

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

Before Administrative Judges:

Michael M. Gibson, Chairman  
Dr. Gary S. Arnold  
Nicholas G. Trikouros

In the Matter of

NORTHERN STATES POWER CO.

(Prairie Island Nuclear Generating Plant  
Independent Spent Fuel Storage Installation)

Docket No. 72-10-ISFSI-2

ASLBP No. 12-922-01-ISFSI-MLR-BD01

January 31, 2013

INITIAL SCHEDULING ORDER

This proceeding concerns the application of Northern States Power Co. (Applicant or Northern States) for renewal of its 10 C.F.R. Part 72 license for an Independent Spent Fuel Storage Installation (ISFSI) at the Prairie Island Nuclear Generating Plant (PINGP) in Red Wing, Minnesota. In its December 20, 2012 decision in LBP-12-24, this Board granted the petition to intervene of the Prairie Island Indian Community (Intervenor or PIIC) and admitted, in part, three of PIIC's proffered contentions for litigation in this proceeding that challenge Northern States' application.<sup>1</sup> Pursuant to 10 C.F.R. § 2.332(a), this Board must issue an initial scheduling order "as soon as practicable" after a petition to intervene or request for hearing is granted.<sup>2</sup> This Board has the "duty to conduct a fair and impartial hearing according to law, to take appropriate

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<sup>1</sup> LBP-12-24, 76 NRC \_\_, \_\_ (slip op. at \_\_) (Dec. 20, 2012). The Board held an additional contention, Contention 1, in abeyance pending the Commission's further order on waste confidence. Id. at \_\_ (slip op. at \_\_).

<sup>2</sup> 10 C.F.R. § 2.332(a); see also 10 C.F.R. Part 2, Appendix B, II, Model Milestones for Hearing Conducted Under 10 C.F.R. Part 2, Subpart L (Initial scheduling order to be issued within 55 days of Board decision granting intervention and admitting contentions).

action to control the prehearing and hearing process, to avoid delay and to maintain order.”<sup>3</sup>

Accordingly, this initial- scheduling order is designed to ensure proper case management of this proceeding, including “expediting the disposition of the proceeding, establishing early and continuing control so that the proceeding will not be protracted because of lack of management, discouraging wasteful prehearing activities, improving the quality of the hearing . . . and facilitating settlement.”<sup>4</sup>

## I. BACKGROUND

On January 4, 2013, pursuant to 10 C.F.R. §§ 2.329 and 2.332, the Board issued an Order setting a date and time for a scheduling conference for the purpose of developing a scheduling order to govern the conduct of this proceeding.<sup>5</sup> In accordance with that order, the NRC Staff submitted its projected schedule for completion of its safety and environmental reviews on January 15, 2013.<sup>6</sup> On January 18, 2013, the parties filed a Joint Motion on Mandatory Disclosures reflecting their agreements regarding mandatory disclosures and requesting that we adopt those agreements as part of our initial scheduling order.<sup>7</sup> On January 22, 2013, the Board conducted the initial scheduling conference.<sup>8</sup> Based on the parties’ agreements, the parties’ statements at the conference, the NRC Staff’s projected review schedule, the regulatory requirements, and the nature and circumstances of this case, the Board now issues this initial scheduling order.

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<sup>3</sup> 10 C.F.R. § 2.319.

<sup>4</sup> Id. § 2.332(c)(1)-(5).

<sup>5</sup> Licensing Board Order (Scheduling Initial Scheduling Conference) (Jan. 4, 2013) at 1 (unpublished).

<sup>6</sup> NRC Staff’s Notification of Safety and Environmental Review Schedule (Jan. 15, 2013) at 1.

<sup>7</sup> Joint Motion on Mandatory Disclosures (Jan. 18, 2013) at 1-2 [Joint Motion].

<sup>8</sup> See Tr. at 270-320.

## II. SCHEDULE

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, the Board establishes the following initial schedule for this matter. Consistent with 10 C.F.R. § 2.306(a), if any deadline prescribed by this scheduling order would fall on a Saturday, Sunday, Federal legal holiday, or a day on which NRC headquarters is not open for business due to an emergency closure of the Federal Government in Washington, D.C., then such deadline will be considered to fall on the next day that is not a Saturday, Sunday, Federal legal holiday, or emergency closure.

