

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BF-250
Niagara Mohawk Power Corporation)	
Owner of Antenna Structure # 1002926)	NAL/Acct. No. 200332280004
Miser Hill, Rutland, New York)	
)	FRN: 0005 9076 21
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 7, 2002

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Niagara Mohawk Power Corporation, (“NMPC”) owner of antenna structure #1002926, has apparently violated Section 17.50 of the Commission’s Rules (“Rules”)¹ by failing to clean and repaint its antenna structure to maintain good visibility. We conclude that NMPC is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 27, 2002, an agent of the Buffalo Office inspected the antenna structure bearing FCC antenna structure registration (“ASR”) #1002926 and located on Miser Hill, Rutland, New York. At the time of inspection, the tower’s paint was chipped and faded reducing the visibility of the structure.

3. On September 3, 2002, the Buffalo Office issued an Official Notice of Violation (“NOV”) to NMPC for the violation found during the August 27, 2002 inspection. Agent Stanbro cited Niagara Mohawk Power Corporation for non-compliance with Section 17.50 of the Rules.

4. On September 11, 2002, the Buffalo Office received a response from Mr. Robert Tiller, Communications Engineer, Niagara Mohawk Power Corporation. Mr. Tiller stated as of September 10, 2002, the tower (#1002926) was being repainted and would be finished within the next four days, depending on the weather.

III. DISCUSSION

5. Section 17.50 of the Rules states that antenna structures requiring painting under this part

¹ 47 C.F.R. § 17.50.

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shall be cleaned or repainted as often as necessary to maintain good visibility. The agent observed that the tower paint was badly faded and chipped, making the tower a hazard to air navigation.

6. Based on the evidence before us, we find that NMPC willfully² and repeatedly³ violated Section 17.50 of the rules by failing to repaint the tower to maintain good visibility. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at \$10,000 for failure to comply with prescribed lighting and/or marking of antenna structures. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 ("Act"), as amended⁵, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶, and Sections 0.111, 0.311 and 1.80 of the Rules⁷, Niagara Mohawk Power Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Commissions Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Niagara Mohawk Power Corporation, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that "the term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, and 0.311.

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payment should note the NAL/Acct. No. 200332280004 and FRN: 0005 9076 21.

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and **MUST INCLUDE THE NAL/Acct. No. 200332280004.**

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. **IT IS FURTHER ORDERED THAT** a copy of this **NOTICE OF APPARENT LIABILITY** shall be sent by Certified Mail, Return Receipt Requested, to Niagara Mohawk Power Corporation, 300 Erie Blvd. W., Syracuse, New York 13612

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
Resident Agent
Buffalo, New York Office

⁸ See 47 C.F.R. § 1.1914.