

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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NORTHERN STATES POWER COMPANY

Monticello Nuclear Generating Plant

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AD
Docket No. 50-263
License: DPR-22

Prairie Island Nuclear Generating Plant

Docket No. 50-282
50-306
License: DPR-42
DPR-60

Prairie Island Independent Spent Fuel
Installation

Docket No.: 72-10
Materials License: SNM-2506

PETITIONER CAROL A. OVERLAND'S REQUEST FOR HEARING
AND PETITION TO INTERVENE
LICENSE TRANSFERS TO "NEW NSP"

I. INTRODUCTION

Petitioner Carol A. Overland hereby submits the following Request for Hearing and Petition to Intervene regarding the application of Northern States Power ("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.

This Petition is supported by the attached Affidavit of Carol A. Overland, resident, property owner and property tax payer to the City of Red Wing, Red Wing School District, County of Goodhue, and State of Minnesota, and a residential NSP ratepayer in Red Wing, where the Prairie Island Generating Plant and ISFSI are located. Petitioner is also a business owner and income tax payer in the State of Minnesota, a residential and

commercial Northern States Power ratepayer, and a citizen with significant investment and interest in the community and a long history of public participation.

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 C.F.R. §2.105; Notice of Docketing, 65 Fed. Reg. 6641-42; 6642-43. Pursuant to the Notice and regulations, Petitioner Carol A. Overland hereby requests a hearing and leave to intervene in these proceedings.

III. FACTUAL BACKGROUND

Northern States Power (hereinafter "NSP") has requested license transfers in association with its merger with New Century Energy ("NCE"), but it should be noted that NSP is not the proposed licensee, which is the appropriate party to make the application. The merged company will be named "Xcel Energy, Inc. (hereinafter "Xcel"). A "newly formed wholly-owned utility operating company subsidiary" (emphasis added) 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 assurance that the new entity has the financial resources to operate, maintain,

decommission, and handle the nuclear waste of the facility. NUREG 1577; 10 C.F.R. §50.80; 10 C.F.R. §72.50; 10 C.F.R. §30.34(b). In the case of a "newly formed" entity such as "New NSP," the rules for financial assurance are more stringent, specifically designed to provide the information necessary to determine whether the entity has adequate funds and to assure that the new company has the technical ability, that it has the financial resources, and will exert appropriate control and authority over the facility. NUREG 1577; 10 C.F.R. §50.33(f). The 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), including 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, its financial ability to meet its contractual obligations. Id. The applicant has not provided this information and claims that it is exempt from the requirements of 10 C.F.R. 50.33(f). "New NSP" Application, pps. A-7-8. Financial information is even more important because NSP stock, at under 18, is currently lower than it has been in recent history.

Petitioner is a property owner and resident in the immediate vicinity of the Prairie Island generating plant, in the same municipality, county and state. Petitioner is also a commercial

and residential ratepayer of Northern States Power. If "New NSP" is not able to operate, decommission, and handle nuclear waste of its facilities, this responsibility and liability may fall to the city, county and state taxpayers, and to the ratepayers of Xcel and/or "New NSP," leaving Petitioner subject to liability as both a taxpayer and ratepayer. If "New NSP" does not have the financial and technical ability to safely operate and decommission the plant, and to handle the nuclear waste, Petitioner, as a Red Wing resident, is directly in harms way both down wind and down river from the plant.

IV. PETITIONER HAS STANDING TO INTERVENE

Under the Atomic Energy Act and the rules and regulations of the Nuclear Regulatory Commission, "any person whose interest may be affected by a proceeding and who desires to participate" may file a petition to intervene. 10 C.F.R. §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).

A. Petitioner has standing to intervene as a taxpayer and ratepayer to demand adequate financial assurance.

Petitioner could suffer injury-in-fact will within the zone of interest protected by the Atomic Energy Act if NSP is allowed

to transfer its operating licenses to "New NSP" without having demonstrated adequate financial assurance for the costs of operation, decommissioning, and nuclear waste as required by federal regulation. 10 C.F.R. §50.33(f). These rules are the mechanism to establish that only the financially qualified entities operate nuclear facilities. As a newly-formed entity, "New NSP" is an unknown quantity, a once-removed subsidiary from the newly merged "Xcel" without apparent independent assets. If "New NSP" does not have the financial resources necessary to operate these facilities, and if the entity fails, the liability for these costs would fall not to the parent company, Xcel, also a "newly formed entity" and insulated from liability by its corporate structure, but to the taxpayer and ratepayer. Petitioner would share with other taxpayers and ratepayers in the responsibility for these costs at a greater proportion than many in the state due to her proximity to the plant and property ownership in the same municipality, school district, and county.

The purpose of the financial assurance regulations is to prevent just such a liability to taxpayers and ratepayers, and Petitioner has standing and is entitled to intervene to compel this disclosure and protect the interests of taxpayers and ratepayers from injury-in-fact threatened by a license transfer to a newly formed entity that has not demonstrated adequate financial assurance under federal regulations.