### A. Mandatory Disclosures and Production of Hearing File

The regulations specify that, within thirty (30) days of the Board's ruling admitting contentions, the parties must make certain mandatory disclosures.<sup>9</sup> In addition, Subpart L proceedings require the NRC Staff to produce a hearing file and make it available to all parties.<sup>10</sup> Pursuant to the Joint Motion on Mandatory Disclosures, and in accordance with 10 C.F.R. § 2.336, the parties will provide their initial disclosures on February 28, 2013. As detailed below, the Board grants the Joint Motion in part.

#### 1. Updating of Disclosures

The regulations specify that the parties have a "continuing" duty to update their mandatory disclosures,<sup>11</sup> and that the NRC Staff has a "continuing" duty to update the hearing file.<sup>12</sup> Based on the Joint Motion of the parties and discussions during the July 11, 2011 conference, the Board directs the parties to update their disclosures and the hearing file monthly, on the first day of each month, beginning on April 1, 2013. Each update shall cover all documents or other material or information required to be disclosed that is in the possession,

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<sup>9</sup> 10 C.F.R. § 2.336(a), (b).

<sup>10</sup> Id. § 2.1203(a).

<sup>11</sup> Id. § 2.336(d).

<sup>12</sup> Id. § 2.1203(c).

custody, or control of each party (or its agents) on or before the last day of the preceding month.

## 2. Privilege Logs

The regulations require that the parties provide privilege logs, i.e., a “list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.”<sup>13</sup> However, the parties have agreed to waive the requirement in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce a privilege log.<sup>14</sup> The parties have also agreed to produce as part of their disclosures a list of all documents withheld as proprietary.<sup>15</sup> The Board further directs the parties to include in that list of withheld documents any documents that are withheld on the grounds they contain security-related or safeguards information. During the pendency of this proceeding, the parties shall preserve and maintain all documents withheld from production as privileged, proprietary, security-related or safeguards information.

## 3. Scope of Disclosures and Hearing File

a. The Board accepts and adopts the agreement of the parties related to mandatory discovery disclosures in the following respects:

1. A party need not identify or produce a document that has previously been served on the other parties to this proceeding.
2. A party need not identify or produce press clippings.
3. If a document exists in both hard copy and electronic formats, a party may produce the electronic copy only.
4. All relevant documents available via the NRC’s website, or the NRC’s

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<sup>13</sup> Id. § 2.336(a)(3); see also 10 C.F.R. § 2.336(b)(5). 10 C.F.R. § 2.336(a)(3) and (b)(5) cover documents claimed to be privileged and documents claimed to be protected. In both cases, the party must identify and list all such documents “together with sufficient information for assessing the claim of privilege or protected status.” Id.

<sup>14</sup> Joint Motion at 1.

<sup>15</sup> Id. See 10 C.F.R. § 2.390(a).

Agencywide Documents Access and Management System (ADAMS) will be identified by the NRC Staff as required by 10 C.F.R. §§ 2.336(b) and 2.1203. No party is otherwise required to identify or produce documents that are publicly available via the NRC's website or ADAMS.

b. The Board declines to accept and adopt the entirety of the agreement of the parties related to mandatory discovery of "draft" documents.<sup>16</sup> The Board directs the parties with regard to "draft" and "final" document disclosures as follows. Where a party has generated a particular document that otherwise would be required to be disclosed, it may limit its mandatory disclosures to its final version of such document and need not include its internal drafts, including comments on drafts, resolution of comments, draft transmittals, or other similar documents. However, if a document, otherwise qualifying as a draft has been shown by one party (or its agents) to another party (or its agents), then that document does not qualify as an exempt draft and it must be promptly disclosed to the other parties. Examples of documents that must be disclosed and that do not qualify as an exempt draft include (a) a "draft" response to an RAI that the Applicant has shown to the NRC Staff, (b) a draft guidance document that the NRC Staff has shown to the Applicant, or (c) a draft document that the NRC Staff reviewed during a conference with the Applicant.<sup>17</sup> Provided, however, non-docketed Applicant information that is reviewed by NRC Staff during an audit or inspection, but that is not removed from the Applicant's site, need not be disclosed if it otherwise qualifies as a "draft" document. The duty to disclose such draft documents does not depend on whether the person with whom the document was shared took possession, custody or control of the document, and does not depend on the locus where the sharing occurred. Further, if a party has legal possession, custody, or control of a document that it or its contractors did not generate or that is already

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<sup>16</sup> Joint Motion at 1.

