

## PrairieIslandNPEm Resource

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**From:** Raleigh, Deann [DRaleigh@CURTISSWRIGHT.com]  
**Sent:** Thursday, June 10, 2010 11:09 AM  
**To:** Keegan, Elaine  
**Subject:** Prairie Island contention  
**Attachments:** P island contention.pdf

Dear Elaine,

I understand the NRC is appealing an ASLB finding on the Prairie Island safety culture contention on the license renewal application. Is this appeal document available to the public? If not, could you tell me the status of the appeal?

Thanks!

Deann

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman  
Dr. Gary S. Arnold  
Dr. Thomas J. Hirons

In the Matter of

Northern States Power Co.

(Prairie Island Nuclear Generating Plant, Units  
1 and 2)

Docket Nos. 50-282-LR and 50-306-LR

ASLBP No. 08-871-01-LR

January 28, 2010

ORDER

(Narrowing and Admitting PIIC's Safety Culture Contention)

This proceeding concerns an application by Northern States Power Company (NSPM or Applicant) to renew its operating licenses for the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP), for an additional 20 years. On December 5, 2008, this Licensing Board granted a hearing request by the Prairie Island Indian Community (PIIC or Intervenor) and admitted seven of PIIC's contentions challenging NSPM's application.<sup>1</sup> Since then, all seven of those contentions have been either settled or dismissed as moot. On November 23, 2009, Intervenor filed a new contention based on information contained in the NRC Staff's Safety Evaluation Report (SER). For the reasons discussed below, the Board concludes the PIIC Safety Culture contention, as narrowed, is admissible.

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<sup>1</sup> Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905 (2008).

## I. New Contention

PIIC's new contention alleges:

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).<sup>2</sup>

Section 54.29(a) of the Commission's regulations states that the Commission, before granting a license renewal application, must find a "reasonable assurance" that the applicant will adequately "manag[e] the effects of aging during the period of extended operation on the functionality of structure and components." In this contention, PIIC challenges the notion that "reasonable assurance" exists. PIIC bases this contention 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."<sup>3</sup> According to PIIC, this material precludes a finding of "reasonable assurance" by providing "evidence" of a "safety culture at Prairie Island that potentially fails to achieve four of the ten elements of an effective aging management program."<sup>4</sup> PIIC acknowledges that the refueling cavity leakage first came to public attention in 2008 – well before the SER was issued – and that other non-compliances occurred over the course of 2008 and 2009.<sup>5</sup> PIIC also acknowledges that the Staff is addressing these issues through the ongoing regulatory process. Still, PIIC insists that its

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<sup>2</sup> Prairie Island Indian Community's Submission of a New Contention on the NRC Safety Evaluation Report (Nov. 23, 2009) at 4 [hereinafter PIIC Contention].

<sup>3</sup> Id.

<sup>4</sup> Id. at 13.

<sup>5</sup> Id. at 4.

contention raises a timely and material challenge to NSPM's application. PIIC's contention is supported by the declaration of Christopher I. Grimes, a senior nuclear safety consultant.<sup>6</sup>

Applicant and the NRC Staff object to the admission of PIIC's new contention on several grounds. First, they argue that the contention fails to satisfy the criteria for new contentions found at 10 C.F.R. § 2.309(f)(2) and (c), because the information underlying the contention was available long before issuance of the SER.<sup>7</sup> Second, they object to the contention's admission under 10 C.F.R. § 2.309(f)(1), arguing that it raises issues outside the scope of the proceeding, lacks an adequate factual basis, and fails to demonstrate a genuine dispute with the application.<sup>8</sup> In addition, Applicant raises two procedural objections to PIIC's new contention. Namely, Applicant argues that PIIC should have filed its contention in the form of a motion for leave, and that PIIC should have consulted with NSPM and the NRC Staff prior to filing that motion, as required by 10 C.F.R. § 2.223(b).<sup>9</sup>

In the sections that follow, the Board dismisses each of the objections raised by Applicant and NRC Staff and concludes that PIIC has proffered an admissible contention.

## **II. Procedural Issues**

The Board declines to reject PIIC's contention on the ground that PIIC neglected to file a motion for leave. As Applicant points out, PIIC's new contention should have been filed as an attachment to a motion for leave, and that motion should have addressed the three-pronged test

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<sup>6</sup> PIIC Contention, Declaration of Christopher I. Grimes (Nov. 23, 2009) [hereinafter Grimes Declaration].

