

December 10, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

**PRAIRIE ISLAND INDIAN COMMUNITY’S REPLY TO NRC STAFF’S
ANSWER AND NORTHERN STATE POWER COMPANY’S ANSWER IN
OPPOSITION TO THE COMMUNITY’S NEW CONTENTION ON THE
NRC SAFETY EVALUATION REPORT**

I. BACKGROUND

On November 23, 2009, in accordance with the Licensing Board Order of November 4, 2009,¹ the Prairie Island Indian Community (“Community,” “Tribe,” or “Petitioner”) submitted a new contention on the Nuclear Regulatory Commission (“NRC” or “NRC Staff”) Safety Evaluation Report (“New Contention”). Northern States Power Company (“NSP” or “Applicant”)² and the NRC Staff³ each submitted answers opposing the Community’s New Contention. The Community’s Reply addresses the opposition arguments in two parts. The first part of the Reply (Section II) will address the alleged procedural deficiencies that the answers

¹ Licensing Board Order (Conference Call summary and Scheduling Order) (Nov. 4, 2009) (unpublished).

² Northern State Power Company’s Answer Opposing the PIIC’s Late-Filed Contention (December 3, 2009) (“NSP Answer”).

³ NRC Staff’s Answer in Opposition to Prairie Island Indian Community’s Submission of a New Contention on the NRC Safety Evaluation Report (December 3, 2009) (“NRC Answer”).

raised. The second part of the Reply (Section III) will address the alleged deficiencies raised by the answers regarding the admissibility of the Community's contention.

II. PROCEDURAL ISSUES

The Applicant raised two issues with the process that the Community used to submit its New Contention. The first issue raised is that the Community was required to meet the requirements for late-filed contentions in 10 CFR § 2.309(c).⁴ The second was that the Community's Contention was not submitted in the proper form, i.e., as a motion, requesting leave of the Board to file the Contention, with prior consultation with the other parties to the proceeding.⁵ In reply, the Community would note that it endeavored to follow the Licensing Board's Order. As stated in the Order "[t]he Board . . . directs that a proposed contention specified above shall be deemed timely under 10 CFR § 2.309(f)(2)(iii) if it is filed within 30 days of the date on which the document on which it is based first becomes available."⁶ The document which provides the basis for the New Contention is the NRC's Safety Evaluation Report ("SER"). The Community believed that submitting our New Contention within thirty days of the SER (per the Board's Order) was in accord with the procedure set forth by the Board, but also that the format would be the same as that for the submission of original contentions, i.e., a motion would not be necessary. To the extent that the Community's filing should have been captioned "Prairie Island Indian Community's *Motion for Leave to Add* New Contention on the NRC Safety Evaluation Report" rather than "Prairie Island Indian Community's Submission of a New Contention on the NRC Safety Evaluation Report," the Community hopes that the failure to follow the format of a motion, rather than the direct submission of a contention, will not prevent

⁴ NSP Answer at 7.

⁵ *Id.* at 2.

⁶ Licensing Board Order (November 4, 2009) at 4.

a hearing on what the Community believes is a legitimate safety issue – one that demonstrates a “genuine dispute” with the applicant on a “material issue of law or fact.”⁷

The NRC Staff also raised a timeliness issue with the Community’s New Contention.⁸ The Community believes that the same misunderstanding that underlies the Applicant’s and the NRC Staff’s concerns on the admissibility of the Contention is also the key to the NRC Staff’s timeliness issue. It was the evaluation in the SER of the refueling cavity leakage at the Applicant’s facility that provided the final link in a series of deficiencies in the Applicant’s safety performance that revealed the existence of a potentially serious weakness in the Applicant’s safety culture. A weakness in the safety culture at a licensee or license applicant’s facility can be revealed by a pattern of events over a period of time.⁹ The analysis of the refueling cavity leakage in the SER, and the corresponding deficiencies requiring additional commitments of the Applicant, brought all of the other inspection and enforcement problems of the Applicant into focus as demonstration of a weak safety culture in the context of license renewal. The existence of a weak safety culture at Applicant’s facility undermines the Applicant’s License Renewal Application and supporting Safety Analysis Report in terms of the Applicant’s ability to manage the effects of aging during the period of extended operation.

III. ISSUES OF ADMISSIBILITY OF THE NEW CONTENTION

The Applicant and the NRC Staff raise several concerns with the admissibility of the Community’s New Contention. We will address each of these in turn.

⁷ See 10 CFR § 2.309(f)(1)(vi). Alternatively, if necessary, the Community hereby moves for leave of the Board to file the New Contention that was served and filed on November 23, 2009.

⁸ NRC Staff Answer at 5-8.

⁹ See Draft Safety Culture Policy, U.S. Nuclear Regulatory Commission (74 Fed. Reg. 57525, 57527, November 6, 2009).

