

I. INTRODUCTION

Petitioner North American Water Office (NAWO) hereby submits the following Request for Hearing and Petition to Intervene regarding the application of Northern States Power Company (NSP) for transfer of NRC operating licenses of Monticello Nuclear Generating Plant, Prairie Island Generating Plant, and Prairie Island ISFSI to "New NSP." See 65 Fed. Reg. 6641-6643.

NAWO is a 501 (c) 3 tax-exempt organization chartered in 1982 to educate people about solutions to environmental problems caused by society's wastes, with a particular focus on wastes from the electric utility industry. Since 1988, NAWO program has been devoted almost exclusively to problems associated with NSP nuclear operations on Prairie Island. In 1990, NAWO became project sponsor of the Prairie Island Coalition, and in that capacity, has participated in numerous state and federal proceedings, including NRC proceedings, relative to the management and regulation of various aspects of the commercial nuclear industry.

II. REQUEST FOR HEARING AND PETITION TO INTERVENE

The Notices of Docketing affords the opportunity to request a hearing and to petition to Intervene. 10 CFR Part 2.105; Notice of docketing, 65 Fed. Reg. 6641-42. Pursuant to the Notice and regulations, Petitioner NAWO hereby requests a hearing and leave to intervene in these proceedings.

III. FACTUAL BACKGROUND

Northern States Power company (hereinafter "NSP") has requested license transfers in association with its merger with New Century Energy ("NCE"). The merged company will be named "XCEL Energy, Inc." (hereinafter "Xcel"). The entity now known as "Northern States Power Co." will cease to exist. A "newly formed wholly-owned utility operating company subsidiary" referred to in the application as "New NSP" is being formed and all existing NSP electric and natural gas utility facilities and operations will be transferred to "New NSP." The corporation has yet to be formed, directors and officers are yet to be named, and the applicant has not demonstrated that "New NSP" has independent assets or that it is any more than a shell corporation.

Under federal regulations, the license transfer application of a "newly formed entity" must provide financial assurances that the new entity has the financial resources to operate, decommission, and handle the nuclear waste of the facility. NUREG 1577; 10 CFR Part 50.80; 10 CFR Part 72.50; 10 CFR Part 30.34(b). In the case of a "newly formed" entity such as "New NSP," the rules for financial assurance are more stringent. The rules for a "newly formed" entity are specifically designed to provide information necessary to determine whether the entity has adequate funds, and to assure that the new company has both the technical ability and financial resources to exert appropriate control and authority over the facility. See NUREG 1577; 10 CFR Part 50.33(f). All applicants must demonstrate that they have resources to cover the costs of operation for the remainder of the license, in this case, until 2007 (Monticello) and 2013 and 2014 (Prairie Island). This includes provision of estimates of annual operating costs for the first five years of operation and the source of funds to cover these operating costs. In addition, the applicant must provide the names and addresses of the directors and officers, the legal and financial relationships it has with

stockholders and owners, and its financial ability to meet its contractual obligations. Id. NSP has not provided this information and claims that it is exempt from the requirements of 10 CFR Part 50.33(f). NSP Application, pps A-7-8.

Petitioner NAWO has been directly involved with state and federal decision-making proceedings involving NSP's nuclear operations since 1988, in its own right and as project sponsor of the Prairie Island Coalition (PIC). This involvement includes a variety of proceedings related to the Prairie Island ISFSI such as the state Environmental Impact Statement; the state Certificate of Need proceeding; state litigation pertaining to the Certificate of Need; state legislation resulting from said litigation; and, various legislative, administrative and judicial proceedings flowing from state legislation. NAWO involvement at the federal level includes public education since 1994 on proposed amendments to the Nuclear Waste Policy Act and nuclear industry attempts, championed by NSP, to privatize nuclear waste management; involvement in the NSP v. Westinghouse lawsuit over prematurely aging steam generator tubes; petitioning the NRC on several Prairie Island and generic rule-making issues; and most recently, participating by invitation of the NRC in the January, 2000 round-table discussion in Red Wing, MN, regarding NRC revisions of its regulatory operations at reactor sites. NAWO has engaged in this work for the past 13 years to do its best to help prevent the harm and destruction that inevitably results from irresponsible nuclear operation conducted outside the scope of public scrutiny. Perhaps the only factors more directly related to public safety than public scrutiny are the financial and technical ability of licensees to safely operate and decommission reactors, and handle nuclear waste, which are at issue in this license application.

