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SUBJECT:
RESPONSE TO NRC REQUEST FOR ADVICE PURSUANT TO SECTION 105 OF THE ATOMIC ENERGY ACT, AS AMENDED, RE REVISED APPL BY APPLICANT"S AS LISTED...ADVISING THAT NO ANTITRUST HEARING BY NRC WILL BE REQUIRED WITH RESPECT TO APPL.

PLANT NAME: NINE MILE POINT -- UNIT 2

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United States Department of Justice

WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

JUL 26 1978

Howard K. Shapar, Esquire
Executive Legal Director
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Nine Mile Point Nuclear Station, Unit 2
NRC Docket No. 50-410A

Dear Mr. Shapar:

You have requested our advice pursuant to Section 105 of the Atomic Energy Act, as amended, in regard to the revised application by Niagara Mowhawk Power Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation and Central Hudson Gas & Electric Corporation to construct the Nine Mile Point Nuclear Station, Unit No. 2.

In 1972 the Department of Justice reviewed the original application for the Nine Mile Point Nuclear Station, Unit 2 submitted by Niagara Mowhawk Power Corporation (Niagara Mowhawk). On December 19, 1972, we informed your predecessor Commission that the activities proposed under that application would not create or maintain a situation inconsistent with the antitrust laws. On September 22, 1975, Niagara Mowhawk entered into a Basic Agreement with Long Island Lighting Company (LILCO), New York State Electric & Gas Corporation (New York State), Rochester Gas & Electric Corporation (RG&E) and Central Hudson Gas & Electric Corporation (Central Hudson), to build, own and operate the Nine Mile Point Nuclear Station, Unit 2 on a joint basis. Each participant's share of the expenses and energy output is as follows:

Niagara Mowhawk	41%
LILCO	18%
New York State	18%
RG&E	14%
Central Hudson	9%

Nine Mile Point Nuclear Station, Unit 2 is proposed to be built on a site on the southeast shore of Lake Ontario, in Oswego County, New York. This location is presently the site of Niagara Mowhawk's existing nuclear generating facility, Nine Mile Point Nuclear Station, Unit 1. The latest cost estimates (not including allowances for funds used during construction) for the completion of the facility are as follows:

Total nuclear production plant costs	$1,018,335,000
Transmission, distribution and general plant costs	7,559,000
Nuclear fuel inventory costs for first core	71,474,000
TOTAL ESTIMATED COSTS	$1,097,368,000

This facility will be capable of generating 1100MW of power and is scheduled to be in service in November, 1982.

Each of the new applicants has been the subject of prior antitrust advice letters written by the Department. On April 22, 1976, we rendered antitrust advice on an application by Central Hudson to participate in the Sterling Power Project, Nuclear Unit No. 1. On January 7, 1975, we rendered antitrust advice on an application by LILCO to construct the Jamesport Nuclear Power Station, Units 1 and 2. RG&E was the subject of antitrust advice letters of December 27, 1974, and April 22, 1976 on an application to construct the Sterling Power Project, Nuclear Unit No. 1. Most recently, on January 26, 1978, we rendered antitrust advice concerning New York State with respect to its applications to participate in the Jamesport Nuclear Power Station, Units 1 and 2. We also rendered antitrust advice on December 27, 1974, on New York State's application to construct the Somerset Nuclear Station, Units 1 and 2.

In each of the above-referenced antitrust advice letters we advised of our conclusion that the activities under the licenses applied for would not create or maintain a situation inconsistent with the antitrust laws.

Since the last antitrust advice letters were written for each of the new applicants only LILCO has had a change in its operations which merit notation.

In April, 1978, the Greenport New York Municipal Electric System, which until that time had been isolated, interconnected with LILCO. The Greenport system has a peak of about 3MW. In addition, Greenport, as well as Freeport and Rockville Centre, the only two other comparatively small municipal utilities in LILCO's service area, have obtained commitments from the Power Authority of the State of New York (PASNY) to supply their bulk power needs. LILCO, as well as other investor-owned utilities in the State of New York, have agreed to transmit that power from the PASNY transmission system to the three municipal systems.

After examination of the current applications and review of the relevant data, we have concluded that no intervening circumstances have appeared to warrant a reversal of the advice given with respect to each of the new applicants in the above-cited antitrust letters.

We express no opinion, however, concerning the legality under the antitrust laws of the manner in which, or any arrangements pursuant to which, the plants will be operated, should they differ from or extend beyond those matters specifically disclosed in the application.

Accordingly, from the information available to us at the present time we conclude that no antitrust hearing by the Nuclear Regulatory Commission will be required with respect to this application.

Sincerely yours,

Joe Sims
Deputy Assistant Attorney General
Antitrust Division