

**Petition of Sithe/Independence Power Partners, L.P. for an
Original Certificate of Public Convenience and Necessity
Authorizing Independence's Proposed Independence
Generating Station to Provide Electric Service to Alcan
Rolled Products Company and Liberty Paperboard L.P.**

Case No. 94-E-0136

TESTIMONY OF RICHARD R. LAWRENCE

1 **Q PLEASE STATE YOUR NAME AND ADDRESS.**

2 **A My name is Richard R. Lawrence. My business address is Alcan Rolled Products**
3 **Company, Lake Road North, Oswego, New York.**

4

5 **Q WHAT IS YOUR POSITION AT ALCAN ROLLED PRODUCTS COMPANY?**

6 **A I am the Director, Special Projects, Energy and Environment.**

7

8 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 **A My testimony will demonstrate that Niagara Mohawk Power Corporation had early**
10 **knowledge of Alcan's intention to purchase electricity from Sithe and, despite having**
11 **an ongoing full and fair opportunity to do so, has failed to provide a single long-term**
12 **competitive offer to retain Alcan as a customer. In addition, my testimony will**
13 **address the other issues which the Commission asked to be considered in its April**
14 **19, 1994 Order establishing the parameters of this proceeding.**

15

1 **Q WHEN DID ALCAN'S OSWEGO FACILITY BEGIN ITS ANALYSIS OF**
2 **ALTERNATIVE ELECTRICITY OPTIONS?**

3 **A In 1990, we received projections that the prices for Niagara Mohawk electricity were**
4 **going to increase significantly in the near future. Inasmuch as the Oswego facility's**
5 **price of electricity already was high relative to its competitors, these projections of**
6 **price increases were the cause of great concern. At the time, I was the Plant**
7 **Manager for Oswego and I personally authorized an investigation into electricity**
8 **supply alternatives. In the Summer, 1990, we began a serious review of self-**
9 **generation and cogeneration options with the help of Turner Associates, a consulting**
10 **firm in Albany. Around the same time, we were contacted by Sithe Energies and**
11 **began initial discussions regarding the potential for a coal-fired cogeneration facility**
12 **that would include our Oswego facility as steam host. Our goal was (and is) to get**
13 **the Oswego facility's price of electricity as close as possible to that paid by its**
14 **internal and external competitors. To do this, we estimated that we would need**
15 **access to electricity priced at approximately 4.0 cents per kilowatthour. Ultimately,**
16 **we concluded that becoming the steam host and part of the qualifying facility at**
17 **Sithe's Independence Project would afford our Oswego facility the greatest savings.**

18 Although we were able to negotiate a favorable contract with Sithe, it is
19 important to stress the high level of our commitment to avoid Niagara Mohawk's
20 projected electricity price increases and, instead, reduce our purchase price of
21 electricity by transacting with Sithe or through some other option. The last

1 alternative, of course, if the Oswego facility could not remain cost competitive,
2 would be the potential reduction of production at the facility.
3

4 **Q IN HIS DISSENT IN THE APRIL 19, 1994 ORDER, COMMISSIONER**
5 **O'CONNOR STATES THAT THE PROVISION OF ELECTRICITY TO**
6 **ALCAN BY THE SITHE PLANT WAS SOMETHING THAT DEVELOPED**
7 **AFTER NIAGARA MOHAWK AND CONSOLIDATED EDISON HAD**
8 **COMMITTED TO PURCHASE ELECTRICITY FROM SITHE. CAN YOU**
9 **COMMENT ON THIS?**

10 **A** Yes. Commissioner O'Connor has a misperception regarding the history of Alcan's
11 negotiations with Sithe and Niagara Mohawk. From the very beginning of
12 discussions with Sithe, we indicated that our interest in being a steam host for its
13 cogeneration facility (or, for that matter, any other cogeneration facility) was
14 premised on our ability to access an alternative supply of lower-cost electricity. As
15 my testimony and that of Mr. Sturgell demonstrate, the price of electricity from
16 Niagara Mohawk was the major competitive problem facing our Oswego facility
17 beginning in 1990. Because of this, we made the purchase of electricity at reduced
18 rates the centerpiece of any cogeneration or self-generation option that we
19 entertained. Sithe was made aware of our position regarding the purchase of
20 electricity from the onset of initial discussions in 1990 and agreed to that concept in
21 early, 1991, prior to the time it had signed contracts with Con Edison or Niagara