Further, NAWO and its staff work and live within the traditional service territory of NSP, approximately 45 miles north and slightly west of Prairie Island, and approximately 45 miles southeast of Monticello. NAWO, member organizations of PIC, and individual staff and members of PIC organizations are all predominately residents within the traditional service territory of NSP, are therefore predominately NSP ratepayers and Minnesota taxpayers who stand to be directly harmed if "New NSP" fails financially, or if, as a result of insufficient financing, improper maintenance of the nuclear facilities results in a nuclear accident.

"New NSP," in its application, does not demonstrate financial and technical ability to adequately carry out nuclear operations at Prairie Island and Monticello in its application for transfer. Therefore, Petitioner and the interests Petitioner has served intently and directly since 1988 are in harms way at least and until "New NSP" demonstrates that it has the financial and technical ability to safely operate and decommission the reactors, and manage the nuclear waste. For this purpose, Petitioner NAWO requests a hearing and petitions to intervene in the above captioned Docket.

IV. PETITIONER HAS STANDING TO INTERVENE

Under the Atomic Energy Act and the rules and regulations of the NRC, "any person whose interest may be affected by a proceeding and who desires to participate" may file a petition to intervene. 10CFR Part 2.714(a)(1). A party's right to intervene under the Atomic Energy Act, Section 189(a), is based upon whether (1) the action being challenged could cause injury-in-fact to the petitioner, and (2) such injury is arguably within the zone of interest protected by the atomic Energy Act or the National Environmental Policy Act (hereinafter "NEPA"). Vermont Yankee

Nuclear Power Station, LBP-90-6, 31 NRC 85, 89 (1990), citing Portland General Electric Co., CLI-76-27, 4 NRC 610, 613-14 (1976).

Petitioner has standing to intervene because the action being challenged could cause injury-in-fact to petitioner. As noted above, Petitioner NAWO and its staff live and work in the region that will be harmed when "New NSP's" inadequate financial and technical resources result in the release of radionuclids at Prairie Island and Monticello. In addition as noted above, NAWO has, by its own initiative and by invitation of the NRC, participated in numerous proceedings relative to Prairie Island nuclear operations, at both the state and federal level. Incidents that will result in such release of radionuclids are within the zone of interest protected by the Atomic Energy Act.

An essential, though not sufficient condition for assurance that licensees will adequately operate and decommission reactors, and manage nuclear waste, is that they demonstrate that they have accessible adequate financial resources to accomplish these objectives. If the NRC transfers licenses in this matter without adequate financial assurance, the potential for harm to, and the threat of injury to Petitioner and those whose interests Petitioner serves is distinct and palpable. Such injury would be directly traceable to the insufficient license transfer application and inadequate disclosure. However, the requirement of disclosure and provision of information sufficient to demonstrate adequate financial assets and assurance, as provided by federal regulation, can redress this matter. Then, if adequate financial assets and assurance are not produced, the application must be denied.

The NRC reworked its financial assurance rules in anticipation of mergers associated with deregulation, and stressed the importance of proof of financial ability, stating it would evaluate "the financial qualifications associated with these transfers by (1) determining whether the licensee will remain an "electric utility" following the transfer, (2) reviewing the recent financial performance of the proposed transferee, or, if the proposed transferee is a new entity such as an operating, generating, or service company subsidiary, evaluating the participation agreement with its owners or other responsible parties, and (3) identifying all parent companies that are not licensed by the NRC or did not undergo an NRC section 50.80 review. NUREG 1577 (1998). NSP's application does not disclose these facts or agreements sufficient to make any determination.

If "New NSP" fails, its liability would not fall to the parent company, Xcel, also a "newly formed entity" which is insulated from liability by its corporate structure, but to taxpayers and ratepayers. The potential for failure is enhanced if "New NSP" lacks financial or technical ability to safely operate the plant and manage the wastes, or if it decides to employ unsafe cost-cutting measures due to precarious financial standing.

Petitioner is concerned that the license application contains insufficient information on which to base a license transfer decision under the rules governing license transfers. If the licensing decision were to be based upon the information provided, the NRC would choose to deny the license transfer request, and redress Petitioner's concerns. The Petitioner's concerns would also be redressed by a requirement that the applicant provide all the information regarding financial and technical qualifications of "New NSP" as required under the federal rules.

