

March 9, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

| | | |
|---|---|------------------------|
| In the Matter of |) | |
| |) | Docket Nos. 50-282-LR |
| Northern States Power Co. |) | 50-306-LR |
| |) | |
| (Prairie Island Nuclear Generating Plant, |) | ASLBP No. 08-871-01-LR |
| Units 1 and 2) |) | |

**NSPM MOTION FOR PROTECTIVE ORDER AND NON-DISCLOSURE
AGREEMENT REGARDING PROPRIETARY DOCUMENTS**

Northern States Power Company, a Minnesota corporation (“NSPM”), moves the Atomic Safety and Licensing Board (the “Board”) to issue a protective order governing the disclosure of proprietary documents in this proceeding. The Board’s Memorandum and Order of February 18, 2009 (Prehearing Conference Call Summary and Initial Scheduling Order) required that any proposed protective order and non-disclosure agreement be filed with the Board on or before February 27, 2009, and the Board’s Order of February 27, 2009 (Granting Request for Extension of Time) extended the date for this filing to March 9, 2009. Consistent with those Orders, a proposed form of the Protective Order and accompanying non-disclosure agreement is attached.

NSPM is seeking this Protective Order and Non-Disclosure Agreement because it foresees the need to obtain financial information from the PIIC, including the income of the Treasure Island Casino and Resort and any other businesses on the PIIC property, as well as the property values, in order to address the PIIC Contention 2. As NSPM understands it, Contention 2 and the bases on which it was admitted include two claims (1) that NSPM’s SAMA analysis does not accurately reflect the cost of cleanup at the PINGP and should utilize the Site

Restoration Study methodology, and (2) “Petitioner believes that the [property] values do not reflect the property’s actual value to the PIIC.” Memorandum and Order (Ruling on Petition to Intervene, Request for Hearing, and Motion to Strike), LBP-08-26 (Dec. 5, 2008) at 23-24. The Sandia Site Restoration Study includes a methodology for calculating decontamination costs which include certain generic compensation assumptions, but it does not include any methodology for calculating the actual property value of the PIIC or the effect thereon. Further, information on the value and income of the PIIC is not publicly available. Therefore, if the PIIC expects NSPM’s SAMA analysis to reflect more specific values for the PIIC property, it must disclose this information and allow NSPM to use it in this proceeding.

NSPM has conferred with the parties in an endeavor to develop a mutually acceptable Protective Order and non-disclosure agreement, including circulating drafts of the proposed order and agreement beginning on February 5, 2009, but has not been successful. Counsel for the NRC Staff has requested changes that would require the PIIC to provide proprietary information to the NRC Staff upon request without execution of the Non-Disclosure Agreement. Counsel for the PIIC has indicated that the PIIC is not willing to produce or allow inspection of this information without assurances that any individual reviewing or inspecting the documents is bound by the Protective Order. Counsel for the PIIC has also indicated that it would prefer a more restrictive disclosure, with PIIC proprietary documents designated “Highly Confidential – Attorneys’ Eyes Only” being disclosed only to the other party’s outside legal counsel and independent experts retained by the other party and having no permanent employment or permanent consulting relationship with that other party. The PIIC’s proposal is not acceptable to NSPM because it would prevent NSPM employees from performing work to assist in addressing Contention 2, and similarly would prevent NSPM management from reviewing work, including

substantive motions or testimony, to address the contention. It would also prevent any disclosure to the NRC Staff.

NSPM's proposed Protective Order and Non-Disclosure Agreement are similar to Protective Orders and Non-Disclosure Agreements that have been issued with the consent of all parties in other proceedings. See, e.g., Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Station), Order (Protective Order Governing Non-Disclosure of Certain Documents Claimed to be Proprietary) (Jan. 12, 2007). Further, they adequately protect proprietary information against public disclosure. Accordingly, NSPM requests that the Board issue the Protective Order and Non-Disclosure Agreement in their proposed form.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

David R. Lewis
Matias F. Travieso-Diaz
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Tel. (202) 663-8474

Counsel for Northern States Power Co.

