STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Sithe/Independence Power Partners, L.P. for an Original Certificate of Public Convenience and Necessity Authorizing Independence's Proposed Generating Station to Provide Electric Service to Alcan Rolled Products Company and Liberty Paperboard, L.P.	:	Case 94-E-0136 ALJ Furlong

COMMENTS OF NIAGARA MOHAWK POWER CORPORATION CONCERNING THE AMOUNT OF THE COMPETITION EQUALIZATION FEE

In its Order on Certification and Remand for Further Comment on Appropriate Equalization Fee ("Order"), issued and effective September 8, 1994, the Commission sought further comments from the parties on the amount of an appropriate competition equalization fee to be paid to Niagara Mohawk Power Corporation ("Niagara Mohawk") by Sithe/Independence Power Partners, L.P. ("Sithe/Independence") as a condition of Sithe/Independence's sales to Alcan Rolled Products Company ("Alcan") and Liberty Paperboard, L.P. ("Liberty").[1] These comments are submitted on behalf of Niagara Mohawk in response to the Commission's request. In submitting comments, Niagara Mohawk reserves its right to request rehearing of the Commission's decision to grant certification to Sithe/Independence to sell to Alcan and Liberty,

[1]The Commission concluded that "the arguments posited by Sithe/Independence against the imposition of a reasonable equalization fee are unpersuasive," leaving only the issue of the amount of an "appropriate fee." Order at 13.

certification to Sithe/Independence to sell to Alcan and Liberty, as well as its right to seek review of that decision in court.

I. THE COMMISSION HAS ESTABLISHED THE APPROPRIATE STANDARD FOR SETTING THE FEE.

In its Order, the Commission addressed the considerations that would guide it in setting a reasonable fee:

> [A] reasonable equalization fee should be established that will balance the equities involved here, i.e., mitigate the extent to which investment undertaken to serve Alcan and other local growth (such as Liberty) now falls on Niagara Mohawk's other customers, and cover as well, contributions to DSM and other programs made by Niagara Mohawk that otherwise would be lost as a result of Sithe/Independence retail sales.

Id. The Commission also noted that, as a result of the Independence Project's nearing completion, this proceeding had to be concluded before there was an opportunity in the competitive opportunities case to develop the "appropriate terms and conditions for the transition to a more competitive electric industry." Id.

Niagara Mohawk agrees with the Commission that the lodestar for setting the fee in this proceeding is mitigation of the impact on Niagara Mohawk's other customers and the Commission's programs from the loss of revenues caused by Sithe/Independence's retail sales to both Alcan and Liberty. Because of Sithe/Independence's decision partially to devote to retail sales the output of a project that was constructable only because of wholesale sales made possible by a federal program, the

Commission has been confronted before the competitive opportunities case with the imperative of fitting those retail sales into a regulatory regime that has not yet been modified to accommodate retail competition. In these circumstances, the Commission has correctly focussed on protecting Niagara Mohawk's remaining retail customers and the Commission's own programs.

II. BECAUSE ONLY NIAGARA MOHAWK'S RECOMMENDATION ON THE APPROPRIATE FEE MEETS THE STANDARD SET BY THE COMMISSION, THE COMMISSION SHOULD ADOPT IT.

Niagara Mohawk recommended that the fee be set annually at the difference between the rates to customers in Alcan's and Liberty's respective rate classes and Niagara Mohawk's marginal cost of service. Initial Brief of Niagara Mohawk, at 51; Tr. 997-98. The basis for that recommendation is straightforward: The retail rates represent the Commission's own determinations of each customer class's responsibility for Niagara Mohawk's reasonable and necessary cost of serving customers and fulfilling the Commission's programs, whereas the marginal cost of service represents the savings Niagara Mohawk would realize by not serving either Alcan or Liberty. Thus, in order to ensure that Niagara Mohawk's other customers and the Commission's own programs are fully protected from any adverse effects as a result of these retail sales by Sithe/Independence, the fee for each sale must be set equal to the difference between Niagara Mohawk's retail rate and its marginal cost. This recommendation, initially advanced by Staff as well (Tr. 1471-72), is the only

recommendation that meets the standard established by the Commission, and should be adopted.

