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ENCLOSURE: Decision of the New York Public Service Commission approving Central Hudson's participation in the ownership of the proposed Nine Nine Mile Point Unit # 2...w/att supporting information...

1p + 32p

PLANT NAME: NINE MILE POINT UNIT # 2
jcm, 01/04/78

1 ENCL / DOPRO AS NECESS

FOR ACTION/INFORMATION

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December 19, 1977

Joseph Rutberg, Esq.
Director
Antitrust Division, OELD
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Niagara Mohawk Power Corporation
Nine Mile Point Unit 2
Docket No. 50-410

Dear Mr. Rutberg:

In accordance with prior understandings, I enclose a copy of a recent decision of the New York Public Service Commission. As you will note, this decision approves Central Hudson's participation in the ownership of the proposed facility in the above-captioned docket.

While the Intervenors still have the right to petition for rehearing and ultimately to appeal to the Third Department of the Appellate Division of the New York Supreme Court, it appears that there is sufficient finality in the enclosed decision that we will file the antitrust information for this facility in mid-January 1978.

Sincerely yours,

E. B. Thomas, Jr.

Eugene B. Thomas, Jr.

Enclosure

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 77-23

CASE 27013 - Joint petition of Niagara Mohawk Power Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and Central Hudson Gas & Electric Corporation (1) for approval of an operating agreement in connection with the Nine Mile Point No. 2 nuclear Generating Plant; (2) for approval of the transfer of interests in the plant and related interests in property; and (3) for approval of the construction of the nuclear electric power plant by petitioners other than Niagara Mohawk.

CASE 27120 - Joint petition of Central Hudson Gas & Electric Corporation and Consolidated Edison Company of New York, Inc. for the approval of the transfer of interests in the electric generating station at Roseton, New York.

OPINION AND ORDER APPROVING PETITIONS REGARDING
ROSETON AND NINE MILE POINT NO. 2 GENERATING STATIONS

Issued: December 5, 1977

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 77-23

CASE 27013 - Joint petition of Niagara Mohawk Power Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and Central Hudson Gas & Electric Corporation (1) for approval of an operating agreement in connection with the Nine Mile Point No. 2 nuclear Generating Plant; (2) for approval of the transfer of interests in the plant and related interests in property; and (3) for approval of the construction of the nuclear electric power plant by petitioners other than Niagara Mohawk.

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OPINION AND ORDER APPROVING PETITIONS REGARDING
ROSETON AND NINE MILE POINT NO. 2 GENERATING STATIONS

Issued: December 5, 1977

CASES 27013 and 27120

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CASES 27013 and 27120

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

APPEARANCES

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Bruce V. Miller and Michael Flynn, Staff Counsel, Agency Building No. 3, Empire State Plaza, Albany, New York 12223, attorneys for the Public Service Commission.

James W. Better, 50 Wolf Road, Albany, New York 12233, attorney for the Department of Environmental Conservation.

David A. Schlissel, 99 Washington Avenue, Albany, New York 12210, attorney for the New York State Consumer Protection Board.

John J. Mavretich, Box 36, West Park, New York 12493, for Mid-Hudson Nuclear Opponents.

Shirley A. Brand, P. O. Box 57, New Paltz, New York 12561, for Safe Energy Coalition of New York State.

Fred Dusenburg, 75 Lafayette Street, Schenectady, New York 12307, for Schenectady Community Action Program, Inc.

H. Lee Davis and Pauline Davis, 25 Koeppel Avenue, Catskill, New York, for Citizens to Preserve the Hudson Valley.

Jack and Dooley Kiefer, 629 Highland Road, Ithaca, New York 14850.

1/ All capacity requirements per company's 1977 149-b statement.

Adjustments to capability, as shown in Appendix D of Vol. 1 of the 1977 1996 statement are as follows:

2/ 1983: decrease total installed capacity by 98 MW
(share of Nine Mile Pt. 2 - C. 27013)

1984-6: decrease total installed capacity by 294 MW
(share of Nine Mile Pt. 2 - 98 MW)
(share of Sterling-SNUPPS - C. 80005,196 MW)

3/ 1983: decrease total installed capacity by 194 MW
(share of Nine Mile Pt. 2 - C. 27013)

increase net transactions by 66 MW
(remove planned but not firm contracts for electric sales App. E, 1977 149-b statement, and account for credits)

1984: decrease total installed capacity by 194 MW
(share of Nine Mile Pt. 2)

decrease net transactions by 230 MW
(100 MW - contract for excess Nine Mile capacity from NYSE&G

(130 MW - anticipated purchases from Prattsville Pumped Storage Station, FPC application pending)

1985-6: decrease total installed capacity by 769 MW
(194 MW - Nine Mile Pt. 2)
(575 MW - Jamesport No. 1, C. 80003)

decrease net transactions by 230 MW as in 1984.

4/ 1983: decrease total installed capacity by 1044 MW
(194 MW share at Nine Mile Pt. 2)
(850 MW Cayuga station C. 80002)

1984-5: decrease total installed capacity by 1619 MW
(194 MW share at Nine Mile Pt. 2)
(850 MW Cayuga Station)
(575 MW Jamesport No. 1, C. 80003)

1986: decrease total installed capacity by 2194 MW
(194 MW share at Nine Mile Pt. 2)
(850 MW Cayuga Station)
(575 MW Jamesport No. 1)
(575 MW Jamesport No. 2)

5/ 1983: decrease total installed capacity by 151 MW
(share at Nine Mile Pt. 2)

1984-6: decrease total installed capacity by 503 MW
(151 MW - share at Nine Mile Pt. 2)
(352 MW share at Sterling-SNUPPS)

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

Charles A. Zielinski, Acting Chairman
Edward P. Larkin
Harold A. Jerry, Jr.
Anne F. Mead

CASE 27013 - Joint petition of Niagara Mohawk Power Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and Central Hudson Gas & Electric Corporation (1) for approval of an operating agreement in connection with the Nine Mile Point No. 2 nuclear Generating Plant; (2) for approval of the transfer of interests in the plant and related interests in property; and (3) for approval of the construction of the nuclear electric power plant by petitioners other than Niagara Mohawk.

CASE 27120 - Joint petition of Central Hudson Gas & Electric Corporation and Consolidated Edison Company of New York, Inc. for the approval of the transfer of interests in the electric generating station at Roseton, New York.

OPINION NO. 77-23

OPINION AND ORDER APPROVING PETITIONS REGARDING ROSETON AND NINE MILE POINT NO. 2 GENERATING STATIONS

(Issued December 5, 1977)

BY THE COMMISSION:

INTRODUCTION

By joint petition dated December 13, 1976 in Case 27120, Central Hudson Gas & Electric Corporation (Central Hudson) and Consolidated Edison Company of New York, Inc. (Con Edison) requested Commission approval, pursuant to Section 70 of the Public Service Law, of two agreements dated November 23, 1976 (hereinafter referred to as the revised Roseton agreements) modifying prior agreements

concerning the companies' rights and interests in the Roseton electric generating plant (Roseton).

By Order issued January 25, 1977, the Commission directed that hearings be held on the joint petition and that the companies present evidence, including "a comparison of the impact of the present and the proposed contracts on the fixed and variable costs of each utility, the projected annual load and capacity requirements of each utility through 1990 and the availability and cost of alternative sources of energy for each within the same period." In the same Order, the Commission reopened hearings in Case 27013 and directed that the hearings in these two proceedings be held jointly.

The proceeding in Case 27013 is based upon a joint petition, filed April 30, 1976, by Niagara Mohawk Power Corporation (Niagara Mohawk), Long Island Lighting Company (LILCO), New York State Electric & Gas Corporation (NYSE&G), Rochester Gas and Electric Corporation (RG&E) and Central Hudson seeking approval of agreements on the ownership, construction, operation and maintenance of the Nine Mile Point No. 2 nuclear electric generating plant (Nine Mile) in the Town of Scriba, Oswego County. Hearings in Case 27013 were held during July and August 1976 and a recommended decision was issued October 26, 1976. Briefs on exceptions to that decision were filed by Citizens to Preserve the Hudson Valley and the Safe Energy Coalition of New York.

