November 23, 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, Units 1 and 2)	)	ASLBP No. 08-871-01-LR

NORTHERN STATES POWER COMPANY'S
MOTION TO DISMISS PIIC CONTENTION 5 AS MOOT

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(a), Northern States Power Company, a Minnesota corporation ("NSPM"), hereby moves this Atomic Safety and Licensing Board (the "Board") for dismissal of the Prairie Island Indian Community ("PIIC")'s Contention 5, which relates to an environmental justice analysis not being included in the NSPM license renewal application ("LRA") for the Prairie Island Nuclear Generating Plant ("PINGP"). NSPM moves this Board to dismiss PIIC Contention 5 because the NRC Staff has issued its draft supplemental Environmental Impact Statement ("EIS") for PINGP, which includes the analysis whose omission was the basis for the Contention. Therefore, the Contention has been rendered moot.

II. PROCEDURAL BACKGROUND

NSPM, formerly Nuclear Management Company, LLC, submitted the LRA for Operating License Nos. DPR-42 and DPR-60 for the PINGP Units 1 and 2 to the NRC on April 11, 2008. PIIC filed its "Notice of Intent to Participate and Petition to Intervene" ("PIIC Petition"), on August 18, 2008, alleging eleven separate contentions. The PIIC Petition included Contention 5, which claimed that the "applicant's environmental report contains a seriously flawed

environmental justice analysis that does not adequately assess the impacts of the PINGP on the adjacent minority population." PIIC Petition at 24.

On December 5, 2008, the Board admitted seven of the PIIC's contentions, including Contention 5. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 N.R.C. 905, 931 (2008). In admitting Contention 5, the Board expressly remarked that it "understands that PIIC's intent is to address the issue to NRC Staff – the entity responsible for preparing the EIS and complying with [the National Environmental Policy Act ("NEPA")] – not Northern States. Nonetheless, NRC regulations require the Petitioner to raise contentions related to NEPA as challenges to Applicant's environmental report, which acts as a surrogate for the EIS during the early stages of a relicensing proceeding." Id. (footnote omitted). The Board also expressly noted that Contention 5 was admitted "as a contention of omission."[1] Id. at 932.

The NRC Staff issued the draft supplemental EIS for PINGP's license renewal on November 13, 2009.[2] That EIS includes an environmental justice analysis, which expressly considered the PIIC, and included the views of the PIIC as well as those of the NRC Staff. The environmental justice analysis contained in the EIS moots PIIC Contention 5 as admitted by the Board and the Contention should be dismissed.

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[1] The Board further explained the admission of PIIC Contention 5 in a subsequent order. It stated, "We admitted Contention 5 under the assumption that Applicant's ER acts as a surrogate for the entire EIS, which NRC Staff will eventually prepare. We interpreted Contention 5 to allege that the EIS, in its current form as Applicant's ER, is deficient in not including an environmental justice analysis. Now it is NRC Staff's responsibility to provide such an analysis in its EIS. Once the EIS is issued, Applicant may find it appropriate to file a motion to dismiss or a motion for summary disposition of Contention 5." Order (Denying Motion for Reconsideration of LBP-08-26 Regarding Contention 5 and Alternative Motion to Refer the Issue to the Commission) (Jan. 16, 2009), at 8.

[2] Generic Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 39 Regarding Prairie Island Nuclear Generating Plant, Units 1 and 2, NUREG-1437 Supplement 39 (Oct. 2009), ADAMS Accession No. ML093170484 ("PINGP EIS").

III. WHEN THE ENVIRONMENTAL IMPACT STATEMENT CURES AN ALLEGED OMISSION FROM THE ENVIRONMENTAL REPORT WHICH SERVED AS THE BASIS FOR AN ENVIRONMENTAL CONTENTION, THE CONTENTION IS RENDERED MOOT

Where "a contention is 'superseded by the subsequent issuance of licensing-related documents'…the contention must be disposed of or modified." Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 N.R.C. 373, 382 (2002) (footnote omitted). Where "a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot." Id. at 383 (footnote omitted).

As discussed below, the issuance of the EIS on November 13, 2009 rendered PIIC Contention 5 moot. This Board should, therefore, dismiss PIIC Contention 5.

IV. PIIC CONTENTION 5 SHOULD BE DISMISSED AS MOOT

A. PIIC Contention 5 Alleged the Omission of Information from the LRA

PIIC Contention 5, as admitted, alleged that NSPM "failed to address the environmental justice impacts of license renewal on the Indian Community." Prairie Island, LBP-08-26, 68 N.R.C. at 932. This Board properly characterized PIIC Contention 5 as a "contention of omission." Id.

B. The EIS Provides the Environmental Justice Analysis Whose Omission Was the Basis for Contention 5

The PIIC acted as a cooperating agency and assisted the NRC in preparing the EIS, including in the area of environmental justice, pursuant to a memorandum of understanding between it and the NRC. PINGP EIS at 1-6. The environmental justice analysis is provided in the following sections of the EIS: Section 3.2.10 (regarding environmental impacts of PINGP

refurbishment); Section 4.9.7 (regarding environmental impacts of PINGP operation); Section 4.11.5 (regarding cumulative environmental impacts of PINGP operation); Section 5.4 (regarding environmental justice issues related to severe accidents); and Sections 8.1.6, 8.2.6, 8.3.6, and 8.6.6 (regarding environmental justice issues concerning alternatives to PINGP).

C. PIIC Contention 5 Has Been Rendered Moot by the EIS

As admitted by the Board, PIIC Contention 5 alleged that NSPM failed to analyze the environmental justice impacts of PINGP's license renewal on the PIIC. The EIS issued by the NRC Staff on November 13, 2009 includes not only the environmental justice views of the NRC Staff, but also those of the PIIC as a cooperating agency. Thus, "the contention of omission, as originally proffered, [has] indeed [been] rendered moot by" the submission of the EIS. AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 N.R.C. 658, 676 n.72 (2008); see also McGuire, CLI-02-28, 56 N.R.C. at 382-83. This Board should, therefore, dismiss PIIC Contention 5.

V. CONCLUSION

For the reasons stated above, the Board should grant NSPM's Motion to Dismiss PIIC Contention 5 as Moot.

CERTIFICATION

As required by 10 C.F.R. § 2.323(b), counsel for NSPM certifies that he has consulted with the other parties in a sincere effort to resolve the issues raised in this motion. The NRC Staff has indicated that it supports the motion. The PIIC has indicated that it currently opposes the motion but may reevaluate its position after it has had the opportunity to review the motion.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: November 23, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Northern States Power Company's Motion to Dismiss PIIC Contention 5 as Moot," dated November 23, 2009, was provided to the Electronic Information Exchange for service on the individuals listed below, this 23rd day of November, 2009.

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/Signed electronically by David R. Lewis/

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