Petitioner's concerns regarding the health and safety risks posed by the applicant's request for license transfer fall within the "zone of interest" protected by the Atomic Energy Act, whose

purposes include protection of the public from undue hazards posed by the nuclear industry. Vermont Yankee, supra, LBP-90-6, 31 NRC at 89; 42 USC Part 2133(d), 2210(b). The National Environmental Policy Act's (NEPA) "zone of interest" also encompasses Petitioner's interest in protecting the quality of the environment and conserving a sound economic base for the community through limitation of potential liability and protection of property values through applicant's demonstration of adequate financial assurance, as required by federal rules.

V. STATEMENT OF ASPECTS ON WHICH PETITIONER WISHES TO INTERVENE.

Pursuant to 10 CFR Part 2.714(b)(2), the petitioner is required to state the "specific aspect or aspects of the subject matter of the proceeding" as to which it wishes to intervene. The purpose of this requirement is not to judge the admissibility of the issues, as the Petitioner has the right to amend its petition to intervene with specific contentions later in the proceeding. Customers Power Co. (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). Rather, the purpose of the requirement is to determine whether the Petitioner specifies "proper aspects" for the proceeding. Id. Thus, the petitioner may satisfy the requirement "by identifying general potential effects of the licensing action or areas of concern that are within the scope of matters that may be considered in the proceeding." Vermont Yankee, supra, LBP-90-6, 31 NRC at 89, citing Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973).

The aspects of the subject matter on which Petitioner seeks to intervene are as follows:

1. The license application poses undue risk to public health and safety because it fails to disclose the names and addresses of corporate officers. The application is premature as the applicant is in fact unable to make this disclosure, stating in the application that the names of the officers and directors are not known. 10 CFR Part 50.33(d)(3)(ii); 10 CFR Part 72.22(d)(3)(ii).
2. The license application poses undue risk to public health and safety because it fails to demonstrate financial qualification of the applicant to carry out the activities for which the permit or license is sought. Specifically, the applicant fails to demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. 10 CFR Part 50.33(f)(2).
3. The license transfer poses undue risk to public health and safety because it does not show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two the applicant will have the necessary funds available to cover reactor maintenance expenses that can reasonably be expected to escalate above historical levels as reactor components, including steam generator tubes, deteriorate prematurely and fail at accelerating rates. 10 CFR Part 50.33(f)(2)
4. The license transfer poses undue risk to public health and safety because it fails to disclose any other source of funding, such as the Settlement Agreement between NSP and Westinghouse electric Corp. that may be necessary to cover reactor maintenance expenses that can reasonably be expected to escalate above historical

levels as reactor components, including steam generator tubes, deteriorate prematurely and fail at accelerating rates. 10 CFR Part 50.33(f)(2)

5. The license application poses undue risk to public health and safety because it fails to provide estimates for total annual operating costs for each of the first five years of operation of the facilities. 10 CFR Part 50.33(f)(2)
6. The license application poses an undue risk to public health and safety because it fails to disclose the source of funds to cover the operating costs for the facilities. 10 CFR Part 50.33(f)(2)
7. The license application poses undue risk to public health and safety because it fails to include the same financial information as is required in an application for an initial license. 10 CFR Part 50.33(f)(2)
8. The license application poses undue risk to public health and safety because it fails to disclose the legal and financial relationships it has or proposes to have with its stockholders or owners. 10 CFR Part 50.33(f)(3)(i).
9. The license application poses undue risk to public health and safety because it fails to disclose its financial ability to meet any contractual obligation which applicant has incurred or propose to incur. 10 CFR Part 50.33(f)(3)(ii).
10. The license application poses undue risk to public health and safety because it fails to disclose in sufficient detail the identity and financial qualifications of the proposed transferee as would be required if the application were an initial license. 10 CFR Part 50.80.
11. The license application poses undue risk to public health and safety because it fails to disclose in sufficient detail the technical qualifications of the proposed transferee as would be required if the application were for an initial license. 10 CFR Part 34; 10 CFR Part 50.80.
12. The license amendment requested by applicant poses undue risk to public health and safety because it does not follow the form and does not provide the information prescribed for original applications. 10 CFR 50.90
13. The license transfer poses undue risk to public health and safety because it does not show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two the applicant will have the necessary funds available to cover estimated operating costs over the planned life of the ISFSI, estimated decommissioning costs and the necessary financial arrangements to provide reasonable assurance prior to transfer of the license that decommissioning will be carried out after the removal of spent fuel from storage. 10 CFR Part 72.22(e)(2).
14. The license transfer poses undue risk to public health and safety because it does not show that the applicant either possesses the necessary funds, or that the applicant has

reasonable assurance of obtaining the necessary funds or that by a combination of the two the applicant will have the necessary funds available to cover estimated decommissioning costs and the necessary financial arrangements to provide reasonable assurance prior to transfer that decommissioning will be carried out after the removal of spent fuel from storage. 10 CFR Part 72.22(e)(3).