Dated: March 9, 2009

NSPM Motion for Protective Order and Confidentiality Agreement (Mar. 9, 2009)
Exhibit A -- Proposed Protective Order and Non-Disclosure Agreement

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froelich, 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 Plan,
Units 1 & 2)

Docket No. 50-282-LR and 50-206-LR

ASLBP No. 08-871-01-LR

March __, 2009

Protective Order

(Governing Non-Disclosure of Certain Documents Claimed to be Proprietary)

This protective order governs the disclosure and use in this proceeding of documents that Northern States Power Company (NSP) or the Prairie Island Indian Community (PIIC) claim contain trade secrets and/or privileged and confidential commercial and financial information (hereinafter "Proprietary Documents").¹ Pursuant to this protective order, counsel, witnesses, employees, consultants, and others

¹ The provisions of this protective order do not restrict use by NRC counsel, witnesses, employees, consultants and others representing the NRC Staff of documents containing protected material that the NRC is entitled to receive apart from its role as a litigant in this proceeding (e.g., documents containing information required to be submitted to the NRC by statute, regulation, or license condition or information submitted to, or acquired by the NRC in support of a requested licensing action or in fulfillment of its regulatory responsibilities). Rather, NRC's use of such documents is governed by 10 C.F.R. §§ 2.390, 2.709, 9.17, and 9.25. The provisions of this protective order apply to NRC counsel, witnesses, employees, consultants, and others representing the NRC Staff with respect to documents containing protected material that NRC receives solely pursuant to 10 C.F.R. § 2.336 and this protective order.

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representing parties requesting copies of Proprietary Documents shall be permitted access to such documents upon the conditions set forth herein.

I. Procedural Posture

Each party to this proceeding is required to disclose and provide all documents relevant to the admitted contentions, except those documents for which a claim of privilege or protected status is being made. 10 C.F.R. § 2.336(a)(2). In the latter case, the party must list such documents on a privilege log. 10 C.F.R. § 2.336(a)(3).

In furtherance of these disclosure obligations, after conferring with the other parties in this proceeding, NSP developed a proposed protective order and non-disclosure agreement, which on March 9, 2009, NSP moved the Board to issue.² The proposal relates only to those documents that NSP or the PIIC claim are Proprietary Documents. No party has proposed disclosure of documents protected by other privileges.

II. Terms and Conditions of Protective Order

After due consideration of the proposed protective order and non-disclosure agreement, the public interest in an open and public hearing, and the practical and efficient conduct of this proceeding, the Board issues the following protective order:

1. If NSP or the PIIC believes that a document that it would otherwise be required to disclose contains information that qualifies for protection under 10 C.F.R. § 2.390(a)(4) and (b)(4)(i)-(v), then such party may designate it as a Proprietary document

² NSPM Motion for Protective Order and Non-Disclosure Agreement Regarding Proprietary Documents (March 9, 2009).

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on its privilege log and it shall be protected in accordance with the terms and conditions of this order. Such documents shall hereinafter be referred to as “Proprietary Documents.”

2. Upon request of another party, the party claiming protected status for a Proprietary Document shall provide an unredacted copy of such document to the duly authorized representatives of the requesting party if such representatives have signed the non-disclosure agreement attached hereto. Each such Proprietary Document produced shall be marked on the first page with a conspicuous “Proprietary” label. The party representatives receiving such Proprietary Documents shall hold and use such documents in confidence and in compliance with the terms and conditions of this order.³

3. If upon receipt and review of a Proprietary Document, the requesting party determines that such document does not appear to qualify for protection under 10 C.F.R. § 2.390(a)(4) and (b)(4)(i)-(v), the receiving party may file a motion with the Board challenging such designation. Absent good cause shown, any such motion shall be filed within ten days of receipt of the Proprietary Document. Prior to presenting any such dispute to the Board, the parties shall consult and use their best efforts to resolve it.

