

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

96 07 18 21 13

.....)
Northern States Power Company)
(Independent Spent Fuel Storage)
Installation))
.....)

Docket No. 72-18

FLORENCE TOWNSHIP'S REQUEST FOR HEARING
AND
PETITION TO INTERVENE

I. INTRODUCTION

Petitioner Florence Township hereby submits the following Request for Hearing and Petition to Intervene regarding the application of Northern States Power ("NSP"), for a license to store spent nuclear fuel at an Independent Spent Fuel Storage Installation ("ISFSI") in Florence Township. See 61 Fed. Reg. 49,989 (September 17, 1996).

This petition is supported by the attached Affidavits of the Chair and Supervisors of the Florence Town Board, Joan Marshman, John Wurst, and Janet Bruce, respectively. All members of the board are residents of the Township, two live within one half mile of the site proposed by NSP, and all are very active in the community and have a significant investment in the Township.

II. REQUEST FOR HEARING AND PETITION TO INTERVENE

The Notice of Docketing affords the opportunity to request a

hearing and petition to intervene. 10 C.F.R. §2.105; Notice of Docketing, 61 Fed. Reg. 48,989. Pursuant to the Notice and regulation, Petitioner Florence Township hereby requests a hearing and leave to intervene in this proceeding.

III. FACTUAL BACKGROUND

A. Florence Township

Florence Township has a population of approximately 1,270 residents, and two population clusters in Old Frontenac and Frontenac Station. The nearest permanent residential dwelling is only 1850 feet away from the proposed ISFSI site, and the majority of homes and the business district in Frontenac Station are less than 3,000 feet distant. The Town Hall is located, by NSP's calculations, just 2,700 feet from the proposed ISFSI site, and the Township's heavily used new civic complex, containing a community center, picnic area, and playground is less than 2,700 feet from the site.

Within two miles of the proposed site are several churches and the Villa Maria Conference and Retreat Center, which serves over 6,000 people each year. The entire area of Old Frontenac is a national historic district, and many of the homes are listed in the National Registry of Historic Homes. Frontenac was the first established in 1839 as a trading post, and was the first settlement on the Minnesota side of Lake Pepin. Indian burial mounds are common in the area, and there is one in the pathway of the rail spur for NSP's alternate site and near the southern

intersection of County Rd. 2 and Highway 61. Other archaeologically significant features include Ian Tiope in Frontenac State Park, burial mounds on the trail on the west side of Highway 61, Sandy Point, Half Breed Tracts established by Ft. Snelling, and traditional celebration and meeting areas for the Dakota Nation.

Florence Township is thriving economically. There are 30 year-round local businesses, including a grocery store, restaurant, and motorcycle shop. There are also businesses such as Knutsen's Caramel's, Bushel & Peck Product, and Great River Vineyards, that produce edible commodities within two miles of the site. The farmer who is renting and farming the site, and whose farm is one-half mile from the site, milks 280 cows, employs 12 people, and has received a 100% rating from the dairy that buys his milk. The area's primary sources of support are agriculture and tourism, both sensitive to the environmental, health, and safety issues surrounding nuclear waste storage.

This is an area renowned for its natural beauty and its agricultural, commercial fishing, and recreational resources. Florence Township lies on the shores of Lake Pepin, on the Mississippi, which is a large widening of the river which is the result of the natural phenomenon of the joining of tributary rivers. Fish from the lake are sold in local markets. Lake Pepin is also widely known as the "birthplace of waterskiing" and the "Waterski Days" festival is held each summer in Lake City.

The proposed ISFSI is also located in the watershed of Wells

Creek, a tributary of the Mississippi. The ISFSI site is on a plateau overlooking the creek. At the site, the water table is about 60 feet from the surface, but in nearby Frontenac Station, the wells are only 20 feet deep.

Within two miles of the proposed ISFSI site there are many local parks, a golf course, a ski area, and heavily used snowmobile trails run on the property selected for the site, which is known as some of the best white-tail deer habitat in the state. The site is visible from Frontenac State Park, which 91,000 tourists visited in 1994. It is also less than one mile from an estimated 80 acres of wetlands, plus 40 acre Pleasant Lake. Less than one mile from the site, there is a campground, a picnic area, a marina, and a boat landing.

From the moment NSP's site selections for the ISFSI were made public, Florence Township has taken a leadership role in educating the community and participating in the administrative, legal, and legislative avenues open to the public. The township immediately organized Township task forces to address environmental, safety, technical, and site selection administrative process issues, and held three highly attended community meetings to educate the public about the Minnesota Environmental Quality Board ("MEQB") siting process. The Township has also sued in state court to stop the siting process because that siting process itself violated many state environmental laws.