<sup>17</sup> See 10 C.F.R. § 2.1203(b) (hearing file to contain "any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action").

publicly available, and which is otherwise subject to mandatory disclosure (e.g., relevant to a contention), then the party must produce that document (even if it is labeled “draft”).

#### 4. Termination

The duty to update mandatory disclosures and the hearing file shall terminate at the close of the evidentiary hearing. If a contention has been dismissed through summary disposition or for other reasons, the duty to update mandatory disclosures shall terminate with respect to that contention upon issuance of the Board order dismissing that contention.

Pending appellate review of a Board decision disposing of a contention, parties should preserve and maintain disclosures relating to that contention, despite termination of the duty to update the disclosures for that contention.

#### B. Disclosure Disputes and Motions to Compel

On or before March 10, 2013, the parties shall file any motions to compel or challenges regarding the adequacy of any mandatory disclosure or hearing file, redactions, or the validity of any claim that a document is privileged or protected, concerning any disclosures occurring prior to that date. Thereafter, any such motion or challenge shall be filed within ten (10) days after the occurrence or circumstance giving rise to such motion or challenge, in accordance with 10 C.F.R. § 2.323(a).

#### C. NRC Staff Submission of Status Reports

On April 1, 2013, the NRC Staff shall submit a short report specifying its best estimate of the dates on which it expects to issue the Final Safety Evaluation Report (FSER), and the draft and the final version of the reports required under the National Environmental Policy Act (NEPA)<sup>18</sup> (i.e., either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)). Thereafter, when the NRC Staff changes any of these date estimates, the NRC Staff shall submit an updated status report on the first day of the month following the month in which

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<sup>18</sup> See National Environmental Policy Act of 1969 § 102(2)(C), 42 U.S.C. § 4332(2)(C).

the NRC Staff decides there will be any change in its previous date estimates.

D. Additional Contentions

1. Consolidated Briefing

In the event a party seeks leave to file a new or amended contention, it shall file its motion for leave and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a new or amended contention under 10 C.F.R. § 2.309(c)(1), and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply responding to the answer.<sup>19</sup>

2. Timeliness

A motion and proposed new contention specified in the preceding paragraph shall be deemed timely under 10 C.F.R. § 2.309(c)(1)(iii) if filed within thirty (30) days of the date when the new and material information on which it is based first becomes available to the public (e.g., accessible through the public version of ADAMS) or otherwise is obtained by or provided to PIIC, whichever is sooner.

E. Pleadings and Motions—Generally

1. Pleadings—Page Limitation

Motions and answers to motions shall not exceed fifteen (15) pages in length (including signature page but excluding attachments, see section II.I.5, infra). A motion for leave to exceed this page limitation should be filed no less than three (3) business days before the motion or answer is due to be filed. A motion to exceed this page limitation must (i) indicate whether the request is opposed or supported by the other participants to the proceeding; (ii)

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<sup>19</sup> 10 C.F.R. 2.309(i)

provide a good faith estimate of the number of additional pages that will be filed; and (iii) demonstrate good cause for being permitted to exceed the page limitation.

2. Response to New Facts or Arguments in Answer Supporting a Motion

Except for a motion to file a new or amended contention as set forth in section II.D, supra, or where there are compelling circumstances, the moving party has no right to reply to an answer or response to a motion.<sup>20</sup> However, if any party files an answer that supports a motion, then a party opposing the motion may, within ten (10) days after service of that answer, file a response to any new facts or arguments presented in that answer. Except as otherwise specified herein, no further supporting statements or responses thereto will be entertained.<sup>21</sup>

3. Motion for Leave to File Reply

If a party seeks to file a reply to an answer to a motion (other than a motion to file a new or amended contention as set forth in section II.D, supra), it must first obtain leave of the Board. A motion for leave to file such a reply shall be submitted within four (4) business days after the filing of the answer to which the moving party seeks to reply.<sup>22</sup> In addition to all other requirements, a motion for leave to file a reply to an answer to such motion must (i) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (ii) demonstrate good cause for permitting the reply to be filed.

4. Motion for Extension of Time

A motion for extension of time should be submitted in writing at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. In addition to all other requirements, a motion for extension of time must (i) indicate whether the

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<sup>20</sup> See id. § 2.323(c).

<sup>21</sup> This provision is modeled on 10 C.F.R. § 2.710(a).