1 Mohawk. Throughout our negotiations with Sithe, the purchase of low-cost
2 electricity always has been the primary consideration for which Alcan has bargained.
3 Moreover, the potential Alcan/Sithe electricity transaction was fully disclosed in
4 Sithe's Article VII proceeding in the Spring, 1992, was discussed extensively in
5 Independence's draft Environmental Impact Statement, filed with the Department of
6 Environmental Conservation and issued in August, 1992, and was included in
7 financing efforts undertaken by Sithe during 1992. Finally, as I will demonstrate
8 below, Niagara Mohawk had actual notice of our intention to buy power from Sithe
9 well in advance of July, 1992, when it contracted with Sithe to purchase energy from
10 Sithe's Independence Station. Thus, Commissioner O'Connor is mistaken -- Sithe
11 committed to sell power to Alcan prior to entering into contracts with Con Edison
12 and Niagara Mohawk. In fact, the Independence Station would not have been built
13 unless Alcan agreed to be the steam host and we would not have agreed to be the
14 steam host without the ability to purchase electricity.

15
16 **Q WHEN DID NIAGARA MOHAWK BECOME AWARE OF ALCAN'S**
17 **INCREASED CONCERN REGARDING PROJECTED PRICE INCREASES?**

18 **A** In 1990, we began serious discussions with Niagara Mohawk about our deep concern
19 regarding the projections of increased electricity prices. Niagara Mohawk neither
20 denied the projections of increased prices nor made any concrete offers of special
21 contracts or tariffs to Alcan. At a meeting on January 30, 1991, Alcan

1 representatives told representatives of Niagara Mohawk that it was investigating
2 cogeneration options and the potential for bypassing the Niagara Mohawk system.
3 This notice coincided with the receipt of additional analyses from our consultants
4 which indicated that the cogeneration option could provide a savings to Alcan when
5 compared to the projected Niagara Mohawk electricity prices.

6
7 **Q WHEN DID NIAGARA MOHAWK BECOME AWARE OF ALCAN'S**
8 **INTENTION TO ACT AS THE STEAM HOST FOR THE SITHE**
9 **COGENERATION FACILITY AND PURCHASE ELECTRICITY AS PART**
10 **OF THAT TRANSACTION?**

11 **A** In March, 1991, Sithe confirmed its intention to have Alcan act as the steam host for
12 a reconfigured cogeneration facility that would be gas-fired, as opposed to coal-fired.
13 At that time, Sithe also confirmed its intent to sell electricity to Alcan as part of the
14 consideration for Alcan acting as the steam host. Negotiations between Alcan and
15 Sithe for a detailed letter of intent began at that time. In October, 1991, at a Key
16 Account meeting between Alcan representatives and Mr. John Endries and Mr. Ralph
17 Sylvia, President and Vice President of Niagara Mohawk, respectively, Alcan
18 reviewed in general terms the lower price of electricity that Alcan would pay for
19 purchases of electricity from the Sithe cogeneration project. Thus, beginning no later
20 than that meeting, Niagara Mohawk's senior management had actual notice of

1 Alcan's opportunity to purchase electricity from Sithe's Independence Station and an
2 idea of the price relief that Alcan was seeking.

3
4 **Q SUBSEQUENT TO THE OCTOBER 3, 1991 MEETING, WAS NIAGARA**
5 **MOHAWK MADE AWARE OF CONTINUING NEGOTIATIONS BETWEEN**
6 **ALCAN AND SITHE?**

7 **A** Yes. During our regularly scheduled Key Account meetings, we advised Niagara
8 Mohawk of the status of negotiations and of our intent to leave the system. For
9 example, at a February 3, 1992 meeting, we reviewed our need for reduced rates
10 with Ralph Sylvia, a Senior Vice President at Niagara Mohawk and our Key Account
11 representative at the time. At that meeting, we complained that we were being
12 forced off of Niagara Mohawk's system by its continuing price increases. In
13 addition, the contemplated transaction between Alcan and Sithe was public
14 knowledge during 1992 and was discussed in numerous news articles and editorials.