Moreover, it is this measurement of the fee that the economic experts[2] in this proceeding unanimously supported as necessary to ensure economically efficient competition during a transition to a competitive electricity industry. In addition, testimony of Dr. Alfred Kahn in another case, entered into the record, and a speech of Dr. Kahn discussed by one of the experts here,[3] established that he also believes that only a fee measured as Niagara Mohawk proposes would further efficient competition.

During this proceeding the only credible argument raised against measuring the fee as proposed by Niagara Mohawk was that the rates Niagara Mohawk charges to Alcan's customer class would not be sustainable as to Alcan -- i.e., that Alcan would self-generate, close down or leave the state rather than continue to pay those rates. It might be that in the absence of Sithe/Independence those rates would not be sustainable. However, it is clear that the rates are sustainable because of Sithe/Independence's commitment, noted by the Commission in its Order of April 19 at p. 11, that it will hold Alcan harmless for the difference between the prices offered by Sithe/Independence and the rates Alcan might have to pay to Niagara Mohawk. Given

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[2]Professor Robert Willig of Princeton University, Dr. Theresa Flaim of Niagara Mohawk, Dr. Miles Bidwell of National Economic Research Associates (testifying for Sithe/Independence), and Dr. Alan Rosenberg of Drazen, Brubaker & Associates (testifying for Alcan).

[3]Dr. Bidwell, testifying for Sithe/Independence.

that commitment and, more importantly, the economic reality that led to it[4] -- Niagara Mohawk's full rates to Alcan's customer class are sustainable as to Alcan and can be used to measure the fee. Basing the fee on those rates would best secure the Commission's objective of providing maximum protection for Niagara Mohawk's remaining customers and for the Commission's regulatory programs.

Niagara Mohawk agrees with the Commission that a fee should be paid for Sithe/Independence's sales to Liberty as well. As the Commission noted, a fee is necessary to "mitigate the extent to which investment undertaken to serve . . . other local growth (such as Liberty) now falls on Niagara Mohawk's other customers." Order at 13.[5] During the hearing Niagara Mohawk contended that the fee on sales to Liberty should be based on the same SC-3A rate (the transmission level industrial rate) as the fee for sales to Alcan. Niagara Mohawk believes that this rate is sustainable as to Liberty as well as to Alcan, because Sithe/Independence needs Liberty as a second steam host to ensure

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[4]As Niagara Mohawk fully developed in the hearing, Sithe/Independence must give Alcan the financial relief it needs because Alcan's existence as steam host is essential to Sithe/Independence's continuing to reap extraordinary profits under its PURPA contract with Consolidated Edison Company.

[5]The Commission correctly rejected the Administrative Law Judge's view that no fee was due for sales to Liberty. The ALJ's reasoning -- that Niagara Mohawk could not have planned for Liberty because it was prevented by the regulatory climate from attracting such customers (Interoffice Memorandum at 32-33) -- ignored the reality that utilities must plan based on statistically determined probabilities of expansions and additions within their service territories, not on the potential addition of specific customers.

its continued rights to wholesale profits and thus will help Liberty pay that rate. While there was no debate about Sithe/Independence's need for Alcan as a steam host, there was disagreement on the record as to whether Liberty was equally necessary as a supplemental host. If the Commission agrees with Niagara Mohawk's position as to Sithe/Independence's need for Liberty, the fee should be based on SC-3A. If the Commission disagrees with Niagara Mohawk, the fee should be set through a process consistent with the Commission's recent guidelines on flexible rates, which are reflected in Niagara Mohawk's recently filed SC-11 tariff.

III. THE ONLY OTHER SPECIFIC PROPOSAL IN THE RECORD, STAFF'S IN BRIEF, REQUIRES CORRECTION IF IT IS ADOPTED.

As noted earlier, Staff during the hearing independently proposed the same measurement of the fee as did Niagara Mohawk. In its brief, however, Staff overlaid on its proposal a cap on the fee at the estimated cost to Alcan and Liberty of installing self-generation -- $40 million and $15 million, respectively, or a total of $55 million, according to Staff. Staff reasoned that capping the fee would allow significant compensation of remaining customers without requiring payments by Sithe/Independence for an indeterminate period. See Staff Initial Brief at 33-34.

