

April 30, 2010

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

**NSPM MOTION REGARDING SCOPE OF DISCLOSURES  
FOR THE PIIC'S SAFETY CULTURE CONTENTION**

**I. Introduction**

Northern States Power Company, a Minnesota corporation (“NSPM”) hereby moves the Atomic Safety and Licensing Board (“Board”) to provide direction on the appropriate scope of document disclosure on the Prairie Island Indian Community (“PIIC”) safety culture Contention.<sup>1</sup> Such direction is necessary because for nearly a month the PIIC failed to respond to the proposal that NSPM provided to the PIIC to establish a reasonable scope of document disclosure for this contention.<sup>2</sup> NSPM sought the PIIC’s agreement on an appropriate and reasonable scope of disclosure because the admitted safety culture contention, if interpreted expansively, could subject NSPM to extremely onerous and unreasonable document production that could, quite literally, encompass every document at the Prairie Island Nuclear Generating Plant (“PINGP”). In addition, under an expansive interpretation of the contention, NSPM could

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<sup>1</sup> See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), Order (Narrowing and Admitting PIIC’s Safety Culture Contention), Docket Nos. 50-282-LR & 50-306-LR (Jan. 28, 2010) (“Jan. 28 Order”).

<sup>2</sup> After not hearing from the PIIC for nearly a month, and because it needed resolution of this matter in order to comply with the schedule established by the Board, NSPM provided a draft of this motion to the PIIC and the NRC Staff on April 28, and informed them of NSPM’s intent to file this motion on April 30. On the evening of April 29, the PIIC finally provided comments on NSPM’s proposal, but the PIIC did not agree to the scope NSPM proposed and posed a number of questions which indicate to NSPM that there is little prospect that the Parties will be able to reach an agreement in time to meet the Board’s schedule.

be required to disclose certain very confidential classes of documents, which would likely have a serious chilling effect on self assessments and the identification of employee concerns.

As discussed below, consistent with the PIIC's original allegations and well established Commission precedent, NSPM submits that the scope of the admitted safety culture contention, and consequently the scope of disclosure, is limited to the specific bases as pled by the PIIC. In addition, certain highly confidential documents should be protected against disclosure because their production would inhibit employees from raising concerns and would inhibit self critical analysis.

The Licensing Board's April 20, 2010 Order provides that "[i]f the parties remain unable to agree upon the scope of mandatory disclosures, they are directed to file their motions for Board intervention in time for disclosures to go forward by the June 18 deadline." Memorandum and Order (Summarizing Prehearing Conference Call and Amending Hearing Schedule) (April 20, 2010) at 3. In light of this deadline and the PIIC's failure for nearly a month to respond to NSPM's proposal, NSPM is now submitting this motion and requests direction from the Board by May 14, 2010.

## **II. Background on the Admitted Contention**

On November 23, 2009, the PIIC submitted the following proposed contention:

Contrary to the conclusion in the Safety Evaluation Report (SER), the Community does not believe that "the requirements of 10 CFR 54.29(a) have been met." Due to recent significant non-compliances with NRC regulations, as well as the applicant's failure to address a known potentially serious safety problem identified in the SER, the Community does not believe that there is any justification for a reasonable assurance determination by the NRC that the applicant will "...manag[e] the effects of aging during the period of extended operation on the functionality of structure and components" as required by 10 CFR 54.29(a)(1).

Prairie Island Indian Community's Submission of a New Contention on the NRC Safety Evaluation Report (Nov. 23, 2009) ("PIIC Submission") at 4 (emphasis added). Thus, on its face, the PIIC's proposed contention was limited to the claim that (1) certain recent non-compliances and (2) the alleged failure to correct an issue identified in the SER prevent a finding of reasonable assurance that NSPM can adequately manage aging.

