

March 1, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE 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))

NRC STAFF'S REPLY TO PRAIRIE ISLAND INDIAN COMMUNITY'S ANSWER TO
THE STAFF'S PETITION FOR INTERLOCUTORY REVIEW¹

Pursuant to 10 C.F.R. § 2.341(b)(3) and (f)(2), the Staff of the Nuclear Regulatory Commission ("Staff") hereby replies to the Prairie Island Indian Community's ("PIIC") Answer² to the NRC Staff's Petition for Interlocutory Review.³ The arguments that PIIC advances in opposition to the Staff's Petition for Interlocutory Review do not refute the Staff's position that the errors in the Order will have a pervasive and unusual effect on this proceeding. In addition, PIIC's arguments are at odds with the fundamental scope of license renewal proceedings and the nature of the Commission's rules governing late-filed contentions. The Commission should,

¹ On February 25, 2010, after the Staff filed its Petition for Interlocutory Review, the Atomic Safety and Licensing Board in this matter denied the admission of the three pending environmental contentions filed by the Prairie Island Indian Community. Order (Granting Motion for Leave to File New Contentions and Denying Their Admission) (Feb. 25, 2010) (unpublished). Therefore, the sole remaining contention in this proceeding is the safety culture contention that is the subject of the Staff's Petition for Interlocutory Review and that is at issue here. For this reason, since Commission disposition of the Staff's appeal could be dispositive of the entire proceeding, the issues raised in the Staff's interlocutory appeal are more appropriately viewed under the standards that apply to appeals as right under 10 C.F.R. § 2.311 rather than 10 C.F.R. § 2.341(f)(2).

² Prairie Island Indian Community's Answer to the NRC Staff's and Northern States Power Company's Petitions for Interlocutory Review of the Atomic and Safety Licensing Board Decision Admitting the Community's Contention on Safety Culture (Feb. 22, 2010) (Agency Document Access & Management System ("ADAMS") Accession No. ML100540292) ("PIIC Answer").

³ NRC Staff's Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision Admitting Late-Filed and Out of Scope Safety Culture Contention (Feb. 12, 2010) (ADAMS Accession No. ML100431768) ("Staff Petition for Interlocutory Review").

therefore, grant the Staff's Petition for Interlocutory Review and reverse the Board's admission of PIIC's safety culture contention.

PIIC claims that the "safety culture contention is only a single contention" and is not "a wide-ranging inquiry into the Applicant's conformance with its licensing basis."⁴ But, this view is not consistent with the scope of its new safety culture contention.

The Commission defines safety culture as that assembly of characteristics, attitudes, and behaviors in organizations and individuals which establishes that as an overriding priority, nuclear safety and security issues receive the attention warranted by their significance.⁵

Given the breadth of this definition, almost any operational or compliance issue that has arisen or may arise could serve as grounds for an additional safety culture contention. In light of the Board's Order, these issues would be germane to the proceeding because they would cast light on the Applicant's ability to effectively implement an aging management program during the period of extended operation.⁶ Consequently, the Board's error does not simply lead to the admission of "only a single contention," it opens the door to a wide-ranging exploration of the Applicant's compliance with its licensing basis. The effect on the basic structure of this proceeding will be pervasive and unusual.⁷

The crux of PIIC's argument is that "a weak safety culture ... may adversely impact NSPM's aging management program."⁸ That argument is based on the erroneous assumption that the Applicant's implementation of aging management programs ("AMPs")⁹ is cognizable in a

⁴ PIIC Answer at 10.

⁵ Draft Safety Culture Policy Statement: Request for Public Comments, 74 Fed. Reg. 57,525, 57,525 (Nov. 6, 2009).

⁶ Order at 11-12.

⁷ 10 C.F.R. § 2.342(f)(2)(ii).

⁸ PIIC Answer at 4.

⁹ The scope of license renewal proceedings includes a review of plant passive systems, structures and components that will require either an aging management review or that are subject to a time-limited aging analysis. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba

license renewal proceeding.¹⁰ In a license renewal proceeding, the question is not, as PIIC assumes, whether the Applicant can be trusted to manage and implement the AMPs; the question is whether the effects of aging are fully addressed by the AMPs themselves.¹¹

In case after case, the Commission has drawn a distinction between current operating issues and license renewal issues.¹² Similarly, the regulatory history is replete with discussions explaining why current operating issues are outside the scope of license renewal proceedings.¹³ Safety culture issues are current operating issues. As such, safety culture issues cannot be bootstrapped into this license renewal proceeding by asserting that they could impact AMPs. PIIC cites no case law or regulatory history in support of the Order's novel conclusion that the scope of license renewal includes a finding of reasonable assurance that the licensee will comply with the terms of its AMPs over the twenty year period of extended operation.