In response to motions made after the revised Roseton agreements were executed, the Commission ordered the reopening of the hearings "for the limited purpose of determining whether the long-run load growth projections for Central Hudson that were relied upon previously remain valid and, if not, how the changes will affect the desirability of its participation in the Nine Mile Point No. 2 plant."

Following four days of joint hearings, Administrative Law Judge Joseph J. Gottlieb, on July 28, 1977, issued a recommended decision recommending approval of the revised Roseton agreements and Central Hudson's participation in the Nine Mile nuclear power project. The Mid-Hudson Opponents filed a brief on exceptions. Replies were submitted by Central Hudson and Niagara Mohawk.

CASE 27120 - THE ROSETON AGREEMENTS

The Roseton electric generating plant consists of two 600 megawatt (MW) oil-fired units which are owned by Con Edison, Central Hudson and the Niagara Mohawk Power Coporation as tenants-in-common with undivided percentage interests as follows: Central Hudson - 20% (240 MW); Con Edison - 40% (480 MW); Niagara Mohawk - 40% (480 MW). The plant is located in the Central Hudson service area and Central Hudson is the managing partner.

The original contract required that Central Hudson purchase 120 MW from Con Edison's share four years after commencement of commercial operation of the second unit of the plant--*i.e.*, December 31, 1978--and an additional 60 MW four years later--on December 31, 1982. In addition, Central Hudson had the option to purchase another 60 MW from Con Edison on December 31, 1982, provided that Central Hudson notified Con Edison of its intent to so do by December 31, 1977.[1/] If Central Hudson made the purchases specified in the original contract and exercised its option, Con Edison's ownership share of the Roseton plant would be reduced to 240 MW after December 31, 1982.

1/Central Hudson also has the option to purchase on December 31, 2004 Con Edison's remaining share of the Roseton plant. Notification must be provided no less than five years in advance of its exercise of the option.

As part of the agreement to build Roseton, Con Edison agreed to sell varying amounts of capacity and associated energy from the Roseton plant to Central Hudson during every winter capability period from the winter of 1975-1976 through December 31, 1982. The maximum amount of capacity to be sold was 400 MW in November and December of 1978. The minimum was 145 MW in the winter of 1975-1976.

On November 23, 1976, Central Hudson entered into agreements which would cancel Central Hudson's obligation to purchase from Con Edison 120 MW of Roseton capacity in 1978 and 60 MW in 1982 as well as Central Hudson's option to purchase an additional 60 MW in 1982.[1/] Further, under the revised agreements, Con Edison's obligation to sell varying amounts of Roseton winter capability through 1982 would be cancelled as of October 31, 1976. The revised agreements require that Con Edison sell at its average system capacity cost such winter capability as may be needed by Central Hudson through the 1980-1981 winter to meet its installed reserve obligations. Associated energy sales would be priced at Con Edison's incremental production cost.

Judge Gottlieb found that the revised Roseton agreements would benefit ratepayers of both Central Hudson and Con Edison. No party opposes them.

The most significant effect of the agreements on Central Hudson is an estimated net reduction of $30.5 million in revenue requirements through 1982. We have already reflected part of this revenue requirement reduction in the rates we set for this company recently in Case 27032. In addition, Central Hudson would be released from contingent

1/The revised Roseton agreements before the Commission affect only the agreements between Con Edison and Central Hudson. Agreements between Niagara Mohawk and Central Hudson regarding ownership interests in the Roseton plant are not an issue.

liabilities arising from differing interpretations of provisions in the original agreement regarding its obligation to pay capacity costs when the plant is not operating. As of January 31, 1977, the company's contingent liability amounted to something over $4 million. Further, releasing Central Hudson from its obligation to purchase additional Roseton capacity in 1978 and 1982 means that the amount of capital it would need to raise for this purpose--about $43.2 million over the next five years--can be used for other construction or saved. Central Hudson is in an excess capacity situation currently, and clearly does not need to purchase more Roseton capacity to meet the immediate needs of its customers.

Con Edison gains three fundamental benefits under the revised Roseton agreements. First, since the cost of the relatively efficient Roseton capacity plus the cost of the higher sulfur fuel oil (2%) which can be burned is lower than the cost of burning 0.3% sulfur fuel at Con Edison's less efficient oil-fired plants, the acquisition of 240 MW of Roseton capacity will result in a net cost savings for Con Edison's customers. Second, Con Edison will be able to defer financing and construction of 240 MW of new generating capacity from 1991 to at least 2005,[1/] relieving its customers of the anticipated future burden to pay for depreciation and return on a much higher investment for the equivalent capacity of a new plant. Third, the 240 MW of Roseton capacity offers Con Edison's customers a measure of reliability protection in the event of slippage on future plant construction or the unavailability of power from Hydro-Quebec.

1/Part of the original Roseton agreement, not covered in the revised agreement at issue here, calls for Central Hudson to purchase all of Con Edison's interest in Roseton at the end of 2004.

It is clear to us that the revised Roseton agreements are in the best interests of the customers of Con Edison and Central Hudson. Accordingly, we will adopt the recommendation of Judge Gottlieb and approve the agreements.

PETITION FOR NINE MILE 2

Niagara Mohawk, on June 15, 1972, applied to the Atomic Energy Commission (now the Nuclear Regulatory Commission) for a construction permit to build a second nuclear power plant at Nine Mile Point. The permit was issued on June 24, 1974. Subsequently, Niagara Mohawk agreed to share ownership of the plant with LILCO, NYSE&G, RG&E and Central Hudson as tenants-in-common with the following undivided interests:

Niagara Mohawk	41%
LILCO	18
NYSE&G	18
RG&E	14
Central Hudson	9

The cost of construction and operation, as well as entitlements to output from the plant would be apportioned according to the respective ownership shares of the co-tenants. Niagara Mohawk would build, operate and maintain the plant.

The companies filed a joint petition seeking Commission approval of the co-tenancy agreements pursuant to Sections 68 and 70 of the Public Service Law. The Citizens to Preserve the Hudson Valley (Citizens), Mid-Hudson Nuclear Opponents (MHNO), Safe Energy Coalition of New York State and the New York State Consumer Protection Board (CPB) oppose the petition. Citizens, MHNO and the Safe Energy Coalition argue that the petition is, essentially, an application for a construction permit which should be subjected to the more rigorous requirements of Article VIII of the Public Service Law, implying that it should not be approved without

a full development of issues pertinent to the siting of a new plant under Article VIII, including alternatives to the planned facility. They suggest that such additional matters as the antitrust implications of the agreement, the consequences of bankruptcy or withdrawal of one of the participants and the effect of a nuclear moratorium must be considered. The intervenors also question the validity of the construction permit issued by the Atomic Energy Commission (now the Nuclear Regulatory Commission) in June 1974, claiming that the AEC approved the project in relation to Niagara Mohawk's ownership and did not evaluate pertinent issues in light of the tenancy-in-common arrangement that now exists.

Judge Gottlieb dismissed the intervenors' argument that the requirements of Article VIII must be applied to this petition. We agree with his decision. Section 141(4)(a) of Article VIII specifically exempts a plant from the provisions of Article VIII if it has been the subject of an application for a necessary federal license filed before July 1, 1972. And the Nine Mile application was filed with the AEC before that date. We believe the Legislature clearly intended to "grandfather" plants under Section 141(4)(a). There is no provision in the law for removing a plant's "grandfathered" status merely because of a change in ownership.

The Administrative Law Judge also dismissed the questions raised by the intervenors about the construction permit issued by the Atomic Energy Commission, finding that such argument should be raised with the Nuclear Regulatory Commission rather than this Commission. The Judge's ruling is clearly correct. Whether the NRC should modify or rescind a construction permit it has granted is a question solely within the jurisdiction of that agency. And, given the existence of a valid federal approval, the issue we must decide is whether, under the provisions of Sections 68 and 70 of the Public Service Law, the agreement of five petitioners to share the ownership of Nine Mile is in the public interest.