A. The New Contention did not assert any deficiency with the Applicant's License Renewal Application.¹⁰

Both the applicant and the NRC staff asserted that the Community was challenging the NRC SER and that the New Contention “did not contain a single reference to the application.”¹¹ Contrary to the NRC Staff's and NSP's argument, however, the Community uses the discussion of the refueling cavity leakage in the SER as the focal point for challenging the adequacy of the Applicant's License Renewal Application. It was the evaluation of the refueling cavity leakage at the Applicant's facility in the SER that provided the final link in a series of deficiencies in the Applicant's safety performance that revealed the existence of a potentially serious weakness in the Applicant's safety culture. The progression of deficiencies includes:¹²

1987

Indications of refueling cavity leakage in both units.

1998

Vacuum box testing and dye penetrant exam of refuel cavity liners with weld repair of 3 pinhole leaks on unit 2.

2002 - 2003

Instacote spray on strippable liner.

2004 – 2008

Leakage mitigated when caulking performed underneath fasteners.

September 2008

LER 1-08-03 reports mispositioned TDAFW valves.

January 2009

EA-09-004, Final White finding related to EA-08-272 for the mispositioned valves.

March 2, 2009

Meeting to discuss request for additional information related to the structures monitoring program and the potential impact of the refueling cavity leakage on containment integrity.

¹⁰ NSP's Answer at 14 and NRC Staff's Answer at 11.

¹¹ NSP Answer at 15.

¹² See Community's Submission of a New Contention at 4-13.

July 2009

Information Notice 2009-11, “Configuration Control Errors,” describes weaknesses in administrative controls, training, operator burdens, and failure to effectively apply station and industry operating experience, as contributing causes to the mispositioned valves.

September 2009

September 1, 2009, NRC transmitted the results of the mid-cycle performance review. The NRC identified a substantive cross-cutting issue (SCCI) in the area of human performance. The NRC has 3 SCCI’s – human performance, problem identification and resolution, and safety conscious work environment. In the case of PINGP, there are themes related to the human performance SCCI:

- systematic process (4 findings)
- conservative assumptions (6 findings)
- procedural adequacy (5 findings)
- procedural compliance (4 findings)

October 2009

Safety Evaluation Report Related to the License Renewal of Prairie Island Nuclear Generating Plant Units 1 and 2 concludes that “the requirements of 10 CFR § 54.29(a) have been met.”¹³

December 1, 2009

Region III meeting with Xcel to discuss the cross-cutting human performance issues.

The existence of a weak safety culture at the licensee’s facility undermines the Applicant’s License Renewal Application and the supporting Safety Analysis Report in terms of the Applicant’s ability to manage the effects of aging during the period of extended operation. The very nature of the Community’s new safety culture contention goes directly to the viability of the

¹³ Part 54.29(a) states: “there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant’s CLB in order to comply with this paragraph are in accord with the Act and the Commission’s regulations. These matters are: (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1).” The SER description of the actions to ensure the effectiveness of the Structures Monitoring Program does not address the human performance issues related to reliance on administrative controls, training, operator burdens, and effectively applying industry operating experience.

Applicant's License Renewal Application and the conclusions in the NRC Staff's Safety Analysis Report. *Accord Georgia Institute of Technology*, CLI-95-12, 42 N.R.C. 111, 120-21 (1995) (holding that petitioner's allegations about management problems bear directly on the Commission's ability to find reasonable assurance that the Georgia Tech Research Reactor facility can be safely operated).

B. The New Contention focuses on plant operational issues which are outside the scope of a license renewal proceeding.¹⁴

Contrary to the NRC Staff's and NSP's argument, the Community is not focusing on the operational safety aspects of the refueling cavity leakage issue. Rather, the Community believes that the Applicant's treatment of the refueling cavity issue – i.e., knowing about a leak that has potential safety problems for a number of years, not notifying the NRC of a condition that could potentially result in the loss of containment integrity, and failing to take prompt and effective corrective actions to preclude a loss of containment integrity – is a culminating symptom of a weak safety culture. Indeed, the Community's belief as set forth in the New Contention is buttressed by the NRC's white enforcement and recent substantive cross-cutting human performance findings. Accordingly, the Community's New Contention does properly address issues that are within the scope of a license renewal proceeding. *Accord Georgia Institute of Technology*, CLI-95-12, 42 N.R.C. at 120-21 (affirming the Board's finding that petitioner's allegations about management problems are relevant to the proposed license renewal).

C. The New Contention is based on a duplication of NRC oversight responsibilities.¹⁵

The Applicant and the NRC Staff assert that the Community merely identified events and activities that are subject to NRC's inspection and enforcement program. Contrary to the NRC

¹⁴ NSP Answer at 16 and NRC Staff Answer at 13.

