

RAS R-3

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Prairie Island Status Conference

Docket Number: 50-282-LR/50-306-LR

Location: (telephone conference)

Date: Tuesday, April 13, 2010

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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TELECONFERENCE

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In the Matter of: : Docket No. 50-282-LR/50-306-LR

PRAIRIE ISLAND : ASLBP Docket No:

: 08-871-01-LR-BD01

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Tuesday, April 13, 2010

BEFORE:

GARY ARNOLD, Administrative Judge

WILLIAM FROELICH, Administrative Judge

THOMAS HIRONS, Administrative Judge

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## 1 APPEARANCES:

2 On Behalf of the Applicant, Northern States

3 Power:

4 DAVID R. LEWIS, ESQ.

5 of: Pillsbury Winthrop Shaw Pittman

6 2300 N Street, N.W.

7 Washington, D.C. 20037-1122

8 Tel: (202) 663-8474

9 Fax: (202) 663-8007

10  
11 On Behalf of the Petitioner, Prairie Island

12 Indian Community:

13 PHILIP R. MAHOWALD, ESQ.

14 of: Prairie Island Indian Community

15 5636 Sturgeon Lake Road

16 Welch, Minnesota 55089

17 Tel: (651) 267-4006

18 Email: pmahowald@piic.org

19  
20  
21  
22  
23  
24  
25  
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1 APPEARANCES: (cont.)

2 On Behalf of the Nuclear Regulatory Commission:

3 BETH MIZUNO, ESQ.

4 BRIAN HARRIS, ESQ.

5 MAXWELL SMITH, ESQ.

6 of: Office of the General Counsel

7 U.S. Nuclear Regulatory Commission

8 Mail Stop - O-15 D21

9 U.S. Nuclear Regulatory Commission

10 Washington, D.C. 20555-0001

11 Tel: (301) 415-7550

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P-R-O-C-E-E-D-I-N-G-S

(1:13 p.m.)

JUDGE FROELICH: Good afternoon. We will be on the record.

And I would like to take appearances from the parties online. As we move through our conference today, make sure you give your name before you begin speaking.

I am presiding here in Rockville, Maryland, and I have Judge Hirons and Judge Arnold on the phone line from their respective homes.

We can begin now with the appearances. For the Applicant?

MR. LEWIS: Yes, sir. This is David Lewis from the law firm of Pillsbury Winthrop Shaw Pittman, representing Northern States Power. I have with me in the office an associate, Stephanie George. There are other participants from NSP on other lines listening in. I believe Mr. Pete Glass is on one line. In addition, Gene Eckholt, the Project Manager, and Ken Ulbrich are also listening in.

JUDGE FROELICH: Thank you, Mr. Lewis.

And for the Petitioner?

MR. MAHOWALD: Bill Mahowald, General Counsel for the Prairie Island Indian Community. Also

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1 on the line is Francis "Chip" Cameron, a consultant  
2 that is working with us as well.

3 JUDGE FROELICH: Thank you. And for the  
4 Commission staff?

5 MS. MIZUNO: Beth Mizuno for the  
6 Commission staff with Brian Harris, Max Smith, Maxwell  
7 Smith, and sitting in with us today is Richard Plath  
8 from the staff.

9 JUDGE FROELICH: Thank you, Ms. Mizuno.

10 It is Tuesday, the 13th of April, and we  
11 are beginning at about 1:15 Eastern Daylight Time.

12 This is the matter of Northern States  
13 Power Company, Prairie Island Generating Units 1 and  
14 2, their application for license extension.

15 Our discussion today is pursuant to the  
16 order that this Board issued convening this conference  
17 to more or less bring the Board up to date on the  
18 progress the parties have been making in settlement  
19 discussions and to agree upon a schedule for hearing,  
20 subject to Subpart L of the regulations.

21 I wonder if at this point in time either  
22 -- one of the counsel can bring the Board up to date  
23 on where the parties stand on their settlement  
24 discussions as to the case itself, or to the document  
25 disclosure issue that was the subject of -- I guess of

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1 the motions leading up to this conference.

2 MR. LEWIS: Judge Froelich, this is David  
3 Lewis. I can start off. The parties continue to  
4 engage in settlement discussions. My understanding is  
5 those discussions are still constructive. I am not  
6 conducting the discussions for Northern -- the  
7 settlement discussion for Northern States Power,  
8 because it is a broader settlement than the one  
9 contention in this case.

10 It is trying to address also issues raised  
11 in a state proceeding and beyond that, some longer  
12 term relationship issues, which is why it has been  
13 taking some time. But the parties are working in good  
14 faith to try and resolve the issues. They remain  
15 constructive. The parties have exchanged terms and  
16 countered terms. Currently, they are working on  
17 setting up a meeting, hopefully towards the end of the  
18 week, so we are still very much engaged in trying to  
19 get to the goal line.

