

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman  
Dr. Gary S. Arnold  
Dr. Thomas J. Hirons

In the Matter of

Northern States Power Co. (formerly Nuclear  
Management Company, LLC)

(Prairie Island Nuclear Generating Plant, Units  
1 and 2)

Docket Nos. 50-282-LR and 50-306-LR

ASLBP No. 08-871-01-LR

February 18, 2009

**MEMORANDUM AND ORDER**

(Prehearing Conference Call Summary and Initial Scheduling Order)

In the above-captioned proceeding, this Licensing Board granted a hearing request by the Prairie Island Indian Community to challenge an application by Northern States Power Co. to renew its operating licenses for the Prairie Island Nuclear Generating Plant, Units 1 and 2, for an additional 20 years.<sup>1</sup> On February 5, 2009, this Board convened a telephone prehearing conference to discuss case management and scheduling.<sup>2</sup> Based on the input we received from the parties, the Staff's projected schedule, our analysis of the regulations, and the nature and circumstances of this case, the Board issues this initial scheduling order. This order lays out specific deadlines for the parties, in addition to the general deadlines and time frames applicable to Subpart L proceedings under 10 C.F.R. Part 2.

<sup>1</sup> See LBP-08-26, 68 NRC \_\_, \_\_ (slip op. at 1) (Dec. 5, 2008).

<sup>2</sup> Pursuant to 10 C.F.R. § 2.1202(b)(2), NRC Staff notified the Board that it will participate as a party on all admitted contentions. See NRC Staff's Notice of Intent to Participate as a Party (Dec. 16, 2008).

1. Mandatory Disclosures

Pursuant to 10 C.F.R. § 2.336, the parties and NRC Staff are required to make and continually update certain mandatory disclosures.<sup>3</sup> The Board issued an order on December 17, 2008, extending the deadline for initial disclosures until February 27, 2009, and allowing the parties to update those disclosures on the last business day of each month thereafter.<sup>4</sup> Because some of these disclosures contain allegedly privileged or proprietary information, counsel for Applicant indicated that the parties would likely submit a proposed protective order and nondisclosure agreement in the near future.<sup>5</sup> The Board directs the parties to confer with one another for the purpose of developing a joint proposed order dealing with the handling (and redaction) of documents alleged to contain privileged, proprietary, or otherwise protected information. Any proposed protective order and nondisclosure agreement shall be filed with the Board on or before February 27, 2009.

In addition, NRC Staff indicated that the hearing file, which is required by 10 C.F.R. § 2.1203, would be presented to the Board and made available to the public, in electronic form, by February 27, 2009, and would be updated on the last business day of each month thereafter.<sup>6</sup> The Board directs the NRC Staff to comply with these dates and to prepare a hearing file which includes the application, any amendments to the application, any NRC environmental impact statement or assessment and any NRC report related to the proposed action, as well as any relevant correspondence between the applicant/licensee and the NRC.<sup>7</sup>

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<sup>3</sup> The term "mandatory disclosures" includes the witness lists and privilege logs required under 10 C.F.R. § 2.336.

<sup>4</sup> See Licensing Board Order (Granting Joint Motion on Disclosure Schedule) (Dec. 17, 2008) (unpublished).

<sup>5</sup> Tr. at 170.

<sup>6</sup> Id. at 171-72.

<sup>7</sup> 10 C.F.R. § 2.1203(b).

The NRC Staff shall make the hearing file available for public inspection and copying at the NRC web site and in the NRC Public Reading Room.<sup>8</sup> The Staff has a continuing duty to update this file.<sup>9</sup>

2. Safety and Environmental Evaluations

Counsel for NRC Staff indicated that the projected milestone dates currently posted on the Commission's website are slipping. According to counsel, the Staff currently expects to issue its draft Supplemental Environmental Impact Statement (SEIS) on June 11, 2009.<sup>10</sup> Comments would then be received between June 19, 2009, and September 4, 2009, and the public meeting on the draft SEIS would be held on July 15, 2009.<sup>11</sup> The Safety Evaluation Report (SER) with Open Items is expected to be issued on May 15, 2009.<sup>12</sup> If this proceeding were to go to hearing, the hearing schedule would be keyed to the release of the Final SEIS and SER and guided by the model milestones provided in 10 C.F.R. Part 2, Appendix B (II).

So as to keep the Board, the parties, and the public abreast of any changes in this schedule, we hereby direct NRC Staff to submit a report on February 27, 2009, to be updated on the last business day of each month thereafter, specifying its best estimate of the dates when it expects to issue the draft and final version of the SER and SEIS. The report should also contain the dates when NRC Staff believes the Advisory Committee on Reactor Safeguards and its relevant subcommittee expect to issue their respective letters or reports concerning Applicant's proposed license renewal. Finally, the Staff shall update the Milestones page on the Commission's web site to reflect this information.

