

April 27, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NORTHERN STATES POWER CO.)	Docket No. 72-10-ISFSI-2
)	
(Prairie Island Nuclear Generating Plant)	ASLBP No. 12-922-01-ISFSI-MLR-BD01
Independent Spent Fuel Storage Installation))	

NRC STAFF'S ANSWER TO NORTHERN STATES POWER
COMPANY'S MOTION FOR SUMMARY DISPOSITION OF THE
PRAIRIE ISLAND INDIAN COMMUNITY'S CONTENTION 6 (HIGH BURNUP FUEL)

INTRODUCTION

Pursuant to 10 C.F.R. § 2.1205(b) and the Atomic Safety and Licensing Board's ("ASLB" or "Board") Amended Initial Scheduling Order (February 1, 2013), the NRC Staff responds to Northern States Power Company's ("Applicant" or "NSPM") motion for summary disposition of Contention 6 ("Motion").¹ Contention 6 involves a challenge by the Prairie Island Indian Community ("PIIC" or "Intervenors") to NSPM's application regarding the potential degradation of high burnup fuel during the extended storage period. NSPM seeks summary disposition on the grounds that no genuine issue of material fact exists and NSPM is entitled to a decision as matter of law pursuant to 10 C.F.R. § 2.1205(c).² As discussed below, the NRC Staff does not agree that NSPM is entitled to a decision on Contention 6 as a matter of law.³

BACKGROUND

¹ See Northern States Power Company's Motion for Summary Disposition of The Prairie Island Indian Community's Contention 6 (High Burnup Fuel) (Mar. 27, 2015). The Board permitted additional time for the NRC Staff and Prairie Island Indian Community to file their respective answers to NSPM's motion. See Order (Granting Motion for Extension of Time to File Answers) (Apr. 14, 2015).

² NSPM's Motion is supported with a Statement of Material Facts, Declaration of Terry A. Pickens, and 11 other enclosures. Motion at 1.

³ The NRC Staff's Answer is supported by the enclosed Affidavit of Michele Sampson, Resume of Michele Sampson, and NRC Staff Response to NSPM's Statement of Material Facts.

In October 2011, NSPM submitted an application to the Nuclear Regulatory Commission (“NRC”) to renew Materials License No. SNM-2506 for the Prairie Island Independent Spent Fuel Storage Installation (“ISFSI”). On August 24, 2012, PIIC submitted a Request for Hearing and Petition to Intervene in License Renewal Proceeding for the Prairie Island Independent Spent Fuel Storage Installation (“Petition”). The Petition’s Contention 6 alleged that “NSPM’s license renewal application is deficient because it did not adequately address the potential degradation of high burnup fuel due to aging during storage, subsequent handling, and transportation.” Petition at 52. In its Memorandum and Order (Ruling on Request for Hearing and Petition to Intervene), issued December 20, 2012, the Board admitted Contention 6. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation) LBP-12-24, 76 NRC 503, 528 (2012) (“LBP-12-24”). The Board concluded that “PIIC has raised a genuine dispute that Northern States’ application did not sufficiently consider the uncertainties associated with long-term dry storage of high burn-up fuel.” LBP-12-24 at 28-29.

DISCUSSION

I. Legal Standards Governing Motions for Summary Disposition

Pursuant to 10 C.F.R. § 2.1205(a), motions for summary disposition must be in writing, must include a written explanation of the basis for the motion, and must include a short and concise statement of material facts for which the moving party contends there is no genuine issue to be heard. In ruling on a motion for summary disposition, the presiding officer must apply the standards for summary disposition set forth in 10 C.F.R. § 2.710. See 10 C.F.R. § 2.1205(c). A moving party is entitled to summary disposition of a contention if the filings in the proceeding, together with the statements of the parties and the affidavits, demonstrate that there is no genuine issue as to any material fact and that it is entitled to a decision in its favor as matter of law. See 10 C.F.R. §§ 2.1205 and 2.710(d)(2); see also *Advanced Medical Sys., Inc.*

(One Factory Row, Geneva, Ohio), CLI-93-22, 38 NRC 98, 102-03 (1993); *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 179-80 (2005). A party seeking summary disposition bears the burden of demonstrating that no genuine issue of material fact exists. See *Sequoyah Fuels Corp. & General Atomics Corp.* (Gore, Okla. Site Decontamination and Decommissioning Funding), LBP-94-17, 39 NRC 359, 361 (1994). The evidence submitted must be construed in favor of the non-moving party. *Id.* Affidavits submitted in support of a summary disposition motion must be executed by individuals qualified by “knowledge, skill, experience, training, or education,” and must be sufficiently grounded in facts. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 NRC 71, 80-81 (2005) (citing Fed. Rule of Evid., Rule 702); see *Braddon v. Abbott*, 524 U.S. 624, 653 (1998) (stating that an expert’s opinion must have a traceable, analytical basis in objective fact before it may be considered on summary judgment). A party opposing a motion for summary disposition cannot rely on mere allegations or denials of the moving party’s facts; rather, the non-moving party must set forth specific facts demonstrating a genuine issue of material fact. See 10 C.F.R. § 2.710(b); *Advanced Medical Sys.*, CLI-93-22, 38 NRC at 102. Bare assertions and general denials, even by an expert, are insufficient to oppose a properly supported motion for summary disposition. *Duke Cogema Stone & Webster*, LBP-05-04, 61 NRC at 81 (citing *Advanced Medical Sys.*, CLI-93-22, 38 NRC at 102); *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981). Although the burden is on the moving party to show there is no genuine issue of material fact, the non-moving party must controvert any material fact proffered by the moving party or that fact will be deemed admitted. *Advanced Medical Sys.*, CLI-93-22, 38 NRC at 102-03.