20 JUDGE FROELICH: Thank you, Mr. Lewis.

21 Mr. Mahowald, would you care to comment or  
22 give your perspective on the status of the settlement  
23 talks with Applicant?

24 MR. MAHOWALD: Yes, Your Honor. We  
25 completely concur with Mr. Lewis in his assessment of

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1 those discussions.

2 JUDGE FROELICH: All right. I guess we  
3 can get right to the order that the Board issued and  
4 talk about the schedule moving towards a hearing. By  
5 doing so, I don't want to discourage the parties from  
6 their settlement efforts in any manner. But I would  
7 like to set in place a hearing schedule in the event  
8 that the discussions are not fully successful.

9 Have the parties had an opportunity to  
10 review the schedule attached to the March 23rd order?  
11 And can you give me your reactions and comments on it?  
12 We can begin with you, Mr. Lewis.

13 MR. LEWIS: Thank you, Judge Froelich.  
14 This is David Lewis. We have discussed this with  
15 counsel, with the staff, and counsel for the Indian  
16 Community. Because we have been trying to work on  
17 settlement, we have been doing work to prepare for a  
18 hearing, but we have not initiated the disclosure  
19 process yet. So the tentative schedule that the Board  
20 has is not one that we could meet.

21 There are, in essence, I think three  
22 constraints on us on how quickly we can get to  
23 hearing, though we are doing everything we can to be  
24 prepared to litigate it, if need be. One is we need  
25 to reach an agreement on the scope of disclosure, and

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1 we wanted to do so before we actually started the  
2 document collection and the review process.

3 We have exchanged a proposal with the  
4 Indian Community on what we think a reasonable scope  
5 is, but we have not really had a chance to discuss  
6 that proposal or reach an agreement yet. If we move  
7 forward with the hearing schedule, I think that first  
8 we need to reach an agreement on that, or if we can't  
9 then I think we will need to bring the issue to the  
10 Board to get the Board's guidance on how we should  
11 proceed.

12 And from Northern States Power's  
13 perspective, the main issue is that the contention, as  
14 reworded, is broad. It refers basically to safety  
15 culture, and, quite frankly, most of the documents at  
16 the plant could be reviewed as somehow relevant to  
17 safety culture. So we have proposed what we think is  
18 our understanding of what the scope of the contention  
19 should be and what is reasonable.

20 But we have not yet moved forward with  
21 trying to get the agreement of the Indian Community  
22 and the staff on our proposal. So that would be one  
23 thing that needs to be done before we start our  
24 document collection process, and we would need some  
25 time, of course, after that agreement is in place to

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1 actually collect the documents and review them and  
2 produce them.

3 We have two other constraints. We have an  
4 outage that is beginning at Unit 2 that starts on  
5 April 17th and goes through May 22nd. Depending on  
6 the scope of disclosure, it might be very difficult,  
7 if not impossible, to engage in the document  
8 collection process while the plant staff are extremely  
9 busy and essentially tied up during that period.

10 And the last constraint we have is we have  
11 been -- and we started working on this soon after the  
12 Board admitted the contention. Our thinking is if we  
13 do proceed with litigation and a hearing, we would  
14 want to present an updated safety culture assessment.

15 Along those lines, we went out to the  
16 independent outside people who do these efforts to  
17 find out what is the earliest that they could do such  
18 an assessment for us. And we have made the  
19 arrangements, but the earliest we could have that  
20 assessment done is during the month of June, at the  
21 beginning of June, and basically go through the month,  
22 which means that a report on that assessment and  
23 testimony would not be available for perhaps another  
24 month after that.

25 So we have those sort of three constraints

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1 on schedule.

2 JUDGE FROELICH: Thank you, Mr. Lewis.

3 Could I have comment from Mr. Mahowald and  
4 the Indian Community on the proposed schedule that was  
5 attached to the Board's order?

6 MR. MAHOWALD: Yes, Your Honor. With  
7 respect to the Community, we have communicated with  
8 Mr. Lewis, and we are, you know, mindful of the  
9 constraints that NSP has. And we are certainly not,  
10 you know, needing to -- or requesting the Board to  
11 push the proposed schedule in light of the constraints  
12 that NSPM has.

13 So, you know, from the Community, we do  
14 think that the start is probably ambitious with  
15 mandatory disclosures due April 23rd. But, again, we  
16 are kind of basing that mostly on the situation of NSP  
17 as opposed to the Community's concerns.

18 And then, we simply had a conflict with  
19 August 17th as a hearing date. But to the extent the  
20 order gets extended, or the deadlines get extended to  
21 accommodate the constraints that NSPM has, I suspect  
22 or expect that that conflict would be removed.