<sup>7</sup> Northern States Power Company's Answer Opposing the PIIC's Late-Filed Contention (Dec. 3, 2009) at 10-14 [hereinafter NSPM Answer]; NRC Staff's Answer in Opposition to Prairie Island Indian Community's Submission of a New Contention of the NRC Safety Evaluation Report (Dec. 3, 2009) at 3-10 [hereinafter NRC Staff Answer].

<sup>8</sup> NSPM Answer at 14-23; NRC Staff Answer at 10-19.

<sup>9</sup> NSPM Answer at 2.

articulated at 10 C.F.R. § 2.309(f)(2).<sup>10</sup> Instead, PIIC opted to file a single submission that addresses both the criteria for new contentions and the criteria for contention admissibility. The Board is not inclined to punish PIIC for this procedural misstep – especially given that PIIC addressed all of the relevant substantive criteria. As PIIC points out in its reply, PIIC’s sole error amounts to a failure to caption its filing as “motion for leave,” rather than a “submission of a new contention.”<sup>11</sup> We do not find this error to be so egregious as to bar our consideration of PIIC’s new contention.

Applicant identifies another related error: that PIIC failed to consult with the other parties prior to filing its motion, as required by 10 C.F.R. § 2.323(b). The Board certainly intended that PIIC would consult with the Applicant and the NRC Staff prior to filing any motion for leave to submit new contentions. The consultation requirement, however, attaches only to the motion for leave and not to the submission of contentions themselves. Because PIIC neglected to file a motion for leave, we understand why it also neglected to follow the consultation requirement. Going forward, we expect that all motions will include “a certification . . . that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant’s efforts to resolve the issue(s) have been unsuccessful.”<sup>12</sup>

### **III. Timeliness**

Because PIIC’s new contention was filed after the 60-day deadline specified in the notice of opportunity for hearing,<sup>13</sup> it must meet the criteria for new contentions laid out at 10 C.F.R. §

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<sup>10</sup> Id.

<sup>11</sup> Prairie Island Indian Community’s Reply to NRC Staff’s Answer and Northern State Power Company’s New Contention on the NRC Safety Evaluation Report (Dec. 10, 2009) at 2-3 [hereinafter PIIC Reply].

<sup>12</sup> 10 C.F.R. § 2.323(b).

<sup>13</sup> See Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos.

2.309(f)(2) or, in the alternative, the criteria for nontimely contentions at 10 C.F.R. § 2.309(c). Under section 2.309(f)(2), before the Board can consider PIIC's new contention, PIIC must show that the contention (i) is based on information that "was not previously available"; (ii) is based on information that "is materially different than information previously available"; and (iii) "has been submitted in a timely fashion." If the Board concludes that PIIC's contention was not "submitted in a timely fashion," we may still consider the contention upon a balancing of the eight factors laid out at 10 C.F.R. § 2.309(c). The Board need not reach those factors, however, because PIIC's contention is clearly timely. We have stated previously that any new contentions "based on new information contained in the final SER" would be deemed timely if filed on or before Monday, November 23, 2009.<sup>14</sup> Because PIIC's new contention was filed on November 23, 2009, we find that it was "submitted in a timely fashion," and we will consider its admissibility as long as it meets the remaining criteria at 10 C.F.R. § 2.309(f)(2).

Namely, we must now decide whether PIIC's contention is based on information that "was not previously available" and that "is materially different than information previously available."<sup>15</sup> Applicant and NRC Staff insist that the information underlying PIIC's contention – information regarding the refueling cavity leakage and other safety issues – was disclosed in numerous documents dating all the way back to late 2008. Thus, they argue, PIIC's contention does not arise from any new information contained in the SER that "was not previously available."<sup>16</sup> It seems, however, that the Applicant and NRC Staff misapprehend the thrust of PIIC's contention. PIIC's contention, as we understand it, does not arise from any single event

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DPR-42 and DPR-60, 73 Fed. Reg. 34,335 (June 17, 2008).

<sup>14</sup> Licensing Board Order (Conference Call Summary and Scheduling Order) (Nov. 4, 2009) at 3 (unpublished).

<sup>15</sup> 10 C.F.R. § 2.309(f)(2)(i)-(ii).

<sup>16</sup> NSPM Answer at 10; NRC Staff Answer at 5.

or any single piece of information. Rather, it arises from the history of NSPM's "deficient performance and dereliction of its obligations to promptly and effectively correct deficient conditions."<sup>17</sup> That history was outlined for the first time in the NRC Staff's SER. Specifically, Section 3.0.3.2.17 of the SER summarizes all of the various NRC meetings and reports that together shed light on NSPM's "deficient performance."<sup>18</sup> As PIIC explains in its reply, the SER "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."<sup>19</sup> Not until issuance of the SER did PIIC acquire the full spectrum of information necessary to formulate its contention.

