DOCKETED USNRC January 3, 2000

00 JAN -7 P 3:44 UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of

21125

Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, and AmerGen Energy Company, LLC (Nine Mile Point Nuclear Station, Units 1 and 2)

Docket Nos. 50-220-LT 50-410-LT

D503

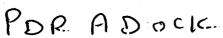
ADJU

NIAGARA MOHAWK POWER CORPORATION'S RESPONSE TO NOTIFICATION OF EXERCISE OF RIGHT OF FIRST REFUSAL BY ROCHESTER GAS AND ELECTRIC CORPORATION

On December 23, 1999, Rochester Gas and Electric Corporation ("RG&E") filed with the Nuclear Regulatory Commission ("NRC" or "Commission") notice that on December 21, 1999, it had exercised its right of first refusal to purchase the collective 59% ownership interest of Niagara Mohawk Power Corporation ("Niagara Mohawk") and New York State Electric and Gas Corporation ("NYSEG") in Nine Mile Point Unit 2 and Niagara Mohawk's 100% ownership interest in Nine Mile Point Unit 1. In accordance with the Commission's Memorandum and Order dated December 22, 1999 (CLI-99-30), RG&E identified January 4, 2000, as the last day that it had to exercise its right of first refusal. RG&E also stated that its timely exercise of its right of first refusal "has mooted the present license transfer proceeding since AmerGen no longer has any right to acquire the NMP facility."¹ Niagara Mohawk Power Corporation respectfully disagrees.

1

Notification of Exercise of Right of First Refusal dated December 23, 1999 at 2.



Niagara Mohawk has not yet completed its examination and evaluation of the RG&E offer to determine, among other things, whether the terms of the RG&E offer are as favorable as those contained in the AmerGen offer. Moreover, even if agreement were to be reached with RG&E, completion of the transaction would require regulatory approvals similar to those being sought for the AmerGen transaction, <u>e.g.</u>, from the New York State Public Service Commission and the NRC. Until such approvals are received, Niagara Mohawk's agreement with AmerGen for the sale of its nuclear units will remain in full force and effect.

۲.

While Niagara Mohawk is committed to the prompt resolution of this matter and to fulfilling all of its contractual obligations, pending completion of the transaction, including the receipt of all necessary regulatory approvals, it does not believe that the present proceeding is moot. Pending further clarification of the direction of the sale of the units, Niagara Mohawk believes the Commission should not presently entertain motions to dismiss the proceeding as moot.

> Respectfully submitted, Margantula

Mark J. Wetterhahn Donald P. Ferraro

WINSTON & STRAWN 1400 L Street, N.W. Washington, DC 20005-3502

Gary D. Wilson

NIAGARA MOHAWK POWER CORP. 300 Erie Boulevard West Syracuse, NY 13202-4250

ATTORNEYS FOR NIAGARA MOHAWK POWER CORPORATION

Dated in Washington, D.C. this 3rd day of January 2000

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

DOCKETED USNRC

00 JAN -7 P3:44

OFFICE OF DEC RULEMAKINGS ADJUDICATIONS

In	the	Matter of	
----	-----	-----------	--

Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, and

AmerGen Energy Company, LLC (Nine Mile Point Nuclear Station, Units 1 and 2) Docket Nos. 50-220-LT 50-410-LT

CERTIFICATE OF SERVICE

I hereby certify that copies of "Niagara Mohawk Power Corporation's Response to Notification of Exercise of Right of First Refusal by Rochester Gas and Electric Corporation" in the captioned proceeding, have been served on the following by electronic mail, this 3rd day of January, 2000, and that, in addition, courtesy copies have been provided to the following this same date by deposit in the United States mail, first class:

Office of the General Counsel U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 ogclt@nrc.gov

Richard W. Golden Assistant Attorney General Telecommunications and Energy Bureau New York State Department of Law 120 Broadway New York, NY 10271 cfnrwg@oag.state.ny.us

Samuel Behrends, IV LeBoeuf, Lamb, Greene & MacRae, L.L.P. 1875 Connecticut Avenue, N.W. Suite 1200 Washington, D.C. 20009-5728 sbehrend@llgm.com Secretary of the Commission U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 Attn: Rulemakings and Adjudication Staff secy@nrc.gov

Maureen Leary Assistant Attorney General Environmental Protection Bureau New York State Department of Law Justice Building Albany, NY 12224 epamfl@oag.state.ny.us

Daniel F. Stenger Hopkins & Sutter 888 Sixteenth Street, N.W. Washington, DC 20006 dstenger@hopsut.com James M. D'Andrea Keyspan Energy 175 E. Old Country Road Hicksville, NY 11801 jdandrea@keyspanenergy.com

Thomas W. Yurik Rochester Gas and Electric Corporation 89 East Avenue Rochester, NY 14649 tom_yurick@rge.com

Gary D. Wilson Niagara Mohawk Power Corporation 300 Erie Boulevard W. Syracuse, New York 13202-4250 wilsong@nimo.com Robert J. Glasser Gould & Wilkie, LLP One Chase Manhattan Plaza New York, NY 10005 bobglasser@gouldwilkie.com

Kevin P. Gallen Paul J. Zaffuts John E. Matthews Morgan, Lewis & Bockius LLP 1800 M Street, N.W. Washington, DC 20036-5869 Kpgallen@mlb.com

erhahn

WINSTON & STRAWN 1400 L Street, N.W. Washington, DC 20005-3502

Counsel for Niagara Mohawk Power Corporation

January 3, 2000