<sup>22</sup> Although the agency's rules of practice regarding motions do not provide for reply pleadings, the Board will deem a reply to be timely if filed within seven (7) days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(i)(2).

request is opposed or supported by the other participants to the particular proceeding; and (ii) demonstrate appropriate cause that supports permitting the extension.

5. Answer Opposing a Motion to Exceed the Page Limitation, a Motion for Leave to File a Reply, or a Motion to Extend the Time for Filing a Pleading

An answer to a motion to exceed the page limit, to a motion for leave to file a reply, or to a motion to extend the time for filing a pleading shall be filed and served on the next business day after the filing of the request.

6. Motion Certification<sup>23</sup>

In accordance with 10 C.F.R. § 2.323(b), an opposed motion will be rejected if it does not include the following certification by the attorney or representative of the moving party: “I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.”<sup>24</sup>

7. Answer Certification

If the attorney or representative of a party is contacted pursuant to the consultation requirement of 10 C.F.R. § 2.323(b), counsel for the non-moving party must make a sincere effort to be available to consult and attempt in good faith to resolve the factual and legal issues raised in the motion. If counsel for the non-moving party is unaware of any attempt by the moving party to contact him or her, the answer to the motion shall so certify. Otherwise, an

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<sup>23</sup> The consultation and certification requirements in paragraphs II.F.6 and II.F.7 do not apply to motions to file new or amended contentions. See 10 C.F.R. § 2.323(a)(1).

<sup>24</sup> Although in general the movant has only ten (10) days within which to file its motion under 10 C.F.R. § 2.323(a), the spirit of the rules is that such motions should be timely, *i.e.*, not initiated at the last minute, but rather commenced sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question. See Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 128 (2006). If the consultation is initiated at a reasonable time and the parties believe that all or part of the matter may be resolved amicably if additional time for filing the motion is provided, the parties are encouraged to file a joint motion requesting such an extension of time.

answer to a motion will be rejected if it does not include the following certification by the counsel for the non-moving party (or his or her alternate): "I certify that I have made a sincere effort to be available to consult with the moving party, and to attempt in good faith to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful."

It is inconsistent with the dispute avoidance/resolution purposes of 10 C.F.R. § 2.323(b), and thus insufficient, for counsel for the non-moving party to fail or refuse to consider the substance of the consultation attempt, or for the non-moving party to respond that it takes no position on the motion (or issues) but reserves the right to file a response to the motion when it is filed.

#### 8. Supplemental Information

The certifications specified in the foregoing two subsections may be supplemented with any additional information the representative or attorney deems necessary to ensure the accuracy of the certification or to explain the situation.

#### F. Dispositive Motions

Motions for summary disposition and other dispositive motions, while permissible,<sup>25</sup> will be managed in this proceeding in accordance with the following requirements.

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<sup>25</sup> The Commission has stated that

[t]here may be times in the proceeding where motions for summary disposition should not be entertained because consideration of the motion would unduly delay or complicate proceedings by distracting responding parties from addressing other pending issues or distracting other parties and the presiding officer from their preparation for a scheduled hearing. Moreover, there may be situations in which the time required to consider summary disposition motions and responses and to issue a ruling on these motions will substantially exceed the time needed to complete the hearing and record on the issues. The presiding officer . . . is in a good position to determine when the use of summary disposition would be appropriate and would not delay the ultimate resolution of issues and the Commission will provide presiding officers the flexibility to make that determination in most proceedings.

Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2186 (Jan. 14, 2004).

1. Certification

A dispositive motion (e.g., motion for summary disposition or motion to dismiss) will be rejected unless, in addition to the signature requirements of 10 C.F.R. § 2.304(d) and the certifications required by 10 C.F.R. § 2.323(b) and this order, the motion includes the following certification by counsel for the moving party:

I certify that this motion is not interposed for delay, prohibited discovery, or any other improper purpose, that I believe in good faith that there is no genuine issue as to any material fact relating to this motion, and that the moving party is entitled to a decision as a matter of law, as required by 10 C.F.R. §§ 2.1205 and 2.710(d).<sup>26</sup>

2. Additional Time for Dispositive Motions

In order to ensure careful consultation as specified above, dispositive motions are to be filed within twenty (20) days after the occurrence or circumstance giving rise to the motion (rather than the ten (10) day time frame established by 10 C.F.R. § 2.323(a)), provided that the moving party commences sincere efforts to contact and consult all other parties within ten (10) days of such occurrence or circumstance, and the accompanying certification so states. In the event that the moving party cannot identify a single occurrence or circumstance giving rise to the motion, the moving party may demonstrate that good cause exists for not filing the motion at an earlier time.