4. If a party has filed a motion under the preceding paragraph then, pending a ruling by the Board, the Proprietary Document in question shall continue to be held in

³ This order, and the good faith representation and designation of documents as Proprietary Documents by counsel for the producing party, serves in lieu of the requirement for marking and for an affidavit under 10 C.F.R. § 2.390(b) and allows the Staff to receive Proprietary Documents and to protect their confidentiality under FOIA.

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confidence. If the Board rules that a document does not qualify as a Proprietary Document, then the unrestricted use of such documents may begin fifteen (15) days after the Board's decision. If, during such time, the party that asserted protected status of the document files an interlocutory appeal or request that the issue be certified to the Commission, such period of time shall be extended until such time as the Board or the Commission rules on the appeal or request for certification.

5. Only individual counsel, consultants, witnesses, employees, and other representatives of the requesting parties who have executed the attached non-disclosure agreement, and the Board and its staff, may have access to Proprietary Documents.⁴ Proprietary Documents shall only be used as necessary for the conduct of this proceeding. Proprietary Documents shall not be disclosed in any manner to any person except (a) the Board and its staff, and (b) those representatives of the parties engaged in the conduct of this proceeding who have executed the non-disclosure agreement and who, in the reasonable opinion of the party who has received the Proprietary Documents, need to know the information contained in the Proprietary Documents in order to carry out their responsibilities in this proceeding. Individuals with access to Proprietary Documents may make copies of and take notes on the confidential information contained in the documents, but such copies and notes become

⁴ A party may make documents it identified as Proprietary Documents in its privilege log available to NRC counsel, witnesses, employees, consultants and others representing the NRC Staff for inspection in lieu of such NRC representatives signing the non-disclosure agreement. In that event access would not include making copies unless the Staff personnel signed the non-disclosure agreement.

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Proprietary Documents subject to the terms of this protective order.

6. Counsel, consultants, witnesses, employees, and others representing a party who receive documents subject to the terms of this protective order shall maintain the confidentiality of the information contained therein as required in the attached non-disclosure agreement, the terms of which are incorporated herein.

7. Counsel shall take all reasonable precautions necessary to assure that Proprietary Documents and the information contained therein are not distributed to unauthorized persons and that persons under their supervision or control comply with this protective order.

8. A party intending to file or submit any pleading, testimony, exhibit, or correspondence in this proceeding that contains a Proprietary Document or information derived from a Proprietary Document, shall provide written notification to the party that asserted protected status no less than ten (10) days prior to the date of the intended filing. Such notice shall identify the Proprietary Document(s) that the party intends to use or include.

9. All pleadings, testimony, exhibits and correspondence in this proceeding that include a Proprietary Document or contain information derived from such a document shall:

a. Be served electronically using the NRC Electronic Submittal instructions applicable to submissions governed by protective order and designating for electronic service only representatives of the parties who have signed the non-disclosure agreement, the Board, and the Secretary;

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b. Include an attached cover sheet identifying the pleading, testimony, exhibit, or correspondence as containing a Proprietary Document or information derived therefrom;

c. Specifically designate, by highlighting, marginalia, or other appropriate markings, the portion of the pleading, testimony, exhibit or correspondence, that contains a Proprietary Document or information derived therefrom; and

d. Be accompanied by a version of the pleading, testimony, exhibit and/or correspondence with the proprietary information redacted unless the party filing the pleading, testimony, exhibit and/or correspondence in good faith determines that such a redacted version cannot be prepared without undue burden or expense and so advises the Board and the other parties.

10. At any hearing or conference in this proceeding in which a statement is made by the representative of a party, or a witness is questioned, concerning a Proprietary Document or information contained therein, the statement or testimony shall be given in camera or under other suitable conditions as this Board may establish, and the record of that portion of the hearing and any transcript thereof, shall be withheld from distribution to the public. It shall be the duty of the party whose statement or testimony contains information contained in a Proprietary Document to notify the Board and the parties that such testimony or statement will contain proprietary information, prior to the testimony or statement being made.

