

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. (formerly Nuclear  
Management Company, LLC)

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

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

ASLBP No. 08-871-01-LR

August 17, 2010

**MEMORANDUM AND ORDER**

(Providing Administrative Direction on Pre-filed Evidentiary Material)

On April 20, 2010 the Licensing Board issued an order establishing a schedule leading up to an October 12, 2010 evidentiary hearing in this proceeding.<sup>1</sup> The schedule contemplates the litigation of a single contention submitted by the Prairie Island Indian Community (PIIC) challenging Northern States Power Company's (NSP) aging management plans based on a purported weak safety culture.<sup>2</sup> The PIIC's contention as restated and clarified by the Board is:

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.<sup>3</sup>

The purpose of this order is to provide guidance and instructions to the parties regarding certain administrative matters, primarily dealing with the Digital Data Management System (DDMS), which will be used at the upcoming evidentiary hearing.

<sup>1</sup> Licensing Board Order (Summarizing Prehearing Conference Call and Amending Hearing Schedule) (April 20, 2010) Appendix (unpublished) [hereinafter Amended Scheduling Order].

<sup>2</sup> Licensing Board Order (Narrowing and Admitting PIIC's Safety Culture Contention) (Jan. 28, 2010) (ADAMS Accession No. ML100280537) (unpublished).

<sup>3</sup> Id. at 14.

A. Use of the DDMS System

As discussed with the parties previously,<sup>4</sup> the Board intends to use the DDMS at the hearing for the purpose of marking exhibits. Assuming that the exhibits submitted by the parties are properly numbered and pre-filed using the agency's E-Filing system (per the additional instructions we provide in section B, below), using that system makes it unnecessary for the parties to provide the Board or counsel for the other parties with any paper copies of their evidentiary materials (or pre-filed testimony) prior to or during the hearing. The Board nonetheless requests that each party have available one properly numbered paper copy of each of its pre-filed exhibits for use in the event there are any operational issues with the DDMS. The format for a hearing under 10 C.F.R. Part 2, Subpart L does not generally contemplate the provision of additional "rebuttal" evidentiary material during an evidentiary hearing. If, however, any of the parties has documentary material that it does not wish to provide in support of its direct or rebuttal pre-filed testimony, but nonetheless contemplates might become relevant in the context of Board questioning of any of the witnesses, it should ensure that it has that material available in the hearing room. The testimony must be marked appropriately both electronically (in portable document format (PDF) that complies with the agency's E-Filing guidance<sup>5</sup>) and via hard copy with enough paper copies to provide to counsel for the other parties, the three Board members, and the Board's law clerk.

B. Providing Revised Pre-Filed Testimony and Exhibits for DDMS Use

Initial written statements of position and pre-filed written testimony and supporting exhibits were filed on July 30, 2010. Responses to statements of position and rebuttal testimony, with supporting exhibits, were filed on August 13, 2010. To ensure that those submissions are organized and formatted in a manner that will provide for the most effective

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<sup>4</sup> Tr. at 224-25.

<sup>5</sup> See 10 C.F.R. § 2.302(g).

and efficient use of those materials in the DDMS system, the parties shall have up to and including 21 days from the date of this order (**until September 7, 2010**), to resubmit their pre-filed direct and rebuttal testimony, and any supporting exhibits associated with those testimonial filings, formatted in a manner that conforms to the protocols set forth below.

1. Pre-filed Testimony

In the context of this 10 C.F.R. Part 2, Subpart L proceeding, the Board generally does not anticipate accepting into evidence any documentary material that is not discussed or cited in support of a party's pre-filed direct or rebuttal testimony. Pursuant to 10 C.F.R. § 2.304(g), each item of pre-filed testimony must be filed as a separate file. Citations in pre-filed testimony to documentary material (other than citations to legal authorities, including statutes, regulations, and NRC Issuances) should be accompanied by an evidentiary exhibit that includes the relevant portions of the supporting material cited. Attempting to incorporate documentary materials into the evidentiary record by merely referencing such documents (by name or ADAMS number, for instance) in pre-filed testimony is not appropriate.

