

February 13, 2015

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)
)
Northern States Power Company) Docket No. 72-10-ISFSI-2
)
(Prairie Island Nuclear Generating Plant,) ASLBP No. 12-922-01-ISFSI-MLR-
Independent Spent Fuel Storage Installation)) BRD01

**JOINT MOTION FOR APPROVAL OF SETTLEMENT
AND DISMISSAL OF PIIC AMENDED CONTENTION 2, RENEWED AND AMENDED
CONTENTION 3, AND CONTENTION 4**

Pursuant to 10 C.F.R. § 2.338(i), Northern States Power Company, a Minnesota corporation (“NSPM”) and the Prairie Island Indian Community (“PIIC” or “the Community”) (collectively, the “Parties”) hereby move this Atomic Safety and Licensing Board (the “Board”) to approve a settlement of Amended Contention 2, Renewed and Amended Contention 3, and Contention 4. The Settlement Agreement is included as Attachment 1. Based on this settlement, the Parties seek dismissal of these three contentions. The NRC Staff has reviewed, supports, and consents to this Joint Motion and settlement.

On December 20, 2012, the Board admitted three contentions submitted by the PIIC, including Contentions 2 and Contention 4. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-12-24, 76 N.R.C. 503 (2012). Contention 3, as initially alleged, was not admitted. Contention 2, as initially admitted, alleged that NSPM’s Environmental Report (“ER”) failed to assess the cumulative impacts of a future ISFSI expansion on archaeological, cultural and historic (“AC&H”) resources. Contention 4, as admitted, alleged that NSPM’s ER had failed to address certain environmental

justice impacts resulting from a future ISFSI expansion. In particular, Contention 4 alleged that two disparate impacts resulting from the ISFSI expansion had not been addressed: (1) potential disturbance of AC&H resources; and (2) skyshine radiation dose. On November 7, 2013, the NRC Staff's Draft Environmental Assessment ("Draft EA") became available on ADAMS. On December 12, 2013, PIIC submitted a motion seeking leave to file new or amended contentions based on the Draft EA.¹ This Motion included an Amended Contention 2 and a Renewed and Amended Contention 3. The Board issued an order admitting a portion of Amended Contention 2 – the Draft EA does not address the potential impacts of the PI ISFSI expansion on cultural and historic resources. *Northern States Power Co. (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation)*, LBP-14-6, 79 N.R.C. 404, 417 (2014). The Board also admitted a portion of Renewed and Amended Contention 3, which alleges that the NRC failed to comply with its trust responsibilities to PIIC because the NRC inadequately analyzed the cumulative impacts of a possible ISFSI expansion on cultural and historic resources. *Id.* at 428.

At this point, there remain three environmental contentions in this proceeding: the AC&H portions of Amended Contention 2, Renewed and Amended Contention 3, and skyshine dose and AC&H portions of Contention 4. *Northern States Power Co. (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation)*, Order (Dismissing Waste Confidence-Based Contention in Accordance with CLI-14-08), slip op. at 5-6 (Oct. 2, 2014).² There are two basic issues underlying these three environmental contentions: the alleged omission of a skyshine dose analysis in the ER for the ISFSI expansion and the alleged

¹ Prairie Island Indian Community's Motion to Admit New and Amended Contentions after Issuance of NRC's Draft Environmental Assessment (Dec. 12, 2013).

² There also remains Contention 6 a safety contention regarding high burnup fuel.

inadequate analysis of the impacts of the ISFSI expansion on AC&H resources. As set forth in the Settlement Agreement and described below, NSPM and PIIC have cooperated to successfully address these underlying issues.

