

March 28, 1974

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

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

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

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

Gentlemen:

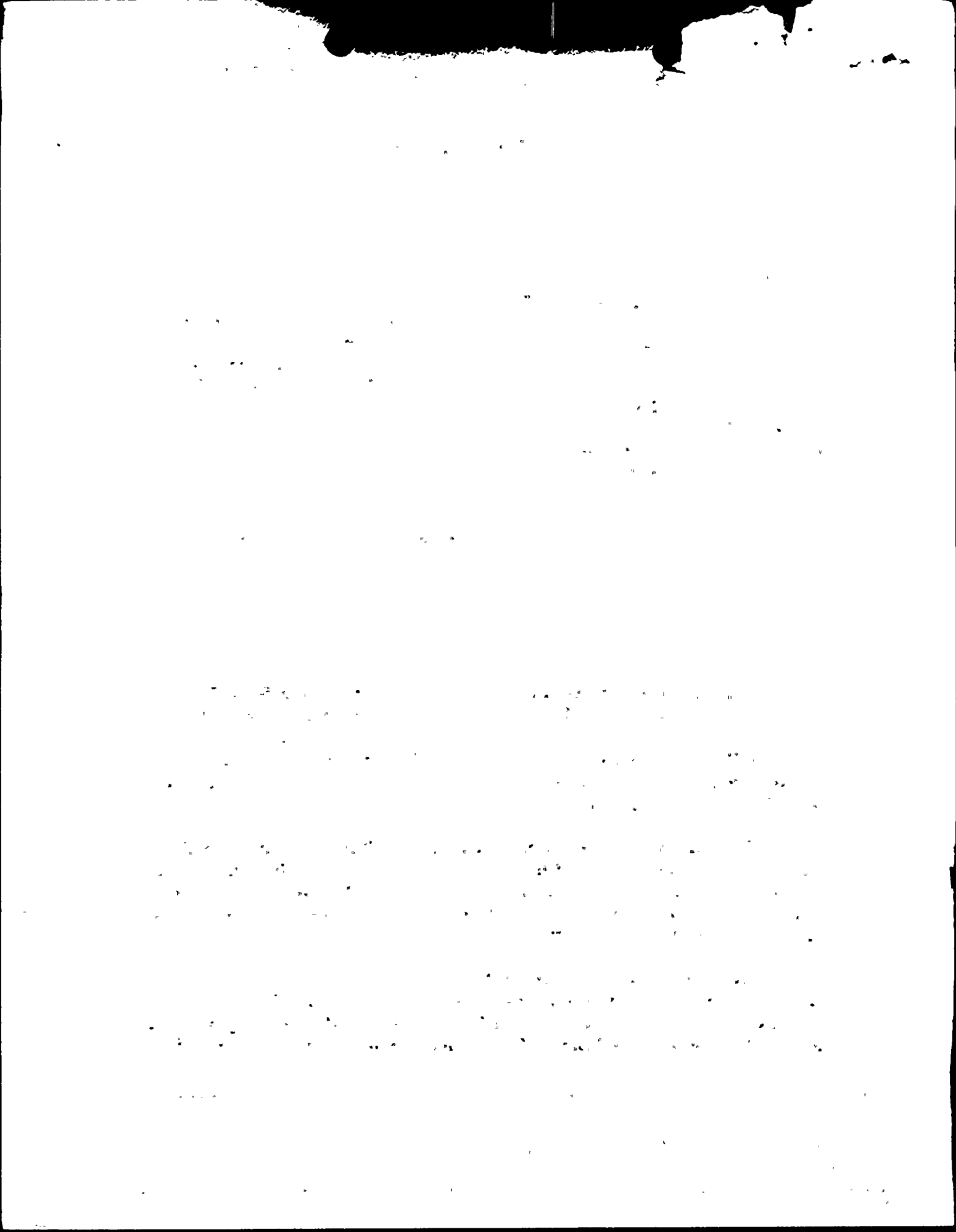
We have a copy of the "Reply of the Environmental Defense Fund [EDF] to the Proposed Findings of Fact and Conclusions of Law and Briefs of the Applicant, Staff and Parties", together with a motion for leave to file the reply in question. We also have a copy of the letter dated March 22, 1974, from Applicant's counsel to the Board urging that the EDF motion be denied.

The Staff also respectfully urges that the EDF motion be denied. EDF concedes that it does not have the burden of proof with respect to the "peak load pricing" issue discussed in the reply. EDF has not pointed to nor is there any provision in the Commission's Rules of Practice for the unsolicited reply tendered by EDF.

The Appeal Board, In the Matter of Consumers Power Company, (Midland Plant, Units 1 and 2), ALAB-115, RAI-73-4, 257 (April 17, 1973), has specifically addressed the criteria to be used in determining whether unsolicited supplemental briefs (or replies) should be accepted for filing.

HEARING

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In Midland, the Appeal Board noted that such filings might be considered if it were shown, in a motion for leave to make the filing, that a germane decision has been rendered (or at least reported) subsequent to initial briefing, or that a relevant but relatively obscure decision has somehow been overlooked by counsel in doing the research for the initial brief. Here, the EDF motion is devoid of any such showing.

In addition, the record in this proceeding, as documented in the proposed findings of fact and conclusions of law submitted by the various parties, including EDF, is adequately developed. Likewise, the various legal positions of the parties have been adequately briefed. In the absence of a request for clarification by the Board, the latest unsolicited EDF filing, served better than three weeks after Applicant's reply, serves no useful purpose and the motion for leave to file it should be rejected.

Sincerely,

Bernard M. Bordenick
Counsel for AEC Regulatory Staff

cc: Joseph F. Tubridy, Esq.
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Mr. Frank W. Karas

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