However appropriate a cap might be in other circumstances, Niagara Mohawk submits it is not justifiable so long as Sithe/Independence's ability to reap wholesale profits depends on

its retention of Alcan (and, perhaps, Liberty) as a steam host. Should the Commission nevertheless be inclined to adopt a cap, certain clarifications and adjustments should be made.

First, the Commission should be clear that the self-generation alternative used to set the cap is the self-generation that Alcan could have accomplished on its own, not the so-called "self-generation" that Sithe/Independence has suggested it might help Alcan accomplish if the Commission imposes a fee higher than Sithe/Independence wants to accept.[6] Second, since Staff proposed that the cap be set at the estimated cost of installing self-generation, the $55 million logically is a net present value ("NPV") figure: Installation would require a one-time investment, so the cost is not a nominal value spread over several years. Third, there should be added to the cost of installation the net costs of operation, since Alcan or Liberty also would incur those costs if they self-generated.

Niagara Mohawk has prepared an analysis of the self-generation alternative that takes these clarifications and adjustments into account. That analysis used a methodology similar to the methodology used under Niagara Mohawk's SC-10 tariff to calculate the price necessary to defer self-generation

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[6]As the Public Utility Law Project noted in its Initial Brief, at 22 n.19, Sithe/Independence's own expert, Dr. Bidwell, agreed that the rate used in the calculation should be the one Alcan would pay in the absence of Independence. Nor should the Commission feel that a cap higher than the cost of a Sithe/Independence-assisted "self-generation" alternative would be a futile act. For the reasons set forth in footnote 9, infra, the Commission has ample authority to prevent Sithe/Independence from circumventing its jurisdiction in this fashion.

by an industrial customer. That analysis shows that the NPV of the contribution preserved by Niagara Mohawk under an SC-10 rate competitive with self-generation for Alcan ranges from the $40 million estimated by Staff for initial capital investment alone to as high as $50 million, the range resulting from variations in certain key assumptions. Niagara Mohawk has been unable to prepare a similar analysis for Liberty, due to an inability to obtain the necessary information from Liberty, and thus cannot refine the Staff's $15 million estimate of capital costs alone. See Affidavit of Carl J. Pietrykowski (Exhibit 1).

IV. NEITHER THE SITHE/STAFF PROPOSAL NOR THE ALJ'S PROPOSAL IS SUPPORTED BY THE RECORD, NOR DOES EITHER OF THEM MEET THE COMMISSION'S GOAL OF FULL PROTECTION OF REMAINING CUSTOMERS AND COMMISSION PROGRAMS.

The Commission's order addressing issues relevant to certification made clear that the Commission expected the parties to address ways to ameliorate the impact of lost retail sales on Niagara Mohawk's remaining customers, and specifically suggested that a fee might be appropriate. Order of April 19, at 11-12. Only Niagara Mohawk and Staff followed the Commission's implicit direction by addressing the appropriate level of a fee. Both Sithe/Independence and Alcan confined themselves to arguing that no fee was appropriate. The ALJ correctly dismissed those arguments (Interoffice Memorandum at 31-34), and the Commission has made clear that a reasonable fee will be imposed. Order at 13.

In effect, Sithe played brinksmanship, placing its bet on

its ability to avoid any fee. It developed no record that would support a measurement of the fee different from Niagara Mohawk's and Staff's proposal. Sithe's proposal of September 2, which resulted from Sithe's eleventh-hour, behind-the-scenes lobbying of Staff, cannot be accepted as a basis for setting the fee because it was developed in contravention of the Commission's settlement guidelines. Niagara Mohawk will not repeat here, but incorporates by reference, all of the procedural points against the Sithe proposal made in the letter to Chairman Bradford from B. Robert Piller, Esq., of the Public Utility Law Project, dated September 6, 1994, and the letter to Secretary Kelliher from Paul J. Kaleta, Esq. of Niagara Mohawk, dated September 7, 1994.

