority
Corporate Plaza West
286 Washington Avenue Extension
Albany, NY 12203-6399

Robert J. Glasser and Bo Hong, Esquires
Gould & Wilkie, LLP
One Chase Manhattan Plaza
58th Floor
New York, NY 10005

Nine Mile Point Nuclear Station
Unit Nos. 1 and 2

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Resident Inspector
U.S. Nuclear Regulatory Commission
P.O. Box 126
Lycoming, NY 13093

Jay E. Silberg, Esquire
Shaw Pittman
2300 N Street, N.W.
Washington D.C. 20037

Ronald D. Byrd, Esq.
Associate General Counsel
Constellation Energy Group
39 West Lexington Street
Baltimore MD 21201

Constance Smith, Esq.
Associate General Counsel
Constellation Energy Group
250 West Pratt Street
Baltimore MD 21201

license for NMP-2, to the extent it is held by NMPC, RG&E, CHGEC and NYSEG to occur in two phases. The Supplemental Order also approves the enclosed conforming amendment, reflecting the first phase of the direct transfer of the NMP-2 license involving the transfer of the interests of NMPC, RG&E, and CHGEC, to be issued and made effective when such transfer is complete.

The NRC staff's related supplemental safety evaluation is also enclosed. The Supplemental Order has been forwarded to the Office of the Federal Register for publication. The Supplemental Order and associated documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and will be accessible electronically through the Agency-wide Documents Access and Management System's Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov>.

Sincerely,
\RA

Peter S. Tam, Senior Project Manager, Section 1
 Project Directorate I
 Division of Licensing Project Management
 Office of Nuclear Reactor Regulation

Docket Nos. 50-220 and 50-410

Enclosures: 1. Supplemental Order
 2. Conforming Amendment for NMP-2
 3. Supplemental Safety Evaluation

cc w/encls: See next 2 pages

DISTRIBUTION:

PUBLIC	SHom	MEvans, RI	
PDI-1/RF	OGC	WCook, RI	
PTam	SCollins	WBeckner	VDricks
LRaghavan	EAdensam	MDusaniwskyj	SECY
SLittle	ACRS	CCarpenter	JShea, EDO
GHill (6)	DCollins	DTrimble	BPlatcheck, RI

ADAMS ACCESSION NUMBER: ML012920556

OFFICE	PDI-1\PM	PDI-1\LA	TECH ED	RGEB/SC*		
NAME	PTam	SLittle	PKleene	PMadden		
DATE	10/24/01	10/24/01	10/19/01	10/10/01		

OFFICE	PDI-1(A)SC	OGC	PDI/D	DLPM/D	NRR/ADPT	NRR/D
NAME	LRaghavan**	SHom	EAdensam	JZwolinskii	BSheron	SCollins
DATE	10/25/01	10/29/01	10/25/01	10/26/01	10/29/01	10/30/01

Official Record Copy

*SE in memo of 10/10/01 used essentially as-is. **P. Milano for L. Raghavan

UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NIAGARA MOHAWK POWER)	Docket Nos. 50-220 and 50-410
CORPORATION, ET AL.)	
)	License Nos. DPR-63 and NPF-69
(Nine Mile Point Nuclear Station,)	
Unit Nos. 1 and 2))	

SUPPLEMENTAL ORDER REGARDING APPROVAL OF TRANSFER OF LICENSES
AND APPROVING CONFORMING AMENDMENT

I.

Niagara Mohawk Power Corporation (NMPC) is the exclusive owner and operator of Nine Mile Point Nuclear Station, Unit 1 (NMP-1), and in regard thereto, holds Facility Operating License No. DPR-63. NMPC is also part-owner and exclusive operator of Nine Mile Point Nuclear Station, Unit No. 2 (NMP-2), and in connection therewith, is a holder of Facility Operating License No. NPF-69. The other co-owners of NMP-2 and holders of the license are New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), Central Hudson Gas & Electric Corporation (CHGEC), and Long Island Lighting Company (LILCO, which is doing business as Long Island Power Authority). NMP-1 and NMP-2 (the facilities) are located at the licensees' site in Oswego County, New York.

II.

By application dated February 1, 2001, Constellation Nuclear, LLC, on behalf of its indirect subsidiary Nine Mile Point Nuclear Station, LLC (NMP LLC), and NMPC, NYSEG, RG&E, and CHGEC requested the consent of the U.S. Nuclear Regulatory Commission (NRC or Commission) to a proposed direct transfer of the licenses for NMP-1 and NMP-2, to the extent held by the foregoing applicants, to NMP LLC. The application was supplemented by submittals from Constellation Nuclear, LLC, dated March 1, March 16, March 29, April 5,

April 27, May 30, and June 7, 2001 (collectively herein referred to as the Application). The Application also requested the approval of conforming license amendments to reflect the direct transfer of the licenses. The Application further requested consent to certain indirect transfers of the licenses, to the extent such would occur following the direct transfers resulting from (1) a planned realignment or restructuring of the Constellation Energy Group (CEG), Inc., of which NMP LLC is a part, and the establishment of a new intermediate parent company of NMP LLC referred to as New Controlled, and (2) the acquisition by Virgo Holdings, Inc. (Virgo), an indirect subsidiary of The Goldman Sachs Group, Inc., of an equity interest in NMP LLC and up to a 17.5% voting interest in New Controlled, coupled with the distribution of the remaining voting shares of New Controlled, all of which would be held by CEG, Inc., up to the time of distribution, to the existing public shareholders of CEG, Inc., leaving Virgo with the largest single voting interest in NMP LLC's ultimate parent company.

The Application provided that in connection with the direct transfers, NMP LLC would assume title to NMP-1 following approval of the proposed license transfers, and would assume the 82% ownership interest in NMP-2 currently held by NMPC (owner of a 41% interest), NYSEG (18% interest), RG&E (14% interest) and CHGEC (9% interest). LILCO is not involved in the direct transfer of NMP-2 and, therefore, will remain a licensee with respect to its 18% ownership interest. In addition, NMP LLC would become responsible for the operation of both NMP-1 and NMP-2. The Application stated that NMP LLC would also assume the decommissioning responsibility of the current owners of NMP-1 and NMP-2 transferring their interests in the facilities to NMP LLC. NMP LLC would provide decommissioning funding assurance through the use of decommissioning trusts coupled with parent company guarantees.