15 Since the October, 1991 meeting to the present, we have had a great number
16 of meetings and/or conference calls during which our need for lower electricity prices
17 and Niagara Mohawk's possible options were discussed. In general, although
18 Niagara Mohawk always listened and appeared sympathetic to our concerns, during
19 that two and one-half years of discussions it has failed to provide a single, long-term
20 competitive offer for our consideration.

1 **Q WHY DO YOU SAY THAT NIAGARA MOHAWK HAS BEEN**
2 **UNRESPONSIVE TO ALCAN'S NEEDS?**

3 **A Throughout our discussions with Sithe Energies, we have extended an open**
4 **opportunity for Niagara Mohawk to make a competitive offer that would keep us on**
5 **their system. However, Niagara Mohawk has responded to the competition posed by**
6 **Sithe in a manner that is inconsistent with competitive markets. In fact, at an August**
7 **19, 1992 meeting with senior Niagara Mohawk officials, including its Vice President**
8 **of Customer Relations, Mr. John Hennessey, and in-house counsel, Niagara Mohawk**
9 **exhibited little interest in making any competitive, long-term offer to retain Alcan**
10 **as a customer. Instead, Niagara Mohawk repeatedly indicated that it would pursue**
11 **litigation to block any electricity transaction between Alcan and Sithe. On October**
12 **6, 1992, Mr. Hennessey reiterated this point to me in a follow-up call that I initiated**
13 **in the hopes of encouraging Niagara Mohawk to find a business solution.**
14 **Subsequent to that August 19, 1992 meeting, although we have continued to meet**
15 **with Niagara Mohawk and have taken affirmative steps in our contractual**
16 **arrangements with Sithe to keep the opportunity for Niagara Mohawk to make a**
17 **long-term competitive offer open, Niagara Mohawk has not made a formal, long-term**
18 **offer to us.**

19
20 **Q DID ALCAN EVER OFFER TO GO WITH NIAGARA MOHAWK TO THE**
21 **PUBLIC SERVICE COMMISSION IN AN ATTEMPT TO GAIN APPROVAL**

1 **FOR A LONG-TERM COMPETITIVE CONTRACT THAT WOULD KEEP**
2 **ALCAN ON THE SYSTEM?**

3 A Yes. At a December 23, 1992 meeting between senior Alcan officials (including Mr.
4 Brian Sturgell, our Vice President) and senior Niagara Mohawk staff (including Mr.
5 William Davis, Chief Executive Officer), Alcan made such an offer to Niagara
6 Mohawk. However, Niagara Mohawk indicated that it would not pursue such a
7 solution, that it viewed the transaction between Alcan and Sithe as illegal and that
8 it would be litigating that transaction. Inasmuch as we had brought our Vice
9 President in from Cleveland for this meeting, Niagara Mohawk's unwillingness to
10 even explore an innovative, long-term solution to the problem and present it to the
11 Public Service Commission was very disappointing. Niagara Mohawk did offer to
12 look into what it considered to be a remote possibility of a short-term, discounted
13 contract pursuant to a new tariff that it was going to file, which ultimately became
14 its S.C. 10 cogeneration deferral tariff. At that time, we indicated to Niagara
15 Mohawk that a one or two year discounted price contract which might be entered
16 into pursuant to a tariff that had not been filed was not competitive with the
17 opportunity we had with Sithe.

18
19 Q **DID YOU CONTINUE DISCUSSIONS WITH NIAGARA MOHAWK AFTER**
20 **THE DECEMBER 23, 1992 MEETING?**

1 A Yes. Throughout the remainder of 1992, all of 1993 and into 1994, we engaged in
2 discussions with Niagara Mohawk in an attempt to receive a competitive offer from
3 it. Despite the prolonged discussions, we did not receive a formal offer from
4 Niagara Mohawk for a discounted rate until February 16, 1994.