3. Answers

In accordance with 10 C.F.R. § 2.1205(b), an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within twenty (20) days after service of the motion.<sup>27</sup>

4. Continuance

If it appears from the affidavits of a party opposing a motion for summary disposition or

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<sup>26</sup> See 10 C.F.R. § 2.304(d) (Representations of a Signatory to a Pleading); cf. Fed. R. Civ. P. 11(b).

<sup>27</sup> See also section II.F.5, supra.

other dispositive motion that the opposing party “cannot, for reasons stated, present by affidavit facts essential to justify the party’s opposition,” the Board may refuse the application for summary disposition, order a continuance to permit affidavits to be obtained, or issue any other order as may be necessary or just.<sup>28</sup>

5. Deadline

With regard to any contention based on 10 C.F.R. Part 51 or NEPA, no motion for summary disposition or other dispositive motion may be filed more than twenty (20) days after the NRC Staff publishes its final NEPA document (or any supplement thereto).<sup>29</sup> With regard to any other contention or issue, no motion for summary disposition or other dispositive motion may be filed more than twenty (20) days after the NRC Staff publishes the FSER (or any supplement thereto).

G. Clarification, Simplification, and Amendment of the Pleadings

The Board encourages the parties to pursue opportunities for the settlement of issues or contentions, as specified in 10 C.F.R. §§ 2.329(c)(1)-(3) and 2.338, including the potential: (1) clarification, simplification, or specification of the issues; (2) necessity or desirability of amending the pleadings; (3) opportunities to develop stipulations or admissions of fact; and (4) opportunities for the settlement of issues or contentions.

The Board will revisit these issues throughout this proceeding. For example, if it appears that stipulations or admissions of fact can narrow or eliminate factual or legal disputes, the parties are encouraged to consult with each other and/or file motions to pursue same.

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<sup>28</sup> See 10 C.F.R. § 2.710(c); cf. Fed. R. Civ. P. 56(d).

<sup>29</sup> Consistent with the Commission’s scheduling instructions in another proceeding, see 74 Fed. Reg. 38,057 (July 30, 2009), if all contentions, other than Part 51 and NEPA contentions, have been dismissed when the FEIS is published, then no answer to a motion for summary disposition or other dispositive motion filed after publication of the FEIS is required, nor appropriate, unless and until ten (10) days after the Board issues an affirmative determination that the motion will not interfere with preparations and filings related to the evidentiary hearing and that its resolution will serve to expedite the proceeding. The Board will endeavor to make such determination within ten (10) days.

#### H. Evidentiary Hearing Filings

The Board currently contemplates a single evidentiary hearing on all admitted contentions, both safety and environmental-related. Pursuant to 10 C.F.R. § 2.1207, a number of documents must be filed immediately prior to the evidentiary hearing. The Board has determined that the earliest practicable trigger date for the initiation of such filings associated with admitted contentions is the later of: (1) the date when the NRC publicly issues the SER, or (2) the date when the NRC publicly issues its final NEPA document. This shall be the “trigger date” for the filings associated with the evidentiary hearing on admitted contentions in this proceeding.<sup>30</sup>

To avoid unreasonable delay, the Board may choose to bifurcate the hearing in the event that changes to the NRC’s review schedule make a single hearing impractical. In that circumstance, the Board will issue a supplemental scheduling order.

##### 1. List of Witnesses

Thirty (30) days after the trigger date, each party shall file, on a contention-by-contention basis, its final list of the witnesses on whose testimony it intends to rely at hearing, in accordance with 10 C.F.R. § 2.336(a)(1).

##### 2. Initial Statements of Position, Testimony, Affidavits, and Exhibits

Sixty (60) days after the trigger date, each party shall file, on a contention-by-contention basis, its initial written statement of position, exhibits, and written testimony with supporting affidavits, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that sets out affirmative arguments and applicable legal standards, identifies witnesses and evidence, and specifies the purpose of witnesses and evidence (i.e.,

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<sup>30</sup> 10 C.F.R. § 2.332(d) prohibits the commencement of evidentiary hearings on environmental issues until after issuance of the FEIS. It also prohibits commencement of evidentiary hearings on safety issues until after issuance of the FSER, unless the Board affirmatively finds that the safety hearing can be held earlier and will expedite the ultimate resolution of the case.

stating with particularity how the witness, exhibit, or evidence supports a factual or legal position). The written testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R.