The Application proposed conforming license amendments that would replace references to NMPC, NYSEG, RG&E, and CHGEC in the licenses with references to NMP LLC, as appropriate, and make other administrative changes to reflect the proposed direct transfer.

The Commission published a notice of the request for approval and an opportunity for a hearing in the Federal Register on April 2, 2001 (66 FR 17584). The Commission received no comments or requests for hearing pursuant to the notice. The NRC staff approved the proposed direct and indirect license transfers by an Order dated June 22, 2001. That Order, which contained several conditions of approval, was based in part on the premise that the NMPC, RG&E, CHGEC and NYSEG interests would be transferred concurrently.

By a submittal dated September 10, 2001, Constellation Nuclear, LLC, NMPC, CHGEC and RG&E stated that due to certain delays in receiving other necessary regulatory approvals, their interests in the NMP-1 and NMP-2 licenses may need to be transferred to NMP LLC prior to any transfer of NYSEG's interest in NMP-2. The September 10, 2001, submittal was supplemented by a letter dated September 26, 2001, from Constellation Nuclear, LLC, and NMPC, and a letter dated September 28, 2001, from J. E. Silberg, counsel to Constellation Nuclear, LLC. These letters are collectively referred to as the Supplemental Application. The Supplemental Application requested NRC consent to the direct transfer approved by the June 22, 2001, Order occurring in two phases, i.e., the NMPC, CHGEC, and RG&E transfers would occur first, followed by the NYSEG transfer.

The Supplemental Application also requested approval of a conforming license amendment for NMP-2 to reflect the first phase of a two-phase direct transfer of the interests in NMP-2. The amendment would delete references to NMPC, CHGEC, and RG&E to reflect the transfer of their interests to NMP LLC, but leave NYSEG on the license.

Approval of the two-phase completion of the previously approved direct transfers involving NMP-2 and corresponding conforming license amendment to reflect the completion of

the first phase was requested pursuant to 10 CFR 50.80 and 50.90. The NRC staff determined that the Supplemental Application relates only to schedular matters and did not involve any material changes to the underlying basis for the transfer approval Order dated June 22, 2001. Therefore, the Supplemental Application was within the scope of the April 2, 2001, *Federal Register* notice cited above and did not require renoticing or a new opportunity for a hearing.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the Supplemental Application and other information before the Commission, the NRC staff has determined that its previous findings set forth in the Order dated June 22, 2001, remain valid notwithstanding that the transfers may occur in two phases, namely, NMP LLC is qualified to hold the licenses for NMP-1 and NMP-2 to the same extent the licenses are now held by NMPC, CHGEC, RG&E and NYSEG, and that the transfer of the licenses, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the Supplemental Application for the proposed license amendment to reflect the first phase of a potential two-phase transfer complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the Supplemental Application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance

with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated October 30, 2001.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the direct NMP-2 license transfer previously approved by the June 22, 2001, Order, from NMPC, CHGEC, RG&E and NYSEG, to NMP LLC may occur in two phases, as described above, subject to the following conditions:

- (1) NMP LLC shall, prior to the completion of each direct transfer, have provided to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMP LLC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.
- (2) On the closing date(s) of the transfer of the NMPC, RG&E, CHGEC, and NYSEG interests in NMP-1 and NMP-2 to it, NMP LLC shall: (1) obtain from the transferors then transferring their interests all of their accumulated decommissioning trust funds for NMP-1 and NMP-2, respectively, and (2) receive [a] parent company guarantee[s] pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in [an] amount[s] which, when combined with the decommissioning trust funds for NMP-1 and NMP-2 that have been transferred, equals or exceeds the total amounts for NMP LLC's then resulting total ownership share of NMP-1 and NMP-2, respectively, pursuant to 10 CFR 50.75(b) and (c).
- (3) The master decommissioning trust agreement for NMP-1 and NMP-2, at the time any subject direct transfer is effected and thereafter, is subject to the following:
 - a. The decommissioning trust agreement must be in a form acceptable to the NRC.
 - b. With respect to the decommissioning trust funds, investments in the securities or

other obligations of CEG Inc., New Controlled, or their affiliates, successors, or assigns, are and shall be prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are and shall be prohibited.

- c. The decommissioning trust agreement must provide that no disbursements or payments from the trusts, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of the payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
 - d. The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
 - e. The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (4) NMP LLC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the Application, the requirements of the June 22, 2001, Order (amended by this Order herein), and the related safety evaluation.
 - (5) At the time any subject direct transfer is effected, NMP LLC shall enter or shall have entered into an intercompany credit agreement with Constellation Energy Group (CEG), Inc., or New Controlled, whichever entity is the ultimate parent of NMP LLC at that time, in the form and on the terms represented in the Application. Should New Controlled

become the ultimate parent of NMP LLC following the direct transfer of the licenses to NMP LLC, NMP LLC shall enter or shall have entered into a substantially identical intercompany credit agreement with New Controlled at the time New Controlled becomes the ultimate parent; in such case, any existing intercompany credit agreement with CEG, Inc. may be canceled once the intercompany credit agreement with New Controlled is established. Except as otherwise provided above, NMP LLC shall take no action to void, cancel, or modify any intercompany credit agreement referenced above, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation.

- (6) NMPC shall inform the Director of the Office of Nuclear Reactor Regulation of the date(s) of the closing of the direct transfers no later than two business days prior to such respective date(s). If all of the direct and indirect transfers of the licenses approved by the June 22, 2001, Order, as supplemented by this Order are not completed by June 30, 2002, this Order and the June 22, 2001, Order shall become null and void with respect to those transfers not so completed, provided, however, upon written application and for good cause shown, such date may in writing be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Supplemental Order, to conform the operating license for NMP-2 to reflect the subject first phase of the direct license transfers, is approved. If NMPC, RG&E, and CHGEC transfer their interests in NMP-2 to NMP LLC and NYSEG does not concurrently transfer its interest in NMP-2, the amendment shall be issued and made effective at the time NMPC, RG&E, and CHGEC transfer their interests in NMP-2 to NMP LLC.