15. The license transfer poses undue risk to public health and safety because the applicant has not provided the applicant's technical qualifications to engage in operating the ISFSI as if it were an initial application. 10 CFR Part 72.28.
16. The license transfer poses undue risk to public health and safety because the applicant has not provided financial assurance for decommissioning the ISFSI as if it were an initial application. 10 CFR Part 72.30.
17. The license transfer poses undue risk to public health and safety because the applicant repeatedly states that "New NSP" will be operating the plants and ISFSI, despite NSP's application of November 24, 1999, that demonstrates otherwise - that the plants and ISFSI, together with several other plants owned by Wisconsin Electric Power Company, Alliant Energy Corporation, and Wisconsin Public Service Corporation, will be operated by "Nuclear Management Company, LLC," another newly-formed entity, and that the corporate structure of that transfer includes another layer of corporations, named NSP Nuclear Corporation, Alliant Energy Nuclear, LLC, WEC Nuclear Corporation, and WPS Nuclear Corporation, further insulating the parent corporations from liability for Nuclear Management Company, LLC and nuclear operations generally.
18. The license transfer poses undue risk to public health and safety because the applicant has not provided documentation that "NEW NSP" has any independent assets nor has it demonstrated that it is anything more than a shell corporation to which operating expenses may or may not be transferred, at the total discretion of the parent corporation, regardless of actual physical needs of licensed facilities.
19. The license transfer application violates NEPA because it does not adequately address financial qualifications and assurance and the potential impact of corporate failure and abdication of financial responsibility on the tax base, property values, and electric rates.
20. The license transfer application violates NEPA because it does not adequately address technical qualifications of the application to operate, decommission, and handle the nuclear waste without posing undue risk to public health and safety.
21. Applicant repeatedly states both that NSP will "continue" to exist as a legal entity and that after the merger, a "newly formed, wholly owned utility operating company subsidiary, 'New NSP' shall be formed." Both are not possible. Under the merger, NSP and NCE will merge and become "Xcel," and "Old NSP" will cease to exist. A "New NSP" will be formed, and this "New NSP" is, as applicant admits, a NEW legal entity. As such, a new entity cannot "continue" anything. It will begin. The

repeated conflations and statements that the new entity will "continue" does not belie the fact that "New NSP" is admittedly a newly formed entity and as such, "New NSP" must provide financial assurance as required for any other new entity. Application at A-2, A-3, A-4, A-7, Exhibit H (Information Notice 89-25); NUREG 1577.

22. The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specifications Pages, relies on the financial qualifications of NSP, but it is the applicant, Nuclear Management Company, LLC, which must demonstrate financial qualifications and assurance. Application, Exhibits F, G, H; 10 CFR 50.33.
23. The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specifications Pages, relies on the technical qualifications of NSP, but it is the applicant, Nuclear Management Company, LLC, which must demonstrate technical qualifications. Exhibits F, G, H; 10 CFR 50.33.
24. The license transfer application poses undue risk to public health and safety because it is proposed that only NSP must have and maintain financial protection under Section 170 of the Atomic Energy Act of 1954 to cover public liability claims. "New NSP," as the licensee, must provide this coverage as well, and must maintain coverage to address liability responsibility for financial assurance purposes.

VI. CONCLUSION

For all the reasons set forth above, Petitioner North American Water Office must receive a hearing, and be permitted to intervene, pending admission of its contentions.

Respectfully submitted,


George Crocker, Executive Director

February 29, 2000
Dated:

North American Water Office

DOCKETED
USNRC

AFFIDAVIT OF SERVICE BY U.S. MAIL

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I, George Crocker, after duly affirming, deposes and states that on the 29th day of February, 2000, he served Petitioner's Request for Hearing and Petition to Intervene regarding License Transfer to "New NSP" and License Transfer to "Nuclear Management Company, LLC," and Affidavit of Service by U.S. Mail to:

Secretary of the Commission
Attn: Rulemaking & Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Council
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay Silberg
Attorney for NSP
Shaw, Pittman, Potts & Trowbridge
2300 N Street N.W.
Washington, DC 20037

by depositing in the United States Mail in the Village of Lake Elmo, Minnesota, a true and correct copy therefor, properly enveloped and addressed, with first class postage prepaid.


George Crocker

Subscribed and sworn to before me this

29th day of February, 2000.