§ 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are relying upon for its statements or position.

3. Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits

No later than twenty (20) days after service of the materials submitted under section II.H.2, each party shall file its written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. The rebuttal testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are relying upon for its statements or position.<sup>31</sup> Being in the nature of rebuttal, the response, rebuttal testimony and rebuttal exhibits are not to advance any new affirmative claims or arguments that were not included in the party's previously filed initial written statement.

4. Motions in Limine or to Strike

No later than ten (10) days after service of the materials submitted under section II.H.3, each party shall file its motions in limine or motions to strike regarding the materials submitted under sections II.H.2 and II.H.3. Answers to such motions shall be filed no later than seven (7) days after service of the subject motion.

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<sup>31</sup> Any document previously submitted with the initial testimony need not be resubmitted as a new exhibit.

5. Proposed Questions for Board to Ask<sup>32</sup>

No later than thirty (30) days after service of the materials submitted under section II.H.3, each party shall file its proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The questions should be accompanied by examination plans containing a brief description of the issue or issues on which the party seeks further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. The proposed questions and plans should be filed in camera and not served on any other party.

6. Motions for Cross-Examination

No later than thirty (30) days after service of the materials submitted under section II.H.3, each party shall file its motions to conduct cross-examination of a specified witness or witnesses, if any, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). Such motion to conduct cross-examination shall be filed with all parties, but the cross-examination plan itself should be filed in camera and not be served on any other party.

7. Evidentiary Hearing

Although the specific time and date for the evidentiary hearing sessions will be determined later, the Board currently contemplates that these sessions will commence between thirty (30) and seventy-five (75) days after the service of the material specified in sections II.H.5 and II.H.6.

8. Witness with Written Testimony Must be Available in Person

Unless the Board expressly provides otherwise, each party must, at its own expense and effort, assure that each of its direct and rebuttal witnesses attends the evidentiary hearing in

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<sup>32</sup> A party should cover all essential points in the direct and rebuttal testimony that it prefiles for each of its own witnesses. The prefiled proposed questions should not focus on a party's own witnesses, but should instead be directed to the witnesses of the other parties.

person and is available to testify and to respond orally to questions.<sup>33</sup>

I. Attachments to Filings

1. Documents Must Be Attached

If a motion or pleading of any kind refers to a report, website, NUREG, guidance document, or any other document of any kind (other than to a law, regulation, case, or other legal authority), then a copy of such document, or the relevant portion thereof, shall be submitted with and attached to the pleading. The pleading must cite to the specific page or section of the document that is relevant.

2. Exception

If the following documents are publicly available on ADAMS, they need not be attached to a motion or pleading: Northern States' License Renewal Application and Environmental Report, the draft and final NEPA Documents, and the FSER. With regard to such documents, it is sufficient if the pleading clearly identifies the document (including its date and revision number, if any), provides its ADAMS ML number, and cites to the specific page or section that is relevant.<sup>34</sup> All other documents (or the relevant portions thereof that cannot be found in ADAMS) should be attached to the subject pleading.

3. Attached Documents are "Attachments"

All documents referred to in the pleadings (pursuant to the two preceding paragraphs)

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<sup>33</sup> If, after reading the pre-filed testimony, the Board concludes that it has no questions for a particular witness, it will so advise the parties and that individual will not need to attend the evidentiary hearing. Likewise, if the Board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention pursuant to 10 C.F.R. § 2.1208.

<sup>34</sup> The NRC's E-Filing guidance document addresses the filing of copyrighted material. See <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html> (access link for Guidance for Electronic Submissions to the NRC, Revision 6 (May 17, 2010)).

shall be labeled and referred to as "Attachments," not as exhibits.<sup>35</sup>

4. Designation and Marking of Attachments

A separate numeric designation shall be assigned to each Attachment (e.g., Attachment 3). With regard to Attachments covered by section II.I.1, the numeric designation shall be prominently marked either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

5. Page Limits/Method of Electronic Submission

Attachments are not subject to the page limitation set forth in section II.E.1 above. All Attachments associated with a pleading shall be submitted together via the E-Filing system as a single electronic file that consists of the pleading or other submission, the certificate of service, and all the Attachments. If, however, the submission exceeds fifteen megabytes in size, then the pleading should be separated into multiple submissions, each less than fifteen megabytes.<sup>36</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Michael M. Gibson  
CHAIRMAN

Rockville, Maryland  
January 31, 2013

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<sup>35</sup> The term "exhibit" is reserved for use as a designation for those items that are submitted pursuant to section II.H as proffered evidence for the evidentiary hearing.