IT IS FURTHER ORDERED that, to the extent any of the conditions of the June 22, 2001, Order, and conditions contained in the conforming license amendments approved by that

Order, are inconsistent with the conditions contained in this Supplemental Order and conditions contained in the amendment approved by this Supplemental Order, all such inconsistent conditions of the June 22, 2001, Order, and all such inconsistent conditions contained in the conforming license amendments approved by that Order, are hereby modified to be consistent with the conditions contained in this Supplemental Order and conditions contained in the license amendment approved by this Supplemental Order. License amendments for NMP-1 and NMP-2, as approved by the June 22, 2001, Order, and as modified herein, or the license amendment as approved by this Supplemental Order, shall be issued as appropriate and made effective at the time the corresponding license transfers occur.

This Supplemental Order is effective upon issuance.

For further details with respect to this Supplemental Order, see the Supplemental Application transmitted by letters dated September 10, 26, and 28, 2001, the associated supplemental safety evaluation dated October 30, 2001, and the Order and its associated safety evaluation both dated June 22, 2001. All of these documents are available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov>.

Dated at Rockville, Maryland, this 30th day of October, 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director

Office of Nuclear Reactor Regulation

NIAGARA MOHAWK POWER CORPORATION

DOCKET NO. 50-410

NINE MILE POINT NUCLEAR STATION UNIT NO. 2

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-69

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas & Electric Corporation, and Constellation Nuclear, LLC, dated September 10, 2001, as supplemented by letters dated September 26 and 28, 2001, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is hereby amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 60 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment:
Changes to the Operating License,
Technical Specifications and
Environmental Protection Plan

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

TO FACILITY OPERATING LICENSE NO. NPF-69

DOCKET NO. 50-410

Replace the following pages of the Operating License with the attached pages. The revised pages are identified by amendment number and contain vertical lines indicating the area of change.

<u>Remove</u>	<u>Insert</u>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
--	9
--	10

Replace the following page of the Technical Specifications with the attached page. The revised page is identified by amendment number and contains vertical lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
4.0-3	4.0-3

Replace the following page of the Environmental Protection Plan with the attached pages. The revised page is identified by amendment number and contains vertical lines indicating the areas of change.

<u>Remove</u>	<u>Insert</u>
Cover page	Cover page

NINE MILE POINT NUCLEAR STATION, LLC (NMP LLC)

NEW YORK STATE ELECTRIC & GAS

LONG ISLAND LIGHTING COMPANY

DOCKET NO. 50-410

NINE MILE POINT NUCLEAR STATION, UNIT 2

FACILITY OPERATING LICENSE

License No. NPF-69

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
 - A. The application for a license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Nine Mile Point Nuclear Station, Unit 2 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-112 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D. below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D. below);

Amendment No.

- E. Nine Mile Point Nuclear Station, LLC is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. Nine Mile Point Nuclear Station, LLC, New York State Electric & Gas Corporation and Long Island Lighting Company have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
 - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
 - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. NPF-69, subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
 - I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70.
2. Based on the foregoing findings regarding this facility, and pursuant to approval by the Nuclear Regulatory Commission at a meeting on July 1, 1987, Facility Operating License No. NPF-69, which supersedes the license for fuel loading and low power testing, License No. NPF-54, issued on October 31, 1986, is hereby issued to Nine Mile Point Nuclear Station, LLC, New York State Electric & Gas Corporation and Long Island Lighting Company (the licensees*) to read as follows:
- A. This license applies to the Nine Mile Point Nuclear Station, Unit 2, a boiling water nuclear reactor, and associated equipment (the facility) owned by Nine Mile Point Nuclear Station, LLC, New York State Electric & Gas Corporation and Long Island Lighting Company. The facility is located on the licensees' site on the southeast shore of Lake Ontario in the town of Scriba, Oswego County, New York and is described in the Nine Mile Point Nuclear Station - Unit 2 "Final Safety Analysis Report," as supplemented and amended, and in the "Environmental Report," as supplemented and amended.
 - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
 - 1) Nine Mile Point Nuclear Station, LLC, pursuant to Section 103 of the Act and 10 CFR Part 50, to possess, use and operate the facility at the

* Nine Mile Point Nuclear Station, LLC is authorized to act as agent for New York State Electric & Gas Corporation and Long Island Lighting Company and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

above designated location in Oswego County, New York, in accordance with the procedures and limitations set forth in this license;

- (2) New York State Electric & Gas Corporation and Long Island Lighting Company, pursuant to Section 103 of the Act and 10 CFR Part 50, to possess the facility at the designated location in Oswego County, New York, in accordance with the procedures and limitations set forth in this license;
- (3) Nine Mile Point Nuclear Station, LLC, pursuant to the Act and 10 CFR Part 70, to receive, possess and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
- (4) Nine Mile Point Nuclear Station, LLC, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use at any time any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
- (5) Nine Mile Point Nuclear Station, LLC, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use, in amounts as required, any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
- (6) Nine Mile Point Nuclear Station, LLC, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Nine Mile Point Nuclear Station, LLC is authorized to operate the facility at reactor core power levels not in excess of 3467 megawatts thermal (100 percent rated power) in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, both of which are attached hereto, as revised through Amendment No. are hereby incorporated into this license. Nine Mile Point Nuclear Station, LLC shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) Fuel Storage and Handling (Section 9.1, SSER 4)*

- a. Fuel assemblies, when stored in their shipping containers, shall be stacked no more than three containers high.
- b. When not in the reactor vessel, no more than three fuel assemblies shall be allowed outside of their shipping containers or storage racks in the New Fuel Vault or Spent Fuel Storage Facility.
- c. The above three fuel assemblies shall maintain a minimum edge-to-edge spacing of twelve (12) inches from the shipping container array and approved storage rack locations.
- d. The New Fuel Storage Vault shall have no more than ten fresh fuel assemblies uncovered at any one time.

(4) Turbine System Maintenance Program (Section 3.5.1.3.10, SER)

The operating licensee shall submit for NRC approval by October 31, 1989, a turbine system maintenance program based on the manufacturer's calculations of missile generation probabilities. (Submitted by NMPC letter dated October 30, 1989 from C. D. Terry and approved by NRC letter dated March 15, 1990 from Robert Martin to Mr. Lawrence Burkhardt, III).

(5) Inservice Inspection (Sections 5.2.4.3 and 6.6.3, SSER 5)

The operating licensee shall submit an inservice inspection program in accordance with 10 CFR § 50.55a(g)(4) for staff review by July 31, 1987.

