

Box 94
Oswego, New York 13126
August 25, 1979

Office of Antitrust and Indemnity
Directorate of Licensing
Nuclear Regulatory Commission
Washington, DC

POOR ORIGINAL

Gentlemen:

This is a request to reopen the antitrust investigation performed by your office in connection with the application by Rochester Gas and Electric Corp. and three other utilities to build a nuclear plant at Sterling, N.Y. Specifically, we ask that a new inquiry be held, focussing on the activities of Niagara Mohawk Power Corp., one of the other three utilities.

Since your investigation in 1975 and 1976, a significant change in the facts has occurred. The village of Massena has condemned Niagara Mohawk's distribution system and has contracted with the Power Authority of New York State for power from PASNY's St. Lawrence River hydro station. Despite the fact that the condemnation has survived every legal effort by Niagara Mohawk to reverse it, the utility is now trying to starve out Massena by refusing to transmit power from PASNY to the town.

This refusal to wheel power, at least on its face, seems an obvious attempt to restrain free trade. On Feb. 26, 1976, your office asked the Sterling applicants about Niagara Mohawk's reported refusal to transmit power to Massena. This inquiry was part of your original antitrust investigation. By letter of March 21, 1976, the applicants replied that any conclusion about Niagara Mohawk's position was premature; that Massena was in the "preliminary stages" of a condemnation proceeding. The letter cited a legal brief by the company submitted to the Federal Power Commission, which said:

"...it would be imprudent and impracticable for Niagara to either 'refuse' or 'agree' to what at present must necessarily be a purely hypothetical 'wheeling agreement' with Massena."

The situation is no longer "hypothetical." Niagara Mohawk now refuses to transmit power to the Massena municipal system and has been granted an injunction in Federal district court preventing the system from starting up while this question is decided.

We think this matter bears directly on the Commission's duty to determine whether the activities under a license will create or maintain a situation "inconsistent with the antitrust laws (42 USC 2135 (5)). It is obvious that your office agrees, or you would not have inquired about it in 1976. Therefore, we ask that the antitrust inquiry be reopened to determine if Niagara Mohawk's actions in regard to Massena violate the antitrust provision of the Atomic Energy Act.

The Massena situation is also relevant to Niagara Mohawk's construction permit to build Nine Mile Unit 2. If the conclusions of your investigation warrant it, that construction permit should also be reconsidered.

Sincerely,

Suzanne Weber

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Chairperson, Ecology Action of Oswego

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Copies of this letter have been sent to:

Lex Larson, LeBoeuf, Lamb, Leiby & MacCrae; Stephen Sohinki, NRC;
Antitrust Division, U.S. Attorney General; New York State Energy Office;
New York State Attorney General; Mayor, Village of Massena.

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