- B. Petitioner could suffer injury in fact if the NRC transfers licenses without adequate financial assurance.**

The proposed license transfer threatens an injury to Petitioner and other similarly situated taxpayers and ratepayers that is "distinct and palpable." Kelly v. Selin, 42 F.3d 1501, 1508 (6th Cir.), cert. denied, 115 S.Ct. 2611 (1995), quoting Warth v. Seldin, 422 U.S. 490, 501 (1975). The injury is also directly traceable to the insufficient license transfer application and inadequate disclosure, and can be redressed by the Nuclear Regulatory Commission through the requirement of disclosure and provision of information sufficient to demonstrate adequate financial assets and assurance as provided by federal regulation, or by denial of the application by the NRC.

The Nuclear Regulatory Commission 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 party, 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 determinations.

As noted above, Northern States Power, the entity that has demonstrated financial assurance as licensee of the nuclear plants, will cease to exist upon completion of the Merger. If "New NSP" fails, its liability would be limited because it is not a party to various financial assurance mechanisms or agreements. Liability of the parent company, Xcel, would also be limited because it is insulated from liability by its corporate structure and is also not a party to various financial assurance mechanisms or agreements. Would liability then fall on the taxpayer and ratepayer? Petitioner would suffer injury-in-fact if she is required to share with other taxpayers and ratepayers in the responsibility for these costs, and she would be liable at a greater proportion than many in the state due to her proximity to the plant and property ownership in the same municipality, school district, and county. Petitioner would also suffer injury-in-fact as a resident immediately down wind and down river from the Prairie Island plant if "New NSP" does not have the financial and technical ability to safely operate the plant or if unsafe cost-cutting measures are used 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.

C. Petitioner's Interests Fall Within the Zone Protected by the Atomic Energy Act and National Environmental Policy Act.

Petitioner's concerns regarding the health and safety risks posed by the applicant's request for license transfer falls 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 U.S.C. §§2133(d), 2210(b). The National Environmental Policy Act's (hereinafter "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 and the tax base through applicant's demonstration of adequate financial assurance as required by federal rules, and through assurance of the applicant's ability to safely operate, decommission, and handle nuclear waste, maintain the environment in a condition that is conducive to agriculture, fishing, recreation, and which preserves its unique historic character, and is attractive to tourists. Kelly v. Selin, 42 F.3d at 1509, citing Lujan v. Defenders of Wildlife, ___ U.S. ___, 112 S.Ct. 2130, 2149 (1992) (holding that injury to economic interests through loss of property values confers standing under NEPA).

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

Pursuant to 10 C.F.R. §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. Consumers Power Co. (Midlands 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, and 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 are not known, and directors. 10 C.F.R. §50.33(d)(3)(ii); 10 C.F.R. §72.22(d)(3)(ii). In fact, the proposed licensee, "New NSP,"

does not exist sufficient to make the application as proposed licensee.

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 that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. 10 C.F.R. §50.33(f)(2).

3. 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 facility. 10 C.F.R. §50.33(f)(2).

4. The license application poses undue risk to public health and safety because it fails to disclose the source of funds to cover the operating costs for the facility. 10 C.F.R. §50.33(f)(2).

5. 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 C.F.R. §50.33(f)(2).

6. 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 C.F.R. §50.33(f)(3)(i).

7. The license application poses undue risk to public health

and safety because it fails to disclose its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur. 10 C.F.R. §50.33(f)(3)(ii).

8. 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 for an initial license. 10 C.F.R. 50.80.

9. 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 C.F.R. 34; 10 C.F.R. 50.80.

10. 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 C.F.R. 50.90.

11. The license transfer poses undue risk to public health and safety because it does not show that the applicant either possess 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 C.F.R. §72.22(e)(2).

12. The license transfer poses undue risk to public health and safety because it does not show that the applicant either possess 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 of the license that decommissioning will be carried out after the removal of spent fuel from storage. 10 C.F.R. §72.22(e)(3).

13. 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 C.F.R. §72.28.

14. 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 C.F.R. §72.30.

15. 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.

16. 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 will be transferred as needed by the parent corporation.

17. 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.

18. 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.

19. 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 conflation 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).

20. The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specification Pages, relies on the financial qualifications of Northern States Power, but it is the applicant, Nuclear Management Company, LLC, which must demonstrate independent financial qualifications and assurance. Application, Exhibits F,G,H.

21. The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specification Pages, relies on the technical qualifications of Northern States Power, but it is the applicant, Nuclear Management Company, LLC, which must demonstrate technical qualifications. Exhibits F,G,H.

22. The license transfer application poses undue risk to public health and safety because it is proposed that only NSP 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 Carol A. Overland must receive a hearing, and be permitted to intervene, pending admission of contentions.

Respectfully submitted,



Carol A. Overland #254617
Petitioner
OVERLAND LAW OFFICE
402 Washington St. So.
Northfield, MN 55057
(507) 664-0252

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