In addition to the procedural infirmities of the Sithe proposal, that proposal is meritless. First, it has no support in the record of this proceeding: Sithe has simply offered, for a limited period of time, a portion of the additional profit it will make by selling the electricity from 44 MW of capacity to Alcan instead of to Niagara Mohawk, apparently in the hope that the Commission will consider this "enough."[7] Moreover, Sithe's

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[7]Sithe/Independence will make in 1995 at least $5 million in additional profit by withdrawing 44 MW for which it has a PURPA-assured market with Niagara Mohawk, and selling that electricity to Alcan instead. (This assumes that Niagara Mohawk would pay Sithe/Independence 2.29 cents per kWh (based on July 1994 energy-only LRACS), and that Sithe/Independence would charge Alcan 4.46 cents per kWh and sell Alcan 230 GWH in 1995, all of which assumptions are supported by the record.) Sithe/Independence will increase its profits handsomely in succeeding years as well by selling the electricity from 44 MW to Alcan instead of to Niagara Mohawk. Moreover, the contract between Sithe/Independence and Alcan runs for 22 years; Sithe/Independence has offered to make annual fee payments for 7

proposal does not even begin fully to protect Niagara Mohawk's other customers and the Commission's programs: Sithe would reimburse Niagara Mohawk only $3 million annually and then only for 7 1/2 years, when the record shows that Niagara Mohawk's annual loss of contribution from Alcan alone is over $10 million.[8] Finally, the proposal does not require Sithe or Alcan to abandon the federal lawsuits they have brought challenging the Commission's jurisdiction to require a certificate and impose a fee: Sithe is trying to "entice" the Commission into accepting this alleged "settlement," while retaining the right to challenge the Commission's jurisdiction to impose the very fee to which it agreed! In effect, the Sithe proposal seeks to substitute a one-sided negotiation (since Niagara Mohawk certainly was not involved and rejects the proposal categorically) for any reasoned approach to setting the fee. It should be flatly rejected.[9]

1/2 years only.

[8]Sithe's proposal has it beginning to pay the fee <u>eight months after</u> it begins service to Alcan (assuming service begins November 1, 1994). Obviously, Sithe should be required to begin paying the fee contemporaneously with its beginning sales to Alcan; there is no justification for giving Sithe instead of Niagara Mohawk the use of money for an eight month period.

[9]Niagara Mohawk submits that Sithe's apparent commitment, in its proposal, to develop Liberty is so hedged and qualified as to be meaningless. In any event, to the extent that the Commission is concerned about the effect of electric rates on the development of Liberty, the Commission should review the letter attached to these comments as Exhibit 2, in which Niagara Mohawk's Chairman and Chief Executive Officer makes clear the company's willingness to offer Liberty rates pursuant to the Commission's recent guidelines on flexible pricing or under an economic development zone rider.

Nor should the Commission be deterred from rejecting Sithe's

The recommendation of the ALJ would protect Niagara Mohawk's remaining customers and the Commission's programs much more than would the Sithe proposal. The recommendation is still insufficient to provide complete protection, however, and it also does not hold up to analysis of the theoretical basis proffered by the ALJ for it. The ALJ suggested that the rate Alcan accepted from Sithe/Independence was the maximum rate Alcan would have accepted from Niagara Mohawk had Niagara Mohawk been able to offer it. Interoffice Memorandum at 35. If he means that it should be considered the sustainable rate because Alcan's ability to get this rate from Sithe/Independence means it would have accepted nothing higher from Niagara Mohawk, he would effectively give future qualifying facilities carte blanche to reduce the amount of their fees by reducing the prices they offer to their steam hosts -- or, indeed, to eliminate the fee by selling at retail at the same price they could sell at wholesale under PURPA. If the price offered by a qualifying facility determines

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proposal by Sithe's contention that it will circumvent any fee in excess of the $3 million per year it has proposed by delivering steam from the Independence Project to a steam turbine to be owned and operated by Alcan. If it elected to furnish steam to Alcan for the generation of electric power, Sithe/Independence would become a "steam corporation" under section 22(2) of the Public Service Law. Since section 81 of the Public Service Law requires that such steam corporations obtain a certificate of public convenience and necessity from the Commission before constructing a "steam plant," the Commission plainly has the authority either to prohibit Sithe/Independence from constructing the steam line and associated facilities required for the delivery of such steam to Alcan or to approve the construction of such facilities only on the condition that Sithe/Independence agrees to pay to Niagara Mohawk whatever fee the Commission determines in this proceeding to be appropriate.