5
6 **Q WHAT DID NIAGARA MOHAWK OFFER ON FEBRUARY 16, 1994?**

7 A In the February 16 offer, Niagara Mohawk proposed a discounted, short-term
8 contract that would apply to Alcan's rates during 1994 only. The short-term offer
9 contained a number of significant conditions, including one which would have
10 required Alcan to repay all amounts received if it refused a future, undefined but
11 allegedly competitive, long-term offer that Niagara Mohawk promised to develop.

12
13 **Q HAS ALCAN RESPONDED TO NIAGARA MOHAWK'S S.C. 10 CONTRACT**
14 **OFFER?**

15 A Alcan has not accepted the short-term discount offered by Niagara Mohawk. The
16 short-term proposal was not made until after the Public Service Commission's
17 February 9, 1994 ruling, which reversed the Empire Energy ruling and stated that
18 Sithe will be considered an electric corporation subject to light-handed regulation.
19 Because of the timing of Niagara Mohawk's proposed short-term discount and its
20 dogged pursuit of every regulatory means of delaying or defeating the sale of
21 electricity by Sithe to Alcan, Alcan began to seriously question Niagara Mohawk's

1 motives. Finally, we were concerned that acceptance of this short-term offer from
2 Niagara Mohawk at that particular time, when the various legal issues were ripe for
3 a decision by the Commission, could have been misconstrued as some sort of
4 resolution of this dispute and possibly could have caused the Commission to deny
5 Alcan the ability to buy electricity from Sithe.

6
7 **Q ASSUMING THAT THE COMMISSION APPROVES THE RIGHT OF SITHE**
8 **TO SELL ELECTRICITY TO ALCAN, WILL NIAGARA MOHAWK**
9 **CONTINUE TO HAVE AN OPPORTUNITY TO COMPETE FOR ALCAN'S**
10 **BUSINESS?**

11 **A** Yes. In our initial Energy Sales Contract, Alcan had broad discretion to purchase
12 electricity from suppliers other than Sithe, with little or no restrictions. On March
13 10, 1993, after delaying our decision for several months in order to afford Niagara
14 Mohawk another opportunity to make a competitive offer, Alcan exercised an option
15 that will provide 15 years of fixed prices if it chooses to purchase from Sithe. In
16 return for exercising that option, Alcan sacrificed some of its flexibility in terms of
17 purchasing from suppliers other than Sithe. However, Alcan still has the option of
18 switching from Sithe to another electricity supplier, including Niagara Mohawk.
19 Niagara Mohawk has been advised of this ongoing opportunity.

1 **Q WOULD ALCAN ENTERTAIN FUTURE OFFERS FROM NIAGARA**
2 **MOHAWK?**

3 **A Of course we would. However, it is fair to say that our supplier/customer**
4 **relationship with Niagara Mohawk is strained at this point. Since filing its petition**
5 **for a declaratory ruling in March, 1993, Niagara Mohawk has done everything**
6 **possible to jeopardize the Oswego facility's ability to survive by attempting to block**
7 **the Alcan/Sithe transaction and to stop or delay construction of the project at every**
8 **turn. Niagara Mohawk even has threatened to deny Alcan crucial back-up power.**
9 **At the same time, Niagara Mohawk has not come forward with even a single,**
10 **concrete long-term competitive offer. Thus, instead of trying to beat the competition,**
11 **Niagara Mohawk has sought to eliminate the competition and, in the process, has**
12 **alienated, and jeopardized the future viability of one of its largest, and best,**
13 **customers. Niagara Mohawk's response to this customer's needs simply would not**
14 **survive in a competitive market, which presumably is why it is fighting so hard to**
15 **block it.**

16
17 **Q PLEASE EXPLAIN THE "STEAM HOST" RELATIONSHIP BETWEEN**
18 **ALCAN AND SITHE.**

19 **A Independence and Alcan are the generating and consuming components, respectively,**
20 **of an approved qualifying facility under the Public Utility Regulatory Policies Act**
21 **of 1978 ("PURPA"). As such, it has to meet certain thermal usage requirements in**

1 order to retain that status. As explained earlier, Alcan is the sole steam host for the
2 Independence Station and, for this and the reasons set forth below, is an integral part
3 of the qualifying facility. Alcan agreed to be part of the qualifying facility in return
4 for the opportunity to purchase lower cost electricity from Sithe. Because of the
5 thermal requirements of PURPA, the viability of the Independence Station is
6 inextricably tied to the ability of our Oswego facility to remain competitive.