The Board dismisses the notion that PIIC should have drafted this contention earlier. As another licensing board recently explained, we are "not impressed with arguments suggesting that, in order to raise a timely contention, a party must piece together disparate shreds of information that, standing alone, have little apparent significance."<sup>20</sup> Applicant and NRC Staff appear to make such an argument here. They claim that PIIC could have filed this contention in the wake of numerous events that transpired since late 2008.<sup>21</sup> Those events include meetings and reports on the cavity leakage issue, the issuance of yellow and white findings in early 2009, NSPM's responses to the NRC Staff's requests for additional information (RAIs), and issuance of the preliminary SER in June 2009, which identified the cavity leakage issue as an open item. All of those events revealed fragments of the story that PIIC would ultimately fashion into a contention. But none of those events, by itself, fully captured the scope of PIIC's concerns

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<sup>17</sup> PIIC Contention at 5.

<sup>18</sup> Division of License Renewal, Office of Nuclear Reactor Regulation, Safety Evaluation Report Related to the License Renewal of Prairie Island Nuclear Generating Plant Units 1 and 2, at 3.141-49 (Oct. 2009) (ADAMS Accession No. ML092890209).

<sup>19</sup> PIIC Reply at 3.

<sup>20</sup> U.S. Dep't of Energy (High Level Waste Repository), LBP-09-29, 70 NRC \_\_, \_\_ (slip op. at 12) (Dec. 9, 2009).

<sup>21</sup> NSPM Answer at 10-12; NRC Staff Answer at 5-7.



related to safety culture. We would not expect PIIC to “piece together” those “shreds of information” and formulate its contention prior to issuance of the final SER. Accordingly, we find that PIIC’s contention meets all of the criteria at 10 C.F.R. § 2.309(f)(2).

Applicant argues that, even if PIIC’s new contention is deemed timely under 10 C.F.R. § 2.309(f)(2), it must also satisfy the criteria for nontimely contentions at 10 C.F.R. § 2.309(c). Applicant bases this argument on a passage from the Commission’s Statement of Consideration accompanying the 2004 Changes to Adjudicatory Process: “If information in the SER bears upon an existing contention or suggests a new contention, it is appropriate for the Commission to evaluate under § 2.309(c) the possible effect that the admission of amended or new contentions may have on the course of the proceeding.”<sup>22</sup> We acknowledge that PIIC’s new contention is based upon information in the SER, and therefore falls within the ambit of this statement. Nonetheless, we decline to subject PIIC’s contention to the criteria for nontimely contentions. The reason for this is simple. In deciding to permit the filing of timely contentions based on the SER, we already made the implicit determination that their admission would not adversely affect the course of this proceeding. Under the terms of our November 4, 2009 scheduling order, PIIC’s contention was filed in a timely manner, and is therefore exempt from the criteria at 10 C.F.R. § 2.309(c). Further, as a matter of regulatory construction, if a contention satisfies the timeliness requirement of 10 C.F.R. § 2.309(f)(2)(iii), then, by definition, it is not subject to 10 C.F.R. § 2.309(c) which specifically applies to “nontimely filings.” This both follows the plain language of the regulations and is eminently sensible because

[i]t is neither logical nor sensible to impose only eight conditions [10 C.F.R. § 2.309(c)(1)(i)-(viii)] on the admissibility of a contention based on old information and where the proponent has, through his own inadvertence, forgotten to raise it, and yet impose even more hurdles (three [10 C.F.R. § 2.309(f)(2)(i)-(iii)] plus eight conditions from

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<sup>22</sup> Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (emphasis added).

10 C.F.R. 2.309(c)(1)(i)-(vii) on a contention based on new information where the proponent is blameless and prompt.<sup>23</sup>

#### IV. Contention Admissibility

Even assuming PIIC's contention is timely and meets all the criteria in 10 C.F. R. §2.309(f)(2), it must still satisfy all six contention admissibility criteria laid out at 10 C.F.R. § 2.309(f)(1).<sup>24</sup> As explained below, we find that PIIC's contention satisfies all six criteria.

However, we 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.