the sustainable price to be used to set the fee, the qualifying facility would have an incentive to set the price to its steam host at the utility's avoided cost, thereby conferring the maximum benefit on its steam host. The qualifying facility could easily recoup part or all of the benefit it conferred on its steam host by other means (e.g., a higher price for the thermal energy provided to the host). Neither the qualifying facility nor its host would lose a cent by employing this strategy; the only losers would be the utility and its remaining customers.[10]

More likely, the ALJ meant that Alcan's acceptance of the rate offered by Sithe/Independence shows that, in the absence of Sithe/Independence, it would have accepted nothing higher than this rate from Niagara Mohawk. Interpreted that way, the ALJ's reasoning suffers from a failure to consider what was made clear

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[10]Sithe/Independence certainly cannot contend that the ALJ's recommendation would bc unfair to it. Although it would restrict Sithe/Independence to the same profits it would earn by selling the entire output of the Independence Project at wholesale, as was the intention under the Public Utility Regulatory Policies Act of 1978, Sithe/Independence has no "right" to the extra profits that it would earn by selling 44 MW to Alcan at prices above Niagara Mohawk's marginal energy costs, since its ability to earn them depends entirely on the Commission's decision as to certification and the level of the fee.

Moreover, according to an independent financial analysis, Sithe/Independence's failure to earn those extra profits would not significantly harm its shareholders. Kidder, Peabody has stated that even if Sithe/Independence were not permitted to sell to either Alcan or Liberty (and thus to make no profit above the profit on its wholesale sales), there would be only "a modest adverse impact on earnings (approximately $0.08 per share)." Exh. 36, at 6. It should be noted that Kidder, Peabody estimated that Sithe's earnings per share would go from $0.35 in 1994 to $1.10 in 1995, after the Independence Project comes on line.

in the proceeding -- that the contract rate for electricity was only one of many interrelated transactions between Alcan and Sithe/Independence. It is impossible to consider the electricity rate as a stand-alone deal, and to say that it represents the highest rate to Alcan that would have been sustainable by Niagara Mohawk. No evidence was presented by either Sithe/Independence or Alcan that Alcan had an alternative -- for instance, moving out-of-state or self-generation -- that made the prices in its contract with Sithe/Independence the absolute highest it would pay.[11] The most that the evidence presented by Sithe/Independence and Alcan would support is a conclusion that at some undetermined price for electricity, equal to or higher than the price in the contract between Sithe/Independence and Alcan, Alcan would have sought another alternative. Sithe/Independence and Alcan had every opportunity to sharpen their proof on this issue, but simply failed to do so.[12]

If the Commission nonetheless is inclined to adopt the ALJ's recommendation, the Commission should correct a computational

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[11]Niagara Mohawk addressed earlier in these comments the correct approach to determining the price at which Alcan would have chosen to self-generate.

[12]It is important to remember, also, that the extraordinary profitability of Sithe/Independence's wholesale contract with the Consolidated Edison Company depends upon Sithe/Independence's retaining its qualifying facility status. This means that Alcan's thermal load is a valuable asset, and Alcan could use the leverage provided by that value to drive the electricity price from Sithe/Independence down. Alcan's ability to do so means that the price from Sithe/Independence is no evidence of the maximum price to Alcan that was sustainable by Niagara Mohawk against unsubsidized forms of competition.

error that the ALJ appears to have made. He appears to have subtracted the energy-and-capacity LRACs from the price in the Sithe/Independence contract. The correct amount to subtract is the energy-only buy-back rate in Niagara Mohawk's SC-6 tariff. So long as Niagara Mohawk retains the obligation to provide service as the utility of last resort within its franchised territory, Niagara Mohawk does not avoid the capacity component of SC-6 when Sithe/Independence sells to Alcan. Moreover, the Commission for years has been approving contracts between Niagara Mohawk and qualifying facilities that use the energy-only SC-6 rate as Niagara Mohawk's avoided costs. The affidavit of Carl J. Pietrykowski attached to these comments as Exhibit 1 indicates that using the correct demand for Alcan and using the energy-only LRACs for 1995 as a proxy for Niagara Mohawk's energy-only SC-6 rate for that year results in an estimated fee of $5 million (exclusive of gross revenues tax) under the ALJ's methodology, instead of the $3.9 million calculated by the ALJ. The actual fee for each year should be based on actual sales and the energy-only SC-6 rate.