* The parenthetical notation following the title of many license conditions denotes the section of the Safety Evaluation Report (SER) and/or its supplements wherein the license condition is discussed.

(6) Initial Startup Test Program (Section 14, SER, SSERs 4 and 5)

Any changes to the Initial Test Program described in Section 14 of the Final Safety Analysis Report made in accordance with the provisions of 10 CFR 50.59 shall be reported in accordance with 50.59(b) within one month of such change.

(7) Operation with Reduced Feedwater Temperature (Section 15.1, SSER 4)

Nine Mile Point Nuclear Station, LLC shall not operate the facility with reduced feedwater temperature for the purpose of extending the normal fuel cycle. The facility shall not be operated with a feedwater heating capacity less than that required to produce a feedwater temperature of 405°F at rated steady-state conditions unless analyses supporting such operations are submitted by Nine Mile Point Nuclear Station, LLC and approved by the staff.

(8) Safety Parameter Display System (SPDS) (Section 18.2, SSERs 3 and 5)

Prior to startup following the first refueling outage, the operating licensee shall have operational an SPDS that includes the revisions described in their letter of November 19, 1985. Before declaring the SPDS operational, the operating licensee shall complete testing adequate to ensure that no safety concerns exist regarding the operation of the Nine Mile Point Nuclear Station, Unit No. 2 SPDS.

(9) Detailed Control Room Design Review (Section 18.1, SSERs 5 and 6)

- (a) Deleted per Amendment No. 24 (12-18-90)
- (b) Prior to startup following the first refueling outage, the operating licensee shall provide the results of the reevaluation of normally lit and nuisance alarms for NRC review in accordance with its August 21, 1986 letter.
- (c) Prior to startup following the first refueling outage, the operating licensee shall complete permanent zone banding of meters in accordance with its August 4, 1986 letter.

(10) Additional Condition 1

The operating licensee is authorized by Amendment No. 91 to relocate certain Technical Specification requirements previously included in Appendix A to licensee-controlled documents, as described in Table R, Relocated Specifications and Removal of Details Matrix, attached to the NRC Staff's safety evaluation dated February 15, 2000, enclosed with the amendment. Implementation of Amendment No. 91 shall include the relocation of these requirements to the appropriate documents, which shall be completed no later than December 31, 2000. The relocations to the Updated Safety Analysis Report shall be reflected in updates completed in accordance with 10 CFR 50.71(e).

(11) Additional Condition 2

The schedule for performing Surveillance Requirements (SRs) that are new or revised in Amendment No. 91 shall be as follows:

For SRs that are new in this amendment, the first performance is due at the end of the first surveillance interval that begins on the date of implementation of this amendment.

For SRs that existed prior to this amendment whose intervals of performance are being reduced, the first reduced surveillance interval begins upon completion of the first surveillance performed after implementation of this amendment.

For SRs that existed prior to this amendment that have modified acceptance criteria, the first performance is due at the end of the first surveillance interval that began on the date the surveillance was last performed prior to the implementation of this amendment.

For SRs that existed prior to this amendment whose intervals of performance are being extended, the first extended surveillance interval begins upon completion of the last surveillance performed prior to the implementation of this amendment.

- (12) On the closing date(s) of the transfer of the NMPC, RG&E, CHGEC, and NYSEG interests in NMP-2 to it, Nine Mile Point Nuclear Station, LLC shall: (1) obtain from the transferors then transferring their interests all of their accumulated decommissioning trust funds for NMP-2, and (2) receive a parent company guarantee pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in an amount which, when combined with the decommissioning trust fund for NMP-2 that has been transferred, equals or exceeds the total amounts for NMP LLC's then resulting total ownership share of NMP-2, respectively, pursuant to 10 CFR 50.75(b) and (c).
- (13) The decommissioning trust agreement for NMP-2, at the time any subject direct transfer is effected and thereafter, is subject to the following:
- a. The decommissioning trust agreement must be in a form acceptable to the NRC.
 - b. With respect to the decommissioning trust funds, investments in the securities or other obligations of Constellation Energy Group, Inc., New Controlled, or their affiliates, successors, or assigns, are and shall be prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are and shall be prohibited.

- c. The decommissioning trust agreement must provide that no disbursements of payments from the trusts, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has given the NRC 30 days prior written notice of the payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
- d. The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- e. The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(14) NMP LLC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the Application for approval of the transfer of the Unit 2 license to NMP LLC (Application), the requirements of the Order approving the transfer, and the related safety evaluation.

(15) At the time any subject direct transfer is effected, NMP LLC shall enter or shall have entered into an intercompany credit agreement with Constellation Energy Group (CEG), Inc., or New Controlled, whichever entity is the ultimate parent of NMP LLC at that time, in the form and on the terms represented in the Application. Should New Controlled become the ultimate parent of NMP LLC following the direct transfer of the licenses to NMP LLC, NMP LLC shall enter or shall have entered into a substantially identical intercompany credit agreement with New Controlled at the time New Controlled becomes the ultimate parent; in such case, any existing intercompany credit agreement with CEG, Inc. may be canceled once the intercompany credit agreement with New Controlled is established. Except as otherwise provided above, NMP LLC shall take no action to void, cancel, or modify any intercompany credit agreement referenced above, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation.

D. The facility requires exemptions from certain requirements of 10 CFR Part 50 and 10 CFR Part 70.

- i) An exemption from the criticality alarm requirements of 10 CFR Part 70.24 was granted in the Special Nuclear Materials License No. SNM-1895 dated November 27, 1985. This exemption is described in Section 9.1 of Supplement 4 to the SER. This previously granted exemption is continued in this operating license.

Amendment No.