This narrowed contention is based upon 10 C.F.R. § 54.29(a), which authorizes the Commission to issue a renewed license only if it finds a "reasonable assurance" that Applicant will "manag[e] the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review . . . ." PIIC contends that a weak safety culture exists at PINGP and that, as a result, such "reasonable assurance" cannot be found. PIIC provides both facts and an expert opinion for the allegation of a weak safety

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<sup>23</sup> Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573 n.14 (2006) (quoting Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813, 821 n.21 (2005)); Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 744-45 & n.12 (2006); Shaw Areva MOX Services (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 192-93 (2007); Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 265 n.5 (2007); Licensing Board Order (Tennessee Valley Authority (Bellefonte Nuclear Power Plant Units 3 and 4) Ruling on Request to Admit New Contention) (Oct. 14, 2008) at 5-11 (unpublished); Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC \_\_, \_\_ (slip op. at 95-97) (July 8, 2009) (aff'd in part and rev'd in part as to other matters, CLI-10-2, 71 NRC \_\_ (slip op.) (Jan. 7, 2010)). See also Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-1, 71 NRC \_\_, \_\_ (slip op. at 3-5 (concurring opinion)) (Jan. 8, 2010).

<sup>24</sup> Because the contention admissibility criteria are fully addressed in our decision admitting PIIC's intervention petition, there is no need to repeat that discussion here. See Prairie Island, LBP-08-26, 68 NRC at 914-18.

culture, citing a longstanding leakage from the refueling canal, a recent improper shipment of radioactive material, and a recent incorrect valve positioning event.<sup>25</sup> PIIC also provides the declaration of Christopher Grimes, which links the elements of an effective aging management plan (AMP) to aspects of a strong safety culture, suggesting that one cannot exist without the other.<sup>26</sup> Moreover, PIIC's contention, as narrowed, raises a genuine dispute with the application, is material to the findings the NRC must make to support the licensing action, and falls within the scope of this proceeding. Thus, we find that PIIC's contention meets all of the criteria at 10 C.F.R. § 2.309(f)(1)(i)-(vi). In the section that follows, we dismiss each of the Staff's and Applicant's objections to its admissibility.

First, Applicant and NRC Staff argue that PIIC's contention fails to raise a genuine, material dispute with the application. They argue that PIIC's contention raises a challenge to the adequacy of the NRC Staff's SER, rather than the license application, and they insist that the Commission has explicitly prohibited contentions attacking the SER.<sup>27</sup> As Applicant and NRC Staff point out, the Commission expressed this principle in the Statement of Consideration accompanying the 2004 Changes to Adjudicatory Process:

The adequacy of the applicant's license application, not the NRC staff's safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the SER are not cognizable in a proceeding.<sup>28</sup>

According to Applicant and NRC Staff, because PIIC's new contention directly challenges the Staff's "reasonable assurance" determination in the SER, the contention is "not cognizable" in this proceeding.

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<sup>25</sup> See, e.g., PIIC Contention at 4, 10, 12.

<sup>26</sup> Grimes Declaration ¶¶ 22-24.

<sup>27</sup> NSPM Answer at 14-15; NRC Staff Answer at 11-13.

<sup>28</sup> 69 Fed. Reg. at 2202.

Again, we find that Applicant and NRC Staff misconstrue the thrust of PIIC's contention. Although the wording of the contention may suggest otherwise, PIIC's contention does not challenge the SER. Rather, it challenges the adequacy of Applicant's AMP, as described in NSPM's application, in light of the deficient safety culture depicted in the Staff's SER. NRC Staff and Applicant may find this reading of the contention disingenuous, given that the contention explicitly "challenges the NRC staff determination that 'reasonable assurance' exists."<sup>29</sup> Still, it would make little sense for this Board to construe PIIC's contention as a challenge to the SER. As the Commission has explained,

[T]he [Applicant] rather than the Staff bears the burden of proof in this proceeding. Consequently, the adequacy of the Staff's safety review is, in the final analysis, not determinative of whether the application should be approved. Given these facts, it would have been pointless for the Presiding Officer to rule upon the adequacy of Staff's review.<sup>30</sup>

This Board does not wish to make any "pointless" rulings. Thus, to the extent PIIC's contention seeks to challenge the Staff's conclusions in the SER, we refuse to consider it. However, to the extent that PIIC alleges that the license renewal application fails to demonstrate a "reasonable assurance" under 10 C.F.R. § 54.29, we cannot deny its admissibility. PIIC's contention is properly understood as an attack on Applicant's AMP as described in the application.<sup>31</sup>

Accordingly, we conclude that PIIC's contention raises a genuine and material dispute with the application and is "cognizable" in this proceeding.

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<sup>29</sup> PIIC Contention at 4.

<sup>30</sup> The Curators of the Univ. of Mo., CLI-95-01, 41 NRC 71, 121 (1995).

<sup>31</sup> Applicant argues that PIIC's submission contains not "a single reference to the application" and thus should be found inadmissible under 10 C.F.R. § 2.309(f)(1)(vi). NSPM Answer at 15. While we acknowledge that PIIC fails to provide any specific references, we understand that PIIC's contention presents a challenge to the AMP as described in the application. We also note that PIIC's contention responds to a new amalgam of information discussed in the SER that arose after NSPM's application was docketed. NSPM has not amended its application to reflect this new information, and PIIC should not be penalized for NSPM's failure to do so.

NRC Staff and Applicant also contend that PIIC's contention raises operational issues beyond the scope of this proceeding.<sup>32</sup> It is true that the Commission has limited the scope of license renewal proceedings. Specifically, intervenors may not raise issues subject to the Commission's ongoing regulatory oversight, but only those issues related to the detrimental effects of aging.<sup>33</sup> PIIC's contention appears to raise a number of current operating issues, including the refueling cavity leakage, human performance issues, and concerns regarding PINGP's Corrective Action Program. These issues, as the NRC Staff argues, "involve components and activities that are subject to the Commission's ongoing inspection and enforcement programs."<sup>34</sup> Nonetheless, a close reading of PIIC's contention reveals that PIIC does not directly challenge these operational issues. Rather, it treats them as indications of a weak safety culture – a safety culture too weak to ensure the effectiveness of Applicant's AMP. As Mr. Grimes asserts in his declaration accompanying PIIC's contention, safety culture is an essential component of an effective AMP. Indeed, it appears to us that a strong safety culture is necessary to achieve the following four of the ten elements required for an effective AMP:

7. Corrective actions, including root cause determination and prevention of recurrence, should be timely.
8. Confirmation process should ensure that preventive actions are adequate and that appropriate corrective actions have been completed and are effective.
9. Administrative controls should provide a formal review and approval process.
10. Operating experience should provide objective evidence to support the conclusion that the effects of aging will be managed adequately so that the structure and component

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<sup>32</sup> NSPM Answer at 16-18; NRC Staff Answer at 13-17.

<sup>33</sup> See, e.g., Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637-38 (2004) ("Our license renewal inquiry is narrow. It focuses on 'the potential impacts of an additional 20 years of nuclear power plant operation,' not on everyday operational issues. Those issues are 'effectively addressed and maintained by ongoing agency oversight, review, and enforcement.'" (internal citations omitted)).

<sup>34</sup> NRC Staff Answer at 16.

intended function(s) will be maintained during the period of extended operation.<sup>35</sup>

PIIC points to several specific examples of safety problems at PINGP, many of which indicate a failure to comply with these four elements.<sup>36</sup> To the extent PIIC's contention challenges Applicant's ability to effectively manage aging, in light of the various events indicating a deficient safety culture,<sup>37</sup> it falls squarely within the scope of this proceeding.

Finally, NRC Staff and Applicant argue that PIIC's contention is not supported by information demonstrating the existence of a genuine material dispute with the application.<sup>38</sup> They insist that none of the support cited by PIIC, which includes various inspection reports and meeting transcripts, actually negates a finding of "reasonable assurance." For example, Applicant notes that the NRC's Mid-Cycle Performance and Inspection Plan, relied upon by PIIC, does not place PINGP in the most serious columns, which would require "a third-party assessment of their safety culture" and would indicate that "the NRC lacks reasonable assurance that the licensee can or will conduct its activities to ensure protection of the public

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<sup>35</sup> Grimes Declaration ¶ 22 (quoting Office of Nuclear Reactor Regulation, Division of Regulatory Improvement Programs, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, NUREG-1800, Rev. 1, at A.1-8 (Sept. 2005) (ADAMS Accession No. ML052110007)).

<sup>36</sup> For example, NRC Information Notice 2009-11 identifies the causal factors contributing to configuration control problems at PINGP, many of which suggest a failure to comply with elements 8 and 9 of an effective AMP. See id. ¶ 23.