¹⁵ NSP Answer at 17 and NRC Staff Answer at 16.

Staff's and NSP's argument, however, invalidating a contention on the mere fact that the NRC should also be overseeing the event forming the basis of the contention would eliminate any possible contention seeking to ensure that a facility is operated safely. Indeed, the reason the Community asserted the New Contention was to ensure that the identified deficiencies are properly identified and adequately addressed in NSP's aging management program, separate and apart from the NRC's inspection and enforcement program.

D. The New Contention addresses deficiencies that are not age related.¹⁶

The Community respectfully disagrees that the deficiencies identified in the New Contention are not age related. The salient point in the Community's New Contention is that the Applicant's actions in regard to the refueling cavity leakage issue and the inspection and enforcement findings of the NRC reveal a weak safety culture which the Applicant relies on to effectively manage aging. Contrary to the NRC Staff's and NSP's arguments, therefore, the deficiencies identified in the New Contention challenge the effectiveness of the aging management program as set forth in the Applicant's License Renewal Application and the basis for the NRC staff's conclusions that aging will be effectively managed during the period of extended operation. Part 54.29(a) requires that the NRC establish that "there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations. These matters are: (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1)." The SER description of the actions to ensure the effectiveness of the Structures Monitoring Program does not address the human performance issues related to reliance on administrative controls,

¹⁶ NSP Answer at 16 and NRC Answer at 15.

training, operator burdens, and effectively applying industry operating experience. Accordingly, the Community has stated an admissible contention.

E. The New Contention is based on mere assertions and speculation and is not supported by information demonstrating the existence of a genuine material dispute.¹⁷

Contrary to the NRC Staff's and NSP's arguments, the Community has identified specific, documented facts and events that raise the potential of a weak safety culture.¹⁸ These same types of events would form the basis for an NRC finding of a weak safety culture consistent with NRC inspection and enforcement documents. At this preliminary stage, the Community need only "[p]rovide a brief explanation of the basis for the contention," 10 C.F.R. § 2.309(f)(1)(ii), and "a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue," 10 C.F.R. § 2.309(f)(1)(v). The information and documents cited by the Community in support of its New Contention clearly support the existence of a genuine dispute with the Applicant on a material issue. *See In the Matter of Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999) (full adjudicatory hearings are triggered by those able to proffer "at least some minimal factual and legal foundation in support of their contentions"); *Georgia Institute of Technology*, CLI-95-12, 42 N.R.C. at 118 (showing of materiality is not an onerous requirement; all that is needed is a

¹⁷ NSP Answer at 19 and NRC Answer at 17.

¹⁸ *See* Community's Submission of a New Contention at 4-13; *supra* Section III.B.

“minimal showing that material facts are in dispute, indicating that a further inquiry is appropriate”).¹⁹

VI. CONCLUSION

For the foregoing reasons, the Community’s New Contention based on the NRC’s Safety Evaluation Report should be admitted in its entirety.

Respectfully Submitted,

/Signed electronically by Philip R. Mahowald/

Philip R. Mahowald
PRAIRIE ISLAND INDIAN COMMUNITY
5636 Sturgeon Lake Road
Welch, MN 55089
Tel. (651) 267-4006
Email: pmahowald@piic.org
Counsel for Prairie Island Indian Community

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¹⁹ Indeed, considering that NSP spends at least three pages of its Answer, at 19-23, endeavoring to refute the facts set forth in the Community’s Submission of a New Contention, there can be little doubt that material facts are in dispute.

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CERTIFICATE OF SERVICE

I hereby certify that copies of “Prairie Island Indian Community’s Reply to NRC Staff’s Answer and Northern State Power Company’s Answer in Opposition to the Community’s New Contention on the NRC Safety Evaluation Report,” dated December 10, 2009, was provided to the Electronic Information Exchange for service on the individuals listed below, this 10th day of December, 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. Hiron
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Email: thomas.hiron@nrc.gov

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

Beth N. Mizuno, Esq.
David E. Roth, Esq.
Maxwell C. Smith, Esq.
Brian Harris, 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;
brian.harris@nrc.gov

David R. Lewis, Esq.
Matias F. Travieso-Diaz, Esq.
Stefanie M. Nelson, Esq.
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, DC 20037-1122
E-mail: david.lewis@pillsburylaw.com
E-mail: matias.travieso-diaz@pillsburylaw.com
E-mail: stefanie.nelson@pillsburylaw.com

Peter M. Glass, Esq.
Xcel Energy Services, Inc.
414 Nicollet Mall
Minneapolis, Minnesota 55401
E-mail: peter.m.glass@xcelenergy.com

/Signed electronically by Philip R. Mahowald/

Philip R. Mahowald