7
8 **Q IN WHAT OTHER WAYS ARE THE TWO FACILITIES**
9 **INTERDEPENDENT?**

10 **A** In addition to serving as the steam host, the Oswego facility bears an integral
11 relationship to the Independence Station in a number of other ways. For example,
12 but for the original conveyance of approximately 78 acres of land by Alcan to Sithe
13 at the beginning of the project, the Independence Station probably could not have
14 been sited at its present location because of environmental regulations. In addition
15 to the original sale of land by Alcan, there was a subsequent conveyance of another,
16 prime parcel of land that Sithe required. We have executed numerous licensing
17 agreements with Sithe for the installation of piping, wiring and transmission lines
18 over Alcan's property and, in some cases, the installation already has been
19 performed. To facilitate the construction at the Independence Station, we also
20 granted additional licensing agreements for construction lay down areas and a rail

1 spur extension over Alcan's property. In addition, Alcan has granted a noise
2 easement that was required for the operation of the Independence Station.

3 Finally, in furtherance of the Energy Sales Contract, Alcan has spent several
4 hundred thousand dollars on engineering, legal and other professional costs.
5 Moreover, several million dollars worth of equipment integral to the operation of the
6 Independence Station is presently being installed in the Oswego facility. Thus, the
7 interests of Alcan's Oswego facility and Sithe's Independence Station are extremely
8 intertwined at this point.

9
10 **Q WHY WAS THE TRANSACTION BETWEEN ALCAN AND SITHE**
11 **STRUCTURED AS IT WAS?**

12 **A** Without delving too much into the legal aspects of it, in March, 1991, we became
13 aware of a Public Service Commission ruling that stated, in very clear terms, that a
14 qualifying facility under PURPA, larger than 80 MW, could sell electricity to its
15 steam host and not be subject to regulation by the Public Service Commission. That
16 ruling, known as the Empire Energy ruling, provided the basis for the structure of
17 the transaction between Alcan and Sithe. With the assistance of counsel, we
18 structured the Alcan/Sithe transaction to emulate the transaction that was approved
19 in the Empire Energy ruling. In fact, the Alcan/Sithe transaction closely tracks the
20 transaction underlying the Empire Energy ruling. Thus, it was with great dismay that
21 we read the February 9, 1994 ruling by the Public Service Commission which

1 essentially reversed the position it had laid out in the Empire Energy ruling. We
2 have petitioned the Commission to reverse the February 9 ruling as it applies to
3 Alcan because we believe that we are being unfairly penalized, retroactively, for
4 relying, in a reasonable and justifiable manner, on a prior Public Service Commission
5 ruling. In addition, Alcan cannot comprehend why the Commission would allow one
6 steam host to purchase from the generating component of the qualifying facility of
7 which it is a part and, three years later, without any prior notice, deny another steam
8 host the same opportunity where there are virtually no factual dissimilarities between
9 the two transactions. Finally, we believe that the late announcement concerning the
10 potential energy sales to Liberty Paperboard was the determining factor that caused
11 the Commission to reverse the Empire Energy ruling as to Alcan. This is totally
12 unfair to Alcan. The possible Sithe/Liberty Paperboard transaction has no effect on
13 the Alcan/Sithe transaction and should not have influenced the Commission's
14 consideration of our separate, and prior, transaction. Despite all of this, the April 19,
15 1994 Order has reaffirmed our expectation that the Public Service Commission
16 ultimately will approve Alcan's right to purchase electricity from Sithe pursuant to
17 our energy sales contract.

