

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-BD01

June 12, 2009

ORDER

(Granting Motions to Dismiss PIIC Contentions 7 and 8)

On December 5, 2008, this Atomic Safety and Licensing Board (Board) issued a memorandum and order admitting seven of the Prairie Island Indian Community's (PIIC)'s 11 proffered contentions: Contentions 1, 2, 5, 6, 7, 8, and 11.¹ On April 3, 2009, pursuant to 10 C.F.R. § 2.338, PIIC and Northern States Power Company (NSPM) filed a joint motion seeking approval of a settlement of Contentions 1, 6, and 11.² The Board promptly approved the settlement and dismissed all three contentions.³

On April 6, 2009, pursuant to 10 C.F.R. § 2.323, NSPM filed a motion seeking dismissal of Contention 8 as moot on the basis of new information supplied by Applicant.⁴ The Board

¹ Northern States Power Co. (Prairie Island Nuclear Generating Plant), LBP-08-26, 68 NRC ___ (Dec. 5, 2008).

² Joint Motion for Approval of Settlement and Dismissal of PIIC Contentions 1, 6, and 11 (Apr. 3, 2009).

³ Licensing Board Order (Approving Settlement and Dismissal of Contentions 1, 6, and 11) (Apr. 14, 2009) (unpublished).

⁴ Northern States Power Company's Motion to Dismiss PIIC Contention 8 as Moot (Apr. 6, 2009).

issued an order on May 11, 2009, conditionally granting the motion and allowing PIIC 20 days to file new or amended contentions based on the new information.⁵ The 20-day period expired on June 1, 2009, and having received no indication that PIIC wishes to file new or amended contentions, the Board hereby dismisses Contention 8.

On May 22, 2009, NSPM filed a motion seeking dismissal of Contention 7 as moot, also on the basis of new information supplied by Applicant.⁶ Contention 7, as restated by the Board, alleges that “[t]he [license renewal application] does not contain an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor vessel internals.”⁷ In admitting this contention, we identified it as a contention of omission.⁸ Namely, we found that the Applicant failed to describe its aging management plan for reactor vessel internals to the extent required by 10 C.F.R. § 54.21.

On May 12, 2009, NSPM filed a supplement to the license renewal application (LRA) providing “a detailed description of the new, plant-specific aging management program for [the Prairie Island Nuclear Generating Plant’s] reactor vessel internals.”⁹ Subsequently, NSPM filed its motion to dismiss Contention 7. As the basis for this motion, NSPM claims that the information contained in the May 12, 2009 supplement renders Contention 7 moot. Neither NRC Staff nor PIIC opposes the motion to dismiss.¹⁰

⁵ Licensing Board Order (Conditionally Granting Motion to Dismiss Contention 8 as Moot) (May 11, 2009) (unpublished) [hereinafter Board Order Conditionally Dismissing Contention 8].

⁶ Northern States Power Company’s Motion to Dismiss PIIC Contention 7 as Moot (May 22, 2009) [hereinafter Motion to Dismiss Contention 7].

⁷ Prairie Island, LBP-08-26, 68 NRC at __ (slip op. at 44).

⁸ Id. at __ (slip op. at 42-43).

⁹ Motion to Dismiss Contention 7 at 2-3.

¹⁰ NRC Staff’s Response to Northern States Power Company’s Motion to Dismiss PIIC Contention 7 at Moot (June 1, 2009); PIIC’s Response to NSPM’s Motion to Dismiss Contention 7 as Moot (June 1, 2009).

The Commission has stated that “[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . , the contention is moot.”¹¹ In the instant case, Applicant filed a supplement to the LRA containing all the information alleged to be omitted from the Application by Contention 7. Thus, the Board concludes that Contention 7 is moot and dismisses it accordingly.¹²

To summarize, as of this date, the Board has dismissed Contentions 1, 6, 7, 8, and 11, and only two contentions – Contentions 2 and 5 – remain in this proceeding.¹³

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA, by A. Baratta for/

Dr. Thomas J. Hirons
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 12, 2009

¹¹ Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002).

¹² Under the Board’s scheduling order dated February 18, 2009, any new or amended contentions based upon new information are to be filed within thirty days of the date on which the new information becomes available. In the present case, NSPM states that it provided a copy of the LRA supplement to PIIC’s counsel on May 12, 2009. See Motion to Dismiss Contention 7 at 2. Thus, any new or amended contentions arising from the information contained in the supplement would have been deemed timely if filed by June 11, 2009. We find no need to grant PIIC additional time beyond June 11, as we did in the case of NSPM’s motion to dismiss Contention 8. See Board Order Conditionally Dismissing Contention 8 at 2-3.

¹³ The Board received a letter from NSPM on April 30, 2009, suggesting that NSPM and PIIC had “amicably resolved Contention 2” and would soon submit a settlement agreement for the Board’s approval. See Letter from David R. Lewis, Counsel for NSPM, to the Licensing Board (Apr. 30, 2009). The Board is prepared to consider any such agreement as soon as the parties submit it.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
NORTHERN STATES POWER COMPANY)
)
) Docket Nos. 50-282-LR
) 50-306-LR
)
(Prairie Island Nuclear Generating Plant,)
Units 1 and 2)
)
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING MOTIONS TO DISMISS PIIC CONTENTIONS 7 and 8) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NOS. 50-282 AND 50-306-LR
LB ORDER (GRANTING MOTIONS TO DISMISS PIIC CONTENTIONS 7 AND 8)

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[Original signed by Evangeline S. Ngbea]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 12th day of June 2009