Further, the PIIC explicitly stated that its contention "is based on material found in the SER in regard to the leakage of borated water from the PINGP Units 1 and 2 refueling cavities since 1998 and on applicant's significant non-compliances with NRC regulations." Id. The PIIC further stated that "[t]he non-compliances with NRC regulations occurred in 2008 and 2009." Id. The PIIC then specified the alleged non-compliances:

- The placement of PINGP into the "Regulatory Response" column of the NRC Reactor Oversight Process Action Matrix, as described in the August 20, 2009 NRC Mid-Cycle Performance Review and Inspection Plan for PINGP Units 1 and 2, due to two "White" findings (one for mis-positioning of the turbine driven auxiliary feedwater valves (EA-08-272 and EA-09-004) and one for a radioactive material shipment from PINGP not conforming to regulations (EA-08-349), and the NRC's identification of a crosscutting issue in the area of human performance at PINGP;
- A preliminary White finding on the design of the component cooling water system (EA-09-167); and
- The concerns raised regarding NSPM's Corrective Action Program in NRC Biennial Problem Identification and Resolution Inspection Report (Sept. 25, 2009).

Id. at 7-14.

On January 28, 2010, the Board issued an Order (Narrowing and Admitting PIIC's Safety Culture Contention) ("Order"). In that Order, the Board concluded that "the PIIC Safety Culture Contention, as narrowed, is admissible." Order at 1 (emphasis added). As the Board stated,

[W]e find it necessary to narrow PIIC's contention as follows:

PINGP's safety culture is not adequate to provide the reasonable assurance required by 10 C.F.R. § 54.29(a)(1) that PINGP can manage the effects of aging during the requested period of extended operation.

Id. at 8. Based on this Order, it is NSPM's understanding that the Board reworded the PIIC contention in this manner so that it would not impermissibly challenge the NRC Staff's SER.

See id. at 10.

### **III. The Permissible Scope of the Contention and Disclosure**

As the Commission recently reaffirmed, the bases for a contention as pled define the scope of a contention.

Where any issue arises over the proper scope of a contention, "NRC opinion has long referred back to the bases set forth in support of the contention." The "reach of a contention necessarily hinges upon its terms coupled with its stated bases." Our contention rules require "reasonably specific factual and legal' allegations at the outset" to assure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they will need to defend against. Intervenors therefore may not "freely change the focus of an admitted contention at will" to add a host of new issues and objections that could have been raised at the outset. Where warranted we allow for amendment of admitted contentions, but do not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their reasonably inferred bounds.

See Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. \_\_ (slip op. at 28) (Mar. 26, 2010) (emphasis in original; footnotes omitted).

This principle – that the scope of a contention is limited to its bases – is reflected in longstanding precedent. In resolving a dispute about the scope of a contention, which would ultimately determine whether that contention was moot, the Commission held that "[w]here an issue arises over the scope of an admitted contention, NRC opinions have long referred back to the bases set forth in support of the contention." 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, 379 (2002).

The Commission cited the Appeal Board's Order in Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 N.R.C. 93, 97 (1988), aff'd sub nom. Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir.), cert. denied, 502 U.S. 899 (1991), which addressed a discovery motion similar to this one, where the parties disagreed on the scope of an admitted contention. The Appeal Board explained, "The reach of a contention necessarily hinges upon its terms coupled with its stated bases. We have long held that one purpose of the requirement in 10 C.F.R. 2.714(b) [now 2.309(f)] that the bases of a contention be set forth with reasonable specificity is to put the other parties on notice as to what issues they will have to defend against or oppose. Thus, where a question arises as to the admissibility of a contention, we look to both the contention and its stated bases. Similarly, where, as here, the issue is the scope of a contention, there is no good reason not to construe the contention and its bases together in order to get a sense of what precise issue the party seeks to raise." ALAB-899, 28 N.R.C. at 97 (footnotes omitted).

Moreover, in this case, the PIIC's original contention was on its face limited to recent non-compliances and the alleged failure to correct the refueling cavity leakage. It would be improper to interpret the contention as reworded and admitted by the Board as going beyond the scope of the original contention, because doing so would be tantamount to the Board raising issues *sua sponte*, which NRC regulations and precedent do not allow without prior permission from the Commission and an opportunity for the parties to present argument.<sup>3</sup>

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<sup>3</sup> See 10 C.F.R. §2.340(a); Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-03, 69 N.R.C. 68, 73 n.24 (2009); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 N.R.C. 41, 55-56 (1978), quoting Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 N.R.C. 347, 354 (1975).