<sup>37</sup> In its draft Safety Culture Policy Statement, the Commission commented on the importance of safety culture to the agency's goals: "It is. . . each licensee's and certificate holder's responsibility to develop and maintain a positive safety culture which establishes that nuclear safety issues and nuclear security issues, as an overriding priority, receive the attention warranted by their significance. Therefore, licensees and certificate holders should foster a positive safety culture in their organizations and among individuals who are overseeing or performing regulated activities. However, as the regulatory agency, the Commission has an independent oversight role (through inspection and assessment processes) including addressing licensees' and certificate holders' performance related to areas important to safety culture." Draft Safety Culture Policy Statement: Request for Public Comments, 74 Fed. Reg. 57,525, 57,526 (Nov. 6, 2009).

<sup>38</sup> NSPM Answer at 18-23; NRC Staff Answer at 17-19.

health and safety.” Rather, it places PINGP in the less serious “Regulatory Response” column, which indicates merely that “increased NRC oversight is appropriate.”<sup>39</sup> In addition, the NRC Staff points out that “Applicant has undertaken several inspection and repair activities” to correct the refueling cavity leakage, and that “PIIC has not produced any evidence that disputes that the Applicant actually took these measures or any evidence that demonstrates with specificity why these measures are inadequate.”<sup>40</sup>

We are not persuaded by these arguments. First, in conducting our contention admissibility review, this Board is not bound by findings of the NRC Staff.<sup>41</sup> Although the Staff may conclude that NSPM’s regulatory failings do not raise any serious concerns, an intervenor is free to reach a different conclusion. And although the NRC Staff may believe that NSPM has taken adequate measures to correct its cavity leakage, an intervenor is free to proffer a contention that suggests otherwise. Certainly, we would be remiss to reject any contention on the grounds that it contradicts an NRC Staff finding.<sup>42</sup> In addition, we believe that Staff and Applicant demand more of PIIC than the NRC regulations actually require. The Commission has held that the proponent of a contention need not “prove its case at the contention admissibility stage” or even proffer facts “sufficient ‘to withstand a summary disposition

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<sup>39</sup> NSPM Answer at 19-20.

<sup>40</sup> NRC Staff Answer at 18.

<sup>41</sup> “[I]t is the license application, not the NRC Staff review, that is at issue in our adjudications.” Baltimore Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998). In other words, the licensing board has a responsibility to review the license application without regard for the Staff’s independent evaluation.

<sup>42</sup> Indeed, a licensing board may identify safety issues that the NRC Staff overlooked or devalued when it decided to grant the license. As the Commission has confirmed, “[i]f the Board determines after full adjudication that the license amendment should not have been granted, it may be revoked (or conditioned).” Entergy Nuclear Vt. Yankee, LLC (Vermont Yankee Nuclear Power Station), CLI-06-08, 63 NRC 235, 238 (2006).

motion.”<sup>43</sup> Rather, under 10 C.F.R. § 2.309(f)(1)(vi), an intervenor need only provide “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.” In the instant case, we find that all of the reports, documents, and transcripts referenced by PIIC, together with the attached expert declaration, constitute adequate support for an admissible contention. Certainly they “call into question the applicant’s ability to effectively implement the aging management program during the period of extended operation.”<sup>44</sup> Any factual disputes between the parties are to be resolved at hearing.

## **V. Conclusion**

We find PIIC’s new contention, as limited and reworded below, to be admissible. The contention, which is timely raised, challenges Applicant’s ability to implement an effective aging management plan in light of PIIC’s deficient safety culture. The contention raises a material issue, within the scope of this proceeding, and identifies a genuine dispute with NSPM’s application. Accordingly, we admit PIIC’s contention as restated and clarified by the Board:

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.

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<sup>43</sup> Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-07, 43 NRC 235, 249 (1996) (quoting Ga. Inst. of Tech. (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 118 (1995)).

<sup>44</sup> Grimes Declaration ¶ 10.



Pursuant to 10 C.F.R. § 2.310(a), we conclude that the hearing procedures of 10 C.F.R. Part 2, Subpart L will govern the adjudication of PIIC's newly admitted contention. Three new NEPA contentions have been filed by PIIC,<sup>45</sup> are currently pending Board review, and will be the subject of a subsequent order.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>46</sup>

*/RA/*

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Thomas J. Hirons  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 28, 2010

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<sup>45</sup> See Prairie Island Indian Community's Motion for Leave to File New Contentions on NRC's Draft Supplemental Environmental Impact Statement (Dec. 14, 2009).

<sup>46</sup> Copies of this order were sent this date by the agency's E-Filing system to counsel for all parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY 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 )  
 )  
(License Renewal) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (NARROWING AND ADMITTING PIIC'S SAFETY CULTURE CONTENTION) have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland  
this 28<sup>th</sup> day of January 2010