Petitioners contend that the agreements should be approved not only because they all need the amounts of additional generating capacity that Nine Mile would provide, but also because the tenancy-in-common arrangement is the most effective and efficient means to satisfy their needs. In support of the latter point, they present several arguments. First, they claim that a tenancy-in-common permits individual companies to share in the economies of scale of a large facility, instead of each building its own smaller plant to satisfy their needs. Each company still takes on capacity that is closely related to load requirements, while having to raise a lesser amount of capital than would be required if they were all to build their own plants. Moreover, they share in the efficiencies achieved in designing, licensing, operating and maintaining one plant instead of five. Second, petitioners argue that pursuit of the tenancy-in-common concept will improve system reliability for all of the companies. They point out that loss of a large unit owned by one company and providing much of its customers' needs would cause significant problems for that company, while the impact on several companies of losing only a smaller fraction of capacity can be absorbed without great problems on any of the affected companies' systems. Third, petitioners claim a prompt opportunity to improve fuel mix through the Nine Mile sharing, a particularly forceful argument in the case of Central Hudson which is heavily dependent on oil-fired generation. Fourth, petitioners claim environmental benefits, arguing that the impact of one large plant at one site is much more tolerable than the effect of several small plants built at separate sites scattered throughout the State. Finally, petitioners note that Nine Mile has already been approved by the federal government, and, therefore, will not suffer the costs of delay due to the licensing process that

new plants experience. Intervenors did not mount an effective attack on these asserted advantages of the tenancy-in-common arrangement. And, while we need not decide the merits of each of the arguments advanced by the companies in favor of the arrangement, it is clear to us that the advantages of common ownership in this case outweigh any disadvantages. But the key issue is whether each of the participants has demonstrated a need for its share of the Nine Mile capacity, and it is on this issue, particularly with respect to Central Hudson's participation, that intervenors have focused their objections.

Petitioners presented three case studies showing their respective reserve capacities from the winter 1982 through winter 1984, assuming that no plant additions are made in the first study, that the plant additions are made on schedule in the second study and that the additions are delayed one or two years in the third study. These studies are based on data presented in the 1976 report of the New York Power Pool under Section 149-b of Article VIII of the Public Service Law.[1/] They show that even if other planned generation additions are made on schedule (Case 2), NYSE&G, Niagara Mohawk and RG&E still would have significant generation deficiencies in winter 1982. In light of past experience, however, Case 3, assuming slippage of other plants, seems more probable. In that event, the 1976 study shows that all of the companies would have severe generation deficiencies by 1984.

The intervenors question the need for Nine Mile, relying on data contained in the 1976 149-b report, which are attached as Appendix F. They argue that the data show ample reserves and, therefore, that no additional generation is

1/Our approval of the revised Roseton agreements actually strengthens the petitioners' case since Central Hudson will not have the 120 MW of capacity that was assumed in the 1976 data.

required. The petitioners point out, however, that the figures in Appendix F should be adjusted to show only those planned additions and power purchases that reasonably may be expected and to reflect the Power Pool's 18% per company reserve margin requirement. Those adjustments clearly are proper, but as we discuss in our conclusion, still overstate the company's generating capacity by assuming certification of proposed but uncertified facilities. Applying them to the figures in Appendix F results in the same data as the petitioners presented in Appendix E.

Considering these factors, the 1976 studies show that Nine Mile would be needed by the petitioners to meet their projected load growth in 1982 and beyond. We note further that, although the Power Pool's 1977 149-b report shows projections for LILCO, NYSE&G, Niagara Mohawk and RG&E somewhat different from those in the 1976 report upon which Appendix E is based, the case for these companies needing the generation available from Nine Mile, especially if there are delays in other certified or proposed facilities, remains convincing.[1/] We turn now to the more difficult question of whether, in light of the revised Roseton agreements, Central Hudson's participation in Nine Mile is proper.

Forecasts of Future Need

Central Hudson's 1976 long-range forecast projects an average annual peak load growth rate during the period 1976-1996 of 6.4%, compared to a 5.5% of the period 1977-1997 in the 1977 forecast. This is a reduction in the

1/See Appendix G. Although no party questioned LILCO's need to participate in Nine Mile, we have examined its projected capability and demand. We observe that it appears to have marginally sufficient capacity through 1984. We find its participation in this venture prudent, however, since any further delay in its planned capacity additions through 1983 or any slippage in the operational date of Nine Mile could cause LILCO to be deficient in 1983 and 1984.

expected rate of growth of about 14%. For the shorter range, 1976-1984 period, the company originally projected an average annual peak load growth rate of 7.4%, while its current forecast suggests a rate of 5.6% for that period, a reduction of about 24%. Considering these substantial changes, Judge Gottlieb concluded that the long-run projections by Central Hudson which formed the basis of its initial case for participation in Nine Mile were no longer valid.

Central Hudson maintains that its latest long-term projections--5.5% for the period 1977-1997--still show a need for the 98 MW of Nine Mile capacity it proposes to purchase. Staff's forecast for this period is an average annual growth rate of 5.0%; but it concedes that the growth rate would be greater if the Economic Development Board's demographic forecasts are realized. Therefore, staff supports Central Hudson's need argument, concluding that the generation deficiencies shown in the company's projections (see Appendix A) are credible.

CPB and Mid-Hudson Nuclear Opponents are critical of these forecasts. They claim that these projections overstate the need for additional capacity. CPB predicts an annual load growth of between 4.3% and 5.3% for the period 1976-1987. It claims that because of large increases in the cost of electricity and diligent conservation efforts, consumers will continue to use less electricity. Further, CPB argues that the cement industry in Central Hudson's service territory will continue to lack vitality because of economic troubles in New York City. CPB concludes that, in view of Central Hudson's failure to take these factors into account properly, the company's forecast of peak loads is unrealistically high. MHNO adds that the impact of alternative technologies and systematic attempts at load management have not been considered. While it views staff's forecast as superior to

the company's, because of its more accurate evaluation of growth in the number of customers and in commercial and industrial sales, MHNO considers staff's projections as the "upper range" of expected growth in the 1977-1985 period. And it believes that growth will fall below staff projections.

These intervenors conclude that Central Hudson will need only a small amount of additional capability for the 1984-1986 period, and none beyond its share of the Sterling proposal until the 1990's.[1/] They argue that if Sterling becomes operational in 1985 (only a one-year slippage instead of the two assumed in Appendix E, Case 3) Central Hudson would be marginally deficient only in 1983-1984 and would not need additional capacity until 1989 under any forecast except that of the company. MHNO also argues that by postponing the retirement of Danskammer Unit No. 1 (62 MW) now scheduled for 1983, Central Hudson would have the capability to meet the deficiencies forecast by staff through 1985.

CPB proposes several specific alternatives to Central Hudson's participation in Nine Mile including: (1) purchasing power from Con Edison and Niagara Mohawk; (2) installing intermediate load generation capacity of either combined cycle gas turbines or a regeneration of a Danskammer unit for combined cycle operation; or (3) adopting one of several options involving differing combinations of Roseton generation and nuclear generation (see Appendix D).

The Administrative Law Judge did not comment on suggestions (1) and (2) and dismissed them from further consideration because they "have been made in general terms, and the necessary investigations and calculations have not been performed for their development." We agree that the record here is devoid of any economic calculations to support these

1/Central Hudson's share of the proposed, but as yet uncertified, nuclear generation facility at Sterling, New York, Case 80005, is 196 MW. Sterling is proposed to be operational in 1984.

contentions which, without such support, do not appear, on their face, to be economical alternatives to participation in Nine Mile Unit 2 because (1) large blocks of firm, economical power are not generally available for firm purchases, and (2) combined cycle oil-fired generation does not usually compare favorably to nuclear generating capacity.

CPB has, however, provided some data and calculations to support its seven options approach, reflected in Appendix D. But CPB no longer supports Option 1, because it now finds the revision of the original Roseton agreements to be in the best interests of Central Hudson's customers. And it presents Options 4 and 7 as only for purposes of contrast with other options.

CPB suggests now that the Commission compare three primary options:

Options*	Total Annual Levelized Revenue Requirements	Total Cost (¢/kWh)	Column 2 Including** Needed Purchased Capacity	Total Cost (¢/kWh)
Option 2	$85,900,000	3.89	$94,600,000	4.29
Option 5	91,500,000	4.14	91,900,000	4.16
Option 6	98,200,000	4.45	98,200,000	4.45

*Option 2 involves the purchase of 240 MW of Roseton capacity from Niagara Mohawk. Option 5 involves the purchase of 180 MW of Roseton capacity and 197 MW of Sterling nuclear capacity on-line in the summer of 1986. Option 6 involves the purchase of 98 MW of Nine Mile capacity on-line in 1983, and 197 MW of Sterling capacity. This in essence is the company's proposal.