- ii) Exemptions to certain requirements of Appendix J to 10 CFR Part 50 are described in Supplements 3, 4, and 5 to the SER. These include (a) (this item left intentionally blank); (b) an exemption from the requirement of Option B of Appendix J, exempting main steam isolation valve measured leakage from the combined leakage rate limit of 0.6 La. (Section 6.2.6 of SSER 5)*; (c) an exemption from Option B of Appendix J, exempting the hydraulic control system for the reactor recirculation flow control valves from Type A and Type C leak testing (Section 6.2.6 of SSER 3); (d) an exemption from Option B of Appendix J, exempting Type C testing on traversing incore probe system shear valves. (Section 6.2.6 SSER 4)
- iii) An exemption to Appendix A to 10 CFR Part 50 exempting the Control Rod Drive (CRD) hydraulic lines to the reactor recirculation pump seal purge equipment from General Design Criterion (GDC) 55. The CRD hydraulic lines to the reactor recirculation pump seal purge equipment use two simple check valves for the isolation outside containment (one side). (Section 6.2.4, SSER 3)
- iv) A schedular exemption to GDC 2, Appendix A to 10 CFR Part 50, until the first refueling outage, to demonstrate the adequacy of the downcomer design under the plant faulted condition. This exemption permits additional analysis and/or modifications, as necessary, to be completed by the end of the first refueling outage. (Section 6.2.1.7.4, SSER 3)
- v) A schedular exemption to GDC 50, Appendix A to 10 CFR Part 50 to allow the operating licensee until start-up following the "mini-outage," which is to occur within 12 months of commencing power operation (entering Operational Condition 1), to install redundant fuses in circuits that use transformers for redundant penetration protection in accordance with their letter of August 29, 1986 (NMP2L 0860). (Section 8.4.2, SSER 5)
- vi) A schedular exemption to 10 CFR 50.55a(h) for the Neutron Monitoring System until completion of the first refueling outage to allow the operating licensee to provide qualified isolation devices for Class 1E/non-1E interfaces described in their letters of June 23, 1987 (NMP2L 1057) and June 25, 1987 (NMP2L 1058). (Section 7.2.2.10, SSER 6).

For the schedular exemptions in iv), v), and vi), above, the operating licensee, in accordance with its letter of October 31, 1986, shall certify that all systems, components, and modifications have been completed to meet the requirements of the regulations for which the exemptions have been granted and shall provide a summary description of actions taken to ensure that the regulations have been met. This certification and summary shall be provided 10 days prior to the expiration of each exemption period as described above.

* The parenthetical notation following the discussion of each exemption denotes the section of the Safety Evaluation Report (SER) and/or its supplements wherein the safety evaluation of the exemption is discussed.

The exemptions set forth in this Section 2.D are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. These exemptions are hereby granted. The special circumstances regarding each exemption are identified in the referenced section of the Safety Evaluation Report and the supplements thereto. The exemptions in ii) through vi) are granted pursuant to 10 CFR 50.12. With these exemptions, the facility will operate to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

- E. Nine Mile Point Nuclear Station, LLC shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans, including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain Safeguards Information protected under 10 CFR 73.21, entitled "Nine Mile Point Nuclear Station Physical Security Plan" with revisions submitted through June 9, 1994; "Nine Mile Point Nuclear Station Guard Training and Qualification Plan," with revisions submitted through September 30, 1993; and "Nine Mile Point Nuclear Station Safeguards Contingency Plan," with revisions submitted through October 1, 1992. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein. |
- F. Except as otherwise provided in the Technical Specifications or Environmental Protection Plan, Nine Mile Point Nuclear Station, LLC shall report any violations of the requirements contained in Section 2.C of this license in the following manner: initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System, with written followup within 30 days in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e). |
- G. Nine Mile Point Nuclear Station, LLC shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report for the facility through Amendment No. 27 and as described in submittals dated March 25, May 7 and 9, June 10 and 25, July 11 and 16, August 19 and 22, September 5, 12, and 23, October 10, 21, and 22, and December 9, 1986, and April 10 and May 20, 1987, and as approved in the SER dated February 1985 (and Supplements 1 through 6) subject to the following provision: |
 - Nine Mile Point Nuclear Station, LLC may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. |
- H. The licensees shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

- I. This license is effective as of the date of issuance and shall expire at midnight on October 31, 2026.

FOR THE NUCLEAR REGULATORY COMMISSION

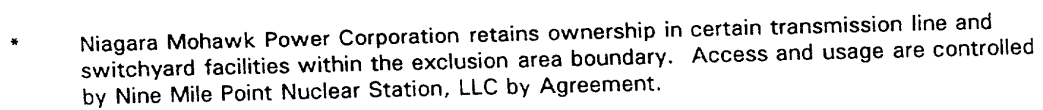
Original signed by:

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Enclosures:

1. Appendix A - Technical Specifications (NUREG-1253)
2. Appendix B - Environmental Protection Plan

Date of Issuance: July 2, 1987



NMP2

APPENDIX B

**TO FACILITY OPERATING LICENSE NO. NPF-69
NINE MILE POINT NUCLEAR STATION UNIT 2**

DOCKET NO. 50-410

**ENVIRONMENTAL PROTECTION PLAN
(NONRADIOLOGICAL)**

SUPPLEMENTAL SAFETY EVALUATION
BY THE OFFICE OF NUCLEAR REACTOR REGULATION
TRANSFER OF OPERATING LICENSES FOR
NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2
TO NINE MILE POINT NUCLEAR STATION, LLC (NMP LLC)
DOCKET NOS. 50-220 & 50-410

1.0 INTRODUCTION

By application dated February 1, 2001, as supplemented by letters dated March 1, March 16, March 29, April 5, April 27, May 30, and June 7, 2001, (collectively, the Application) Constellation Nuclear LLC, on behalf of its indirect subsidiary, Nine Mile Point Nuclear Station, LLC (NMP LLC), Niagara Mohawk Power Corporation (NMPC), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), and Central Hudson Gas & Electric Corporation (CHGEC) requested U.S. Nuclear Regulatory Commission (NRC) approval to transfer the Facility Operating Licenses, Nos. DPR-63 and NPF-69, for Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP-1 and NMP-2, respectively), to the extent held by the applicants proposing to sell their ownership interests in NMP-1 and NMP-2, to NMP LLC. The Application also requested NRC approval of conforming license amendments. On June 22, 2001, the NRC issued an Order approving the transfer. This Order, with an expiration date of June 30, 2002, was premised in part on all selling owners transferring their interests in NMP-1 and NMP-2 concurrently. The Order also approved conforming license amendments, to be issued at the time the transfers were completed.

