NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410]

Niagara Mohawk Power Corporation (Nine Mile Point Nuclear Station Unit Nos. 1 and 2); Order Approving Application Regarding Restructuring of Niagara Mohawk Power Corporation by Establishment of a Holding Company Affecting Licenses Nos. DPR–63 and NPF–69, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

I

Niagara Mohawk Power Corporation (NMPC or the licensee) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to possess, maintain, and operate the Nine Mile Point Nuclear Station, Units 1 and 2 (NMP1 and NMP2, or collectively, the facility), under Facility Operating License No. DPR–63, issued by the Commission on December 26, 1974, and Facility Operating License No. NPF–69, issued by the Commission on July 2, 1987. NMPC fully owns NMP1, is a 41-percent co-owner of NMP2, and acts as agent for the other co-owners of NMP2. The other co-owners of NMP2, who may possess but not operate NMP2, are New York State Electric & Gas Corporation with an 18-percent interest, Long Island Lighting Company with an 18-percent interest, Rochester Gas and Electric Corporation with a 14-percent interest, and Central Hudson Gas & Electric Corporation with a 9-percent interest. The facility is located in the town of Scriba, Oswego County, New York.

II

Under cover of a letter dated July 21, 1998, NMPC submitted an application for consent by the Commission, pursuant to 10 CFR 50.80, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating licenses for the facility to the extent held by NMPC. The application was supplemented October 23, 1998. Under the proposed restructuring, NMPC would become a subsidiary of a new holding company, Niagara Mohawk Holdings, Inc., created by NMPC in accordance with a Settlement Agreement reached with the New York Public Service Commission (PSC Case Nos. 94–E–0098 and 94–E–0099), dated October 10, 1997, and revised March 19, 1998. In addition, certain of NMPC's non-utility subsidiaries would be transferred to the holding company.

According to the application, each share of NMPC's common stock would be exchanged for one share of common stock of the holding company. NMPC's outstanding preferred stock would not be exchanged. Under this restructuring, NMPC would divest all of its hydro and fossil generation assets by auction, but would retain its nuclear assets, and would continue to be an ''electric utility'' as defined in 10 CFR 50.2 engaged in the transmission, distribution and, through NMP1 and NMP2, the generation of electricity. NMPC would continue to be the owner of NMP1 and a co-owner of NMP2 and would continue to operate both NMP1 and NMP2. No direct transfer of the operating licenses or ownership interests in the facility would result from the proposed restructuring. The transaction would not involve any change in the responsibility for nuclear operations within NMPC. Officer responsibilities at the holding company level would be primarily administrative and financial in nature and would not involve operational matters related to NMP1 or NMP2. No NMPC nuclear management positions would be changed as a result of the corporate restructuring.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on September 9, 1998 (63 FR 48254), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 23, 1998 (63 FR 50931).

Under 10 CFR 50.80, no license 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 submitted in the application of July 21, 1998, as supplemented by letter dated October 23, 1998, the NRC staff has determined that the restructuring of NMPC by establishment of a holding company structure will not affect the qualifications of NMPC as the holder of the license for NMP1, and as a holder of the license for NMP2, and that the transfer of control of the licenses, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated December 11, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the proposed restructuring of NMPC by the establishment of a holding company structure, subject to the following: (1) NMPC shall provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from NMPC to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of NMPC's consolidated net utility plant as recorded on NMPC's books of account; and (2) should the restructuring of NMPC as described herein, not be completed by December 10, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV

By January 11, 1999, any person whose interest may be affected by this Order may file in accordance with the Commission's rules of practice set forth in Subpart M of 10 CFR Part 2 a request for a hearing and petition for leave to intervene with respect to issuance of the Order. Such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. John H. Mueller, Chief Nuclear Officer, Niagara Mohawk Power Corporation, Nine Mile Point Nuclear Station, Operations Building, Second Floor, P.O. Box 63, Lycoming, New York 13093; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a

hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this Order, see the application for approval filed by NMPC under cover of a letter dated July 21, 1998, from John H. Mueller of NMPC, as supplemented by letter dated October 23, 1998, and the safety evaluation dated December 11, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 11th day of December 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–33587 Filed 12–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Westchester County, New York.

II

The Code of Federal Regulations, 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsection (a)(1) and (a)(2) of 10 CFR 70.24 specifies detection and sensitivity requirements that these monitors must meet. Subsection a(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at IP3 is in the form of nuclear fuel; the quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass. The Commission technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at IP3 and has determined that such an accident cannot occur if the licensee meets the following seven criteria:

1. Plant procedures permit only one new fuel assembly to be in transit between the associated shipping cask and dry storage rack.
2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.
3. If optimum moderation of fuel in the fresh fuel storage racks occurs when the fresh fuel storage racks are not flooded, the k-effective corresponding to this optimum moderation does not exceed .98, at a 95 percent probability, 95 percent confidence level.
4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.
5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.
6. Radiation monitors are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.
7. The maximum nominal U–235 enrichment is limited to 5 wt%.

By letter dated September 24, 1998, the licensee requested an exemption from 10 CFR 70.24. In this exemption request, the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittal and has determined that IP3 meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that there is no credible way in which an inadvertent criticality could occur in special nuclear materials handling or storage areas at IP3.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material personnel would be alerted to that fact and would take appropriate action. The staff has determined that there is no credible way in which such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion (GDC) 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to GDC 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants the following exemption: