

NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-282 AND 50-306

LICENSE NOS. DPR-42 AND DPR-60

NORTHERN STATES POWER COMPANY

PRAIRIE ISLAND NUCLEAR GENERATING PLANT, UNITS 1 AND 2

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION

[NRC-2010-0022]

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated September 4, 2009, filed by Mr. David Sebastian, hereinafter referred to as the "petitioner." On September 30, 2009, the petitioner requested an opportunity to address the U.S. Nuclear Regulatory Commission (NRC) Petition Review Board (PRB) to provide any additional information to support the petition. A teleconference took place on October 13, 2009.

The petition requested that the NRC take the following actions:

- (1) Order Xcel Energy Inc. (Xcel) to cease and desist from its current arbitrary and capricious practice of using the Access Authorization and Fitness-for-Duty (AA/FFD) Programs for purposes other than their original intent as they are being applied against him.
- (2) Order compliance with:
  - (A) the NRC's regulations at Title 10 of the Code of Federal Regulations (10 CFR) 73.56, "Personnel Access Authorization Requirements for Nuclear Power Plants";
  - (B) the rationale described in the final rule "Access Authorization Program for Nuclear Power Plants" (RIN 3150-AA90) published in the *Federal Register* on April 26, 1991 (56 FR 18997); and

- (C) the Nuclear Energy Institute's (NEI's) implementation guidance in NEI 03-01, "Nuclear Power Plant Access Authorization Program," Revision 2, issued October 2008.
- (3) Grant the petitioner access authorization without further delay to perform his accepted job tasks, with all record of said denial removed from any and all records wherever found.
- (4) Issue any other order, or grant any other relief, to which the petitioner may have shown himself entitled.

As the basis for the September 4, 2009, request, the petitioner stated that Xcel is in violation of 10 CFR 73.56 in denying him access to the Prairie Island Nuclear Generating Plant using the AA/FFD Programs by basing the decision solely upon an existing tax lien. The petitioner stated that Xcel failed to base the decision to grant or deny unescorted access authorization on a review and evaluation of all pertinent information. The petitioner stated that Xcel failed to incorporate all three elements (i.e., background investigation, psychological assessment, and behavioral observation) of the unescorted access authorization program when making the decision to deny unescorted access and that this is contrary to the rationale for rulemaking, as discussed in 56 FR 18997.

On October 26 and December 2, 2009, the NRC PRB convened to discuss the petition under consideration to determine whether it met the criteria established in NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," dated October 25, 2000, for acceptance into the process under 10 CFR 2.206, "Requests for Action under This Subpart." The PRB made the following final recommendations:

- (1) Item 1 met the criteria established in MD 8.11 for acceptance into the 10 CFR 2.206 process for the petition under consideration.
- (2) Item 2 met the criteria established in MD 8.11 for acceptance into the 10 CFR 2.206

process for the petition under consideration.

- (3) Item 3 did not meet the MD 8.11 criteria for further review under the 10 CFR 2.206 process, in that the request did not specifically address an enforcement-related action.
- (4) Item 4 did not meet the MD 8.11 criteria for further review under the 10 CFR 2.206 process, in that the petition provided insufficient facts to support the request.

The NRC sent a copy of the proposed Director's Decision to the petitioner and the licensee for comment on May 7, 2010. The licensee had no comments on the proposed Director's Decision. On June 4, 2010, the NRC staff received comments on the proposed Director's Decision from the petitioner. The Director's Decision includes the comments and the NRC staff's response to them.

The Director of the Office of Nuclear Reactor Regulation has determined that the request pertaining to Xcel be denied. The Director's Decision, DD-10-02, explains the reasons for this decision pursuant to 10 CFR 2.206. The complete text of the decision is available in the Agencywide Documents Access and Management System (ADAMS) Electronic Reading Room (ADAMS Accession No. ML101650032) on the NRC's Web site, <http://www.nrc.gov/reading-rm/adams.html>, and for inspection at the Commission's Public Document Room, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

In accordance with 10 CFR 2.206 of the Commission's regulations, the staff will file a copy of the Director's Decision with the Secretary of the Commission for the Commission's review. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 20th day of July 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

***/RA/***

Eric J. Leeds, Director  
Office of Nuclear Reactor Regulation