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<sup>8</sup> Id. § 2.1203(a)(3).

<sup>9</sup> Id. § 2.1203(c).

<sup>10</sup> Tr. at 175.

<sup>11</sup> Id. at 176.

<sup>12</sup> Id. at 175.

3. Schedule for Summary Disposition

The parties agreed that any summary disposition motions on the currently admitted contentions would be due no later than 30 days after the latter of the issuance of the draft SEIS or issuance of the SER with Open Items.<sup>13</sup> This agreement was memorialized in a letter to the Board submitted by Applicant on February 6, 2009.<sup>14</sup> The Board hereby approves this agreement. Pursuant to 10 C.F.R. § 2.323(c), answers to any motion for summary disposition are due within 10 days after the motion is served.

4. Schedule for Filing of New or Amended Contentions

The parties agreed that, in the name of expediency, any new or amended contentions would be submitted together with the request for leave to file such contentions.<sup>15</sup> Further, the parties agreed that any new or amended contentions on new data or conclusions in the draft SEIS or SER would be filed within 30 days after issuance of the document from which the contentions arose.<sup>16</sup> This agreement was memorialized in Applicant's letter to the Board dated February 6.<sup>17</sup> The Board, consistent with the parties' agreement, hereby directs that a motion and proposed contention specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within 30 days of the date when the document on which it is based first becomes available. If filed after 30 days, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). Pursuant to 10 C.F.R. § 2.323(c), answers to any new or amended contentions are due within 10 days after service of the contentions.

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<sup>13</sup> Id. at 177.

<sup>14</sup> See Letter on Schedule Agreements (Feb. 6, 2009).

<sup>15</sup> Tr. at 180-81.

<sup>16</sup> Id. at 178-80.

<sup>17</sup> See Letter on Schedule Agreements.

5. Settlement

The parties indicated that settlement discussions are currently on hold as a result of the holidays and the process of putting a disclosure agreement in place.<sup>18</sup> The parties did express an interest in renewing settlement discussions.<sup>19</sup> The Board advised the parties that it stood ready to provide assistance if they wished to employ alternative dispute resolution with respect to any or all of the admitted contentions.<sup>20</sup> The parties are free to file a joint motion requesting a settlement judge at any point in the proceeding.<sup>21</sup>

6. Venue

The parties indicated their preference that any hearing in this proceeding be held in the vicinity of the Prairie Island Nuclear Generating Plant and that the Dakota County Judicial Center, site of the oral argument on October 29, 2008, would be a suitable venue for such a hearing.<sup>22</sup>

7. Additional Matters

In accordance with 10 C.F.R. § 2.323(b), motions (including requests of any kind) will be rejected if they do not include a certification by the attorney or representative of the movant that, prior to filing the motion or request, he or she has made a “sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion” or request. The Board believes that in order to be sincere, the effort should not be initiated at the last minute. Rather, it should be made sufficiently in advance to provide at least some reasonable time for the possible resolution of the matter or issues in question. In the case of a motion for summary disposition, the Board suggests that the “sincere effort” should include informing the opposing party or

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<sup>18</sup> Tr. at 183.

<sup>19</sup> Id.

<sup>20</sup> Id. at 184; see also 10 C.F.R. § 2.338.

<sup>21</sup> Tr. at 184-85; see also 10 C.F.R. § 2.338(b).

<sup>22</sup> Tr. at 185.

parties, prior to filing the motion, of the material facts about which the movant believes there is no genuine dispute. Likewise, the opposing party must be prepared to respond very promptly, advising whether it agrees that there is no genuine dispute concerning those facts.

A motion, opposed or unopposed, for extension of time or for modification of this schedule shall be filed as soon as the movant knows or should have known of the facts, circumstances, or grounds for the motion, and in no event later than 11 AM Eastern Time on the day preceding the applicable deadline. The motion shall inform the Board of the position of the other parties regarding the requested extension. A motion for extension or modification filed after the applicable deadline will be summarily denied unless it is accompanied by a sworn declaration or affidavit from the counsel or representative of the party that describes very extraordinary circumstances explaining why the motion was not filed earlier and otherwise justifies the requested extension. Opposed motions for extension or modification shall address the factors specified in 10 C.F.R. § 2.332(b).

The Board plans to hold another scheduling conference within the next few months to discuss further scheduling matters and any other case management issues that may arise.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>23</sup>

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 18, 2009

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<sup>23</sup> Copies of this order were sent this date by the agency's E-Filing system to counsel for (1) Applicant, Northern States Power Co., (2) Petitioner, Prairie Island Indian Community, and (3) NRC Staff.



DOCKET NOS. 50-282 AND 50-306-LR  
LB MEMORANDUM AND ORDER (PREHEARING CONFERENCE  
CALL SUMMARY AND INITIAL SCHEDULING ORDER)

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[Original signed by Nancy Greathead]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of February 2009