

March 2, 1978

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1935 W. County Road, B2  
Roseville, Minnesota 55113

In the Matter of  
Northern States Power Company  
MONTICELLO NUCLEAR GENERATING PLANT, UNIT 1  
Docket No. 50-263

Dear Jocelyn and Jay:

As indicated during our conference call of February 28, 1978, I am sending you the Staff's proposed revised Joint Motion and Order. I attempted to incorporate language responsive to concerns which you expressed. As I also indicated, I have discussed with Russell Hatling the prospects of MECCA joining in the motion. He indicated that he would bring the matter up to the MECCA Board at its meeting of March 8, 1978 and would get back to me by telephone on March 9. Having been advised that Steve Gadler is out-of-town on an extended basis, I have not tried to contact him.

Let me hear your reactions to this draft as soon as possible.

Sincerely,

SL

Stephen H. Lewis  
Counsel for NRC Staff

Enclosure:  
As stated

cc w/enclosure:

Mr. Russell J. Hatling  
Gerald Charnoff, Esq.  
Arthur Renquist, Esq.  
Mr. Steve J. Gadler  
Mr. Ken Dzugan

NRC Central File  
OELD FF (2)  
Shapar/Engelhardt/Grossman  
RCBrowne  
MKarman D&SS (3)  
SHLewis  
Chron  
LPDR  
SBajwa, P-522  
RSnaider, 314 Phil.  
JFScinto  
BABerson

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| OFFICE  | OELD <i>SL</i> | OELD    |  |  |  |
| SURNAME | SHLewis:jdl    | MKarman |  |  |  |
| DATE    | 3/2/78         | 3/2/78  |  |  |  |



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

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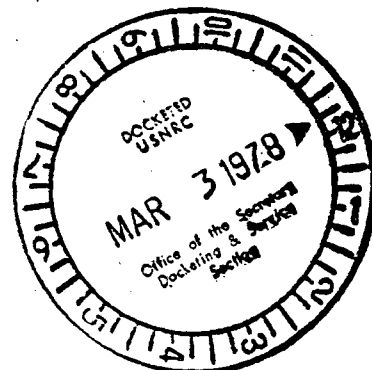
A handwritten signature in cursive script that reads "Steve".

Stephen H. Lewis  
Counsel for NRC Staff

Enclosure:  
As stated

cc w/enclosure:

Mr. Russell J. Hatling  
Gerald Charnoff, Esq.  
Arthur Renquist, Esq.  
Mr. Steve J. Gadler  
Mr. Ken Dzegan



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
NORTHERN STATES POWER COMPANY ) Docket No. 50-263  
 )  
(Monticello Nuclear Generating )  
Plant, Unit 1) )

JOINT MOTION TO TERMINATE PROCEEDING

1. This is a consolidated proceeding which has been underway since December, 1972, to consider (1) whether, in accordance with the provisions of 10 C.F.R. Part 50, Appendix D, Sections B and E, the provisional operation license (POL) for the Monticello facility should be continued, modified, or appropriately conditioned to protect environmental values, and (2) whether, in accordance with the provisions of 10 C.F.R. Part 50, Appendix D and 10 C.F.R. §50.57, a full-term operating license should be issued. The parties to this proceeding are Northern States Power Company ("Licensee"), the Staff of the Nuclear Regulatory Commission ("Staff") and Intervenors Minnesota Pollution Control Agency ("MPCA"), Minnesota Environmental Control Citizens Association, E. Taylor Hare, and Russell J. Hatling (collectively, "MECCA"), and Steve J. Gadler ("Gadler").<sup>1/</sup>

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<sup>1/</sup> Intervenor City of Saint Paul withdrew from this proceeding on August 30, 1976.

2. On May 22, 1974, the Licensing Board ordered the Intervenors to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact and conclusions of law, and arguments relating to the contentions that were outstanding as of that date. The then-existing contentions of the MPCA had been adopted by Intervenors MECCA and Gadler as their own. ("Joint Revised Contentions of Minnesota Environmental Control Citizen's Association, Russel J. Hatling, E. Taylor Hare, and Steve J. Gadler," April 4, 1974 and "Intervenor Steve J. Gadler's Request to Join MECCA and MPCA," April 3, 1974.)<sup>2/</sup> Evidentiary hearings in this proceeding were held on November 12-14, 1974, and May 6-15, 1975. At the close of the hearings, it was agreed (Tr. 1852-1855) that there remained three outstanding issues to be decided by the Licensing Board: MPCA Contentions II-27 (direct shine), II-33 (Class 9 accidents), and the Board's sua sponte question on whether the Commission could issue a full-term operating license in the absence of a Section 401 certification by the State of Minnesota under the

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<sup>2/</sup> In their April 4, 1974 filing, MECCA and Gadler asserted four joint contentions in lieu of all contentions previously asserted by them. The Board, in its May 22, 1974 Memorandum and Order, found deficiencies in each of these contentions, but allowed Intervenors an opportunity to cure them. Intervenors did not, however, avail themselves of that opportunity. Mr. Gadler did later clarify that he had decided to drop the four contentions. Tr. 133. MECCA did not further address the matter in any manner and may be deemed to have waived its contentions.

Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. §1251 et seq.<sup>3 /</sup> Additionally, on February 5, 1975, MPCA had submitted Contention B.1 (pipe crack issue), which has never been ruled on by the Board as to its admissibility, and on August 5, 1975, the Board admitted MPCA's additional Contention C.1 (concerning Anticipated Transients Without SCRAM), which had been submitted in final form by the MPCA on May 14, 1975. MPCA is the only sponsor of Contentions B.1 and C.1.

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3 / Evidence was taken at the November, 1974, and May, 1975, hearings on MPCA Contentions II-27 and II-33. On April 18, 1975, NSP and the Staff submitted written answers to the 17 environmental questions posed by the Board on December 18, 1974; evidence was taken on these matters at the May, 1975, hearings. We believe the record is complete as to the Board's environmental questions and that all parties have completed their evidentiary presentations as to Contentions II-27 and II-33.

MPCA had issued a certification on March 6, 1973, pursuant to Section 401(a)(1) of the FWPCA, which stated that "there is not an applicable effluent limitation or other limitation under Sections 301(b) and 302, and there is not an applicable standard under Sections 306 and 307 of the [FWPCA]." By letter of April 15, 1975, the Staff advised MPCA that in view of the intervening promulgation by the U.S. Environmental Protection Agency of effluent guidelines, it was the Staff's position that recertification under Section 401(a)(1) was required. Following its issuance of a National Pollutant Discharge Elimination System permit for Monticello under Section 402 of the FWPCA and applicable provisions of Minnesota law, MPCA, by letter dated December 19, 1977, certified that "there is reasonable assurance that the plant is being operated in a manner that will not violate Minnesota water quality standards and other applicable limitations under Section 301(b) of the Act" and that "to the best of [MPCA's] knowledge there is no standard applicable to the Monticello plant under Sections 302, 306, and 307 of the Act." It is the position of the Licensee, Staff, and MPCA that the requirements of Section 401(a)(1) have now been satisfied.

3. Licensee and MPCA have entered into an Agreement, dated December 20, 1977 (copy attached), whereby MPCA has agreed to withdraw all of its remaining contentions (II-27, II-33, B.1 and C.1) as issues in this proceeding and to withdraw as a party from this proceeding. Having reviewed the evidentiary record compiled on Contentions II-27 and II-33, MPCA has concluded that there is no further purpose in pursuing those contentions. MPCA's basis for withdrawing Contentions B.1 and C.1, which were not litigated, is its belief that either resolution of the problems identified has been achieved or substantial progress has been made toward their resolution. Thus, MPCA no longer asserts any issues to be in controversy in this proceeding. Accordingly, NSP, MPCA and the Staff move the Board to permit the withdrawal of MPCA as a party to this proceeding, to dismiss Contentions II-27, II-33, B.1 and C.1, and, absent objection by other parties, to dismiss the proceeding.

4. NSP, MPCA and the Staff submit that dismissal of the proceeding will be appropriate on two counts. First, no hearing is required either under Section B of Appendix D or upon NSP's request for a full-term operating license unless such a hearing has been requested by an interested person. Neither is a hearing required unless requested, under Section E of

Appendix D.<sup>4/</sup> Assuming that all intervenors withdraw, there will no longer remain any issues in controversy. Under Section 2.760a of the Commission's Rules of Practice there is no occasion for a decision by the Board on matters not put into controversy by the parties unless the Board finds that there are extraordinary circumstances involving a serious safety, environmental, or common defense and security matter. There is ample precedent for termination of Part 50 Appendix D proceedings after all intervenors have withdrawn. See, e.g., Carolina Power & Light Company (Brunswick Steam Electric Plant, Units 1 and 2), LBP-74-92, 8 AEC 1144 (1974) (Section B proceeding); Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-73-15, 6 AEC 375 (1973); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), LBP-73-43, 6 AEC 1062 (1973); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), Docket 50-289 (November 16, 1973) (Section C proceedings).

Accordingly:

1. MPCA hereby requests the Licensing Board for leave to withdraw Contentions II-27, II-33, B.1 and C.1;

<sup>4/</sup> Under Section B of Appendix D, which applies to all reactor licenses issued in the period January 1, 1970, to September 9, 1971, environmental hearings were made mandatory for construction permits issued during that period. For operating licenses, however, hearings were required only if requested by the licensee or an interested person. Similarly, under Section E of Appendix D, and for requests for a full-term operating license, no hearings are required unless requested by an interested person. Section 189 of the Atomic Energy Act of 1954, as amended; Section 2.105 of the Commission's Rules of Practice.

2. Licensee, MPCA and the Staff hereby move the Licensing Board to enter an order approving the withdrawal of MPCA as a party in this proceeding; and

3. Licensee, MPCA and the Staff move the Licensing Board, absent objection by other parties, to enter an order dismissing this proceeding.