18
19 **Q IN ITS APRIL 19, 1994 ORDER, THE PUBLIC SERVICE COMMISSION**
20 **NOTED THAT NIAGARA MOHAWK HAD RAISED ALLEGATIONS OF**
21 **"UNFAIR COMPETITION" WITH REGARD TO THE ALCAN/SITHE**

1 **TRANSACTION. DO YOU HAVE ANY COMMENT ON THESE**
2 **ALLEGATIONS?**

3 A Since 1990, Niagara Mohawk has been keenly aware of Alcan's critical need for
4 reduced electricity prices at its Oswego facility. In addition, since at least January,
5 1991, Niagara Mohawk has been aware that Alcan was investigating cogeneration
6 options and, beginning no later than October, 1991, was aware of Alcan's intention
7 to act as steam host, and purchase electricity, from the Sithe cogeneration facility.
8 Despite this early knowledge of Alcan's intentions, and an open opportunity within
9 the ensuing two and one-half years of negotiations and discussions, Niagara Mohawk
10 has failed, to date, to make a single long-term, competitive offer, either through a
11 tariff filing or by special permission of the Public Service Commission, to keep
12 Alcan on the system. In addition, Niagara Mohawk's senior management declined
13 to join with Alcan in a special effort to have the Public Service Commission consider
14 the potential benefits of allowing Niagara Mohawk to make a long-term, competitive
15 offer to Alcan through a special contract.

16 Given all of this, it is inconceivable to me that Niagara Mohawk could claim
17 that it has not had a "fair opportunity" to compete for Alcan's business. We have
18 gone out of our way to present Niagara Mohawk with opportunities to retain Alcan
19 as a customer. In fact, during our meetings with Niagara Mohawk we frequently
20 updated them on the status of our contract negotiations with Sithe and even gave
21 advance notice to Niagara Mohawk prior to signing the Energy Sales Contract on

1 November 18, 1992 and prior to executing the fixed price option on March 10, 1993,
2 just to give them an additional chance to make competitive offers.
3

4 **Q PLEASE CONTINUE.**

5 **A** As I noted earlier, Niagara Mohawk has had, and will continue to have, chances to
6 compete with Sithe for Alcan's business. To date, Niagara Mohawk simply has not
7 met the challenge. In terms of "fairness," it is our belief that the prices that Alcan
8 will pay to Sithe exceed Sithe's cost of producing electricity. Thus, Alcan is not
9 receiving a subsidized price from Sithe. Instead, the prices were fairly determined
10 during an extensive, arms length negotiating process between two parties that lasted
11 almost two full years. In fact, the pricing terms that we eventually agreed upon were
12 not as favorable as what we originally sought because there was competition for the
13 role of steam host from Jefferson Smurfit Paper Company.

14 Moreover, Niagara Mohawk has stated publicly that its incremental cost of
15 service is less than 3.0 cents/kwh, which means that it could make a competitive
16 offer if it chose to do so. As Niagara Mohawk is aware, the price that Alcan will
17 pay to Sithe also exceeds Niagara Mohawk's incremental cost of service. This means
18 that Niagara Mohawk could have made a competitive offer to Alcan, which would
19 benefit both its shareholders and its other customers, if it had chosen to do so. To
20 date, it has not. In short, Alcan has been up front with Niagara Mohawk from the
21 very start with regard to its critical need for lower electricity prices. It has pursued

1 those prices by examining a number of options for alternative supply and attempted
2 negotiations to achieve this goal with Niagara Mohawk. Ultimately, we concluded
3 that the Independence project offered the greatest, long-term benefits that would help
4 to ensure the future viability of the Oswego facility. The Public Service Commission
5 should reject any contention by Niagara Mohawk that it has not had a fair
6 opportunity to compete for our business.