Nor would it be logical to believe that in explicitly narrowing the PIIC's contention, the Board had somehow expanded its scope beyond the original bases pled by the PIIC. In explaining the narrowed Contention, the Board made reference to the PIIC's bases as described above. Order at 9. Nothing in the Order suggests an expanded scope beyond that in the PIIC's originally proposed contention.

Thus, the scope of the admitted Contention should be limited to the specific bases pled by the PIIC. Those bases are:

- The alleged failure to correct the PINGP refueling cavity leakage;
- The placement of PINGP into the "Regulatory Response" column of the NRC Reactor Oversight Process Action Matrix, as described in the August 20, 2009 NRC Mid-Cycle Performance Review and Inspection Plan for PINGP Units 1 and 2, due to two "White" findings (one for mis-positioning of the turbine driven auxiliary feedwater valves (EA-08-272 and EA-09-004) and one for a radioactive material shipment from PINGP not conforming to regulations (EA-08-349), and the NRC's identification of a substantive crosscutting issue ("SCCI") in the area of human performance at PINGP;
- A preliminary White finding on the design of the component cooling water system (EA-09-167); and
- The concerns raised regarding NSPM's Corrective Action Program in NRC Biennial Problem Identification and Resolution Inspection Report (Sept. 25, 2009).

PIIC Submission at 7-14.

Similarly, because the document disclosure required by the NRC rules is limited to those relevant to the contention (10 C.F.R. § 2.336(a)(2)), the mandatory document disclosure is likewise limited to documents relating to the bases above, and the Board should so rule.

#### **IV. Additional Voluntary Production**

While NSPM believes that its disclosure obligations are limited to documents relevant to the bases of the PIIC's Contention, NSPM is willing to make a reasonable, additional voluntary

disclosure. NSPM recognizes that the PIIC has a broader interest in safety culture at PINGP beyond the bases pled in its Contention. Although it is outside the scope of the Contention as pled, NSPM is willing to accommodate that interest within reasonable limitations. Therefore, in addition to mandatory disclosures and subject to the limitations described below, NSPM is also willing to produce (a) any surveys, self assessments, audits, or third party assessments of safety culture at PINGP conducted in or after 2008, other than reports of the Institute for Nuclear Power Operations (“INPO Reports”);<sup>4</sup> and (b) the policies, program descriptions, procedures, and training modules that NSPM uses to instill safety culture at PINGP. NSPM is amenable to expanding the scope of disclosures as a courtesy to the PIIC, in recognition of the PIIC’s interest in a robust safety culture at PINGP, and would agree that the subject matter of these additional documents may be addressed in the hearing.

NSPM’s proposal to provide such documents going back to 2008 is reasonable for two reasons. First, NSPM assumed responsibility for plant management and operation in 2008, when the operating license was transferred from Nuclear Management Company (“NMC”) to NSPM. Further, the non-compliances on which the PIIC based its contention, and in particular the placement of PINGP in column 2 of the ROP and the identification of the SCCI in the area of human performance, occurred in 2008. See PIIC Submission at 4 (“The non-compliances with NRC regulations occurred in 2008 and 2009.”).

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<sup>4</sup> INPO Reports are treated as highly confidential. See Critical Mass Energy Project v. NRC, 975 F.2d 871, 874 (D.C. Cir. 1992) (“Compilation of these reports requires the solicitation of candid comments and evaluations from nuclear power plant employees. The reports are distributed . . . pursuant to the explicit understanding that they are not to be disclosed....”), cert. denied, 507 U.S. 984 (1993).