In the event the Board receives any objections to this motion, we request the Board to consider these matters at a prehearing conference.

Respectfully submitted,

By \_\_\_\_\_  
Jocelyn Furtwangler Olson  
Special Assistant Attorney General

and \_\_\_\_\_  
John-Mark Stensvaag  
Special Assistant Attorney General

Attorneys for the Minnesota  
Pollution Control Agency

By \_\_\_\_\_  
Jay Silberg  
Attorney for Licensee

Dated \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_  
Stephen H. Lewis  
Counsel for NRC Staff

Dated \_\_\_\_\_



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
NORTHERN STATES POWER COMPANY ) Docket No. 50-263  
 )  
(Monticello Nuclear Generating )  
Plant, Unit 1) )

ORDER DISMISSING PROCEEDING

By notice of hearing dated December 19, 1972 (37 Fed. Reg. 28544), the Commission designated this Atomic Safety and Licensing Board to conduct a hearing in the above entitled proceeding. The Commission directed that the hearing consider two issues: (1) whether, considering those matters covered by Appendix D, Sections B and E, to 10 C.F.R. Part 50, the provisional operation license should be continued, modified, terminated or appropriately conditioned to protect environmental values, and (2) whether, in accordance with the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) in 10 C.F.R. Part 50, Appendix D, a full-term operating license should be issued.<sup>1/</sup>

The parties are Northern States Power Company ("NSP"), the Staff of the Nuclear Regulatory Commission ("Staff") and the Intervenors, Minnesota Pollution Control Agency ("MPCA"), Minnesota Environmental Control

<sup>1/</sup> A supplemental notice, 38 Fed. Reg. 2489 (1973), amended the hearing notice to consider also whether the full-term operating license should be issued in accordance with 10 C.F.R. 950.57.

Citizens Association, E. Taylor Hare, and Russell J. Hatling (collectively "MECCA"), and Steve J. Gadler ("Gadler").<sup>2 /</sup>

Two prehearing conferences were held, one on March 28, 1973, and a second on March 20, 1974. Evidentiary hearings were held in St. Paul, Minnesota, from November 12 through 15, 1974, and May 6 through 15, 1975. MPCA actively presented evidence on behalf of the consolidated Intervenors.

On March , 1978, NSP, MPCA, and the Staff filed a Joint Motion for the withdrawal of MPCA's Contentions, the withdrawal of MPCA as a party to the proceeding, and, absent objection by other parties, the dismissal of the proceeding. The Board will accept withdrawal of MPCA's Contentions and the withdrawal of MPCA as a party. This withdrawal removes all issues in controversy among the parties.

The motion to dismiss this proceeding is consistent with Commission regulations, which do not contemplate a hearing either under Section B or E of 10 C.F.R. Part 50, Appendix D, unless requested by an interested party. Neither is a hearing required on an application for an operating license. Section 189 of the Atomic Energy Act of 1954, as amended; Section 2.105 of the Commission's Rules of Practice. A Licensing Board may terminate Part 50, Appendix D proceedings after all intervenors

<sup>2 /</sup> Intervenor City of Saint Paul withdrew from the proceeding on August 30, 1976.

have withdrawn. See, e.g., Carolina Power & Light Company (Brunswick Steam Electric Plant, Units 1 and 2), LBP-74-92, 8 AEC 1144 (1974) (Section B proceeding); Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-73-15, 6 AEC 375 (1973); Tennessee Valley Authority (Browns Ferry Nuclear Plant Units 1, 2 and 3) LBP-73-43, 6 AEC 1062 (1973); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), Docket 50-289 (November 16, 1973) (Section C proceedings).

Furthermore, the environmental issue raised sua sponte by this Board, i.e., whether the Commission could issue a full-term operating license in the absence of a Section 401 certification by the State of Minnesota under the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. §1251 et seq., has now been resolved. The State of Minnesota issued the FWPCA Section 401(a)(1) certification on December 19, 1977. MPCA has also issued, and the U. S. Environmental Protection Agency has approved, a National Pollution Discharge System (NPDES) Permit for Monticello (Permit No. MN 0000868, dated August 26, 1977) pursuant to Section 402 of the FWPCA and applicable provisions of Minnesota law.

There are no further controverted issues to be resolved by this Board. Under Section 2.760a of the Commission's Rules of Practice, there is no occasion for a decision by the Board on matters not put into controversy

by the parties unless the Board finds that there are extraordinary circumstances involving a serious safety, environmental, or common defense and security matter. Consequently, the other parties not having objected, the Joint Motion to dismiss the proceeding before this Board will be granted and the proceeding will be terminated.

Atomic Safety and Licensing Board

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Robert M. Lazo, Chairman

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Dr. Walter H. Jordan, Member

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Dr. Richard F. Cole, Member

Issued at Washington, D. C.

this        day of        , 1978.