V. CONCLUSION

The Commission has established maximum protection of Niagara Mohawk's other customers and the Commission's own programs as the standard by which to set the competition equalization fee. Only Niagara Mohawk's proposal, that the fee be set at the difference between its rates to the rate classes for Alcan and Liberty minus

Niagara Mohawk's avoided costs, meets that standard. Every economic expert agreed that Niagara Mohawk's proposal also would ensure economically efficient competition, so long as Niagara Mohawk's rates were sustainable; the rates are sustainable because Sithe/Independence's need for Alcan (and, perhaps, Liberty) as steam host(s) requires it to make up the difference between those rates and the prices offered by Sithe/Independence.

There is no justification for a cap on the fee, as proposed by Staff. If the Commission nonetheless decides to impose a cap, certain corrections described herein require that the cap be raised, although how much above the $55 million proposed by Staff is not possible to determine at this time.

The Sithe proposal of a $3 million annual fee for 7 1/2 years has no logic and no support in the record, and does not begin to meet the Commission's goal of protecting customers and its own programs. While the ALJ's approach reaches the logical result of restricting Sithe/Independence to the profits it could

make from wholesale sales alone, it still does not fully meet the Commission's goal and it falls short logically when measured against its own purported rationale.

Respectfully submitted,

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EXHIBIT 1

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Sithe/Independence Power Partners, L.P. for an Original Certificate of Public Convenience and Necessity Authorizing Independence's Proposed Generating Station to Provide Electric Service to Alcan Rolled Products Company and Liberty Paperboard, L.P.	:	Case 94-E-0136 ALJ Furlong

AFFIDAVIT OF
CARL J. PIETRYKOWSKI

1. My name is Carl J. Pietrykowski. My business address is 300 Erie Boulevard, Syracuse, New York 13202. I am employed by Niagara Mohawk Power Corporation as the Manager of Client Services for Large Commercial and Industrial Accounts. My duties include determining the prices that Niagara Mohawk should offer to industrial customers under its SC-10 tariff to defer self-generation by those customers.

2. I have conducted several analyses of the cost of self-generation for Alcan Rolled Products Company ("Alcan"). In these analyses, which are similar to the analyses conducted under SC-10, I took into account all components of the cost of self-generation to Alcan, including initial capital costs and net operating costs. A fifteen-year term was chosen to match the life of the fixed price portion of the Alcan contract. To conduct a net present value ("NPV") analysis, a 9.5% discount

rate was used, equivalent to the Company's allowed rate of return. These analyses showed that if Niagara Mohawk provided prices to Alcan that matched the cost of Alcan's stand-alone self-generation options, Niagara Mohawk would have retained contribution in the range of $40-50 million NPV, depending upon the inputs assumed in the evaluation. This range of contribution produces prices to Alcan between 5.36¢/kWh and 5.98¢/kWh in the first year (inclusive of gross revenues tax). In comparison, prices that have been offered to and accepted by other customers under the SC-10 tariff range from 5.71¢/kWh to 7.97¢/kWh (inclusive of gross revenues tax).

3. I have been unable to complete an analysis of the cost of self-generation to Liberty Paperboard, L.P. ("Liberty"). This is because Niagara Mohawk has been unable to obtain from Liberty the information necessary to conduct an SC-10 analysis, including expected electric power requirements and requirements for thermal energy.

4. I have reviewed the Interoffice Memorandum dated August 29, 1994 and submitted by Administrative Law Judge Vincent P. Furlong to the Public Service Commission in this proceeding. Specifically, I have reviewed the ALJ's proposal to calculate a fee using ". . . the difference between the 4.46¢/kWh price to be charged by Independence and Niagara Mohawk's avoided cost (a difference of approximately $3.9 million using more recent LRACs)." Interoffice Memorandum at 35, n.2. Based on my knowledge of Niagara Mohawk's avoided costs and the more recent

the fee by subtracting energy-and-capacity LRACs from the 4.46¢/kWh price. In 1995, those LRACs will be 2.75¢/kWh (based on the July 1994 LRAC schedule). In addition, it appears the ALJ used an annual consumption for Alcan of approximately 230 GWH. I have recalculated the fee using the energy-only LRACs of 2.29¢/kWh (from the July 1994 LRAC schedule), which would approximate the buy-back rates contained in Niagara Mohawk's rate schedule S.C. No. 6, and using the same annual consumption of 230 GWH. Using these LRACs and this annual consumption, and continuing to use the 4.46¢/kWh used by the ALJ as the sustainable price, I have calculated the fee for 1995 to be $5 million.