Florence Township has actively participated in the EQB

administrative process. Two of three town board members were on the MEQB Siting Advisory Task Force, the Chair was a citizen of Florence Township, and there were two other Township at-large members. The Board and the Township's citizens have spent considerable time at the legislature lobbying to change the Minnesota law, which will again be reviewed in the 1997 session.

B. NSP License Application for ISFSI.

On August 8, 1996, NSP filed its application for an ISFSI in Florence Township. The site is approximately 33 acres, and the storage area itself is approximately four acres. The storage area is surrounded by a 17 foot high earthen berm and two security fences. The facility utilizes a storage system consisting of an interior canister and separate exterior casks to be used for shipping and storage. Casks will be brought to the facility by rail, and transferred from the transport casks to the storage casks and placed upon four concrete pads in its transfer building. There will also be a security building on the site, and the site will be brightly lit at night.

NSP filed this application for an ISFSI in Florence Township because the Minnesota legislature passed a law that nuclear waste must be sited off of Prairie Island in Goodhue County if NSP wishes to utilize additional casks at the Prairie Island facility. Minn. Laws Chapter 641. NSP has received additional cask authorization from the MEQB, and at the same MEQB meeting, NSP's application for Site Certificate for the Florence Township site was denied. MEQB, Resolution, 10/2/96.

C. State Permitting Process

The Minnesota Legislature mandated that NSP's ISFSI be sited using Minnesota's Power Plant Siting Act. Siting a Power Plant in the state of Minnesota is a dual-track process which requires a Certificate of Need from the Public Utilities Commission (PUC) and a Certificate of Site Compatibility from the MEQB. Minn. Stat. §116C.51-59; Minn. Stat. § 216.243; see also State of Minnesota by Citizens Against Power Plant Pollution, Inc. (CAPPP, Inc.) v. Minnesota Environmental Quality Board, et al., 305 N.W.2d 575 (Minn. 1981). On the first track, an application provides a detailed application to the PUC which lists in great detail the physical design of the facility, use and term of storage, alternatives in technology, storage site, and energy generation and demand, which provide the basis for the Certificate of Need inquiry. Minn. R. ch. 7855.0600-0670. Then the proposal moves through the Certificate of Need process, which includes general notice and specific notice to the affected community and at least one hearing. The PUC then makes a determination of the need for the facility balance against long range energy forecasts; potential damage to the environment; possible conservation efforts; promotional activities on the part of the applicant; and socially beneficial uses of the output of the facility including protection or enhancement of environmental quality. See Min. Stat. §216B.243, Subd. 3.

On the second track, the utility must obtain a Certificate of Site Compatibility from the MEQB, which is also a multi-step

process. Minn. Stat. §§ 116C.55, Subd. 2; Subd. 3; 116C.57, Subd. 1; Subd. 4; see also No Power Line v. Minn. Environmental Quality Board., 262 N.W.2d 312, 324 (Minn. 1977); CAPPP, Inc. v. MEQB, 305 N.W.2d 575, 579 (Minn. 1981). The steps of the PPSA must be completed within a specified time limit. First, the MEQB is to develop site selection criteria and standards in a public process including notice and hearings. Minn. Stat. §116C.54, Subd. 2. The next step is development of the inventory of potential sites. Minn. Stat. §116C.55, Subd. 3. The third step is submission of an application for a specified site by a public utility and subsequent environmental evaluation by the EQB. Minn. Stat. §116C.57, Subd. 1.

When a utility makes an application to the MEQB, it must include the Certificate of Need. Minn. R. 4400.2600.(1)(1). The MEQB then reviews possible environmental effects. Minn. Stat. §116C.57, Subd. 4. This evaluation is to be based, in part, on the siting criteria and standards developed previously. During this portion of the process, the EQB is also required to give notice and hold at least one public hearing in each county considered as a site. Minn. Stat. §116C.58. After evaluation, the EQB may designate and certify a site with any conditions or refuse to designate a site and explain the reasons for the refusal and conditions under which a Certificate could be issued. Minn. Stat. §116C.57, Subd. 1.

The majority of these requirements have not been met, and Florence Township has initiated a suit in state court for

declaratory judgment that these laws and regulations were violated. It is now at the appellate level, and review is pending. State of Minnesota by Florence Township v. Northern States Power, Minnesota Environmental Quality Board, Minnesota Public Utilities Commission, and Goodhue County, CI-96-00180, Minn. Ct. App. No. C9-96-1548 (1996).

IV. PETITIONERS HAVE 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. Florence Township Has Standing to Intervene on Behalf of Its Citizens.

Florence Township would suffer injury-in-fact well within the zone of interest protected by the Atomic Energy Act and NEPA if NSP is allowed to proceed with its planned ISFSI.