In return for this additional voluntary disclosure, NSPM would seek the following reasonable limitations, applicable to all disclosure and parties, to increase efficiency of the proceeding and preserve the resources of all parties:<sup>5</sup>

- A. A party need not identify or produce any document that has been served on the other parties to this proceeding;
- B. If a document exists in both hard copy and electronic formats, a party may produce the electronic copy only;
- C. The Parties may limit mandatory discovery disclosures to final documents they develop, and need not include drafts (including comments on drafts, resolutions of comments, draft transmittals, or similar documents); and
- D. The NRC Staff will identify all documents required by 10 C.F.R. §§ 2.336(b) and 2.1203 by providing the accession numbers for the documents in the Agency Wide Documents Access Management System (“ADAMS”). No Party is required to produce documents available via the NRC’s website or ADAMS.
- E. The Parties waive the requirement to produce a privilege log, pursuant to 10 C.F.R. §§ 2.336(a)(3) and (b)(5).<sup>6</sup>

**V. Broader Disclosure Would Be Unreasonable and Unduly Burdensome**

Even if the admitted safety culture Contention were construed as extending beyond the original bases pled by the PIIC (which, as discussed above, would be improper), the Board

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<sup>5</sup> The parties have previously waived the requirement in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce a privilege log, and NSPM expects this waiver would continue to apply to disclosures relevant to the PIIC’s safety culture Contention. As with the previously admitted contentions, however, the Parties will still produce as part of their disclosures a list of any documents withheld as proprietary.

<sup>6</sup> NSPM and the PIIC previously agreed to waive production of a privilege log in this proceeding. *See* Prairie Island Indian Community’s Second Supplemental Disclosures (Apr. 30, 2009); NSPM’s Second Supplemental Disclosure (Apr. 30, 2009).

should still limit disclosure as NSPM has proposed above. A broader disclosure would subject NSPM to undue burden and expense, could significantly delay the proceeding, and would be unreasonable.

Under the NRC's disclosure rules, a party is required to make its disclosures "based on the information and documentation then reasonably available to it." 10 C.F.R. § 2.336(c). Thus, the mandatory disclosures may be limited to those documents available through a reasonable search, which the Board may define. Further, the NRC rules give the Board the authority to modify the mandatory disclosure requirements. See 10 C.F.R. § 2.336(a) (requiring parties to make disclosures "[e]xcept . . . as otherwise ordered by . . . the Atomic Safety and Licensing Board assigned to the proceeding").

If the admitted safety culture Contention were broadly construed, NSPM could be required to identify and disclose all documents touching upon "PINGP's safety culture." Because safety culture has been defined very broadly,<sup>7</sup> documents and data compilations relevant to safety culture could literally encompass almost anything at the plant, including the documents and electronic data in the possession of most, if not all, plant employees. NSPM is very concerned with the tremendous distraction and diversion of resources (away from operational duties) that would be caused if plant employees have to comb through their files looking for anything relevant to safety culture.

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<sup>7</sup> As the NRC Staff has explained,

Historically, the NRC has defined safety culture very broadly. Safety culture means "the necessary full attention to safety matters," "the personal dedication and accountability of all individuals engaged in any activity which has a bearing on the safety of nuclear power plants," and a "safety first focus."

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) at 5, citing SECY-04-0111, Recommended Staff Actions Regarding Agency Guidance in the Areas of Safety Conscious Work Environment and Safety Culture, at 2 (July 1, 2004) (ADAMS Accession No. ML041750238).

Further, without reasonable limits on time, a broadly construed contention could require review of plant records over the entire life of the plant. Reviewing such a tremendous volume of documents would not only be unduly burdensome to NSPM, but would likely produce a document disclosure that might overwhelm the PIIC. For example, just producing the documents in the PINGP corrective action system would result in over a million pages of documents (not including the attachments in the database, which amount to at least an additional terabyte of data).

Beyond the sheer volume of documents that could be implicated by an overly expansive view of the PIIC's Contention, NSPM is very concerned with the potential chilling effect if certain very sensitive types of documents are considered relevant and are required to be disclosed. These documents are (1) Employee Concerns Program ("ECP") records; (2) INPO Reports; (3) records identifying what specific employees have said in voluntary interviews or surveys conducted as part of safety culture assessments.