Constellation Nuclear LLC, acting on behalf of NMP LLC, NMPC, RG&E, and CHGEC, by letter dated September 10, 2001, submitted an application for a Supplemental Order. By letter dated September 26, 2001, Constellation Nuclear LLC and NMPC, and by letter dated September 28, 2001, J. E. Silberg, Esq., counsel to Constellation Nuclear, LLC, submitted additional information. These 3 letters are collectively referred to as the Supplemental Application. The Supplemental Application notified the NRC of developments that may delay the schedule for closing the NYSEG transaction, and requested that the NRC issue a Supplemental Order authorizing phased transfers of the ownership interests in NMP-2 to NMP LLC (NYSEG does not own any part of NMP-1). The Supplemental Application requested that the NRC modify prior conditions of approval of the original Application to be consistent with the transfers occurring in two phases and also requested NRC approval of a revised operating license amendment consistent with the delayed transfer of the ownership interest held by NYSEG.

Enclosure

As of the date of this Supplemental Safety Evaluation (SSE), NMP-1 is owned and operated exclusively by NMPC. NMP-2 is operated by NMPC and jointly owned by NMPC (41%), RG&E (14%), NYSEG (18%), Long Island Lighting Company, doing business as Long Island Power Authority (LIPA; 18%), and CHGEC (9%). LIPA is not participating in the sale and transfer of NMP-2, and will maintain its 18% ownership interest. Per the Supplemental Application, the first phase of a possible two-phase transfer would be the transfer of all of NMPC's interests in NMP-1 and the NMPC, RG&E, and CHGEC interests in NMP-2 to NMP LLC such that NMP LLC would then be the sole owner and operator of NMP-1 and NMP LLC would then operate and hold a 64% undivided ownership interest (intermediate state) in NMP-2; NYSEG and LIPA will each continue to hold their respective interests. The second phase would then be the transfer of NYSEG's 18% interest in NMP2 to NMP LLC such that the end state approved by the June 22, 2001, Order is achieved.

A separate potential indirect transfer of RG&E's undivided ownership interest in NMP-2 that could result from the planned acquisition of RG&E's parent company, RGS Energy Group, Inc., by Energy East Corporation is unaffected by this possible schedule change in the direct transfer. That transfer is currently under review and will be addressed separately by the NRC staff under a separate action.

2.0 DISCUSSION AND EVALUATION

In support of the Order of June 22, 2001, the NRC staff issued a safety evaluation (SE) also dated June 22, 2001. The SE analyzed the transfer of the NMPC, RG&E, NYSEG, and CHGEC interests in NMP-1 and NMP-2 to NMP LLC, and concluded that NMP LLC is qualified to hold the NMP-1 and NMP-2 licenses with respect to these interests, and that the license transfers would otherwise be consistent with applicable provisions of law, regulations, and orders issued by the Commission. The NRC staff's analysis was premised in part on the interests of all selling owners being transferred concurrently.

After reviewing the Supplemental Application, the NRC staff determined that the only issues analyzed in the June 22, 2001, SE that could potentially be impacted by the NYSEG transfer occurring at a different time than the transfer of the other transferors' interests are: (1) NMP LLC's financial qualifications to hold the proposed ownership interests of NMP-2 in the intermediate state, and (2) whether NMP LLC will have adequate assurance of decommissioning funding for NMP-2 in the intermediate state. The NRC staff's review of the proposed transfer of NMPC's 100% ownership interest in NMP-1 is unaffected by the possible schedule changes depicted in the Supplemental Application and need not be revisited.

2.1 Financial Qualifications Analysis

The NRC staff's finding in the June 22, 2001, SE that NMP LLC is qualified to hold the ownership interests of NMPC, RG&E, NYSEG, and CHGEC in NMP-2 was based on the premise that by acquiring these interests, NMP LLC's annual operating costs for NMP-2 will be equal to its pro rata share of total operating expenses, while its entitlements to capacity and energy, and thus revenues, will also be based on its proportionate ownership interest in NMP-2. Although not explicitly stated, this finding also assumed that there is no need for NMP LLC to demonstrate an ability to cover LIPA's share of NMP-2's operating costs because LIPA will retain its interest in and responsibilities for NMP-2 and LIPA is an electric utility in accordance with 10 CFR 50.2, able to recover its costs associated with NMP-2 through the rate base.

Thus, based on NMP LLC's financial projections showing NMP LLC's ability to cover its expected portions of the NMP-2 operating costs, the NRC staff concluded that NMP LLC would be financially qualified under 10 CFR 50.33(f), which requires a demonstration that an applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license.

Prior to the transfer of NYSEG's ownership interest in NMP-2 to NMP LLC, NYSEG and LIPA, which are both electric utilities per 10 CFR 50.2, will continue to be responsible for their pro rata shares of operating expenses and will continue to be entitled to their proportionate shares of revenues. Since it was determined that NMP LLC would be able to cover the proportionate share of operation costs associated with the acquisition of the proposed 82% ownership interest by being entitled to proportionate revenues, it follows that NMP LLC will be able to cover the proportionate share of operation costs associated with the acquisition of a lesser interest in NMP-2, since NMP LLC would still be entitled to the proportionate revenues associated with the lesser interest. Accordingly, the staff concludes that NMP LLC will be financially qualified to hold the NMPC, RG&E, and CHGEC interests, without at the same time holding the NYSEG interest. Thus, the NRC staff has determined that the phased transfers of the ownership interests in NMP-2 to NMP LLC as proposed in the Supplemental Application is acceptable from the standpoint of financial qualifications. This finding encompasses a finding that NMP LLC is financially qualified even if the intermediate state should become a permanent state, i.e. NYSEG never transfers its interest in NMP-2.

The NRC staff notes that the June 22, 2001, Order and associated conforming amendments included a condition (Condition (5)) that requires an intercompany credit agreement to be established at the time of the closing of the direct transfer of ownership interests in NMP-2 to NMP LLC. Since ownership interests could be transferred in two separate phases as proposed in the Supplemental Application, the NRC staff concludes that this condition must be modified accordingly to address all potential scenarios. Thus, Condition (5) of the June 22, 2001, Order should be modified as follows:

- (5) At the time any subject direct transfer is effected, NMP LLC shall enter or shall have entered into an intercompany credit agreement with Constellation Energy Group (CEG), Inc., or New Controlled, whichever entity is the ultimate parent of NMP LLC at that time, in the form and on the terms represented in the Application. Should New Controlled become the ultimate parent of NMP LLC following the direct transfer of the licenses to NMP LLC, NMP LLC shall enter or shall have entered into a substantially identical intercompany credit agreement with New Controlled at the time New Controlled becomes the ultimate parent; in such case, any existing intercompany credit agreement with CEG, Inc. may be canceled once the intercompany credit agreement with New Controlled is established. Except as otherwise provided above, NMP LLC shall take no action to void, cancel, or modify any intercompany credit agreement referenced above, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation.