Florence Township is the unit of government with jurisdiction over the site chosen by NSP for the ISFSI. The Township

government bears the first line of responsibility for protecting its citizens' interests in a healthy environment as well as a sound tax base and economic foundation of agriculture, commercial fishing, recreation, and tourism. The proposed ISFSI threatens these interests.

Thus, the government of Florence Township is entitled to intervene in this proceeding for the purpose of protecting its citizens' interests from the injury-in-fact threatened by the proposed ISFSI.

B. Florence Township Will Suffer Injury-In-Fact If The NRC Licenses An ISFSI In Florence Township.

The proposed ISFSI threatens an injury to petitioner and its citizens that is "distinct and palpable." Kelly v. Sellin, 42 F.3d 1501, 1508 (6th Cir.), cert. denied, 115 S.Ct. 2611 (1995), quoting Warth v. Sellin, 422 U.S. 490, 501 (1975). The injury is also directly "traceable" to the proposed license application and can be redressed by a decision denying the application. Id. If the proposed facility is licensed, there is risk of an accidental radioactive release from the dry casks that would injure and compromise the health and safety of the citizens of the Township and the integrity of the natural environment.

An accidental release could contaminate the air, ground and surface water, the land, and surrounding people, animals, and plants. For example, in a cask explosion scenario, or terroristic sabotage, the citizens of Florence Township could suffer immediate severe radioactivity related illness or death from high-level radiation exposure. Other scenarios involving

high or low level exposure could result in increased cancer and leukemia rates or cellular and genetic defects many years into the future. An accidental release would also cause significant adverse economic consequences, including diminished property values and a correlating decline in tax revenues, as well as endangerment of the area's agricultural and tourist income base.

This accidental release could occur by means of a transportation accident, or a design or manufacturing flaw in the cask used. A criticality accident could cause a radiological explosion. An accident could also occur by sabotage or terrorism; or a cask drop during transfer, or by many other means. NSP Emergency Plan, Section 4.2; SAR, ch. E.

As discussed in more detail in Section D below, petitioner is concerned that NSP's license application for the ISFSI lacks sufficient measures to protect them from such an accidental release, thus posing an undue risk to their health and safety. Petitioner's concerns may be redressed by denial of the license application on the ground that it fails to provide sufficient measures to protect health and safety.

Petitioner is also concerned that the Environmental Report ("ER") prepared by NSP in support of the license application contains insufficient information on which to base a decision on the relative risks, costs and benefits of the proposed project, or on alternatives to the project. See Section D below. Petitioner believes that if supporting environmental documents,

¹ Section D is incorporated herein by reference.

including the ER and the forthcoming Environmental Impact Statement ("EIS"), were to fully disclose the costs and risks of the proposed ISFSI, the NRC would choose not to license the facility. Thus, preparation of a complete and accurate ER and EIS would, in all likelihood, result in the denial of the permit, and thereby redress petitioner's concerns.

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 proposed ISFSI fall within the "zone of interest" protected by the Atomic Energy Act, whose purposes include the 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 protection of property values and the tax base, and through maintenance of the environment in a condition that is conducive to agriculture, fishing, recreation, and 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 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 Florence Township seeks to intervene are as follows:

1. The license application poses undue risk to public health and safety because it lacks sufficient provisions for prevention of and recovery from accidents during storage resulting from such causes as sabotage, cask drop and bend, or improper welds.

2. The license application poses undue risk to public health and safety because it lacks sufficient provisions for protection against transportation accidents, including a criticality

accident. For instance, the design of the shipping cask does not provide sufficient protection against a criticality accident during transportation. Nor does the license application provide sufficient measures for protection of shipping casks during sub-zero weather.

3. The license application poses undue risk to public health and safety because it fails to provide an adequate emergency plan. For instance, NSP has failed to secure letters of agreement from emergency responders to the ISFSI; it misrepresents the status of Letters of Agreement with emergency providers; it fails to specify the provider of fire-fighting assistance and ambulance service; it contains inadequate provisions for training and exercises; and it also incorrectly identifies the provider of hospital and medical support.

4. The license application poses undue risk to public health and safety because it fails to make sufficient provision for funding of estimated construction costs, operating costs, and decommissioning costs. 10 C.F.R. §§ 72.22(e), 72.30(b).

5. The license application poses undue risk to public health and safety because it is not apparent how NSP will obtain any funding for construction, operation or decommissioning of the ISFSI, given that it has failed to obtain certain state permits that constitute prerequisites for funding. In particular, the MEQB has denied a siting permit for the proposed site and requested NSP to withdraw its application for an NRC license at the earliest possible date. MEQB Findings of Fact, Conclusions,

and Order, 10/2/96; Letter of Hustad, Chair, MEQB to Howard, NSP 10/4/96. In order to build the ISFSI and obtain financing through the rate base, NSP must apply for a rate case through the Public Utilities Commission (hereinafter "PUC"), and may also be required to apply for a Certificate of Need, also through the PUC. It has done neither.