**This column adjusts the total annual levelized revenue requirements of Column 2 to reflect (1) for Option 2, purchases by Central Hudson of 150 MW of gas turbines in 1983 and 75 MW of replacement energy in 1989, and (2) for Option 5, purchases of replacement energy of 31 MW in Summer 1983, 54 MW in Summer 1984, 43 MW in Winter 1984, 114 MW in Summer 1985, and 103 MW in Winter 1985. These additional capacities for Options 2 and 5 are required to meet peak and reserve requirements. No additional capacity is required for Option 6.

CPB argues that Option 5 is the cheapest alternative, even with the necessity of purchasing additional amounts of capacity. It argues that additional capacity could be purchased from Con Edison and Long Island Lighting Company which project large amounts of excess capacity during the 1983-1985 period according to the 1977 149-b filing. Consequently, CPB considers Option 5 superior to Option 6, the company's choice.

CPB claims further that Option 2 is superior to Option 6 not only because it is cheaper, but because the gas turbines provide the company with greater flexibility since the lead time for installing gas turbine units is comparatively short. Option 6, the company's proposal, is considered the least desirable, since a failure to achieve the anticipated growth would leave the company with excess capacity, the same situation from which it is currently attempting to extricate itself.

Central Hudson and staff raised numerous questions about the validity of studies underlying CPB's analysis. These criticisms are discussed in detail at pages 39-44 of the recommended decision. They object basically to CPB's failure to utilize computer programming methods which, in their opinion, are necessary for proper analysis of numerous and complex factors involved in the study. They also critize--with clear justification--the assumptions about fuel and replacement energy costs used in the study.

The company argues that the purpose of its participation in Nine Mile is not merely to meet projected generation deficiencies in the mid-1980's; it contends that even if all of the nuclear capacity from Nine Mile were not required in its initial year of operation to match load and reserve requirements, the availability of low cost nuclear generation would reduce substantially the rates to its customers, notwithstanding the fact that they would be

required to pay a return on the capital costs of the unit. Further, as noted by staff, the use of nuclear generation would reduce Central Hudson's dependence on oil and improve its generation mix, thereby increasing its system reliability.

MHNO argues that the projected savings due to nuclear generation accrue only when large savings on fuel costs overcome the original higher initial investment, and therefore current ratepayers would be burdened unjustly since projected savings will not accrue to customers until 1990. MHNO also characterizes these projected savings as speculative because of the erratic performance of a significant number of nuclear plants.

Conclusion

Of the various load forecasts presented in these proceedings, staff's 5% projected growth rate seems the most plausible. Staff's forecast, in our opinion, includes more accurate projections of growth in the number of residential customers and of trends in commercial and industrial sales than Central Hudson's study. The CPB forecasts, on the other hand, are based on modifications of assumptions used in other forecasts and not on independent studies. While staff's 5% growth rate would be higher if the Economic Development Board's demographic projections materialized, we believe that a more conservative estimate is warranted since relatively slow growth experienced in recent years has led to downward revisions of earlier forecasts.

In analyzing capability projections, we find that it would be improper and unwise to assume that planned but uncertified additional generating facilities will be available as proposed to meet the need for capacity shown to exist in this proceeding. Our decision must be based upon an analysis of need and capability as can best be projected at the time

of our decision. As shown in Appendix C, Central Hudson will have capability deficiencies as early as 1983 using staff's 5% load growth rate without the addition of new generating capacity. Only the lower end of the range of CPB's forecast--4.3% growth--fails to show such a need; but even that forecast indicates that 97 MW of capacity, Central Hudson's share of Nine Mile Point Unit No. 2, would be required soon after that. The data shown in Appendix B reflect approval of the revised Roseton agreements and Central Hudson's participation in Nine Mile.

Central Hudson's participation in a nuclear facility to satisfy its need for additional capacity would clearly be beneficial to its ratepayers. Studies presented by staff and the company show that participation in the proposed nuclear unit will lead to sizable savings compared to reliance on additional Roseton or other oil-fired capacity as was suggested by CPB. Further, Central Hudson's studies show that meeting its anticipated capacity needs with gas turbines instead of base load generation would involve very large additional costs.

In light of the foregoing considerations, we conclude that the participation of Central Hudson, with LILCO, NYSE&G, Niagara Mohawk and RG&E in the Nine Mile Point Unit No. 2 plant, is in the public interest and should be approved.

PETITION TO REOPEN PROCEEDING

Mid-Hudson Nuclear Opponents has petitioned for further hearings in Case 27013 for the limited purpose of reexamining the necessity of Central Hudson's participation in the Nine Mile nuclear facility. MHNO asserts that such action is warranted because Central Hudson has substantially altered its position on the impact of peak load pricing on

load growth. MHNO points to Central Hudson's petition for rehearing in Case 27032 (Central Hudson's most recent electric rate case) in which Central Hudson seeks additional revenues to cover short-term erosion due to shifts in customer load to off-peak periods. MHNO cites this argument as supporting its position that Central Hudson now anticipates a significant decrease in load growth due to the implementation of peak load pricing, which is contrary to the view expressed by the company in defending its load growth projections in this case. The Consumer Protection Board supports MHNO's petition for rehearing.

Responses to MHNO's motion have been received from Central Hudson and Niagara Mohawk on behalf of the co-tenants of the Nine Mile project. PSC staff and other parties did not respond.

As discussed supra, it is clear that Central Hudson will require the capability that would be provided by its participation in the Nine Mile project. The kind of short-term revenue loss against which Central Hudson sought protection in Case 27032 would not necessarily result in a consequent reduction in peak demand or in a sustained dampening of peak load growth. MHNO's petition therefore will be denied.

The Commission orders:

1. The Revised Roseton Agreement (Case 27120) as presented by joint petition of Central Hudson Gas & Electric Corporation and Consolidated Edison Company of New York, Inc. for transfer of interests in the electric generating station at Roseton, New York, is approved.

2. The joint petition of Niagara Mohawk Power Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and Central Hudson Gas & Electric Corporation

(1) for approval of an operating agreement in connection with the Nine Mile 2 nuclear generating plant; (2) for approval of the transfer of interests in the plant and related interests in property; and (3) for approval of the construction of the nuclear electric power plant by petitioners other than Niagara Mohawk is granted.

3. This proceeding is continued.

By the Commission,

(SEAL) (SIGNED) SAMUEL R. MADISON
Secretary

APPENDIX A

CENTRAL HUDSON LOAD AND CAPACITY SCHEDULE

(Assumes Approval of the Subject Roseton Agreements and Participation in Nine Mile Point 2* and Sterling Nuclear **Plants)

Maximum Installed Net Capability	Summer Megawatts													
	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
hermal (Oil-Fired)	692	719	839	839	839	839	899	833	833	833	767	767	767	767
hermal (Coal-Fired)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
hermal (Other)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
hermal (Gas Turbines)	38	38	38	38	38	38	38	38	38	38	138	238	238	238
hermal (Diesel)	5	5	5	5	5	5	5	5	5	5	5	5	5	5
hermal (Nuclear)	0	0	0	0	0	0	0	97	97	293	293	293	393	493
ydro (Conventional)	45	45	45	45	45	45	45	45	45	45	45	45	45	45
ydro (Pumped Storage)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
otal Controlled Sources	780	807	927	927	927	927	987	1,018	1,018	1,214	1,248	1,348	1,448	1,548
et Capacity Transactions	170	250	93	197	146	145	4	102	100	100	100	100	100	100
eserve Credit	2	2	1	1	1	1	1	0	0	0	0	0	0	0
otal Capacity	952	1,059	1,021	1,125	1,074	1,073	992	1,120	1,118	1,314	1,348	1,448	1,548	1,648
ummer Peak	640	670	710	760	810	860	910	960	1,020	1,080	1,140	1,200	1,270	1,340
equired Capability	755	791	838	897	956	1,015	1,074	1,133	1,204	1,274	1,345	1,416	1,499	1,581
xcess/Deficiency	197	268	183	228	118	58	-82	-13	-86	40	3	32	49	67
xcess/Deficiency %	26.1	33.9	21.8	25.4	12.3	5.7	-7.6	-1.1	-7.1	3.1	.2	2.3	3.3	4.2

*Nine Mile Point No. 2 Plant slipped to 1984.
**Sterling Nuclear Plant slipped to 1986.