2.2 Decommissioning Funding

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

In the June 22, 2001, SE, the NRC staff concluded that NMP LLC would have adequate funding of the decommissioning trusts for NMP-1 and NMP-2, in accordance with 10 CFR 50.75(e), after the NMPC, RG&E, CHGEC, and NYSEG interests in NMP-1 and NMP-2 were transferred. As noted previously, the transfer of the NMPC interest in NMP-1, and the associated decommissioning funds, will still occur in accordance with the June 22, 2001, Order approving the transfer. Hence, the only decommissioning funding assurance issue that the NRC staff must consider in light of the Supplemental Application, is whether NMP LLC would have adequate funding of the decommissioning trusts for NMP-2 in the intermediate state, or even assuming the NYSEG interest in NMP-2 and associated decommissioning funds were never transferred to NMP LLC. As discussed below, the staff concludes that NMP LLC will have adequate funding of the NMP-2 decommissioning trusts, without at the same time holding the NYSEG ownership interest in NMP-2 or the trust funds associated with that interest. The following decommissioning funding analysis is based on the information provided in the Application and Supplemental Application.

In the SE supporting the Order dated June 22, 2001, approving the transfer of the NMP-2 license to the extent held by NMPC, RG&E, CHGEC, and NYSEG to NMP LLC, the NRC staff found that the proposed funding mechanisms described in the Application provide reasonable assurance of decommissioning funding in accordance with 10 CFR 50.75(e), provided that the Order approving the license transfer and conforming amendment contains a condition requiring (a) transfer of the NMPC, RG&E, CHGEC, and NYSEG trust funds to NMP LLC's trusts, and (b) that NMP LLC obtain a parent company guarantee in an amount which, when combined with the transferred trust funds for NMP2, equals or exceeds the total amount required by 10 CFR 50.75. That evaluation assumed that the transfers of the NMPC, RG&E, CHGEC, and NYSEG ownership interests would occur simultaneously. Accordingly, the condition referred to above was drafted based on the NMPC, RG&E, CHGEC, and NYSEG trust funds being transferred collectively. As stated earlier, in the Supplemental Application NMP LLC notified the NRC that the closing on the transfer of the NYSEG interest may be delayed and might now take place sometime after the transfer of the NMPC, RG&E, and CHGEC interests, assuming it is eventually transferred.

In conformance with 10 CFR 50.75(f)(1), NMPC, acting on behalf of all co-owners of NMP-2, submitted a decommissioning funding status report on March, 30, 2001. Currently, all co-owners of NMP-2 are providing financial assurance for decommissioning their respective interests in NMP-2 through external sinking funds in which deposits are made at least annually. When the transfer of the NMPC, RG&E, and CHGEC ownership interests occurs, all assets held in their respective decommissioning trusts for NMP-2 will be transferred to NMP LLC. In the intermediate state, LIPA and NYSEG will remain responsible for the decommissioning liabilities associated with their respective ownership interests in NMP-2 and will continue to fund their decommissioning trusts in accordance with 10 CFR 50.75.

NMP LLC is an unregulated non-electric utility, which is not subject to traditional State controls on decommissioning funding. The September 26, 2001, letter, which supplemented the September 10, 2001, submittal, stated that the decommissioning funding assurance for NMP-2 that will be provided during the first phase of the transfer will consist of (a) transfer of the NMPC, RG&E, and CHGEC decommissioning funds for NMP-2 in a total estimated amount of \$132 million, and (b) a parent company guarantee pursuant to 10 CFR 50.75(e)(1)(iii) obtained by NMP LLC in the amount of \$32.5 million. *[Note: This amount was erroneously reported as \$34 million and \$35 million on page 12 of the proprietary version of the June 22, 2001, SE. By*

a letter dated October 24, 2001, the NRC staff notified CEG Inc. that it will no longer withhold this number from public disclosure.] This combination would provide decommissioning funding assurance for NMP LLC's pro rata share of the projected decommissioning costs associated with the 64% undivided ownership interest that NMP LLC would then hold in NMP-2.

The second phase would then involve the transfer of the assets of the NYSEG decommissioning trust funds such that the combination of decommissioning funding assurance mechanisms would provide adequate decommissioning funding assurance with respect to the 82% ownership interest in NMP-2 that NMP LLC would then hold as proposed in the Application. The mechanisms and amounts at that state would be identical to the mechanisms and amounts that were approved in the June 22, 2001, Order approving the transfer as originally proposed.

The Application contains a calculation of the minimum NRC formula amount required for the radiological decommissioning of NMP-2, pursuant to 10 CFR 50.75(c), NRC Regulatory Guide 1.159 and NUREG-1307, Rev. 9. Based on these calculations, the applicants concluded that the total minimum formula amount for NMP-2 is approximately \$421.4 million. Hence, for the first phase of the transfer as proposed in the Supplemental Application, NMP LLC would be required to provide total decommissioning funding assurance of approximately \$269.7 million to cover its pro rata share of the projected decommissioning costs associated with the 64% undivided ownership interest in NMP-2 that NMP LLC would then hold. The second phase of the transfer would then require NMP LLC to provide decommissioning funding assurance for approximately \$345.5 million as discussed in the SE dated June 22, 2001, that accompanied the June 22, 2001, Order.

The NRC staff reviewed the applicants' calculations in the Application, and found them to be acceptable. The staff notes that the applicants' calculations implicitly assumed that the value of the parent company guarantee is adjusted annually such that, in combination with the projected fund earnings, the minimum requirements of 10 CFR 50.75(c) will be met. The NRC staff thus included as a condition of approval in the Order and conforming license amendments an explicit requirement that the parent company guarantee be adjusted annually to ensure that adequate decommissioning funding assurance is maintained.