NSPM's ECP records include information voluntarily provided by employees with the expectation that confidentiality will be maintained. The ECP plays a significant role in promoting safety culture at PINGP, and its success in doing so is based on the trust of employees that ECP records will remain confidential. Turning over such information to a third party – particularly a party who is opposed to the plant's continued operation and may seek to use those statements in hearings – might deter employees from using the ECP, thus weakening safety culture at PINGP. Encouraging employees to identify their concerns and providing a completely

confidential forum in which they may do so is so important to safety culture that such records should be treated as entirely exempt from disclosure.<sup>8</sup>

Similarly, INPO Reports are highly confidential. “Compilation of these reports requires the solicitation of candid comments and evaluations from nuclear power plant employees. The reports are distributed . . . pursuant to the explicit understanding that they are not to be disclosed” See Critical Mass, 975 F.2d at 874.<sup>9</sup> In Critical Mass, the United States Circuit Court of Appeals for the District of Columbia (“D.C. Circuit”) denied a Freedom of Information Act (“FOIA”) request for the production of certain INPO Reports by the NRC. Id. at 880. The court found that the INPO Reports fell within the FOIA exception for confidential documents because “the

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<sup>8</sup> The Commission has emphasized that employees who raise concerns serve an important role in addressing potential safety concerns. Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation: Policy Statement, 61 Fed. Reg. 24,336, 24,338 (May 14, 1996). Because it recognizes that employees may not always be comfortable in raising concerns through the normal channels (i.e. through line management), the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternative means of raising and addressing concerns are accessible, credible and effective. Id. The Commission has observed that the success of the alternative program for concerns may be influenced by a number of factors, including “provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity.” Id.

In furtherance of this policy, the NRC inspects "how employees are assured that confidentiality will be preserved" NRC Inspection Procedure 40001, "Resolution of Employee Concerns," (June 3, 1997) ¶¶ 02.02f. Under this Inspection Procedure, the NRC examines whether "[r]ecords are maintained in an officially designated secure location accessible only to internal auditors, ECP staff, and authorized management" (id., ¶ 03.02a) and whether "the ECP is independent," "confidentiality of employees is maintained," and "employees understand the accessibility, confidentiality, and protection against retaliation provided by the ECP." Id., ¶ 03.02f.

In cases where confidentiality is not properly protected, the NRC has required corrective action. See, e.g., Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), DD-94-13, 40 N.R.C. 377, 380-81 (1994) (after an NRC inspection finding that “employees perceived that the [ECP] did not always protect the alleged's identity,” the NRC required the licensee to address the effectiveness of its ECP, conducted follow up inspections, and assessed the progress in resolving the “chilling effect” that may have been present).

<sup>9</sup> A Memorandum of Agreement Between the Institute of Nuclear Power Operations and the U.S. Nuclear Regulatory Commission, dated December 10, 2007, (ADAMS Accession No. ML073460015) provides that “in the interest of improving plant safety, NRC will control distribution of INPO proprietary documents and information within the agency and will exert best efforts to protect them from unauthorized disclosure.” See p. 3 (emphasis added).

information they contain is commercial in nature; . . . the reports are provided to the NRC on a voluntary basis; and . . . INPO does not customarily release such information to the public.” Id.<sup>10</sup>

The level of confidentiality that PINGP employees rely on in raising concerns with the ECP or providing information for INPO evaluations also applies to their participation in voluntary interviews or surveys conducted as part of other safety culture assessments. Employees volunteer for such assessments because they know that their comments will be kept confidential. Their candor in these interviews and surveys is essential for an accurate assessment of safety culture. Disclosure of their comments may discourage future participation or make employees more circumspect in their criticisms, thereby weakening NSPM’s ability to obtain such assessments. Exempting these documents from mandatory disclosures is the most effective way to ensure a robust safety culture at PINGP, allaying the concerns of the PIIC in its Contention.