Maximum Installed Net Capacity	Winter Megawatts													
	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
ermal (Oil-Fired)	719	799	839	839	839	879	899	833	833	833	767	767	767	767
ermal (Coal-Fired)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ermal (Other)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ermal (Gas Turbines)	48	48	48	48	48	48	48	48	48	48	148	248	248	248
ermal (Diesel)	5	5	5	5	5	5	5	5	5	5	5	5	5	5
ermal (Nuclear)	0	0	0	0	0	0	98	98	98	294	294	294	394	494
dro (Conventional)	46	46	46	46	46	46	46	46	46	46	46	46	46	46
dro (Pumped Storage)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
tal Controlled Sources	818	898	938	938	938	978	1,096	1,030	1,030	1,226	1,260	1,360	1,460	1,560
t Capacity Transactions	-55	-84	-84	-41	11	8	105	102	100	100	100	100	100	100
serve Credit	4	3	3	2	2	1	1	0	0	0	0	0	0	0
tal Capability	767	817	857	897	951	987	1,202	1,132	1,130	1,326	1,360	1,460	1,560	1,660
nter Peak	650	670	710	750	800	850	900	950	1,000	1,050	1,100	1,150	1,210	1,270
quired Capability	767	791	838	897	956	1,015	1,074	1,133	1,204	1,274	1,345	1,416	1,499	1,581
cess/Deficiency	0	26	19	0	-5	-28	128	-1	-74	52	15	44	61	79
cess/Deficiency %	0.0	3.3	2.3	0.0	-0.5	-2.8	11.9	0.0	-6.1	4.1	1.1	3.1	4.1	5.0

CASES 27[illegible] and 27120

APPENDIX B

CENTRAL HUDSON LOAD AND CAPACITY SCHEDULE
Assumes Approval of Roseton Agreement, Participation in Nine Mile Plant 2
(97 MW) Operational 1982 Without Including Sterling Capacity

		1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
:al Capability (MW)		952	1,059	1,021	1,125	1,074	1,170	1,089	1,120	1,118	1,118	1,152	1,252	1,252
	Peak Load	640	670	699	729	760	793	827	862	900	938	979	1,021	1,065
3%	Req. Capability	755	791	825	860	897	936	976	1,017	1,062	1,107	1,155	1,205	1,257
ıd	(18% Margin)													
owth														
3	Excess (MW)	197	268	196	265	177	234	113	103	56	11	(3)	47	(5)
ı.	(Def.) %	26.1	33.9	23.8	30.8	19.7	25.0	11.6	10.1	5.3	1.0	(0.3)	3.9	(4.0)
	Peak Load	640	670	706	741	778	817	858	901	946	993	1,043	1,095	1,150
)%	Req. Capability	755	791	833	874	918	964	1,012	1,063	1,116	1,171	1,231	1,292	1,357
ıd	(18% Margin)													
owth														
:	Excess (MW)	197	268	188	251	156	206	77	57	2	(53)	(79)	(40)	(105)
ıff	(Def.) %	26.1	33.9	22.6	28.7	17.0	21.4	7.6	5.4	0.2	(4.5)	(6.4)	(3.1)	(7.7)
	Peak Load	640	670	706	743	782	824	867	913	962	1,013	1,066	1,123	1,182
3%	Req. Capability	755	791	833	877	923	972	1,023	1,077	1,135	1,195	1,258	1,325	1,395
ıd	(18% Margin)													
owth														
3	Excess (MW)	197	268	188	248	151	198	69	43	(17)	(77)	(106)	(73)	(143)
x.	(Def.) %	26.1	33.9	22.6	28.2	16.4	20.4	6.7	4.0	(1.5)	(6.4)	(8.4)	(5.5)	(10.3)
	Peak Load	640	670	710	760	810	860	910	960	1,020	1,080	1,140	1,200	1,270
5%	Req. Capability	755	791	838	897	956	1,015	1,074	1,133	1,204	1,274	1,345	1,416	1,499
ıd	(18% Margin)													
owth														
ıtral	Excess (MW)	197	268	183	228	118	155	15	7	(86)	(156)	(193)	(164)	(247)
ison	(Def.) %	26.1	33.9	21.8	25.4	12.3	15.3	1.4	0.6	(7.1)	(12.2)	(14.3)	(11.6)	(16.5)

APPENDIX C

CENTRAL HUDSON LOAD AND CAPACITY SCHEDULE

(Assumes Approval of the Subject Roseton Agreement Non Participation in the Nine Mile Plant 2

		1977	1978	1979	1980	1981	1982	1983	1984	1985
Total Capability (MW)		952	1,059	1,021	1,125	1,074	1,073	992	1,023	1,021
	Peak Load	640	670	699	729	760	793	827	862	900
4.3%	Reg. Capability	755	791	825	860	897	936	976	1,017	1,062
CPB	(15% Margin)									
Min.										
	Excess (MW)	197	268	196	265	177	137	16	6	(40)
	(Def.) %	26.1	33.9	23.8	30.8	19.7	14.6	1.6	.6	(3.8)
	Peak Load	640	670	706	741	778	817	858	901	946
5.0%	Reg. Capability	755	791	833	874	918	964	1,012	1,063	1,116
PSC	Excess (MW)	197	268	188	251	156	109	(20)	(40)	(95)
Staff	%	26.1	33.9	22.6	28.7	17.0	11.3	(2.0)	(3.8)	(8.5)
	Peak Load	640	670	706	743	782	824	867	913	962
53%	Reg. Capability	755	791	833	877	923	972	1,023	1,077	1,135
CPB	Excess (MW)	197	268	188	248	151	101	(31)	(54)	(114)
Max.	%	26.1	33.9	22.6	28.2	16.4	10.4	(3.0)	(5.0)	(10.0)
	Peak Load	640	670	710	760	810	860	910	960	1,020
	Reg. Capability	755	791	838	897	956	1,015	1,074	1,133	1,204
	Excess (MW)	197	268	183	228	118	58	(82)	(110)	(183)
	%	26.1	33.9	21.8	25.4	12.3	5.7	(7.6)	(9.7)	(15.2)
5.5% Central Hudson										

APPENDIX D

Consumer Protection Board Seven Option Recommendation

Option 1 - Purchase by Central Hudson of 360 MW of Roseton capacity under the original Roseton agreement in addition to its current share of 240 MW.

Option 2 - Purchase of 240 MW of Roseton capacity from Niagara Mohawk.

Option 3 - Purchase of 180 MW of additional Roseton capacity by 1983 and 98 MW of Nine Mile capacity in 1983.

Option 4 - Purchase of 120 MW of additional Roseton capacity from Niagara Mohawk and 98 MW of Nine Mile capacity.

Option 5 - Purchase of 180 MW of Roseton capacity and 197 MW of Sterling nuclear capacity coming on line in the summer of 1986.

Option 6 - Purchase of 180 MW of additional Roseton capacity, 98 MW of Nine Mile capacity coming on line in 1983, and 197 MW of Sterling capacity coming on line in mid-1986.

Option 7 - Purchase of 98 MW of Nine Mile capacity, and 197 MW of Sterling capacity for total nuclear capacity of 295 MW.

In all options, as necessary, a suffucient amount of replacement energy is furnished so that the total generation amounts to 2,207,520,000 KWh.

