

March 20, 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)	)	

**NORTHERN STATES POWER COMPANY'S  
REPORT TO THE BOARD ON DISCLOSURE DISCUSSIONS**

**I. INTRODUCTION**

In accordance with the Atomic Safety and Licensing Board's ("Board") March 16, 2009 Order (Granting Motion for Extension of Time to File Motions to Compel and Directing Negotiations on Protective Order), Northern States Power Company, a Minnesota corporation ("NSPM"), provides this report on its discussions with the Prairie Island Indian Community ("PIIC") to resolve the PIIC's concerns with disclosure of information regarding its income.<sup>1</sup> NSPM and the PIIC have engaged in considerable and good faith discussions, but regrettably have not been able to fully resolve the issues.

NSPM has proposed a number of measures to resolve the PIIC's concerns with the disclosure of confidential information on the PIIC's income. First, NSPM has proposed to limit dissemination of any confidential income information received from the PIIC to outside consultants, outside counsel, and four NSPM employees with direct responsibility for the license renewal project, provided of course that each has signed such Non-Disclosure Agreement as may

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<sup>1</sup> The relevancy of this information to Contention 2 is discussed in Northern States Power Company's Answer in Opposition to Prairie Island Indian Community's Motion for Protective Order and Non-Disclosure Agreement Concerning Proprietary Documents (March 19, 2009) at 2-3, and 5 n.4.

be required by a Protective Order issued by the Board. In addition, NSPM has further proposed that any confidential information on the PIIC's income would not be shared with any NSPM employees (i.e. dissemination would initially be limited to disclosure to outside counsel and outside consultants) unless and until (1) the results of the consultants' analyses indicate that the PIIC information materially affects the conclusions of the SAMA analysis in the Environmental Report ("ER"), or (2) after disclosure of the results of the consultants' analyses, the PIIC declines to withdraw Contention 2. The full terms that NSPM has proposed are included in the Disclosure Proposal attached to this report.

NSPM believes that its proposal goes to extraordinary lengths to address the PIIC's concerns – indeed goes far beyond what is required under the NRC Rules of Practice.<sup>2</sup> The PIIC, however, remains concerned with any disclosure of its income to NSPM employees and proposes that any access by any NSPM employee to PIIC income information would depend on further motion practice after the consultants' analyses are performed and shared with the PIIC. The PIIC's position is unacceptable to NSPM for multiple reasons. First, if NSPM's consultants perform additional analyses using the PIIC income information and conclude that the information materially affects the results that were presented in the ER, NSPM believes that it would be required to disclose these analyses to the NRC and would have to verify that any such submittal is complete and accurate. Similarly, NSPM would be required under its own procedures to evaluate any additional SAMA identified as cost beneficial. For both these reasons, NSPM employees would need to understand the inputs that altered the results of the SAMA analysis in the ER. In addition, if the PIIC were to continue to litigate Contention 2 after additional analyses are performed, NSPM believes it should have complete access to its own

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<sup>2</sup> Pursuant to 10 C.F.R. § 2.336(a)(2)(i), "a party shall have the right to request copies of [any relevant] document or data compilation" (emphasis added).

consultants' analyses as a fundamental matter of fairness. Indeed, the PIIC's proposal would in effect result in NSPM's consultants working for the PIIC, and not NSPM.

Accordingly, NSPM respectfully submits that the PIIC should be required to disclose its income information under the terms of NSPM's proposed Protective Order and Disclosure Agreement and the attached Disclosure Proposal. If the PIIC is unwilling to disclose its income information under these terms, NSPM submits that the Board should dismiss from the scope of Contention 2 any allegation that NSPM's SAMA analysis fails to adequately account for the effect on the Treasure Island Casino and Resort, or on any other aspect of PIIC income. Dismissal of this aspect of the contention would be appropriate under these circumstances not only under 10 C.F.R. § 2.336(e), but also because the National Environmental Policy Act ("NEPA") does not require environmental analyses to use information that is not reasonably available. See, e.g., 40 C.F.R. § 1502.22 (CEQ regulation on incomplete or unavailable information). If the PIIC's income information is unavailable to NSPM because the PIIC will not disclose it to NSPM, then there is no longer any basis for challenging the adequacy of NSPM's SAMA analysis under NEPA, and any portion of Contention 2 relating to the PIIC's income should be dismissed. Further, as a fundamental matter of fairness, the PIIC should not be permitted to challenge NSPM's SAMA analysis as inadequate for not considering the specific effect on PIIC income while at the same time refusing to provide the information that NSPM would need to address this claim.