In March 2014, NSPM prepared a draft motion for summary disposition of the skyshine portion of Contention 4. That draft motion was supported by the Declaration of Herbert Olaf Nelson (“Nelson Declaration”) attached hereto as Attachment 2. At that time, as required by 10 C.F.R. § 2.323(b), NSPM consulted with PIIC counsel on the draft motion in order to attempt to resolve the issues raised in the motion. NSPM and PIIC agreed that the draft motion addressed the skyshine issues raised in Contention 4, that the Community would benefit from a presentation on the resolution of these issues, and that the Nelson Declaration supporting the motion should be submitted to the NRC Staff for use in drafting its final environmental assessment for the PI ISFSI license renewal. As a result, on May 1, 2014 NSPM senior management met with the PIIC Tribal Council President to present information on projected skyshine radiation dose to the PIIC resulting from the PI ISFSI, including its future expansion. This presentation is set forth as Attachment 3. Additionally, on August 21, 2014, NSPM submitted the Nelson Declaration and supporting enclosures to the NRC Staff for its use in drafting the final environmental assessment.³

NSPM and PIIC counsel also consulted on PIIC’s concerns with the analysis of the impacts on AC&H resources resulting from a future expansion of the ISFSI. As set forth in the Settlement Agreement, NSPM agreed to follow its Cultural Resource Management Plan and

³ Letter from Kevin Davison, Site Vice President, Prairie Island Nuclear Generating Plant, to U.S. NRC, re: Supplemental Information to Support Environmental Review of License Renewal Application for the Prairie Island Independent Spent Fuel Storage Installation (TAC No. L24592) (Aug. 21, 2014 (ADAMS Accession No. ML14237A222) (“NSPM Aug. 21, 2014 letter”).

related procedures to protect AC&H resources while implementing modifications necessary to expand the ISFSI. Attachment 1 at ¶ 1. NSPM also agreed to perform subsurface testing within the area where any new ISFSI pads will be located and to perform such testing in cooperation with the PIIC. *Id.* at ¶ 3. As a result of those discussions, NSPM submitted a commitment to the NRC to perform

subsurface archeological surveys within the area where any new ISFSI pads will be located, to a depth expected to be excavated for construction of the new ISFSI pads. These subsurface archeological surveys will be performed consistent with the Cultural Resource Management Plan and implementing procedures, and will be completed prior to submittal of a License Amendment Request for the ISFSI expansion.⁴

Following the development of the conceptual design for the proposed ISFSI expansion to accommodate 64 casks,⁵ NSPM hired Westwood Professional Services to complete a Phase I archaeological survey of the proposed expansion area. NSPM and PIIC collaborated to develop a testing protocol to perform subsurface testing of the area where construction will occur. The field work for that testing was completed in September 2014, and both PIIC and NRC representatives were onsite observing the field work. The results of the Westwood survey are documented in the report included as Attachment 4. No archaeological sites or paleosols⁶ were identified during the field investigations. Attachment 4 at i. PIIC representatives reviewed and agreed with this report. NSPM submitted this report to the NRC for use in drafting its Final EA.⁷

⁴ NSPM Aug. 21, 2014 letter at 3.

⁵ NSPM will require 64 casks to support operations of the Prairie Island Nuclear Generating Plant through its extended license. This is the number of casks approved by the Minnesota Public Utilities Commission.

⁶ Paleosols are older land surfaces that have been buried.

⁷ Letter from Scott Sharp, Director, Site Operations, Prairie Island Nuclear Generating Plant, to U.S. NRC, re: Supplemental Information to Support Environmental Review of License Renewal Application for the Prairie Island Independent Spent Fuel Storage Installation (TAC No. L24592) (Dec. 16, 2014 (ADAMS Accession No. ML14353A006)).

Following these actions, PIIC consented to the dismissal of Amended Contention 2, Renewed and Amended Contention 3, and Contention 4, provided that both Parties comply with the terms to which they have agreed. The Settlement Agreement, attached hereto in accordance with 10 C.F.R. § 2.338(g), sets forth this understanding.

Accordingly, the Parties request that the Board approve this settlement and dismiss Amended Contention 2, Renewed and Amended Contention 3, and Contention 4. Dismissal of these contentions is in the public interest because NSPM has taken actions to address the PIIC's concerns, and because the Commission encourages settlement of contested issues in licensing proceedings. 10 C.F.R. § 2.338. As required by 10 C.F.R. § 2.338(g), a proposed Consent Order is provided as Attachment 5.

PIIC's counsel has authorized NSPM to file this Joint Motion on its behalf. As required by 10 C.F.R. § 2.323(b), counsel for NSPM certifies that he has consulted with the other parties before filing this Motion, and does so with the support of all parties.