CA[illegible] 27013 and 27120

APPE[illegible] E

Installed Capacity Surplus (Deficiency)

WITH & WITHOUT NINE MILE POINT #2 CO-TENANCY

I. Assured Resources

Share (MW)

	CH		LILCO		NYSEG		NMPC		RGSE		
	97	0	194	0	194	0	443	0	1080	151	0
1982 W	138	41	340	146	(714)	(908)	341	(102)	978	47	(104)
1983 S	136	39	(115)	(309)	(233)	(427)	301	(142)	938	(27)	(178)
1983 W	82	(15)	125	(69)	(901)	(1095)	41	(402)	678	(48)	(199)
1984 S	(10)	(107)	(347)	(541)	(351)	(545)	41	(402)	678	(124)	(275)
1984 W	(78)	(175)	(103)	(297)	(1086)	(1280)	(230)	(673)	407	(144)	(295)

II. Assured Resources and Planned Generation Additions - (Target In-Service Dates Per 1976 149-b)

1982 W	138	41	340	146	136	(58)	401	(42)	1038	47	(104)
1983 S	136	39	460	266	1192	998	361	(82)	998	(27)	(178)
1983 W	82	(15)	700	506	524	330	101	(342)	738	(48)	(199)
1984 S	186	89	228	34	1074	880	354	(89)	991	198	47
1984 W	118	21	472	278	339	145	83	(360)	720	178	27

III. Assured Resources and Delayed Planned Generation Additions - (Delayed In-Service Dates Per 1976 149-b)

1982 W	138	41	340	146	(714)	(908)	401	(42)	1038	47	(104)
1983 S	136	39	(115)	(309)	(233)	(427)	361	(82)	998	(27)	(178)
1983 W	82	(15)	125	(69)	(51)	(245)	101	(342)	738	(48)	(199)
1984 S	(10)	(107)	(347)	(541)	499	305	101	(342)	738	(124)	(275)
1984 W	(78)	(175)	(103)	(297)	(236)	(430)	(170)	(613)	467	(144)	(295)

Revised: 8/3/76

CASES 27013 and 27120

APPENDIX F

PLANNED CAPABILITY, PEAK, MARGINS

Central Hudson

	1982W	1983S	1983W	1984S	1984W
Total Capacity	1262	1483	1500	1616	1630
Peak Load	1020	1040	1100	1110	1180
Excess Capacity	242	443	400	506	450
% Margin	23.7%	42.6%	36.4%	45.6%	38.1%

Long Island Lighting

	1982W	1983S	1983W	1984S	1984W
Total Capacity	5513	6180	6080	6167	6071
Peak Load	3320	4500	3460	4690	3600
Excess Capacity	2193	1680	2620	1477	2471
% Margin	66.1%	37.3%	75.7%	31.5%	68.6%

New York State Electric & Gas

	1982W	1983S	1983W	1984S	1984W
Total Capacity	3634	3985	4200	3982	4191
Peak Load	2870	2270	3020	2360	3170
Excess Capacity	764	1715	1180	1622	1021
% Margin	26.6%	75.6%	39.1%	68.7%	32.2%

Niagara Mohawk

	1982W	1983S	1983W	1984S	1984W
Total Capacity	8246	7986	8102	8230	8332
Peak Load	6540	6160	6760	6360	6990
Excess Capacity	1706	1826	1342	1870	1342
% Margin	26.1%	29.6%	19.9%	29.4%	19.2%

Rochester Gas & Electric

Total Capacity	1699	1742	1698	2043	2019
Peak Load	1400	1470	1480	1550	1560
Excess Capacity	299	254	218	493	459
% Margin	21.4%	17.3%	14.7%	31.8%	29.4%

C 27013 and 27120

APPENDIX F

PROJECTED RESERVE MARGINS

	1982W	1983S	1983W	1984S	1984W
Central Hudson	23.7%	42.6%	36.4%	45.6%	38.1%
Long Island Light	66.1%	37.3%	75.7%	31.5%	68.6%
NYSE&G	26.6%	75.6%	39.1%	68.7%	32.2%
Niagara Mohawk	26.1%	29.6%	19.9%	29.4%	19.2%
RG&E	24.4%	17.3%	14.7%	31.8%	29.4%
Average (Petitioners)	32.5%	40.4%	37.1%	41.4%	37.5%
Statewide	49.9%	36.6%	48.3%	35.3%	50.9%

	1976Summer	1976Winter
Central Hudson	53.1%	58.8%
LILCO	19.3%	59.8%
NYSE&G	41.7%	19.9%
Niagara Mohawk	54.1%	47.0%
RG&E	28.1%	38.3%
AVERAGE	39.2%	44.7%
STATEWIDE	34.3%	61.0%

Systems Capabilities, Required Capacity and Margins - 1977 149-b, Appendix D - Target Dates Revised to Eliminate Planned, but not yet Certified, Additional Generation Facilities 1/

	Central Hudson			LILCO			NYSE&G			RG&E		
	Capbl.2/	Req.	Margin	Capbl.3/	Req.	Margin	Capbl.4/	Req.	Margin	Capbl.5/	Req.	Margin
1983	1104	1074	30	4992	4755	237	2570	3611	(1041)	1539	1723	(184)
1984	1024	1133	(109)	4984	4956	28	2580	3800	(1220)	1520	1817	(297)
1985	1022	1204	(182)	4967	5157	(190)	2555	4000	(1445)	1519	1923	(404)
1986	1021	1275	(253)	4964	5381	(427)	2575	4213	(1638)	1519	2041	(522)

NRC DISTRIBUTION FOR PART 50 DOCKET MATERIAL
(TEMPORARY FORM)

CONTROL NO: 12944
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TO:	ORIG	CC	OTHER	
DL	one signed			SENT NRC PDR XX SENT LOCAL PDR XX

CLASS	UNCLASS	PROP INFO	INPUT	NO CYS REC'D	DOCKET NO:
	XXXXXXX			1	50-410

DESCRIPTION:

Ltr re our 10-24-75 ltr....advising that they will notify us of the scheduled date of submittal of Anti-Trust material re Appendix L.will.....

ENCLOSURES:

ACKNOWLEDGED

DO NOT REMOVE

PLANT NAME: Nine Mile Point #2

FOR ACTION/INFORMATION 11-12-75 ehf

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– ACRS HOLDING/SENT		

NIAGARA MOHAWK POWER CORPORATION

NIAGARA MOHAWK

300 ERIE BOULEVARD WEST
SYRACUSE, N.Y. 13202

GERALD K. RHODE
VICE PRESIDENT

October 31, 1975

Director of Nuclear Reactor Regulation
Attn: Mr. Argil Toalston, Chief
Power Supply Analysis Branch
Office of Antitrust & Indemnity
Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, D. C. 20555

Gentlemen:

Nine Mile Point No. 2 Nuclear Station
Docket No. ~~50-105~~ 50-410

In response to your October 24, 1975 letter concerning antitrust information from all of the entities participating in Nine Mile Point Nuclear Station Unit No. 2, the Basic Agreement finalizing the participation of these entities was filed only recently on September 22, 1975. The information required under Appendix L has been collected in preliminary form and is now being reviewed by Counsel. After the opinion of Counsel has been obtained, the Commission will be notified of our schedule for submission of the required information.

Very truly yours,

Gerald K. Rhode

GKR:hjc

12944

NRC DISTRIBUTION FOR PART 50 DOCKET MATERIAL
(TEMPORARY FORM)

CONTROL NO: 8900
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TO:	ORIG	CC	OTHER	
Mr Toalston	one signed			SENT NRC PDR XX SENT LOCAL PDR XX

CLASS	UNCLASS	PROP INFO	INPUT	NO CYS REC'D	DOCKET NO:
	XXXXXXX			1	50-410

DESCRIPTION:

Ltr re our 6-23-75 ltr....advising that info concerning anti-trust matters will be submmitted upon completion of the basic agreement between participiants.....

ENCLOSURES:

ACKNOWLEDGED
DO NOT REMOVE

PLANT NAME: Nine Mile Point #2

FOR ACTION/INFORMATION 8-21-75 ehf

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Regulatory Docket File

NIAGARA MOHAWK POWER CORPORATION

NIAGARA MOHAWK

300 ERIE BOULEVARD WEST
SYRACUSE, N.Y. 13202

GERALD K. RHODE
VICE PRESIDENT

July 11, 1975

Mr. Argil L. Toalston, Chief
Power Supply Analysis Branch
Office of Antitrust & Indemnity
Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Toalston:

Nine Mile Point Unit No. 2 Nuclear Station
Docket No. 50-410

In reply to your letter of June 23, 1975 concerning antitrust information in connection with the above plant, Niagara Mohawk and four other New York State Utilities have entered into a Memorandum of Understanding providing for ownership of the plant as tenants in common. However, the Basic Agreement finalizing this arrangement is still in preparation and it would be appropriate, I believe, to defer submitting the requested antitrust information until such time as this Basic Agreement is executed.

The interested parties are proceeding to assemble the requested antitrust information and I would expect to be able to inform you within a few weeks of the schedule by which Niagara Mohawk, as lead applicant, will submit the assembled material on behalf of itself and the other co-owners.

