

January 16, 1973

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

Dr. William E. Martin, Senior
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Battelle Memorial Institute
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Gustave A. Linenberger,
Alternate Member
Atomic Safety and Licensing Board
Panel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Dr. Marvin M. Mann
Atomic Safety and Licensing
Board Panel
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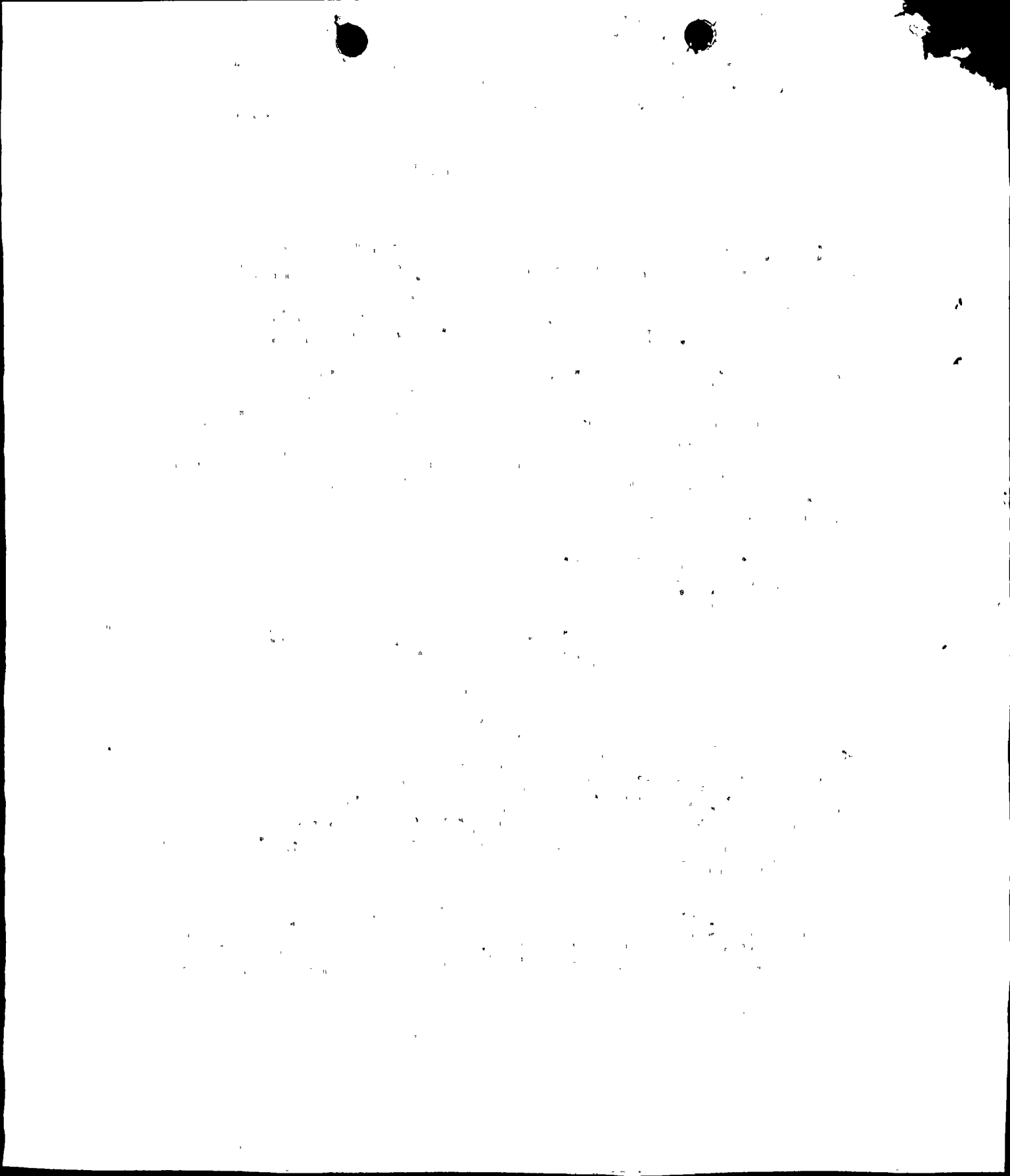
Joseph F. Turbridy, Esq.
Alternate Chairman
Atomic Safety and Licensing
Board Panel
4100 Cathedral Avenue, N. W.
Washington, D. C. 20016

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

Gentlemen:

The AEC Regulatory Staff has now had an opportunity to review Mr. Goldsmith's supplementary statement regarding petitioners' contentions 4(f)(1) + (11) (Tr. 126-129). As supplemented, these contentions meet the requirement of specificity contained in section 2.714 of 10 CFR Part 2. However, the staff still maintains that the contentions should not be allowed.