Respectfully Submitted,

/Signed electronically by Jay E. Silberg/

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Dated: February 13, 2015

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NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

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)	Docket No. 72-10-ISFSI-2
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(Prairie Island Nuclear Generating Plant,)	ASLBP No. 12-922-01-ISFSI-MLR-
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Joint Motion for Approval of Settlement and Dismissal of PIIC Amended Contentions 2, Renewed and Amended Contention 3, and Contention 4” has been served through the E-Filing system on the participants in the above-captioned proceeding, this 13th day of February 2015.

/Signed electronically by Kimberly A. Harshaw/

Kimberly A. Harshaw

Attachment 1
Settlement Agreement

**SETTLEMENT AGREEMENT BETWEEN THE PRAIRIE ISLAND INDIAN
COMMUNITY AND NORTHERN STATES POWER COMPANY**

This Settlement Agreement is made and entered into as of February 12, 2015, by and between the Prairie Island Indian Community (“PIIC”) and Northern States Power Company, a Minnesota corporation (“NSPM”), hereinafter referred to collectively as “Parties.”

WHEREAS, NSPM has submitted a License Renewal Application, dated October 20, 2011, (“LRA”) to the U.S. Nuclear Regulatory Commission (“NRC”), seeking renewal of the Prairie Island Independent Fuel Storage Installation (“ISFSI”) site-specific license, Special Nuclear Material License No. 2506;

WHEREAS, on August 24, 2012, the PIIC filed a Request for Hearing and Petition to Intervene (“Petition”) in the NRC proceeding to renew the ISFSI license, Docket No. 72-10. Among the contentions that PIIC raised in its Petition were two contentions relating to the analysis in the LRA’s Environmental Report of impacts on the PIIC, including cumulative impacts (“PIIC Contention 2”) and environmental justice impacts (“PIIC Contention 4”);

WHEREAS, on November 8, 2012, the Atomic Safety and Licensing Board established to preside over the proceeding (“ASLB”) heard oral arguments regarding the Petition, including the admissibility of PIIC Contentions 2 and 4;

WHEREAS, on December 20, 2012, the ASLB granted the Petition and admitted three contentions including, as limited by the ASLB, PIIC Contentions 2 and 4;

WHEREAS, over the past several years, NSPM and the PIIC have worked together to develop a Cultural Resource Management Plan (“the Plan”) and excavation procedures and controls, and NSPM has performed surveys to identify and protect cultural, historical and archaeological resources;

WHEREAS, on March 13, 2013, NSPM responded to NRC requests for additional information (“RAI Response”) and provided an analysis of cumulative and environmental justice impacts addressing issues raised in PIIC Contentions 2 and 4;

WHEREAS, on November 7, 2013 the Nuclear Regulatory Commission (“NRC”) issued its Draft Environmental Assessment of the Proposed Renewal of U.S. Nuclear Regulatory Commission License No. SNM-2506 for Prairie Island Independent Spent Fuel Storage Installation (“Draft EA”), which included PIIC’s views as a cooperating agency;

WHEREAS, on December 12, 2013, PIIC submitted its Motion to Admit New and Amended Contentions after Issuance of NRC’s Draft Environmental Assessment (“Motion”), raising additional environmental contentions;

WHEREAS, on April 30, 2014, the ASLB admitted portions of PIIC's Amended Contention 2 and Amended Contention 3, both related to the Draft EA's analysis of the impacts of a future ISFSI expansion on archaeological, cultural, and historic resources; and

WHEREAS, PIIC and NSPM both desire to work cooperatively and amicably to protect and preserve cultural, historical and archaeological resources on the Prairie Island Nuclear Generating Plant ("Plant") and ISFSI site and now desire to resolve and settle PIIC Contentions 2 and 4 as well the admitted portions of Amended Contentions 2 and 3.