Very truly yours,

Gerald K. Rhode
Vice President-Engineering

GKR:hjc

8300

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Marcus A. Rowden	1 signed			SENT AEC PDR X SENT LOCAL PDR X

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Ltr furnishing information regarding ANTI-TRUST Matters for the Nine Mile Point Station, Unit # 2.

ENCLOSURES:

ACKNOWLEDGED

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PLANT NAMES: Nine Mile Point, Unit # 2

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15

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

DEC 19 1972

Marcus A. Rowden, Esquire
Associate General Counsel
U. S. Atomic Energy Commission
Washington, D.C. 20445

Re: Niagara Mohawk Power Corporation
Nine Mile Point Nuclear Station Unit 2
AEC Docket No. 50-410A
Department of Justice File No. 60-415-53

Dear Mr. Rowden:

You have requested our advice pursuant to the provisions of Section 105 of the Atomic Energy Act of 1954, as amended by P.L. 91-560 (December 19, 1970), in regard to the above cited application.

Introduction

Niagara Mohawk Power Corporation proposes to construct a nuclear generating facility with a capacity of 1,100 megawatts on a 900 acre site on the southeast shore of Lake Ontario, in the town of Scriba, Oswego County, New York. This location is presently the site of Niagara Mohawk's existing nuclear generating facility, the Nine Mile Point Nuclear Station, Unit 1. The total cost of the unit is estimated to be approximately $420,000,000 including first core nuclear fuel inventory costs and transmission, distribution and general plant costs. Construction of the Nine Mile Point Nuclear Station Unit 2 is expected to be completed between January and June 1978 with commercial operation following shortly thereafter.

The Applicant

Niagara Mohawk Power Corporation is a privately owned utility which supplies electric power to more than 1,250,000 customers in 37 counties of upstate New York. Its system

6992

covers more than 24,000 square miles and includes 31 cities and 639 towns and villages. The utility also markets natural gas to more than 410,000 customers. In 1971 total system revenues were $571,382,000 of which $440,327,000 (77%) was derived from electric revenues.

The Applicant's most recent peak load was 4,551,000 kilowatts. Total dependable capacity at the time of this peak was 5,674,000 kilowatts comprised of 574,000 kilowatts from owned and leased hydro-electric facilities, 3,376,000 kilowatts of owned thermal capacity and 1,724,000 kilowatts of purchased capacity. The internally generated capacity is produced at five steam stations (including the Nine Mile Point Nuclear Station Unit 1), 82 hydro stations and 20 combustion turbine and diesel units. Over the ten-year period from 1971-1981 Niagara Mohawk estimates that its load will increase 2,949,000 kilowatts yielding a total load of approximately 7,500,000 kilowatts. The capacity of the Nine Mile Point Nuclear Unit Number 2 is part of the Company's construction program intended to meet this additional load. 1/

Applicant's Coordination and Interconnections with Other Utilities

Niagara Mohawk plans its generation and transmission facilities as part of the New York Power Pool (NYPP) which encompasses virtually the entire State of New York. At present seven large investor-owned utilities and the Power Authority of the State of New York (PASNY) comprise the

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1/ In 1972 Applicant will add 240 megawatts of generation from its share of the jointly-owned (with Consolidated Edison Company and Central Hudson Gas and Electric) Roseton No. 1 oil-fired unit. In 1973, the jointly-owned Roseton No. 2 Unit will provide an additional 240 megawatts. Applicant will add 875 megawatts when its Oswego No. 5 oil-fired plant comes on line in 1974. Nine Mile Point Unit 2 with its 1,100 megawatt capacity is planned for 1978 and an as yet undesignated nuclear-fired unit of similar size is expected in 1981. During 1977 Niagara Mohawk will lose 120 megawatts of capacity from the Roseton facility, as its share in that joint venture decreases. Throughout the period the Applicant will purchase power in varying amounts to meet its load requirements at any given point in time.

[illegible]

[illegible]

[illegible]

[illegible]

membership of the New York Power Pool. 2/ These eight pool members generated approximately 99.5% of the total electric energy generated in the state in 1967. The investor-owned members of the pool supply the majority of the bulk power requirements of the five small investor-owned systems, one federal, and eleven municipal systems in the state. PASNY sells its power at wholesale to Niagara Mohawk and two other upstate members of the Pool, to 41 municipal and cooperatively-owned electric systems in New York, to one in Pennsylvania, to three industrial plants in Massena, to the Plattsburgh Air Force Base and the State of Vermont. The Power Authority presently generates power at two sources, the St. Lawrence hydroelectric project and the Niagara Falls hydroelectric project. Substantial amounts of the power produced at these facilities are sold to Niagara Mohawk 3/ and the generating and transmission facilities of PASNY are closely integrated, on a day-to-day basis, with those of three upstate utilities, including Niagara Mohawk.

In addition to these existing facilities, PASNY is presently constructing a nuclear plant with an expected output of approximately 820,000 kilowatts on property acquired from the Company adjacent to its Nine Mile Point site. For purposes of off-site transmission, the plant is to be tied in with the Company's nearby switchyard, and the Applicant will reconstruct, at PASNY expense, a section of one of its existing 115 kilowatt lines so as to provide a backup source of station service power between the plants of PASNY and the Applicant. When the plant goes into operation in 1973 Niagara Mohawk has contracted to provide operating and

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2/ In addition to Niagara Mohawk and PASNY, the members of the New York Power Pool are Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Orange and Rockland Utilities Incorporated, and Rochester Gas and Electric Corporation.

3/ The St. Lawrence hydroelectric project has 912,000 kilowatts of installed capacity on the U.S. side of which PASNY is selling 115,000 kilowatts of firm capacity to the Company under a contract terminating in 1985. The Niagara Falls hydroelectric project has 2,190,000 kilowatts of installed capacity of which Niagara Mohawk purchases up to 1,294,400 kilowatts of firm and peaking power and associated energy (of which 387,000 kilowatts is firm power with 137,000 kilowatts of that withdrawable) under a contract terminating in 1990.

maintenance personnel for the facility at cost. PASNY is also constructing the 1,000,000 kilowatt Blenheim-Gilboa pump storage hydroelectric generating station in Schoharie County. This facility is also scheduled for completion in 1973. Niagara Mohawk expects to contract on a long term basis for some of the capacity of both of these plants.

Although PASNY presently supplies power to only three members of the Pool, benefits of its peaking capacity are passed on to all of the state's utilities through the coordinated operations of the Pool. The purpose of the New York Power Pool is to coordinate the development and operation of the generation and transmission facilities of its members to obtain optimum reliability and efficiency of operation of their interconnected systems. To carry out these objectives the Pool's Planning Committee coordinates the planning of additional generating capacity, the interconnecting of transmission facilities, and the forecasting of future load requirements. The Operating Committee establishes the rules and procedures to coordinate the operation of the pool, determines cost standards, establishes coordinated maintenance schedules, and determines the reserve requirements and load relief of the Pool members. 4/

Niagara Mohawk, as well as other members of NYPP, is also a member of the Northeast Power Coordinating Council. This agency, which includes in its membership the major utilities of New York and New England, as well as two Canadian utilities, was established for the purpose of promoting maximum reliability and efficiency of electric service by furthering inter-pool operations through coordination of system planning and operating procedures in the northeast. The Applicant is also a party to various agreements with other electric utilities which provide for thr receipt or delivery of emergency power, deficiency power or unit power or other coordinating arrangements.

Applicant's Competitors

1. Privately-Owned Utilities

Niagara Mohawk is interconnected with the various large privately-owned utilities that have service areas adjoining

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4/ For a more detailed survey of the New York Power Pool, see the FPC's 1970 National Power Survey, Part II, pages II-1-75-77.

its territory, and to some limited extent may compete with them for load growth. Except to the extent that the Applicant exchanges limited amounts of energy with these utilities, it does not presently supply power on a firm basis to any investor-owned utility. It has wheeled power to several large utilities to meet their peak load requirements and may be expected to do so in the future.