23 JUDGE FROELICH: Thank you.

24 From the Commission staff's perspective,  
25 could I have your comments, please, on the proposed

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1 hearing schedule?

2 MS. MIZUNO: Yes, Your Honor. This is  
3 Beth Mizuno. We have some issues with some of the  
4 dates in the schedule, but it appears that our  
5 concerns are -- could well be superseded by others.  
6 So unless Your Honor wishes to apply the schedule that  
7 was in the order, we really don't have anything to  
8 say.

9 JUDGE FROELICH: Could you comment on the  
10 staff's position on the proposed schedule that was in  
11 the Board's order, and the guidelines or milestones  
12 that are in the Commission's regs for these type of  
13 proceedings?

14 MS. MIZUNO: Your Honor, all right. With  
15 respect to the motions in limine and motions to  
16 strike, that due date being July 1 would be rather  
17 difficult for us. If you could move it to July 6, we  
18 would be appreciative. And that would impact the rest  
19 of the dates through the final telephone pre-hearing  
20 conference.

21 So if I could give you the responses to  
22 the motions in limine and motions to strike, we ask  
23 July 19. Parties to submit proposed questions for the  
24 Board, we would like August 3. Motions for cross, we  
25 don't see why that can't also be August 3. And final

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1 pre-hearing telephone conference, if you could move  
2 that to August 7.

3 JUDGE FROELICH: And you wouldn't propose  
4 a change in the hearing date?

5 MS. MIZUNO: No, sir.

6 JUDGE FROELICH: Okay. All right. Maybe  
7 I should go back at this point, since, Mr. Lewis, you  
8 seem to be raising the concerns of the Applicant, and  
9 I appreciate the effort to narrow the scope and to  
10 work in these dates with the ongoing operations of the  
11 plant and the outside assessment that you mentioned,  
12 are the -- I mean, what is the likelihood, or what are  
13 the dates that you would propose that we start from?  
14 And what ultimate hearing date would that contemplate?

15 MR. LEWIS: Yes, Judge Froelich. I think  
16 my proposal would be, if we proceed with litigation,  
17 that initial updated disclosure -- the initial  
18 disclosure on the new contention would be due end of  
19 June, which is one month after the end of the outage,  
20 because we would not have the results of the safety  
21 culture assessment until the end of July, there would  
22 be a further update at the end of July, and then your  
23 hearing milestones would proceed from there with  
24 initial testimony filed at some period after that  
25 second disclosure update.

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1                   And I would suggest that could be within,  
2                   you know, two weeks or a month after the second  
3                   disclosure update when we produce the safety culture  
4                   assessment.

5                   JUDGE FROELICH: Just for clarification,  
6                   Mr. Lewis, that initial written date would then be  
7                   some time in August, is that -- is that what you're  
8                   proposing?

9                   MR. LEWIS: I was proposing that the  
10                  mandatory disclosure, initial mandatory disclosure  
11                  would be due on June 30th, with an update on July 30th  
12                  to allow us to produce the safety culture assessment.  
13                  Then, the initial written statements of position and  
14                  pre-filed testimony and exhibits some time after  
15                  June 30th. I would propose August 15th. And then,  
16                  keep the remaining timeframes that you have in your --  
17                  remaining intervals that you have in your tentative  
18                  schedule, Judge Froelich.

19                  JUDGE FROELICH: And if I am -- just doing  
20                  this very roughly, that would put our hearing some  
21                  time in October, or am I off?

22                  MR. LEWIS: I have not --

23                  JUDGE FROELICH: You didn't take it that  
24                  far?

25                  MR. LEWIS: I did not do it. I just --

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1 JUDGE FROELICH: Okay.

2 MR. LEWIS: It would be July -- a month  
3 and a half -- it would push everything back a month  
4 and a half.

5 JUDGE FROELICH: Month and a half. Yes.

6 MR. LEWIS: So it --

7 JUDGE FROELICH: Okay.

8 MR. LEWIS: Yes, so it would be October.

9 JUDGE FROELICH: October. While we are  
10 all on the line together, I was going to ask of the  
11 Commission staff, on the status of the SEIS, another  
12 sort of loose end that we have in this case, I checked  
13 the web recently, and I think it said to be  
14 determined. Do you have any updated information for  
15 us on that, staff counsel?

16 MS. MIZUNO: Your Honor, this is Beth  
17 Mizuno. Richard Plath might be able to help you here.  
18 He is with the staff.