The NRC staff reviewed the decommissioning funding assurance mechanisms and amounts proposed in the Supplemental Application for the intermediate state and finds that, with a requirement for annual adjustment of the parent company guarantee, they will be sufficient to meet the requirements of 10 CFR 50.75. In consideration of the foregoing, the staff concludes that NMP LLC would have reasonable assurance of decommissioning funding if the transfer of NMPC, RG&E, and CHGEC's interests in NMP-2 to NMP LLC occurs separate and apart from the transfer of NYSEG's interest to NMP LLC, provided the prior Condition (2) of the June 22, 2001, Order to ensure the transfer of relevant decommissioning trust funds, is modified as follows:

- (2) On the closing date(s) of the transfer of the NMPC, RG&E, CHGEC, and NYSEG interests in NMP-1 and NMP-2 to it, NMP LLC shall: (1) obtain from the transferors then transferring their interests all of their accumulated decommissioning trust funds for NMP-1 and NMP-2, respectively, and (2) receive [a] parent company guarantee[s] pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in [an] amount[s] which, when combined with the decommissioning trust

funds for NMP-1 and NMP-2 that have been transferred, equals or exceeds the total amounts for NMP LLC's then resulting total ownership share of NMP-1 and NMP-2, respectively, pursuant to 10 CFR 50.75(b) and (c).

The staff has also determined that certain decommissioning trust agreement conditions are necessary to provide reasonable assurance of decommissioning funding in the case of unregulated non-electric utility entities such as NMP LLC, which are not subject to traditional State controls on decommissioning funding. These conditions were contained in Condition (3) of the June 22, 2001, Order and associated conforming amendments. To reflect the potential phased transfers, the opening statement of Condition (3) in the June 22, 2001, Order should be revised as:

- (3) The master decommissioning trust agreement for NMP-1 and NMP-2, at the time any subject direct transfer is effected and thereafter, is subject to the following:

[Subsequent items a. through e. of Condition (3) remain unchanged.]

Finally, by letter dated September 28, 2001, the applicants notified the NRC of changes made to the Asset Purchase Agreements for both NMP-1 and NMP-2 regarding provisions under which a portion of any excess funds in the decommissioning trusts would be returned to the rate payers through the selling owners. The NRC staff has reviewed these amendments to the agreements and finds that they do not materially affect the basis for approving the subject transfers.

2.3 Other Conditions in the Order

All other conditions of approval of the transfers of the NMP-1 and NMP-2 licenses contained in the June 22, 2001, Order and associated conforming license amendments are and shall remain in effect unchanged regardless of whether the transfer of all selling owners interests is performed concurrently or in phases as proposed in the Supplemental Application, except Condition (1) of the Order should be modified as follows to ensure appropriate Price-Anderson insurance coverage is in place prior to any transfer of interest in NMP-1 or NMP-2:

- (1) NMP LLC shall, prior to the completion of each direct transfer, have provided to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMP LLC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

Also, to be consistent with the possibility of phased transfers, Condition (6) of the Order should be modified as follows:

- (6) NMPC shall inform the Director of the Office of Nuclear Reactor Regulation of the date(s) of the closing of the direct transfers no later than two business days prior to such respective date(s). If all of the direct and indirect transfers of the licenses approved by the June 22, 2001 Order, as supplemented by this Order are not completed by June 30, 2002, this Order and the June 22, 2001, Order shall become null and void with respect to those transfers not so completed, provided, however, upon written application and for good cause shown, such date may in writing be extended.

2.4 Conforming Amendment for the NMP-2 Intermediate State Transfer

The Supplemental Application also requested approval of a conforming license amendment for NMP-2, modified from the amendment previously approved for single-phase direct transfers to reflect the proposed two-phase direct transfers. The amendment would delete references to NMPC, CHGEC and RG&E to reflect the transfer of their interests to NMP LLC while NYSEG continues to hold its interest in NMP-2 and thus remains on the license. The staff reviewed the proposed changes against the current NMP-2 license, and against the conforming amendment approved by the June 22, 2001, Order (which reflected the transfer of the interests of NMPC, CHGEC, and RG&E, as well as that of NYSEG, to NMP LLC). The new proposed changes reflect the first phase of the phased transfers as depicted in the Supplemental Application and this safety evaluation, as well as the potential of a second phase.

The conforming amendments for NMP-1 and NMP-2 approved by the June 22, 2001, Order remain unaffected, except as discussed below. These previously approved conforming amendments reflect the ultimate state of the direct transfers as depicted in the Application. They will be issued and made effective at the time all of the corresponding direct license transfers are completed. The only modifications to these amendments will be to the conditions of the licenses, which will reflect the modified conditions contained in the Supplemental Order regarding the phased transfers, and which have been discussed in Sections 2.1, 2.2, and 2.3 above. The modified conditions contained in the Supplemental Order that are part of the amendment were changed slightly by the NRC staff from the modified conditions proposed in the Supplemental Application for editorial purposes.

The applicants requested no physical or operating changes to NMP-2. The information contained in the Supplemental Application not specifically referenced in the initial Federal Register notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

The changes to be made to the NMP-2 operating license, the NMP-2 Technical Specifications, and NMP-2 Environmental Protection Plan do no more than accurately reflect the approved transfer actions, which are subject to certain conditions set forth in the Supplemental Order regarding the transfers, and that were identified and discussed earlier in this SSE. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

2.4.1 State Consultation

In accordance with the Commission's regulations, New York State official, Mr. Jack Spath, was notified of the proposed issuance of the amendment. The State official had no comments.

2.4.2 Conclusion With Respect to the Conforming Amendment

The NRC staff has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

3.0 ENVIRONMENTAL CONSIDERATION

The Supplemental Application is for an approval regarding the direct transfer of the NMP-2 operating license and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of this application.

4.0 CONCLUSION

For the reasons discussed above, the NRC staff concludes that the possible schedule change in the transfer of NYSEG's ownership interest (a) would not affect the NRC's previous approval of the transfer of the NMP-1 license, and (b) would not affect the previous finding in the SE that NMP LLC is financially qualified to hold the license for NMP-2 with respect to the interests being transferred to NMP LLC by NMPC, RG&E, and CHGEC, and the ownership interest being transferred to it by NYSEG.

Also, there will be reasonable assurance of adequate decommissioning funding should the transfers occur in two phases. All other findings contained in the Order dated June 22, 2001, and the supporting SE are unaffected and remain valid. Thus, the staff confirms that NMP LLC is qualified to hold the above licenses with respect to the interests being transferred from NMPC, RG&E, NYSEG, and CHGEC, whether the transfer occurs concurrently or in two phases, and the transfer of the licenses, to the extent described above, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Principal Contributors: D. Collins
P. Tam

Date: October 30, 2001