As noted above, the Applicant is a party to a joint venture with Consolidated Edison Company and Central Hudson Gas and Electric to construct and operate the two Roseton 600 megawatt oil-fired generating units. Furthermore, the Applicant, Rochester Gas and Electric Corporation and New York State Electric and Gas Corporation are undertaking a study to determine the feasibility of jointly creating and operating a separate corporation to build and operate major generating plant installations. The study will determine whether a separate company for power production will best accommodate their total new generating facility requirements by improving efficiency and economy and allowing lower cost financing. It is proposed that if this joint venture generating company is created, it will take over construction and operation of the Nine Mile Point Nuclear Station's Unit 2 as well as the new fossil-fuel units under construction. With this single exception, no privately-owned electric utility has expressed an interest in participating in the Nine Mile Point unit.

2. Municipal Electric Systems

There are 27 municipal electric systems that distribute electric power within or adjacent to Niagara Mohawk's service area who compete with it for retail loads and load growth. Of these 27, the Applicant sells, at wholesale, all the bulk power requirements of the Villages of Brocton, Green Island, Holley and Richmondville. Niagara Mohawk does not sell bulk power to any of the other systems. The City of Jamestown receives part of its bulk power supply from PASNY and generates the remainder. The City of Salamanca and 21 villages purchase all their bulk power requirements from PASNY. The Applicant, pursuant to contracts with PASNY, provides most of the transmission necessary to receive, transmit and deliver the bulk power from PASNY to the two cities and the villages.

None of the municipal systems own or operate any high voltage transmission capable of moving electric power in

bulk. Consequently, for the most part, these systems have no reasonable economic alternative but to rely on Niagara Mohawk, which controls the high voltage transmission needed to wheel their power, for the delivery of bulk power.

Our investigation reveals that none of the municipal systems have advised the Applicant of a desire to obtain ownership participation in the Nine Mile Point Nuclear Station.

Our investigation further reveals at least one situation which warrants further comment. As noted above, the City of Jamestown, New York, is the only municipal system in Niagara Mohawk's service area with appreciable generation facilities of its own. At present Jamestown is generating 45 megawatts at its Samuel A. Carlson Electric Generating Station, a coal burning facility. To supplement this generation, Jamestown purchases an additional 15 megawatts of power from PASNY, and the City has requested that this total be increased to 21 megawatts in 1973. The PASNY power is delivered to Jamestown over two 115 kv transmission lines owned by Niagara Mohawk that extend from Dunkirk, New York, to an interconnection point at Falconer, New York, where Jamestown's transformers step down the voltage to 13.8 kv, the system voltage for Jamestown.

The City's generating facility currently does not comply with the New York State particulate emission standards which must be met in 1974 if the plant is to remain in operation. One of the alternatives being considered by the City is the phasing out of its own generating equipment and procuring all of its power requirements by purchases at wholesale. The two most logical sellers would be PASNY and Niagara Mohawk. Of the two, PASNY would probably be the lower cost supplier, and the City has informally approached PASNY about the possibility of supplying the additional power. It has also made a preliminary approach to the Applicant. Niagara Mohawk has indicated that it does not have any power available until 1976. It also indicated that, if Jamestown could purchase all its bulk power needs from PASNY, the capacity of its existing transmission facilities may not allow wheeling of more than the 20 megawatts that Niagara Mohawk is currently obligated to deliver from PASNY to Jamestown. 5/ The Company apparently is not interested in entering into a joint venture with Jamestown

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5/ The wheeling contract between Niagara Mohawk and PASNY provides that the Authority shall inform the Company at least annually of the estimated future load requirements
(footnote continued)

for construction of a new high voltage transmission line between Dunkirk and Jamestown and is similarly disinclined to construct such a line on its own at this time.

As the situation currently stands, discussions between representatives of the City and of the Applicant are continuing and the Applicant has not foreclosed prospects of providing Jamestown with the necessary wheeling of PASNY power when and if the City determines to buy all its bulk power requirements. Accordingly, it is not possible to conclude that a situation inconsistent with the antitrust laws may presently exist. If the Applicant files any new application for a license under Section 103 of the Atomic Energy Act of 1954, as amended, careful further consideration would have to be given to Niagara Mohawk's future conduct vis-a-vis the City of Jamestown in order to determine if a situation inconsistent with the antitrust laws will then be likely to exist.

Recommendation

As heretofore noted, no other electric utility systems formally have requested participation in the proposed Nine Mile Point Nuclear Station Unit No. 2. Furthermore, we have found no concrete evidence that Applicant has exercised or is exercising its control of high voltage transmission to

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5/ footnote continued
of the Authority and its customers for the ensuing five-year period, and within ninety days thereafter the Company will inform PASNY whether or not it will be able to deliver the power and energy to meet each load included in the estimate. This provision seems to be the basis for Applicant's assertion that it is obligated to deliver only 20 megawatts to Jamestown. It seems doubtful, however, that this contract can foreclose or prevent the delivery of PASNY power to Jamestown. The Niagara Power Project Act, 16 U.S.C. 836, which authorized the construction and operation of the Niagara Falls hydroelectric project by PASNY, provides that public bodies and cooperatives will be given preference and priority to 50% of the power produced at the project (§836(b)(1)). The Act also imposes an absolute obligation on the Power Authority to deliver that power either by wheeling agreement or by the purchase or construction of the necessary transmission facilities. (§836(b)(4)).

the detriment of other utility systems in the area. Nevertheless, in the instances outlined above questionable activities seem to exist and may warrant further attention in the event of future license applications. At this time, however, there is no substantial reason to believe that the Commission's licensing of the requested nuclear unit would create or maintain a situation inconsistent with the antitrust laws. Accordingly, we conclude that the Commission need not conduct an antitrust hearing with respect to the application.

Sincerely yours,

Thomas E. Kauper

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

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PLANT NAMES: Nine Mile Pt. Nuclear Station Unit 2

ENCLOSURES: Nine Mile Point Nuclear Station Unit2 Info Requested by the Attorney General for Anti-Trust Review..... (EXH. F)

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June 15, 1972

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Mr. L. Manning Muntzing
Director of Regulation
U.S. Atomic Energy Commission
Washington, D.C. 20545

Re: Niagara Mohawk Power Corporation
Nine Mile Point Nuclear Station,
Unit 2

Dear Sir:

As counsel for the Applicant, Niagara Mohawk Power Corporation, we enclose herewith the following:

1. Three (3) originals and twenty-five (25) copies of pleading entitled "Application for Licenses." Within the bound volume of this pleading are four (4) exhibits relating to the following: Applicant's 1971 Annual Report (Exhibit A); the names and addresses of Applicant's directors and principal officers (Exhibit B); estimate of total cost of the proposed facility (Exhibit C); and resolution of the Board of Directors authorizing the filing of this application (Exhibit G);

2. Seventy (70) copies of Applicant's Preliminary Safety Analysis Report, which has been designated as Exhibit D;

3. Two hundred (200) copies of Applicant's Environmental Report - Construction Permit Stage; and

3272-A

LB

4. Twenty (20) copies of information requested on antitrust matters by the Attorney General of the United States.

Applicant has prepared and has ready for submission an additional one hundred (100) copies of its Environmental Report for this unit. At the request of the Division of Reactor Licensing, Applicant is holding these copies for submission when requested.

Applicant has also prepared an additional twenty-five (25) copies of the information requested by the Attorney General in the event that antitrust matters should become the subject of a hearing in this proceeding.

In the material submitted in response to certain questions raised by the Attorney General of the United States, there was no mention of Niagara Mohawk's recently announced plans for a sixth oil-fired generating unit at its Oswego steam station. The announcement about this plant came after the material had been prepared.

In accordance with the Commission's Regulations, Applicant encloses a check in the amount of Seventy Thousand Dollars ($70,000) as the filing fee for its application for a construction permit.

The service of the foregoing application and exhibits is being made personally by a representative of the Applicant. The service is being made upon:

Mr. Robert P. Jones
Supervisor, Town of Scriba
R. D. #4
Oswego, New York 13126

Mr. Donald I. Gleason
Chairman
County Legislature
County Office Building
46 East Bridge Street
Oswego, New York 13126

Upon completion of this service an Affidavit of Service will be filed with the Commission.

Very truly yours,

LeBOEUF, LAMB, LEIBY & MacRAE
Attorneys for Niagara Mohawk
Power Corporation

By Eugene B. Thomas, Jr.
Eugene B. Thomas, Jr.
Partner

Enclosures