19 JUDGE FROELICH: Mr. Plath?

20 MR. PLATH: Yes. This is Richard Plath.  
21 We are looking at the end of May, early June, so I  
22 guess conservatively the end of the first week of June  
23 is what we are -- the staff is shooting for. And, you  
24 know, everything has got to come together, the  
25 reviews. But that's -- we have been -- the comments

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1 so far, and don't see anything that would prevent us  
2 from completing that task by the early part of June.  
3 So that's what I can give you today.

4 JUDGE FROELICH: Okay. Thank you, Mr.  
5 Plath. I appreciate that.

6 At this point, I would like to briefly  
7 place the parties on hold and confer with Judges  
8 Hirons and Arnold, if that's all right. Please hold.

9 (Whereupon, the proceedings in the  
10 foregoing matter went off the record at  
11 1:29 p.m. and went back on the record at  
12 1:32 p.m.)

13 JUDGE FROELICH: Okay. We will be back on  
14 the line. Thank you for your indulgence.

15 I have spoken with the other members of  
16 the Board, and it appears that we will have to adjust  
17 the schedule contemplating a hearing in early October.  
18 I would hope that by adjusting this schedule the  
19 parties will, you know, redouble their efforts to  
20 resolve the issues in the case, and that once we have  
21 a schedule in place that we strictly adhere to it.  
22 The Board will issue an order with a new set of dates  
23 shortly, also summarizing this telephone conference.

24  
25 I wanted to raise one last issue while we

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1 have -- while we all together are on the line, and  
2 that was consideration of using the DDMS, the digital  
3 data management system, for the hearing, if we do have  
4 a hearing in October. And I wondered if any of the  
5 parties had given this any thought one way or the  
6 other. We'll start with the Applicant, Mr. Lewis.

7 MR. LEWIS: Yes. I did look it up online.  
8 I have not used this in a hearing yet, so I have no  
9 experience with it. It would be helpful. We would be  
10 willing to do so. I just don't have experience with  
11 this particular system.

12 JUDGE FROELICH: Okay. It should not be  
13 a frightening occurrence. It is a system that the  
14 agency has that is really tied into the electronic  
15 hearing docket. And with a little bit of training, it  
16 would greatly facilitate the use of the documents, the  
17 pre-filed documents, in the hearing.

18 Mr. Mahowald, have you given this any  
19 thought?

20 MR. MAHOWALD: Yes, Your Honor. I guess  
21 I would share Mr. Lewis' sentiment as well, or  
22 concern. I would certainly be willing to become  
23 familiar with it, but have never used it previously.  
24 So that's -- it would be new to me as well.

25 JUDGE FROELICH: And staff counsel, where

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1 are you on DDMS?

2 MS. MIZUNO: Staff counsel, similarly, has  
3 not had an opportunity to use this. But, you know, it  
4 is our system, so I guess we are going to have to  
5 learn.

6 JUDGE FROELICH: I think we will all learn  
7 together. Is there anything else that any of the  
8 parties or the staff would like to raise with the  
9 Board at this time, at this juncture? Are there any  
10 other issues?

11 MR. MAHOWALD: No, sir.

12 MR. LEWIS: No, Your Honor.

13 MS. MIZUNO: The staff has no issues, Your  
14 Honor.

15 JUDGE FROELICH: All right. And, Mr.  
16 Mahowald, any concerns at this point?

17 MR. MAHOWALD: No, Your Honor.

18 JUDGE FROELICH: In that case, Judge  
19 Arnold or Judge Hirons, do you have any comments or  
20 matters you wish to raise?

21 JUDGE HIRONS: No. I would like the Board  
22 to --

23 JUDGE FROELICH: Is this Judge Hirons  
24 speaking?

25 JUDGE HIRONS: -- discussion as we did

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1 before after the call is done.

2 JUDGE FROELICH: All right. I'll stay on  
3 the line with you afterwards. Anything from Judge  
4 Arnold?

5 JUDGE ARNOLD: No.

6 JUDGE FROELICH: Thank you. With that, I  
7 think we will conclude this telephone pre-hearing  
8 conference. The Board will issue a summary of this  
9 conference and an amended scheduling order which  
10 contemplates a hearing in early October. In the  
11 meantime, I would ask that the parties continue their  
12 efforts towards settlement and to bring to the Board's  
13 attention any matters in which we may assist you in  
14 that endeavor.

15 Hearing no further matters, we will stand  
16 adjourned. Thank you.

17 (Whereupon, at 1:36 p.m., the proceedings  
18 in the foregoing matter were adjourned.)

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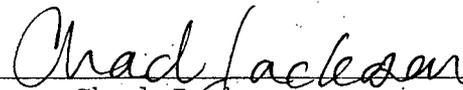
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in the matter of:           Prairie Island

Name of Proceeding: Status Conference  
Docket Number:           50-282-LR/50-306-LR  
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were held as herein appears, and that this is the  
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Chad Jackson  
Official Reporter  
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