<sup>36</sup> This accords with NRC's E-Filing guidance. See <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html> (access link for Guidance for Electronic Submissions to the NRC, Revision 6 (May 17, 2010) at 14).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
Northern States Power Company ) Docket No. 72-10-ISFSI-2  
 )  
(Prairie Island Nuclear Generating Plant, )  
Independent Spent Fuel Storage Installation) )  
 )  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL SCHEDULING ORDER** have been served upon the following persons by Electronic Information Exchange or by electronic mail as indicated by an asterisk\*.

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board  
Mail Stop T-3F23  
Washington, DC 20555-0001

Michael M. Gibson, Chair  
Administrative Judge  
E-mail: [michael.gibson@nrc.gov](mailto:michael.gibson@nrc.gov)

Dr. Gary S. Arnold  
Administrative Judge  
E-mail: [gary.arnold@nrc.gov](mailto:gary.arnold@nrc.gov)

Nicholas G. Trikouros  
Administrative Judge  
E-mail: [nicholas.trikouros@nrc.gov](mailto:nicholas.trikouros@nrc.gov)

James Maltese, Law Clerk  
Email: [james.maltese@nrc.gov](mailto:james.maltese@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate Adjudication  
Mail Stop O-16C1  
Washington, DC 20555-0001  
OCA Mail Center: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop O-16C1  
Washington, DC 20555-0001  
Hearing Docket: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O-15D21  
Washington, DC 20555-0001

Mary Spencer, Esq.  
Mauri T. Lemoncelli, Esq.  
Molly Barkman Marsh, Esq.  
Christopher C. Hair, Esq.  
E-mail:  
[mary.spencer@nrc.gov](mailto:mary.spencer@nrc.gov)  
[mauri.lemoncelli@nrc.gov](mailto:mauri.lemoncelli@nrc.gov)  
[molly.barkmanmarsh@nrc.gov](mailto:molly.barkmanmarsh@nrc.gov)  
[christopher.hair@nrc.gov](mailto:christopher.hair@nrc.gov)

OGC Mail Center: [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)

Prairie Island Nuclear Generating Plant, Independent Spent Fuel Storage Installation,  
Docket No. 72-10-ISFSI  
**INITIAL SCHEDULING ORDER**

Counsel for Prairie Island Indian Community  
5636 Sturgeon Lake Road  
Welch, MN 55089  
Phillip R. Mahowald, Esq.  
E-mail:  
[pmahowald@piic.org](mailto:pmahowald@piic.org)

Counsel for Northern States Power Company  
Xcel Energy, Inc.  
414 Nicollet Mall, 5<sup>th</sup> Floor  
Minneapolis, MN 55401  
Peter M. Glass, Esq.\*  
E-mail:  
[peter.m.glass@xcelenergy.com](mailto:peter.m.glass@xcelenergy.com)

Counsel for Prairie Island Indian Community  
Jacobson, Buffalo, Magnuson,  
Anderson & Hogen, P.C.  
335 Atrium Office Building  
1295 Bandana Boulevard  
St. Paul, MN 55108  
Joseph F. Halloran, Esq.  
Email: [jfh@jacobsonbuffalo.com](mailto:jfh@jacobsonbuffalo.com)  
Diana Kinney, Legal Assistant  
E-mail: [dkinney@jacobsonbuffalo.com](mailto:dkinney@jacobsonbuffalo.com)

Counsel for Northern States Power Company  
Pillsbury Winthrop Shaw Pittman, LLP  
2300 N. Street, N.W.  
Washington, DC 20037-1128  
Jay Silberg, Esq.  
Kimberly Harshaw, Esq.  
Maria Webb, Paralegal  
E-mail:  
[jay.silberg@pillsburylaw.com](mailto:jay.silberg@pillsburylaw.com)  
[kimberly.harshaw@pillsburylaw.com](mailto:kimberly.harshaw@pillsburylaw.com)  
[maria.webb@pillsbury.law.com](mailto:maria.webb@pillsbury.law.com)

[Original signed by Herald M. Speiser ]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 31<sup>st</sup> day of January, 2013