

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Northern States Power Co.)	Docket No. 50-282-LR
)	50-306-LR
(Prairie Island Nuclear Generating Plant,)	
Units 1 and 2))	

NRC STAFF'S MOTION IN LIMINE REGARDING
TESTIMONY FILED BY THE PRAIRIE ISLAND INDIAN COMMUNITY

INTRODUCTION

Pursuant to 10 CFR § 2.323 and the Atomic Safety and Licensing Board's ("Board") April 20, 2010 Order,¹ the Staff of the U.S. Nuclear Regulatory Commission ("Staff") moves to exclude portions of the "Direct Testimony of Christopher I. Grimes" dated July 30, 2010 ("Grimes Testimony") and PIIC Exhibit 2 "Declaration of Christopher I. Grimes" (November 23, 2009), from the evidentiary record of this proceeding and further preclude Mr. Grimes from providing expert testimony on safety culture during the hearing.² As explained below, PIIC did not demonstrate that Mr. Grimes is qualified by knowledge, training, or experience to provide expert testimony on safety culture. Furthermore, Mr. Grimes' largely conclusory testimony will not assist the Board in understanding the evidence in this proceeding because it precludes the Board and other witnesses from examining his methods and the principles relied upon to formulate his conclusions. Thus, the Board should exclude, otherwise not consider, or give little or no weight to Mr. Grimes' testimony.

¹ Order (Summarizing Prehearing Conference Call and Amending Hearing Schedule), (Apr. 20 2010) (unpublished) ("Scheduling Order").

² PIIC did not submit rebuttal testimony from Mr. Grimes, relying instead on argument of counsel, which is not a substitute for expert testimony. See Prairie Island Indian Community's Rebuttal Statement of Position on the Safety Culture Contention (Aug. 13, 2010).

DISCUSSION

A. Legal Standards

Experts must be qualified by knowledge, training, or experience. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 NRC 71, 80-81 (2005) (citing Fed. R. Evid. 702). If a party's proffered expert lacks the requisite knowledge, training, or expertise, his or her testimony should be stricken. See, e.g., *Georgia Institute of Technology* (Georgia Tech Research Reactor Atlanta, Georgia), LBP-96-10, 43 NRC 231, 232-33 (1996); *Vermont Yankee LLC. & Vermont Yankee Nuclear Operations, Inc.* Order (Ruling on Motions to Strike and Motions in Limine) (July 16, 2008) (unpublished) (ADAMS Accession No. ML081980664). The opinions of experts qualified by knowledge, training, or experience will only be admitted if: (1) the opinion would assist the trier of fact in understanding the evidence or determining a fact at issue; and (2) the opinion is based on sound methods and reliable principles rather than some "subjective belief or unsupported speculation." *Duke Cogema*, LBP-05-04, 61 NRC at 80 (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589-90 (1993)). When a proffered expert's qualifications are challenged, the burden falls to the proponent of the expert to demonstrate that the expert possesses sufficient expertise and that the testimony will assist the trier of fact. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-05-22, 62 NRC 328, 356 (2003) (citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1405 (1977)).

B. Mr. Grimes' Education, Training, and Experience Fail to Establish His Expertise on Safety Culture

PIIC relies on Mr. Grimes' opinions to support its safety culture contention. See *Prairie Island Initial Statement of Position on Safety Culture Contention* (July 30, 2010) ("PIIC Initial Statement"). PIIC, however, has not established that Mr. Grimes is qualified by knowledge, training, or experience to provide an expert opinion on safety culture. Mr. Grimes' lack of safety culture expertise casts doubt on his ability to testify as an expert witness on safety culture.

Specifically, the Staff's expert Dr. Barnes, testified that in order to provide a reliable expert opinion on the safety culture of a complex organization, an individual should have a master's degree in psychology, sociology, or organizational behavior and at least 1 year of experience performing and evaluating safety culture assessments under the supervision of a qualified person.³ Dr. Barnes further testified that the same knowledge, training, and experience are needed to interpret the results of a safety culture assessment. But Mr. Grimes does not have either the education or practical experience necessary to qualify him as an expert on safety culture or safety culture assessments.