Instead, PIIC states that it "does not understand the reluctance of the Staff to ascertain if the PINGP safety culture ... needs improvement."¹⁴ PIIC asks, if "a weak safety culture puts adequate implementation in doubt, why wait for failure to correct it?"¹⁵ But there is no reluctance on the part of the Staff to investigate safety culture issues as evidenced by the fact

Nuclear Station, Units 1 and 2) CLI-01-20, 54 NRC 211, 212 (2001); Final Rule, Nuclear Power Plant License Renewal Revisions, 60 Fed. Reg. 22,461, 22471-72 (May 5, 1995) ("1995 License Renewal Final Rule").

¹⁰ PIIC Answer at 4.

¹¹ Staff Petition for Interlocutory Review at 7-10. This is not to say that the effectiveness of a licensee's ability to manage and implement its compliance with NRC requirements is not a critical consideration. It is—in the sphere of the adequacy of its current operations, not the adequacy of its license renewal application.

¹² *E.g., Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637-38 (2004); *Florida Power & Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6 (2001).

¹³ 1995 License Renewal Final Rule, 60 Fed. Reg. at 22,463-64, 22,473-74, 22,473, 22,481-82; Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946-47, 64,958-59, 64,960-61 (Dec. 13, 1991).

¹⁴ PIIC Answer at 9.

¹⁵ *Id.*

that those issues were identified by the Staff in the report that PIIC relies on and which the Staff issued as part of its continuing oversight of current operating issues.¹⁶ These issues are exactly the kinds of issues that the Staff is prepared to handle in the current period of operations. PIIC has actually highlighted one of the reasons the Commission structured license renewal proceedings to exclude current operating issues. As the Commission explained when it published the 1991 Final Rule, current operating issues must be dealt with immediately and cannot wait until a license renewal hearing or rely on the chance that someone with standing will file an admissible contention on the issue.¹⁷

Similarly, PIIC cites nothing in support of its assertion that the admission of the late-filed safety contention would not have a pervasive and unusual effect on the basic structure of this proceeding. As the Staff explained in its Petition, the Order has a pervasive and unusual effect on the basic structure of this proceeding because it fundamentally alters the burden on parties to identify and pursue contentions in a timely manner.¹⁸ It allows the filing of new contentions based on old information on current or past performance and compliance issues. Any performance, inspection or enforcement notice or report could trigger a new contention regardless whether it contains new information or not. PIIC contravened none of the Staff's arguments.

PIIC states only that "there is no wave of 'untimely' contentions waiting in the wings[.]"¹⁹ But, this does not undo the effect of the Board's Order on this proceeding. The broadly crafted safety culture contention has opened the door to addressing any and all compliance and performance events at Prairie Island. PIIC argues, and the Board held, that a contention will be considered timely "if it is filed within 30 days of the date on which document became

¹⁶ See Staff Petition for Interlocutory Review at 12 n.58.

¹⁷ 56 Fed. Reg. at 64,946.

¹⁸ Staff Petition for Interlocutory Review at 15-18.

¹⁹ PIIC Answer at 11.

available.”²⁰ Under the law of this case, as articulated by PIIC and the Board, PIIC can revisit any issue identified in a new inspection report regardless of the staleness of the issue. This includes the resolution of previous issues identified and merely discussed to provide a historical perspective for the matter at hand. This results in a pervasive and unusual effect on the structure of the proceeding because it allows PIIC to “disregard [the Commission’s] timeliness requirements”.²¹

For the foregoing reasons and for the reasons set out in the Staff’s Petition for Interlocutory Review, the Commission should grant interlocutory review and reverse the Order admitting the safety culture contention.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
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²⁰ PIIC Answer at 2 (citing Licensing Board Order (Conference Call Summary and Scheduling Order (Nov. 4, 2009) (ADAMS Accession No. ML093080529) (unpublished). See also Order at 5.

²¹ *Amergen Energy Co., L.L.C* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 271-72 (2009) (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003)).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S REPLY TO PRAIRIE ISLAND INDIAN COMMUNITY'S ANSWER TO THE STAFF'S PETITION FOR INTERLOCUTORY REVIEW," dated March 1, 2010, have been served upon the following by the Electronic Information Exchange, this 1st day of March, 2010:

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