6. The license application poses undue risk to public health and safety because the proposed site cannot be adequately protected against flooding or groundwater contamination, due to the facility design, its location in a floodplain, and the nature of the soils and bedrock of the area.

7. The license application poses undue risk to public health and safety because it fails to provide for adequate radiation monitoring to protect the health of the public and workers. It also fails to provide for adequate radiation monitoring necessary to facilitate radiation detection, event classification, emergency planning, and notification.

8. The license application poses undue risk to public health and safety because it does not provide for on-site weather monitoring.

9. The license application poses undue risk to public health and safety because it fails to provide adequate protection of the ISFSI against intruders. For instance, the area is protected only by a fence that would not deter a determined intruder. The area is also surrounded by bluffs and open land that would provide ample protective cover and access to the site.

10. The license application poses undue risk to public health and safety because it calls for use of a cask whose design is unsafe, and has not been certified for either transportation or storage.

11. The license application poses undue risk to public health and safety because NSP has not adequately complied with the rail carriers requirements. NSP has not received the required authorization from the railroad for access to the mainline, construction at a railroad crossing, and has not addressed the design requirements established by the railroad for the railroad crossing design and railroad spur design, including, but not limited to specified spur grades, degrees of curvature, and track design.

12. In violation of 10 C.F.R. §51.71(d), the ER fails to give due consideration to the decision of the MEQB denying a siting permit for the proposed site and requesting that NSP withdraw its application for an NRC license for an ISFSI in Florence Township. MEQB Findings of Fact, Conclusions, and Order, 10/2/96; Letter of Hustad, Chair, MEQB to Howard, NSP 10/4/96. The ER also fails to give due consideration to NSP's failure to obtain the requisite Certificate of Need from the State of Minnesota before the Public Utilities Commission. Minn. Stat. § 216C.243; Minn. R. ch. 7847; Minn. R. 7855.0600-0670.

13. The license application violates NRC regulations because the ER fails to address the status of compliance with all permits, licenses and approvals required for the facility. See

10 C.F.R. §§ 51.71(c), (d). For example, the ER fails to address federal water discharge requirements and the certifications and permits required for water and storm water discharges, erosion and sediment control for prevention of pollution of water; air quality requirements and the Construction of a Stationary Source permit; and because NSP has not provided verification of a agreement between the railroad and county, and has not received DOT authorization construction at a railroad crossing.

14. The license application violates NEPA because its ER fails to give adequate consideration to alternatives, including alternative sites, alternative technologies, and the no-action alternative. For instance, the inventory of sites was limited by both the state legislature, which required that the inventory be limited to Goodhue County; by NSP, which limited its choices to those within one mile of the only railroad track in the county; and by NSP again, when it restricted its inventory to those sites not underlain by limestone.

15. The license application violates NEPA because its ER fails to give adequate consideration to the adverse impacts of the proposed ISFSI, including the risk of transportation accidents.

16. The license application violates NEPA because the ER does not contain a reasonable comparison of the costs and benefits of the proposed ISFSI.

17. The license application violates NEPA because the ER does not address the impact of the proposed facility upon the

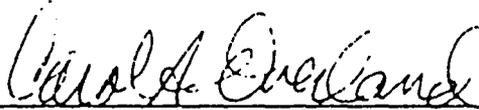
historic district and archeological heritage of the area, agriculture, commercial fishing, recreation, wildlife, and endangered species.

19. The license application violates NEPA because the ER does not adequately consider the impact of the facility upon property values, the tax base, and the loss of revenues for agriculture, fishing, recreation and tourism, which comprises the economic base of Florence Township.

V. CONCLUSION

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

Respectfully Submitted,



Carol A. Overland #254617
Attorney for Petitioner
OVERLAND LAW OFFICE
P.O. Box 202
209 Oak Street, Suite 8
Farmington, MN 55024
(612) 460-6461

Dated: 10/7/96

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

72-18

Northern States Power Company
(Independent Spent Fuel Storage
Installation)

Docket No. 72-18

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney, an attorney-at-law in good standing admitted to practice in the state of Minnesota herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. §2.713(b), the following information is provided:

NAME: Carol A. Overland
ADDRESS: P.O. Box 202
209 Oak Street, Suite 8
Farmington, MN 55024
(612) 460-6461

PARTY
REPRESENTED: Florence Township

Respectfully submitted,


Carol A. Overland #254617
Attorney for Petitioner

October 17, 1996