5. This completes my affidavit.

Carl J. Pietrykowski

Carl J. Pietrykowski

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

Sworn to and subscribed before me by Carl J. Pietrykowski, this 16th day of September, 1994.

Ruth A. Galutz

Notary Public

RUTH A. GALUTZ
Notary Public in the State of New York
Qualified in Onondaga County No. 6451396
My Commission Expires _____

My commission expires:

9/30/96

EXHIBIT 2

NIAGARA MOHAWK

NIAGARA MOHAWK POWER CORPORATION/300 ERIE BOULEVARD WEST, SYRACUSE N Y 13202/TELEPHONE (315) 428-3500

WILLIAM E. DAVIS
Chairman of the Board and
Chief Executive Officer

September 1, 1994

To: Liberty Paperboard, L. P.

c/o Mr. William Kriegel
Chairman, President and CEO
Officer
Sithe Energies, Inc.
450 Lexington Avenue
New York, NY 10017

c/o Mr. J. Weldon Cole
President and Chief Operating

Beloit Corporation
One St. Lawrence Ave.
Beloit, WI 53511

c/o Mr. Robert K. Kraft
President
International Forest Products Corp.
1 Boston Place
Boston, MA 02108

Gentlemen:

Concern has been raised through the local media that the Liberty Paperboard project may not go forward if Sithe/Independence is not certified to sell electricity directly to the plant. Niagara Mohawk is committed to economic development in its service territory, and can offer Liberty two very attractive and very competitive electricity price options.

A tariff currently pending before the Public Service Commission will permit us to discount our prices to a level 1¢ per kwh above our marginal costs, if necessary to meet competitive or marketplace requirements. This would yield a price averaging about 3.4¢ per kwh, taxes included, based on our current marginal costs. This would also obviate the need for backup power, which may be required if service is taken from Sithe/Independence. Under this tariff, contract terms of up to seven years are permitted, but it is possible to seek permission for a longer commitment.

Another possible pricing option is our Economic Development Zone Rider. This rate is offered in conjunction with new electric load in certified Economic Development Zones created by New York State. The rate is directly equal to the price Niagara Mohawk pays the Independence Station for its power, plus the appropriate taxes on retail sales. That rate is estimated to be under 2.5¢ per kwh, at the present time. Discounts on natural gas service are also available to new customers in these zones. In addition to the attractive energy prices, New York State and local governments can offer tax incentives, credits and other benefits. It is our understanding that Oswego County plans to expand its Economic Development Zone to the area surrounding the Independence Station. This was outlined in a letter to Mr. Cole from William Donlon, Jr. of our Economic Development Department dated February 17, 1994. Once this action is taken by Oswego County these benefits would be available to Liberty and other new customers locating in the zone.

Niagara Mohawk is committed to ensuring that energy prices are not a factor in any decision in whether to proceed with the Liberty project. I would appreciate the opportunity to speak with any representative of the Liberty partnership in pursuing either of the above options.

Very truly yours,

William E. Davis

William E. Davis

WED/pmk
xc: Mr. Joseph Martens, Office of the Governor
Hon. Francis Murray, Commissioner, NYSEO
Mr. Anthony Gaetano, Sr. Deputy Commissioner, NYSDED
Mr. L. Michael Treadwell, Oswego County Area Industrial Director

CERTIFICATE OF SERVICE

I, Lisa A. Silvestri, hereby certify that I have this day served copies of the Comments of Niagara Mohawk Power Corporation Concerning the Amount of the Competition Equalization Fee, in Case No. 94-E-0136, upon the active parties to the case, via hand delivery or first class mail.

Lisa A. Silvestri
Principal Paralegal

Dated: Sep. 16, 1994
Albany, New York