November 5, 1973

Richard I. Goldsmith, Esq.
Syracuse University
College of Law
E. I. White Hall, Campus
Syracuse, New York 13210

In the Matter of Niagara Mohawk Power Corporation
(Nine Mile Point, Unit No. 2)
Docket No. 50-410

Dear Mr. Goldsmith:

Enclosed is a copy of a recent AEC publication entitled "Utility Staffing and Training for Nuclear Power" (WASH-1130 - Revised - June, 1973).

The preparation of this document was mentioned in staff answer 6B to intervenor's questions on the "need for power" issue in this proceeding. I later promised you a copy of the publication as soon as it was available.

Sincerely,

Bernard M. Bordenick
Counsel for AEC Regulatory Staff

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Form AEC-318 (Rev. 9-53) AECM 0240 OFO 643-16-81465-1 445-078

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Daniel M. Head, Esq., Chairman
Atomic Safety and Licensing Board
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dr. William E. Martin, Senior Ecologist
Battelle Memorial Institute
Columbus, Ohio 43201

Dr. Marvin M. Mann
Atomic Safety and Licensing Board Panel
U. S. Atomic Energy Commission
Washington, D. C. 20545

In the Matter of Niagara Mohawk Power Corporation
(Nine Mile Point, Unit No. 2)
Docket No. 50-410

Gentlemen:

The staff has received a copy of the October 24, 1973, letter from Richard I. Goldsmith, Esq., counsel for intervenors, to Chairman Head and wishes to make the following comments on the points raised.

According to Mr. Goldsmith, "Mr. Larson's comment that 'Mr. Goldsmith should be here today' (Tr. 1299) was ***totally uncalled for". In the staff's view, Mr. Larson's comment, when viewed within the totality of transcript pages 1299-1300 and previous discussions between counsel for all parties and the Board, should not have come as a surprise to counsel for intervenors. Illustrative of the staff's view is the fact that the basis of the Board's verbal ruling on October 15, 1973, granting intervenors' "motion for continuance" (Tr. 732), was that all matters of an evidentiary nature except "the need for power" issue would be concluded by October 19, 1973.

Counsel's "strong objection to the Board's refusal to allow [him] to reserve the right to cross examine the direct testimony of Charles Mangan, which concerned the subject of alternative energy sources (Tr. 1301-1310)", should also be viewed in light of the completion schedule made known to counsel by the Board. Counsel's observation that "the opportunity to reserve cross examination with respect to testimony not pre-filed was afforded to the applicant and to the staff" overlooks the fact that had he chosen to be present in the hearing room on October 19, he too could have availed himself of the right to cross examine applicant's witness Mangan. Moreover, there was an Ecology Action representative present in the hearing room on the date in question.

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However, in view of the fact that Mr. Mangan's testimony was not responsive to any testimony of any witness of intervenor and was not served in advance and that the staff is unable to locate anything in the record which indicates that intervenors' counsel knew that applicant would offer such testimony on October 19, the staff recommends that the Board order the applicant to make Mr. Mangan available for cross examination by Mr. Goldsmith on November 13, 1973 or some other date convenient to the parties and the Board. In making this recommendation, the staff does not suggest that the schedules approved by the Board in this proceeding (Tr. 1398-1403) should be altered in any manner. If intervenors are later of the view that their previously prepared proposed findings on the "alternative energy sources" issue need to be amended as a result of Mr. Mangan's additional testimony, the staff foresees no difficulty with the Board granting leave therefor, provided intervenors' amended proposed filings are filed concurrently with intervenors' proposed findings on the "need for power" issue.

With respect to the "official notice" question (Tr. 1403-1406), the staff notes that events subsequent to Mr. Goldsmith's letter have obviated the necessity for further comment. During the course of a conference call between him and counsel for all parties on October 26, 1973, Chairman Head advised that the Board had ruled on the question and would promptly issue its order thereon. Accordingly, the staff will defer its comments, if any, until the Board's written order is received.

Finally, counsel has recorded "strong objections" to the Board's setting of the "further hearings" (commencing on November 13, 1973) in this proceeding in Syracuse, New York. First, the staff has previously indicated that the location of the "further hearings" is within the Board's discretion. Secondly, in our view, the setting of the "further hearings" in Syracuse is not an abuse of the Board's discretion. As the Board and parties well know, Oswego (and/or the Nine Mile Point, Unit 2, site) is located approximately one hour's distance by automobile from Syracuse. In any event, however, the staff would interpose no objection to Oswego as the location of the "further hearings" should the Board view the last paragraph of Mr. Goldsmith's letter as a motion to change the site of the "further hearings".

Sincerely,

Bernard M. Bordenick
Counsel for AEC Regulatory Staff

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cc:	See page 3					
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DATE ▶						

cc: Joseph F. Tubridy, Esq.
Mr. Gustave A. Linenberger
Mr. J. Bruce MacDonald
Arvin E. Upton, Esq.
Eugene B. Thomas Jr., Esq.
James P. McGranery Jr., Esq.
Ecology Action
c/o Richard Goldsmith
Ms. Suzanne Weber
Atomic Safety and Licensing
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