Mr. Grimes does not mention designing, performing, or evaluating any safety culture assessments prior to this proceeding. See *generally*, PIIC Exhibit 1; Grimes Testimony; PIIC Exhibit 2. His bachelor's degree in nuclear engineering does not provide the necessary educational experience to opine on safety culture, evaluate a safety culture assessment, or design a valid safety culture assessment. Notwithstanding his experience with license renewal, environmental impact statements, rulemaking, regulatory analysis, and the operation and safety of pressurized water reactors during his NRC career, this experience does not demonstrate that he is qualified as an expert on safety culture and safety culture assessments. Even though Mr. Grimes offers his opinion on Prairie Island's safety culture, neither Mr. Grimes nor PIIC claim that he has safety culture expertise. Instead, PIIC describes Mr. Grimes as a "Reactor Safety Expert." See *PIIC Initial Position* at 6. See *also* Grimes Testimony at A3. Because PIIC does not claim that Mr. Grimes is a safety culture expert and Mr. Grimes has not demonstrated through education, training, and experience expertise on safety culture, his testimony should be excluded or otherwise given little or no weight. The Staff respectfully requests that Mr. Grimes' testimony in A15–16, A18–19, A23, A31–32, A34, A36, A39, A41–45 and paragraphs 10, 13,

³ NRC Staff Rebuttal Testimony of Dr. Valerie E. Barnes, June Cai, Molly Jean Keefe, and Audrey L. Klett Concerning Safety Culture and NRC Safety Culture Policy Development and Implementation ("NRC Safety Culture Rebuttal Testimony") at A3–4.

21, and 24–25 of PIIC Exhibit 2 be excluded from the record and Mr. Grimes be precluded from opining on safety culture and safety culture assessments. Alternatively, the Staff requests that the Board give this testimony and the listed paragraphs of PIIC Exhibit 2 little or no weight.

C. Mr. Grimes' Testimony Would Not Assist the Trier of Fact

Mr. Grimes' testimony would not assist the trier of fact in this proceeding in understanding the evidence or determining a fact at issue. First, as explained above, Mr. Grimes is not qualified by knowledge, training, or experience to provide expert testimony on safety culture. Therefore, his opinions would not assist the Board in understanding the evidence or determining a fact at issue, such as whether there is reasonable assurance that PINGP will manage the effects of aging during the period of extended. Second, a significant portion of Mr. Grimes' testimony consists of quotes and paraphrases of NRC documents followed by conclusions, without analysis or explanation, about safety culture at PINGP. See, e.g., Grimes Testimony at A23, A40. This testimony would not assist the trier of fact because Mr. Grimes fails to analyze or explain how the facts he recites support his conclusions. Mr. Grimes' failure to provide analysis or explanation in support of his conclusions prevents the Board and other parties from determining whether Mr. Grimes' conclusions are based upon sound methods and reliable principles. In addition, Mr. Grimes does not have first-hand knowledge of the facts of this case, i.e., he was neither involved in nor did he observe the events he describes in his testimony, and thus he cannot provide the Board with additional insight into the events he describes in this testimony. Consequently Mr. Grimes' testimony in A23, A31-32, A34, A36, A42-45 is inadmissible.

CONSULTATION

Pursuant to 10 CFR § 2.323(b), Staff counsel contacted counsel for PIIC. Counsel for PIIC indicated that he will oppose this motion.

CONCLUSION

The Staff respectfully requests the Board exclude the Direct Testimony of Christopher I. Grimes in A15-16, A18-19, A23, A31-32, A34, A36, A39, A41-45, excluding paragraphs 10, 13, 21, and 24-25 of PIIC Exhibit 2, and precluding Mr. Grimes from providing expert testimony on safety culture because his knowledge, training, and expertise do not demonstrate that he is an expert on safety culture. The Staff further submits that Mr. Grimes' testimony in A23, A31-32, A34, A36, A42-45 should be excluded, otherwise not considered, or given little or no weight, because it would not assist the trier of fact in this proceeding.

Respectfully Submitted,

/Signed (electronically) by/

Brian G. Harris

Beth N. Mizuno
Mary Baty Spencer
Maxwell C. Smith
Brian G. Harris
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
(301) 415-1392
brian.harris@nrc.gov

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NRC Staff's Motion in Limine Regarding Testimony Filed by the Prairie Island Indian Community, dated August 23, 2010, has been served upon the following by the Electronic Information Exchange, this 23rd day of August, 2010:

Administrative Judge
William J. Froehlich, Chair
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: wjf1@nrc.gov

Administrative Judge
Gary S. Arnold
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gxa1@nrc.gov

Administrative Judge
Thomas J. Hiron
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: thomas.hirons@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop – O-16G4
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

David R. Lewis, Esq.
Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1122
david.lewis@pillsburylaw.com

Phillip R. Mahowald, Esq.
General Counsel
Prairie Island Indian Community
Legal Department
5636 Sturgeon Lake Road
Welch, MN 55089
E-mail: pmahowald@piic.org

Peter M. Glass, Esq.
Xcel Energy Services, Inc.
414 Nicollet Mall Minneapolis,
Minnesota 55401
peter.m.glass@xcelenergy.com

Respectfully Submitted,

/Signed (electronically) by/

Brian G. Harris
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
(301) 415-1392
brian.harris@nrc.gov