Petitioners do not seriously dispute that their contentions, insofar as they question the Commission's compliance with National Environmental Policy Act of 1969 (NEPA), are premature. However, they insist (Tr. 118) that the contentions are timely insofar as they



question applicant's compliance with Appendix D of 10 CFR Part 50 of the Commission's regulations. The difficulty with petitioners' argument is that applicant's compliance with the requirement of Appendix D with respect to Environmental Reports is not for determination by this Board. Under the notice of hearing herein, the Board is to determine only whether the Commission -- not the applicant -- has complied with Appendix D. The notice says:

"With respect to the Commission's responsibilities under NEPA * * * the board will * * * determine whether the requirements of section 102(2)(c) and (d) of NEPA and Appendix D of 10 CFR Part 50 have been complied with in this proceeding * * *"
[Underscoring added]

Accordingly, petitioners' contentions 4(f)(i) + (ii), insofar as they seek to put in issue the adequacy of applicant's Environmental Report and its compliance with Appendix D, are not germane to the issues in this proceeding and should be rejected.

Sincerely,

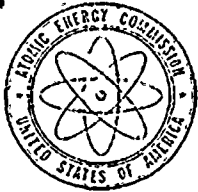
Mark R. Haflich
Counsel for AEC Regulatory Staff

cc: J. Bruce MacDonald
LeBoeuf, Lamb, Leiby & MacRae
for Upton, Thomas, Jr., and
McGranery, Esquires
Ecology Action [Richard Goldsmith]
Ms. Suzanne Weber
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Frank W. Karas, Chief PPS

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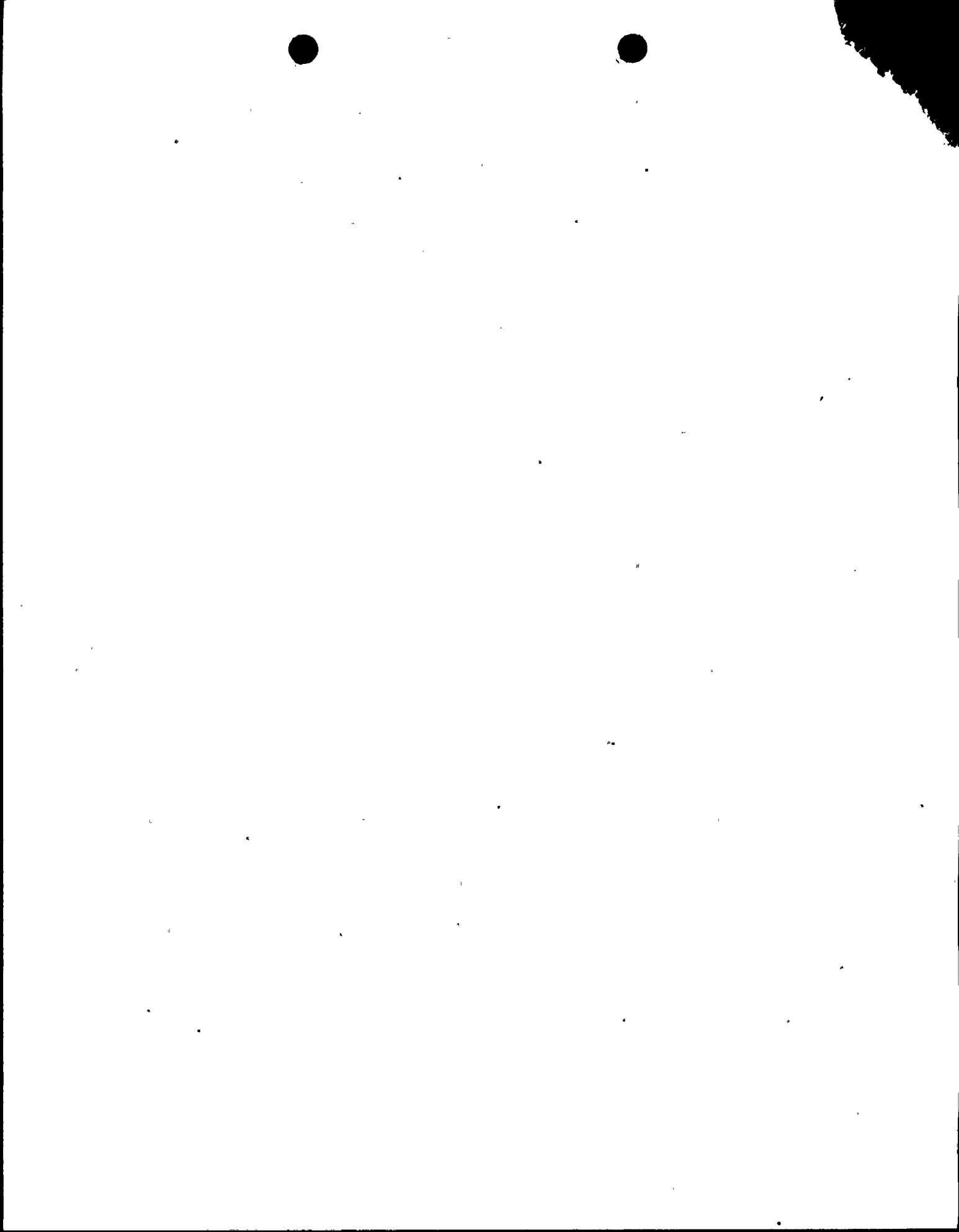
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