To the degree the parties find they need to resubmit their pre-filed direct or rebuttal testimony to conform to this or any of the other protocols set forth in this issuance, they should include in the upper right hand corner of the first page the following heading that incorporates the date the revised testimony is submitted via the E-Filing system: **REVISED: Month/Day/Year**. Any subsequent revisions to the testimony should bear the date of the revised filing. Also, any revised version should be accompanied by a separate submission that provides either (a) a description of each of the changes made to the testimony relative to the previous version; or (b) a "redline/strike-out" version of the pre-filed testimony that indicates the changes to the testimony from the previous version.

2. Pre-Filed Exhibits

a. Duplicate Exhibits

Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if NSP offers (and has admitted) a certain portion of an NRC Staff report regarding the Prairie Island Nuclear Generating Plant (PINGP) facilities, the NRC Staff should not offer into evidence the same portion of the report. Instead, the NRC Staff would rely on the document already proffered by NSP. To this end, the parties should consult with one another regarding whether any of the pre-filed exhibits a party intends to offer into evidence in support of its pre-filed direct testimony would otherwise be duplicated by another party in the proceeding.<sup>6</sup> In each instance in which this is the case, the parties should determine, based on the order of party presentations outlined in section D.2 below, which party will first offer the exhibit into evidence. The other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the appropriate exhibit number. Instead of using the initial submitting party's identifier for an exhibit to be used by more than one party, the parties may instead choose to identify shared exhibits with the prefix JNT (for "joint"). See section 2.b below. Additionally, the parties should follow this practice relative to any exhibits used for pre-filed rebuttal testimony or any evidentiary material introduced in the first instance during the evidentiary hearing itself.

When duplicate pre-filed party exhibits have been identified and one party has been identified as the initial sponsoring party, the party that is recognized as the one that first will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to all other parties who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in pre-filed direct or rebuttal testimony.

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<sup>6</sup> If, on the other hand, the Applicant plans to offer only a portion of a longer document as an exhibit, i.e. five pages of a report, but the NRC Staff wishes to use those five pages plus another six pages of the same report, both parties should introduce their intended sections of the report as separate exhibits and number them accordingly with their NSP and NRC identifiers.

b. Exhibit Submission, Order, and Numbering

As is the case with each witness' or witness panel's pre-filed testimony, 10 C.F.R. § 2.304(g) requires each exhibit proffered by a party to be provided as a separate PDF file. Further, to expedite electronic processing via the DDMS, each party should number their pre-filed exhibits in a format that consists of a three-character party designation, followed by a six-character zero-filled number. The three-character designation to be used by each of the parties is as follows: Northern States Power Company - NSP, NRC Staff - NRC, Prairie Island Indian Community - PIC. Consequently, a typical numbering sequence for the NRC Staff's exhibits would be as follows:

NRC000001

NRC000002

\* \* \* \* \*

NRC000100

Further, if an exhibit needs to be segmented because of the 50 megabyte (MB) file size limitation specified in the NRC's E-Filing guidance, each segment of the document should be given the same numerical designation along with a unique alpha designation for that segment (e.g., NRC00001A, NRC00001B, etc.).

The exhibit number should be placed in the upper right hand corner of the first page of each document or other item of evidentiary material. A "cover sheet" page before the first page of the evidentiary item may be used only if there is no space in the upper right hand corner of the first page of the item for the exhibit number.

Once an exhibit is pre-filed using this numbering protocol, if a party subsequently needs to amend, revise, or otherwise make a substitution for that pre-filed exhibit, the new pre-filed exhibit should be numbered with an "R" as the fourth character (e.g., NRRCR00001), with any subsequent revision of that same exhibit given a sequential numerical designation in the fifth character slot (e.g., NRRCR20001).

Finally, to the extent possible, the parties should order and number their pre-filed exhibits in the sequence the parties plan to identify and present them for inclusion in the record.

c. Exhibit List

At the time they submit the exhibits associated with their pre-filed direct testimony that conform to the formatting and numbering protocols specified above, each party should provide the Licensing Board's law clerk, Kara Wenzel, Esq. (e-mail address: kara.wenzel@nrc.gov) with an electronic copy (preferably in Microsoft Word format) of their pre-filed exhibit list. In addition, concurrent with the filing of any further revised pre-filed testimony or any revised pre-filed exhibit, each party should provide the Licensing Board's law clerk with an updated exhibit list. In that regard, to the extent possible the parties should use the exhibit list template included as Attachment A to this issuance, which Ms. Wenzel can provide in Microsoft Word format upon request. Copies of the exhibit lists also should be made available to the other parties upon request to the party that created the list.

C. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present their documentary materials in the form specified below:

1. Testimony

Assuming the versions provided via E-Filing are complete and correct, the parties need not provide any additional hard copies of their witnesses' pre-filed testimony at the hearing.<sup>7</sup> Although strongly discouraged, if a party sees a compelling need to make any revisions to its pre-filed testimony that were not submitted to the Board and the other parties prior to the hearing, it must be prepared to provide that revised testimony at the hearing session, marked appropriately both electronically (in a PDF format that conforms to the agency's E-Filing guidance) and in hard copy with a sufficient number of copies for counsel for the other parties,

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<sup>7</sup> However, the parties should plan to bring one paper copy of each exhibit to the hearing in case of operational issues with the DDMS, as explained in section A, supra.

three copies for the Board members, one copy for the Board's law clerk, and two copies for the Court Reporter/Clerk.

The Board anticipates that pre-filed direct and rebuttal testimony, which should be in question-and-answer format that, in the case of a witness panel, identifies the witness(es) sponsoring each answer, will be adopted by the witnesses while under oath and incorporated into the record as if read prior to questioning each witness or witness panel. Accordingly, it is not necessary for the parties to assign an exhibit number to pre-filed testimony.<sup>8</sup>

2. Exhibits

For exhibits that have been pre-filed via the agency's E-Filing system in accord with the protocols set forth in section B.2 above, no additional paper copies need be provided. When first seeking to have an exhibit identified (e.g., at the time a party is seeking to have the pre-filed testimony that relies upon that exhibit incorporated into the record), the sponsoring party should be prepared to give a brief description of that individual exhibit for the record.

D. Miscellaneous Matters

1. Submission of Proposed Cross-Examination Questions

a. Pre-Hearing Proposed Questions

To maintain the confidentiality of each party's proposed cross-examination questions pending a Board initial decision, see 10 C.F.R. § 2.1207(a)(3)(iii), those questions should not be filed in the agency docket for this proceeding using the E-Filing system. Instead, counsel should submit their proposed questions directly to the Board via e-mail directed to the Board Chairman (e-mail: [william.froehlich@nrc.gov](mailto:william.froehlich@nrc.gov)). The submission containing the questions should be in a PDF format that complies with the agency's E-Filing guidance. If the party so chooses, it may password-protect the electronic file it uses to submit its questions, but if it does so, the

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<sup>8</sup> For purposes of this hearing, the Board will receive prepared testimony as if read into the transcript, contrary to 10 C.F.R. § 2.1207(b)(2) (written testimony will be received into evidence in exhibit form).

party should contact the Board's law clerk, Kara Wenzel, Esq., at 301-415-5123, to provide the password used.

b. Proposed Questions Submitted During Ongoing Hearing

The Board contemplates breaking at appropriate intervals to allow the parties to compile and submit proposed examination questions based on the information the Board elicits during its questioning of a particular witness or witness panel. The parties should come to the hearing prepared logistically to generate their proposed questions in a manner that will be both efficient (e.g., will not require extended breaks) and effective (e.g., readable). On or before the final telephone prehearing conference call on Tuesday, September 21, 2010,<sup>9</sup> the parties should advise the Board of any logistical requirements they have in connection with their proposed question generation capabilities.

2. Order of witnesses and witness panels

As to the order of party presentations, the party with the ultimate burden of proof under 10 C.F.R. § 2.325 relative to issuance of the requested license extension -- applicant NSP -- will present its witnesses and evidence for Board questioning first, followed by the NRC Staff, followed by PIIC.

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<sup>9</sup> See Amended Scheduling Order at Appendix.

The Board may issue additional administrative guidance over the next few weeks to assure a smooth and productive evidentiary hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>10</sup>

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 17, 2010

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<sup>10</sup> Copies of this memorandum and order were sent this date by the agency's E-Filing system to counsel for (1) Applicant NSP, (2) Intervenor PIIC, and (3) NRC Staff.





DOCKET NOS. 50-282 AND 50-306-LR  
LB MEMORANDUM AND ORDER (PROVIDING ADMINISTRATIVE DIRECTION ON  
PRE-FILED EVIDENTIARY MATERIAL)

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[Original signed by Evangeline S. Ngbea ]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 17<sup>th</sup> day of August 2010