NOW, THEREFORE, in consideration of the premises and mutual promises herein, PIIC and NSPM agree as follows:

1. NSPM agrees to follow the Plan, including any amendments thereto, and implementing procedures to protect significant historical, archaeological, and cultural resources that may currently exist on the Plant site, including the ISFSI site, in planning and implementing the modifications necessary to store up to 98 casks at the ISFSI ("ISFSI modifications").
2. NSPM, promptly upon the identification of the proposed location for the construction activities associated with ISFSI modifications, agrees to disclose to PIIC that location. PIIC acknowledges that NSPM has met its obligation for disclosure under this paragraph for construction activities related to an ISFSI expansion to accommodate up to 64 casks.
3. NSPM agrees to perform subsurface testing within the area where any new ISFSI pads will be located to the depth expected to be excavated for construction of the new ISFSI pads. This testing will be performed using generally accepted practices under the observation of a qualified archaeologist selected by NSPM. Prior to conducting this testing, NSPM will collaborate with PIIC to review, incorporate comments and finalize the testing protocol to be used. NSPM will also allow representatives of the PIIC a reasonable opportunity to observe performance of the testing, subject to their compliance with NSPM's Plant and ISFSI site access restrictions. In addition, NSPM will collaborate with the PIIC and provide the PIIC a reasonable opportunity to review and provide comments on the draft report summarizing the results of the testing. With respect to its opportunity for review and comment under this paragraph, NSPM and PIIC agree that a ten-day period from receipt is sufficient.
4. NSPM has completed the subsurface testing required by, and in accordance with, paragraph 3 for an ISFSI expansion to accommodate up to 64 casks. NSPM and PIIC collaborated to develop the testing protocol. PIIC participated in the testing and reviewed and concurred with the final testing report. PIIC acknowledges that NSPM has met its obligations under paragraph 3 for construction activities related to an ISFSI expansion to accommodate up to 64 casks.

5. NSPM agrees to abide by the protocols and procedures established pursuant to the Settlement Agreement dated April 1, 2009, the Plan, and this Agreement for any further expansion of the ISFSI up to 98 casks.

6. PIIC agrees that its archaeological, cultural and historic resources contentions raised in Contentions 2, Amended Contention 2, Amended Contention 3, and Contention 4 have been adequately addressed.

7. PIIC agrees that its skyshine radiation concerns raised in Contention 4 have been adequately addressed by NSPM's RAI Response, the NRC's Draft EA, PIIC's views incorporated therein, and by submitting the Declaration of Herbert Olaf Nelson provided to PIIC on March 26, 2014 and the Enclosures referenced in the Declaration as a supplement to the LRA.

8. PIIC consents to the dismissal of PIIC Contentions 2 and 4 and the admitted portions of Amended Contentions 2 and 3, and agrees to take such other actions as may be reasonably necessary to obtain the dismissal of PIIC Contentions 2 and 4 and the admitted portions of Amended Contentions 2 and 3.

9. PIIC and NSPM agree to file a joint motion seeking a Consent Order from the ASLB approving this Settlement Agreement, dismissing PIIC Contentions 2 and 4 and the admitted portions of Amended Contentions 2 and 3.

10. NSPM and PIIC expressly waive any and all further procedural steps before the ASLB or any right to challenge or contest the validity of any order entered by that Board in accordance with this Settlement. The Parties also expressly waive all rights to seek administrative and judicial review or otherwise to contest the validity of any order entered by the ASLB approving this Settlement Agreement, the dismissal of PIIC Contentions 2 and 4 and the admitted portions of Amended Contention 2 and 3, so long as such order is fully consistent with each provision of this Settlement Agreement.

11. NSPM and PIIC agree that an order entered by the ASLB in accordance with this Settlement Agreement will have the same force and effect as an order entered after a full hearing.

12. NSPM and PIIC acknowledge this Settlement Agreement resolves the matters identified in this Settlement Agreement that are required to be adjudicated.

13. This Settlement Agreement resolves the issues between NSPM and PIIC with respect to cultural, historical and archeological resources and skyshine dose associated with an ISFSI expansion to accommodate up to 98 casks, and with respect to cumulative and environmental justice impacts associated with such cultural, historical and archeological resources and skyshine dose. So long as NSPM complies in all material respects with the terms of the April 1, 2009 Settlement Agreement, the Plan, and this Agreement, and the modeled or demonstrated skyshine radiation dose impact to the PIIC is within the applicable limits of 10 C.F.R. § 72.104(a), 40 C.F.R. Part 190, and 10 C.F.R.