11. Proprietary Documents shall remain available until the date that an order terminating this proceeding is no longer subject to judicial review. The parties shall,

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within fifteen (15) days of the date described above, return the Proprietary Documents to counsel for party that provided them or shall destroy such documents and shall submit to counsel for the disclosing party an affidavit stating that, to the best of its knowledge, all Proprietary Documents have been returned or destroyed. Pending their return or destruction, Proprietary Documents shall remain subject to the provisions of this protective order.

12. Counsel, consultants, employees, or any other individuals representing a party who have reason to believe that Proprietary Documents may have been lost or misplaced or may have otherwise become available to unauthorized persons shall notify the Board and counsel for the disclosing party promptly of their concerns and the reasons for them.

13. Any violation of the terms of this protective order or a non-disclosure agreement executed in furtherance of this order may result in the imposition of such sanctions as the Board may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

14. Each party governed by this protective order has the right to seek changes in it as appropriate from the Board or the Commission.

15. Nothing in this protective order shall be deemed to preclude any party from independently seeking, through discovery in any other administrative or judicial proceeding, any Proprietary Document or information produced in this proceeding under this protective order. In addition, if documents identified in this proceeding as Proprietary Documents, or some or all of the information contained therein, come into

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the possession of or are known by any party independently of the document being produced in this proceeding, use of that document or information thus obtained in this proceeding, without compliance with the terms of this protective order, shall not be a violation of the terms of this protective order. The party asserting independent knowledge of the contents of Proprietary Documents or independent access to such documents, shall have the burden of proving that such information was independently obtained.

16. The Board may alter or amend this protective order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March __, 2009

⁵ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) licensee Northern States Power Company, LLC.; (2) intervenor Prairie Island Indian Community; and (3) the Staff.

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ATTACHMENT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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

(Prairie Island Nuclear Generating Plan,
Units 1 & 2)

Docket No. 50-282-LR and 50-206-LR

ASLBP No. 08-871-01-LR

March __, 2009

NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify that: access to Proprietary Documents is provided to me pursuant to the terms and restrictions of the Atomic Safety and Licensing Board's Protective Order, dated March __, 2009 in this proceeding; that I have been given a copy and have read said Protective Order; and that I agree to be bound by it. I understand and agree that Proprietary Documents, their contents, or any notes or other memoranda summarizing or otherwise describing their contents, or any form of information that derives from the Proprietary Documents and copies or discloses the contents of the Proprietary Documents, shall be held in confidence, shall not be disclosed to anyone except in accordance with that Protective Order, and shall be used only for purposes of this proceeding. I acknowledge that a violation of this agreement or the protective order, which incorporates the terms of this agreement, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of such sanctions as the Board or the Commission may deem to be appropriate.

WHEREFORE, I do solemnly agree to protect such Proprietary Documents, and their contents, as may be disclosed to me in this NRC proceeding, in accordance with the terms of this agreement.

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Name (printed): _____

Title: _____

Signature: _____

Date: _____

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Before the Atomic Safety and Licensing Board

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| In the Matter of |) | |
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| Northern States Power Co. |) | 50-306-LR |
| |) | |
| (Prairie Island Nuclear Generating Plant, |) | ASLBP No. 08-871-01-LR |
| Units 1 and 2) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of “NSPM Motion for Protective Order and Non-Disclosure Agreement Regarding Proprietary Documents,” dated March 9, 2009, was provided to the Electronic Information Exchange for service on the individuals listed below, this 9th day of March, 2009.

Administrative Judge
William J. Froehlich, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Email: wjfl@nrc.gov

Administrative Judge
Dr. Gary S. Arnold
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Email: gxa1@nrc.gov

Administrative Judge
Dr. Thomas J. Hirons
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Email: thomas.hirons@nrc.gov

Secretary
Att’n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
secy@nrc.gov; hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Philip R. Mahowald, Esq.
General Counsel, Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089
pmahowald@piic.org

Beth N. Mizuno, Esq.
David E. Roth, Esq.
Maxwell C. Smith, Esq,
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: beth.mizuno@nrc.gov;
david.roth@nrc.gov; maxwell.smith@nrc.gov

/Signed electronically by David R. Lewis/

David R. Lewis