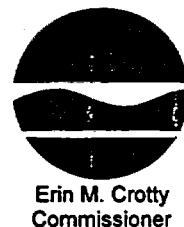


**New York State Department of Environmental Conservation**  
**Division of Environmental Permits, Region 8**  
6274 East Avon-Lima Road, Avon, New York 14414-9519  
Phone: (585) 226-2466 • FAX: (585) 226-2830  
Website: www.dec.state.ny.us



January 23, 2003

Mr. Paul Sawyko  
Environmental Quality Coordinator  
Rochester Gas and Electric Corporation  
89 East Ave.  
Rochester, N.Y. 14649-0001

Re: Application ID # 8-5434-00010/00010  
401 Water Quality Certification - **Notice of Incomplete Application**  
Nuclear Regulatory Commission Operating License Renewal  
RG&E Ginna Nuclear Power Plant  
Ontario (T), Wayne (C)

Dear Mr. Sawyko:

The purpose of this letter is to update RG&E of the status of the Department's review of the 401 Water Quality Certification Application and requirement for additional information, as well as to propose a schedule for milestones to be achieved to meet the October 2003 decision deadline.

**Schedule and Processing under State and Federal Regulations:**

As we discussed on the phone, the Department must make a final decision on the 401 Water Quality Certification in accordance with the Uniform Procedures Act (6 NYCRR Part 621) and the Clean Water Act (33 USC 1341). Section 401 of the Clean Water Act indicates that a State shall act on an application for Certification within a reasonable time period, not to exceed one year. Therefore, it is the goal of the Department to make a decision on the 401 Water Quality Certification by October 7, 2003. The possible decisions for the application include issuance, denial, or waiver. Department staff have decided not to waive the Certification.

As we discussed, in order for the Department to approve the 401 Water Quality Certification within the one year time frame, additional information will be required during the summer of 2003. In order to meet this schedule, Department staff have estimated that the information requested in this letter (below) and requested in the December 11, 2002 letter to the NRC, should be submitted to the Department by June 15, 2003 so that the Department is allowed suitable review time, as well as time for clarification and revision, if needed. This schedule incorporates time for the public comment period of 15 days, as well as a period for information clarification.

Mr. Paul Sawyko  
Rochester Gas and Electric Corporation  
Page 2

If the information requested is not available in time for the Department to make an approval decision on the Water Quality Certification, it has been Department policy to either send a letter denying the Water Quality Certification without prejudice (due to incompleteness), or to invite the applicant to withdraw the application and re-start the 1-year federal time clock.

The Uniform Procedures Act (UPA) requires that the Water Quality Certification application include the information stated in 6 NYCRR 621.3 and 621.4(e). The general requirements of UPA indicate that if a project is subject to the provision of Article 8 of the ECL SEQR, the Department must satisfy the requirements of Part 6 NYCRR Part 617 (State Environmental Quality Review). Section 617.15, *Actions Involving a Federal Agency*, discusses the process whereby the Department can accept the federal NEPA documents to meet the SEQR requirements. Alternatively, the Department may be required to issue a separate SEQR decision. The mechanism to meet the SEQR requirements will continue to be determined by the Department as the process continues.

Rather than deeming the 401 Water Quality Certification incomplete, you requested that the Department suspend the time frames until after the SEIS is issued. I have suspended the state time frames under 6 NYCRR 621.15(a) until July 1, 2003 with the understanding that information will need to be generated and submitted to the Department prior to this date. The federal 1-year time continues to run as explained above.

#### **Information Requirements:**

The Department has provided written comment to the U.S. NRC in a letter dated December 11, 2002 for their consideration in the SEIS process. Department staff reviewed the 316(a) supplement and other documents since the December 11, 2002 letter was mailed. As indicated in that letter, staff have concerns regarding the potential for thermal stress to impinged fish as they are delivered back into the heated discharge canal. Although this report did evaluate the thermal issues in the contact zone, an area of 175.7 surface acres and 10.7 bottom acres, staff indicated that the thermal issues in the discharge canal were not addressed. The report also included thermal effects data to certain species but not others (trout). Staff reviewed Section 4.2 of the 316(a) report and indicated that exposure of fish to the increased temperatures in the discharge canal (up to 28 degrees F increase in temperature) could have effects on some species such as smallmouth bass, alewife and spottail shiners.

Department staff are requiring the following steps to address this issue: 1) a literature search of the thermal tolerances of representative important species (RIS) impinged at the station, and an assessment of their exposure to cooling water discharge temperatures; 2) identification of RIS, which at a minimum are to include all game species, American eels and any additional species representing 10 percent or more of the impinged fish in any one year during the 1997-2001 period; 3) a study to measure the intake temperatures (when fish are brought in) and discharge temperatures at the point where fish enter the discharge canal, unless RG&E can demonstrate that existing temperature monitoring is adequately representative; 4) submittal of a report to cover

Mr. Paul Sawyko  
Rochester Gas and Electric Corporation  
Page 3

items 1-3 (above) including a discussion of fish contact times at elevated temperatures in the discharge canal. Department staff by June 15, 2003, who will determine whether mitigation is necessary to minimize thermal stresses and any increased mortality to impinged fish.

It is imperative that a meeting is held to flesh out the information requirements necessary for the Department to make a permit decision. If RG&E is to begin monitoring this spring, we will need to agree to the protocol as soon as possible. Please contact me to set up a meeting time in the near future.

Sincerely,



Kimberly A. Merchant  
Environmental Analyst 1

Enclosure: Letter to the NRC

cc: D. Persson, DOW  
M. Calaban, Bureau of Habitat, NYSDEC, C.O.  
P. Kolakowski, DOW Central Office  
W. Little, Legal Division, NYSDEC, C.O.  
F. Ricotta, Regional Engineer, NYSDEC, Region 8  
W. Pearsall, Fisheries, NYSDEC, Region 8  
L. Kuwik, Environmental Permits, NYSDEC, C.O.  
J. Nasca, Environmental Permits, NYSDEC, C.O.  
J. Prill, RG&E  
G. Wrobel, RG&E  
V. Barr, NYSDOS  
R. Schaaf, NRC  
M. Sackschewsky, Battelle