

August 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’S RESPONSE IN SUPPORT OF STAFF’S MOTION IN LIMINE REGARDING
TESTIMONY FILED BY THE PRAIRIE ISLAND INDIAN COMMUNITY**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c) and the schedule set forth in the Board’s April 20, 2010 Memorandum and Order (Summarizing Prehearing Conference Call and Amending Hearing Schedule), Applicant Northern States Power Company, a Minnesota corporation (“NSPM”), hereby files its response in support of the NRC Staff’s “Motion in Limine Regarding Testimony Filed by the Prairie Island Indian Community” dated August 23, 2010 (“Motion”). The Motion asks that the Board 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.

NSPM fully supports the Staff Motion. Mr. Grimes is clearly unqualified to testify as an expert on the safety culture at an operating nuclear power plant such as the Prairie Island Nuclear Generating Plant (“PINGP”), the subject of the contention being litigated in this proceeding.

II. LEGAL STANDARDS

The legal standards governing motions in limine in Commission proceedings are patterned after those in the Federal Rules of Evidence, from which guidance is drawn from time to time in appropriate circumstances. Final Rule: Changes to the Adjudicatory Process, 69 Fed. Reg. 2,182, 2,187 (Jan. 14, 2004). In the area of expert witness testimony, an expert witness' opinion is admissible as evidence in Commission proceedings:

only if (1) the opinion would assist the trier of facts in understanding the evidence or to determine a fact in issue; and (2) the opinion is based upon sufficient facts or data to be the product of reliable principles and methods that the witness applied to the facts of the case.

Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 N.R.C. 71, 80 (2005) (citing Fed. R. Evid. 702) ("Savannah River"). A proffered witness can only qualify as an expert by his or her "knowledge, skill, experience, training, or education." Id. (quoting Fed. R. Evid. 702). The party sponsoring the expert witness bears the burden of demonstrating the expert's expertise in the field or area in which the expert offers an opinion. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 N.R.C. 1398, 1405 (1977). Thus, "[e]xpert opinion is admissible only if the affiant is competent to give an expert opinion and only if the factual basis for that opinion is adequately stated and explained in the affidavit." Savannah River, LBP-05-04, 61 N.R.C. at 81 (citing Garside v. Osco Drug, Inc., 895 F.2d 46, 50 (1st Cir. 1990) and United States v. Various Slot Machs. on Guam, 658 F.2d. 697, 700 (9th Cir. 1981)).

III. MR. GRIMES IS NOT QUALIFIED TO OFFER EXPERT TESTIMONY ON SAFETY CULTURE ISSUES

Mr. Grimes' resume indicates that at the time of his retirement from the NRC he was "responsible for all of the reactor-related rulemaking activities, financial assurance, regulatory analysis, generic communications, generic project management, interoffice coordination,

licensing processes, and all of the licensing and inspection activities associated with research and test reactors.” PIIC Exhibit 1 at 1. Mr. Grimes earlier activities included “completion of the NRC’s Systematic Evaluation Program, completion of the licensing of the Comanche Peak nuclear power plant, implementation of the Technical Specification Improvements Program, issuance of the improved Standard Technical Specifications, development of the process for converting licenses to improved technical specifications, development and implementation of the NRC’s license renewal process, and improved application of risk-informed decisions in the regulatory process. He was a qualified Incident Investigation Team Leader and Emergency Officer in the NRC’s Incident Response Program, and he led the Diagnostic Evaluation Team at the Oyster Creek nuclear plant.” Id. None of the work experience listed by Mr. Grimes includes performance of safety culture assessments or evaluations, development of standards for performing such assessments or evaluations, or any other tasks that relate to safety culture.

Mr. Grimes’ educational background is in Nuclear Engineering, and his experience, as he describes it in his Declaration, includes familiarity with “with a broad variety of reactor designs” (PIIC Exhibit 2 at ¶ 4), “nuclear reactor safety management” (id. at ¶ 5), “nuclear reactor license renewal and environmental impacts” (id. at ¶ 6), “rulemaking and regulatory analysis” (id. at ¶ 7), and “the operation of, and safety analyses associated with, pressurized water nuclear reactors (PWRs)” (id. at ¶ 8). Again, while Mr. Grimes’ experience covers a variety of technical subjects, he does not indicate that he has ever been involved in safety culture determinations. His failure to cite any prior exposure to safety culture issues is quite telling: one would expect that a safety culture expert would highlight his experience in the area. Mr. Grimes does not.

This is no surprise. The Commission defines safety culture as “that assembly of characteristics, attitudes, and behaviors in organizations and individuals which establishes that as

an overriding priority, nuclear safety and security issues receive the attention warranted by their significance.” Draft Safety Culture Policy Statement: Request for Public Comments, 74 Fed. Reg. 57525 (2009). Thus, safety culture is an “assembly of characteristics, attitudes, and behaviors” in organizations and individuals. It is not a technical issue, and knowledge of reactor designs or safety analyses has little, if any, relevance to whether nuclear safety is an “overriding priority” in an organization. Therefore, any opinion of Mr. Grimes on the status of safety culture at PINGP would not “assist the trier of facts in understanding the evidence or to determine a fact in issue” regarding safety culture and thus should be excluded.¹

For the above stated reasons, the Staff Motion should be granted and Mr. Grimes’ testimony should be limited as set forth in the Motion.

Respectfully Submitted,

/Signed electronically by Matias F. Travieso-Diaz/

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¹ Thus, for example, Mr. Grimes is not qualified to offer the opinion that “[t]he failure of the applicant to correct the potential damage to the containment integrity resulting from the refueling cavity leaks, the safety culture weaknesses associated with the causal factors described in Information Notice 2009-11, the series of White findings associated with one or both of the PINGP units, the identification of substantive crosscutting issues in the area of human performance, the serious concerns identified by NRC inspectors with the applicant’s corrective action program, and failure to effectively manage the plant design and effectively resolve potentially the safety-significant flooding issues identified 20 years ago, are all indicative of a weak safety culture at PINGP.” Direct Testimony of Christopher I. Grimes (July 30, 2010), A44 at 19-20. Such an opinion must be excluded.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of “NSPM’s Response in Support of Staff’s Motion in Limine Regarding Testimony Filed by The Prairie Island Indian Community,” dated August 30, 2010, was provided to the Electronic Information Exchange for service on the individuals listed below, this 30th day of August, 2010.

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