While these documents may be protected as confidential, proprietary information,<sup>11</sup> NSPM submits that they should also be protected under the “self-evaluative” or “self-critical analysis” that a number of courts have recognized as applying in appropriate circumstances. The United States District Court for the District of Columbia (“D.C. District”) first recognized such a

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<sup>10</sup> Under NRC case law, the extent to which INPO reports are protected is unsettled. In Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-13, 38 N.R.C. 11 (1993), a Licensing Board considered this issue. Although the Board stated, “we also recognize the sensitivity and confidentiality of the information . . . There can be a potential chilling effect attendant upon release, for the writers of such reports might be less candid if their frank expressions might be used against a licensee’s interest during subsequent litigation,” id. at 15, it ultimately held that the INPO document in question was not privileged and referred the ruling to the Commission. Id. at 16. The Board stayed the effectiveness of its ruling pending Commission action, stating “given the sensitive nature of the report in question, we find that this referral and accompanying stay are necessary to prevent detriment to the public interest.” Id. (footnote omitted). The Commission subsequently declined review because the controversy had been eliminated by an agreement among the parties. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-93-18, 38 N.R.C. 62, 63 (1993).

<sup>11</sup> For example, the Commission has stated that “INPO reports are confidential within the meaning of [FOIA] Exemption 4 and therefore [are] protected from discovery.” Critical Mass, 975 F.2d at 880.

privilege in Bredice v. Doctor's Hospital, Inc., 50 F.R.D. 249 (D.D.C.1970), when it excluded from production minutes and reports of a hospital committee's review of the death of a patient. The purpose of the committee's review was to improve care and treatment at the hospital, and the court found the committee's work is performed with the understanding the confidentiality would be maintained. Id. at 250. The court held that "[t]here is an overwhelming public interest in having those staff meetings held on a confidential basis so that the flow of ideas and advice can continue unimpeded. . . . These committee meetings, being retrospective with the purpose of self-improvement, are entitled to a qualified privilege on the basis of this overwhelming public interest." Id. at 251. The D.C. Circuit affirmed the district court's ruling without issuing an opinion. Bredice v. Doctor's Hosp., Inc., 479 F.2d 920 (D.C. Cir.1973). See also Laws v. Georgetown Univ. Hosp., 656 F.Supp. 824, 825-26 (D.D.C. 1987) (protecting a letter from a doctor accused of malpractice detailing the incident that was reviewed at a hospital staff meeting).

The "self-evaluative" or "self-critical analysis" privilege is most often recognized in cases involving public health, such as Bredice and Laws, and public safety where there is a strong public interest in promoting candid self-evaluation. In Granger v. National Railroad Passenger Corp., 116 F.R.D. 507 (E.D. Pa. 1987), for example, the court applied the privilege to a railroad company's internal investigation of an accident. The court held that "one of the primary purposes of the doctrine is to prevent a chilling effect on self-analysis and self-evaluation prepared for the purpose of protecting the public by instituting practices assuring safer operations . . . ." Id. at 510. The court in Bradley v. Melroe Co., 141 F.R.D. 1 (D.D.C. 1992), made a similar finding regarding investigation reports of machinery accidents: "The reasoning behind [the self-critical analysis privilege] is that the ultimate benefit to others from this critical

analysis of the product or event far outweighs any benefits from disclosure. Valuable criticism could not be obtained under the threat of potential or possible public exposure for it is not realistic to expect candid expressions of opinion or suggested changes in policies, procedures or processes knowing that such statements or suggestions may very well be used against colleagues and employees in subsequent litigation.” Id. at 3 (citation omitted). The public interest in promoting safety at PINGP likewise suggests that the self-critical analysis privilege should be applied to NSPM’s ECP records, INPO Reports, and employee statements in interviews and surveys conducted as part of safety culture assessments.

### **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. NSPM provided a disclosure proposal to the PIIC consistent with this motion on April 1, subsequently prompted the PIIC for a response on a number of occasions, and finally provided a draft of this motion to the PIIC, but NSPM does not view the PIIC’s response on the eve of this filing as constructive. The NRC Staff has no objection.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: April 30, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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Northern States Power Co.	)	50-306-LR
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(Prairie Island Nuclear Generating Plant, Units 1 and 2)	)	ASLBP No. 08-871-01-LR
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of “NSPM Motion Regarding Scope of Disclosures for the PIIC’s Safety Culture Contention,” dated April 30, 2010, was provided to the Electronic Information Exchange for service on the individuals listed below, this 30th day of April 2010.

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