7
8 **Q IN ITS APRIL 19, 1994 ORDER, THE PUBLIC SERVICE COMMISSION**
9 **MAKES REFERENCE TO NIAGARA MOHAWK'S ALLEGATIONS**
10 **REGARDING THE INDEMNIFICATION CLAUSE THAT IS IN THE**
11 **ENERGY SALES CONTRACT BETWEEN ALCAN AND SITHE. CAN YOU**
12 **EXPLAIN THE INDEMNIFICATION CLAUSE?**

13 **A** The indemnification clause that you reference is contained in Sections 9.12 and 9.13
14 of the Energy Sales Contract. A copy of those sections is attached hereto as
15 RRL-1 (). By letter agreement dated January 29, 1993, the indemnification clause
16 was clarified to expand coverage to include certain circumstances that might have
17 been precluded under the original language (See RRL-2 ()).

18 The indemnification clause was negotiated by Alcan subsequent to the August
19 19, 1992 meeting with Niagara Mohawk. That meeting led Alcan to conclude that
20 Niagara Mohawk might seek to litigate the right of Alcan to purchase electricity from
21 Sithe. The clause was intended to ensure that the savings that Alcan had projected

1 **Q IN ITS APRIL 19, 1994 ORDER, THE COMMISSION ALLUDED TO**
2 **NIAGARA MOHAWK'S ARGUMENTS REGARDING THE NEGATIVE**
3 **IMPACT THAT THE LOSS OF ALCAN AS A CUSTOMER WILL HAVE ON**
4 **ITS REMAINING CUSTOMERS. CAN YOU COMMENT ON NIAGARA**
5 **MOHAWK'S POSITION?**

6 **A As noted earlier, we dispute the proposition that the sale of electricity by Sithe to**
7 **Alcan will have a net negative impact on Niagara Mohawk's other customers. To**
8 **the contrary, we believe that net benefits will flow to Niagara Mohawk's other**
9 **customers. More fundamentally, Niagara Mohawk's position assumes that the \$9**
10 **million in gross margin that it allegedly receives from Alcan currently will remain**
11 **in place. For the reasons stated earlier, that is a faulty assumption. The Oswego**
12 **facility's ability to remain competitively viable would be threatened if it had to**
13 **continue paying the spiraling Niagara Mohawk electricity prices. If Alcan had not**
14 **decided to serve as the steam host for the Sithe project, it either would have served**
15 **as a steam host for another cogeneration project, self-generated, pursued other**
16 **suppliers of electricity or, if all else failed, been forced to move production, and jobs,**
17 **out of the state. In fact, the very fact that Niagara Mohawk has made a short-term**
18 **offer (albeit a noncompetitive one), and allegedly is contemplating a longer-term**
19 **offer, should serve as an acknowledgement by Niagara Mohawk that its existing level**
20 **of margins received from Alcan could not continue. Finally, in its 1993 Annual**
21 **Report, Niagara Mohawk reports that its electricity sales increased by 1.1 billion**
22 **kilowatthours, more than four times Alcan's annual usage. Thus, Niagara Mohawk**
23 **already has absorbed the loss of Alcan, and then some.**

1 **Q DO YOU HAVE ANYTHING TO ADD REGARDING NIAGARA MOHAWK'S**
2 **CLAIM REGARDING ITS LOSS OF MARGINS FROM ITS SALES TO**
3 **ALCAN?**

4 **A Assuming that Niagara Mohawk's calculations are correct, the utility's claimed**
5 margin recovery of \$9 million means that it is earning well over a 100 percent return
6 on its sales to Alcan! Although we realize that we currently are beholden to a
7 monopoly, these numbers astonished us. We at Alcan feel that we are being abused
8 and that Niagara Mohawk's litigation efforts are, first and foremost, an effort to
9 protect its monopoly status, regardless of the impact on Alcan, Alcan's employees
10 and residents in Niagara Mohawk's service territory, so that it can continue to charge
11 us prices that bear absolutely no relationship to economic theory or what a
12 competitive market would bring. I doubt that the Commission ever contemplated a
13 situation where any utility would be allowed to earn such incredible returns from a
14 single customer and then be asked by that same utility to protect its "right" to
15 continue that pricing practice. We are hopeful that the Commission will reject
16 Niagara Mohawk's position and allow Alcan's Oswego facility to access electricity
17 supplies that will allow it to regain its competitive status.

18
19 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A Yes, it does.**
21