If the Board dismisses from the scope of Contention 2 any allegation that NSPM's SAMA analysis fails to adequately account for the effect on PIIC income, or if the PIIC withdraws such allegations, NSPM would continue to address claims that its SAMA analysis should consider actual values of the PIIC property and decontamination costs derived under the

methodology in the Site Restoration Study. NSPM understands from its discussions with the PIIC that property value information is not as sensitive as income information and could be disclosed under normal Protective Order provisions.

While NSPM and PIIC have not been successful in reaching a mutually acceptable agreement on disclosure of PIIC income, there are portions of NSPM's Disclosure Proposal on which NSPM and the PIIC have reached agreement. In particular, the PIIC has agreed to supplement its initial disclosures in the manner described in paragraph 1 of NSPM's Disclosure Proposal, and has agreed that any motion to compel related to its initial disclosures need not be filed until after this supplementation. In addition, NSPM and the PIIC have agreed that after this supplementation, NSPM and the PIIC will waive the requirement to further supplement their respective listing of documents for which a claim of attorney client or work product privilege is asserted. NSPM requests that the Board approve these agreements.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: March 20, 2009

**NSPM's Disclosure Proposal**

1. The PIIC will supplement its initial disclosures by [April 1, 2009] to:
  - Provide its privilege log through that date. Thereafter, NSPM and the PIIC agree to waive further supplementation of the listing of documents subject to attorney client or work product privilege.
  - Provide a listing of all documents and data compilations identified through a reasonable search relevant to the PIIC income or PIIC property values potentially affected by a severe accident at the Prairie Island Nuclear Generating Plant.
  - Provide maps and general descriptions of the PIIC boundaries, facilities and land uses.
  
2. The PIIC agrees that any motion to compel related to the PIIC's initial disclosures need not be filed until after the PIIC provides this supplementation.
  
3. NSPM will limit any dissemination of confidential income information received from the PIIC to outside counsel and outside experts working on addressing Contention 2 and the following four NSPM employees, subject to each recipient signing such Confidentiality Agreement as the Board may require by Protective Order:

Charles Bomberger, Vice President, Nuclear Projects  
Kenneth Albrecht, General Manager, Major Projects - Nuclear  
Eugene Eckholt, Project Manager, License Renewal Project  
James Holthaus, Environmental Project Manager
  
- Further, confidential income information received from the PIIC will not be disseminated to these four NSPM employees except as described below.
  
4. Subject to the Protective Order and Non-Disclosure Agreement issued by the Board, the PIIC will promptly produce to NSPM's outside counsel the Replacement and Reconstruction Appraisal and the Audited Financial Statements identified in the PIIC's March 9, 2009 proprietary log. Before seeking receipt of any further confidential financial documents, NSPM will have its outside counsel and consultants review these two documents to determine whether

they are sufficient for use in addressing Contention 2. If NSPM's counsel and consultants determine that additional documents are needed, NSPM reserves the right to request such documents and, if necessary, move the Board to compel such production.

5. Upon determination that the confidential information received from the PIIC is sufficient to support analyses addressing Contention 2, NSPM will have its consultants perform sensitivity analyses to determine whether use of the PIIC information materially affects the results of the SAMA analysis contained in NSPM's Environmental Report ("ER"). The analysis in the ER will be considered materially affected if use of PIIC information results in additional SAMA being identified as cost beneficial. If use of the PIIC information does not materially affect the SAMA analysis in the ER, NSPM will provide the consultants' report to the PIIC and allow the PIIC a reasonable opportunity (not to exceed ten days) to review the report and withdraw Contention 2 prior to NSPM seeking summary disposition. The inputs derived from PIIC confidential income information will not be disclosed to the four designated NSPM employees (i.e. any copy of the consultant's report provided to NSPM will have PIIC confidential income information redacted) unless (1) the consultants' report indicates that the conclusions of the SAMA analysis in the ER are materially affected, or (2) after review of the consultants' report, the PIIC declines to withdraw Contention 2.

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	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of “Northern States Power Company’s Report to the Board on Disclosure Discussions” dated March 20, 2009, was provided to the Electronic Information Exchange for service on the individuals listed below, this 20th day of March, 2009.

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/Signed electronically by David R. Lewis/

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