

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-220 and 50-410; License Nos. DPR-63 and NPF-69]

In the Matter of Niagara Mohawk Power Corporation, et al. (Nine Mile Point Nuclear Station Unit Nos. 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

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 (submitted in proprietary and non-proprietary versions), 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. organization of which NMP LLC is a part, and 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.

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-percent 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 states that NMP LLC would also assume the decommissioning responsibility of the current owners of NMP-1 and NMP-2 who are 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 proposed conforming license amendments 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 Application requested approval of the direct transfer of the facility operating licenses, conforming license amendments, and possible indirect license transfers pursuant to 10 CFR 50.80 and 10 CFR 50.90. The staff 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.

Under 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. Upon review of the information in the Application, and relying upon the representations and agreements contained in the Application, the NRC staff has determined that NMP LLC is qualified

to hold the licenses to the extent proposed in the Application, that the establishment of New Controlled as a new intermediate parent of NMP LLC, if such follows the direct license transfers, will not affect the qualifications of NMP LLC as the holder of the NMP-1 license and as a holder of the NMP-2 license, that the acquisition by Virgo of up to a 17.5% voting interest in New Controlled coupled with CEG, Inc.'s distribution of its voting shares of New Controlled to CEG, Inc.'s shareholders, resulting in Virgo becoming the largest single voting shareholder of the ultimate corporate parent of NMP LLC, if such follows the direct license transfers, will not affect the qualifications of NMP LLC as the holder of the NMP-1 license and as a holder of the NMP-2 license, and that the direct transfer of the licenses to NMP LLC as proposed and indirect license transfers, to the extent effected by the foregoing transactions if such occur after the direct license transfers, are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the Application for the proposed license amendments 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 facilities will operate in conformity with the 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 amendments 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 amendments 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 amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated June 22, 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 transfer of the licenses as described herein to NMP LLC, and the indirect transfer of the licenses, to the

extent effected by the transactions described above that may occur following the direct transfers, are approved, subject to the following conditions:

(1) NMP, LLC shall, prior to the completion of the direct transfers, provide 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 of the transfer of NMP1 and NMP2 to it, NMP LLC shall: (1) obtain from the transferors all of their accumulated decommissioning trust funds for NMP1 and NMP2, respectively, and (2) receive [a] parent company guarantee[s] pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually as required under 10 CFR 50.75(f)(1), unless otherwise approved by the NRC) in a form acceptable to the NRC and in [an] amount[s] which, when combined with the decommissioning trust funds for NMP1 and NMP2, equals or exceeds the total amounts required for NMP1 and NMP2, respectively, pursuant to 10 CFR 50.75(b) and (c).

(3) The master decommissioning trust agreement for NMP1 and NMP2, at the time the direct transfers are 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 this Order, and the related safety evaluation.

(5) At the time of the direct transfers, NMP LLC shall enter or shall have entered into an intercompany credit agreement with 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 of the closing of the direct transfers no later than two business days prior to such date. If all of the direct and indirect transfers of the licenses approved by this Order are not completed by June 30, 2002, this Order shall become null and void, 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), license amendments that make changes, as indicated in Enclosure 2 to the cover

letter forwarding this Order, to conform the licenses to reflect the subject direct license transfers are approved. The amendments shall be issued and made effective at the time the proposed direct license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated February 1, 2001, the supplemental submittals dated March 1, March 16, March 29, April 5, April 27, May 30 and June 7, 2001, and the safety evaluation dated June 22, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland this 22nd day of June 2001.

For The Nuclear Regulatory Commission.

Jon R. Johnson,

Acting Director, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.