For a Board to find the existence of a genuine issue of material fact, “the factual record, considered in its entirety, must be enough in doubt so that there is a reason to hold a hearing to resolve the issue.” *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2),

LBP-83-46, 18 NRC 218, 223 (1983). The adjudicating body need only consider the purported factual disputes that are “material” to the resolution of the issues raised in the summary disposition motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).⁴ Material facts are those with the potential to affect the outcome of the case. *Ganton Technologies Inc. v. National Indus. Group Pension Plan*, 865 F. Supp 201, 205 (S.D.N.Y 1994); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86, 99 (1996). In addition to demonstrating that no genuine issue of material fact exists, the movant must also demonstrate that it is entitled to the decision as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

II. NSPM’s Motion

NRC’s regulations at 10 C.F.R. § 72.122 require that “spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage.” 10 C.F.R. § 72.122(h)(1). Further, “[s]torage systems must be designed to allow ready retrieval of spent fuel, high-level radioactive waste, and reactor-related GTCC waste for further processing or disposal.” 10 C.F.R. § 72.122(l). The Staff’s guidance document for reviewing ISFSI license renewals, NUREG-1927, “Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance,” provides guidance for a license renewal applicant to identify structures, systems and components (“SSCs”) that are within the scope of license renewal, identify and analyze the potential aging effects, and develop Aging Management Plans (“AMPs”) to ensure that SSCs continue to meet their intended function throughout the period of extended operation. NUREG-1927 further provides that the NRC Staff should assess whether the

⁴ Because the Commission’s summary disposition rules follow Rule 56 of the Federal Rules of Civil Procedure, federal court decisions that interpret and apply Rule 56 are considered appropriate precedent for the Commission’s rules. See *Safety Light Corp.* (Bloomsburg Site Decommissioning and License Renewal Denials), LBP-95-9, 41 NRC 412, 449 n. 167 (1995); see also *Advanced Medical Sys.*, CLI-93-22, 38 NRC at 102-03; *Duke Cogema Stone & Webster*, 61 NRC at 79.

applicant has considered the most recent revision of Interim Staff Guidance-11, Revision 3, *Cladding Considerations for the Transportation and Storage of Spent Fuel* (Nov. 2003) (“ISG-11”), and research results in this area. NUREG-1927 at 20. ISG-11 provides temperature limits on the calculated maximum fuel cladding temperature to assure the integrity of the fuel’s cladding material. ISG-11 at 2. Subsequent to issuing ISG-11, the NRC issued additional guidance to address extended storage of high burnup fuel in Interim Staff Guidance- 24, Revision 0, *The Use of a Demonstration Program as a Surveillance Tool for Confirmation of Integrity for Continued Storage of High Burnup Fuel Beyond 20 Years* (July 14, 2014) (“ISG-24”). ISG-24 states that “[t]here is no evidence to suggest that [high burnup fuel] cannot similarly be stored safely and then retrieved for time periods beyond 20 years” and that “[a]dditional confirmatory data or a commitment to obtain data on [high burnup fuel] and taking appropriate steps in a learning aging management plan (AMP) will provide further information that will be useful in assuring the storage and retrievability of HBF for extended durations beyond 20 years.” ISG-24 at 2.

In its Motion, NSPM provides several reasons it is entitled to a decision on Contention 6 as a matter of law. First, NSPM has “completed calculations, which are part of its current licensing basis, that demonstrate that the high burnup fuel cladding will remain below the temperatures specified in NRC guidance for ensuring that the postulated aging mechanisms will not occur.” Motion at 3. Further, NSPM has submitted an AMP that will require NSPM to utilize data from a U.S. Department of Energy’s High Burnup Fuel Cask Research and Development Project to confirm its licensing basis analysis. *Id.* Finally, NSPM argues that the NRC Staff has prepared a draft renewed PI ISFSI license that contains a license condition “requiring NSPM to submit an analysis of the ability of the high burnup fuel cladding to perform its intended function, which relies on this confirmatory data, prior to the time that the first high burnup fuel stored in the PI ISFSI exceeds twenty years of storage.” *Id.*

The Staff does not dispute that the information provided in NSPM's Motion is consistent with NRC's guidance regarding the Staff's review of high burnup fuel storage. However, the Staff does not agree that the current draft of the Prairie Island ISFSI renewed license, which contains a draft license condition requiring confirmation of the safe storage of high burnup fuel beyond 20 years, supports NSPM's argument that it is entitled to a decision on Contention 6 as a matter of law. As NSPM correctly notes, the NRC Staff has issued the Calvert Cliffs Nuclear Power Plant ISFSI renewed license relying on substantially the same license condition. See Motion at 3. The draft license provided to NSPM is not identical to the license condition issued in Calvert Cliffs, and is subject to further change based on the Staff's ongoing review of NSPM's application. Therefore, to the extent that NSPM relies on the draft license condition to support its Motion, the NRC Staff does not agree that there is no material dispute on this issue. Accordingly, as supported by the enclosed Affidavit of Michele Sampson, the NRC Staff does not agree that there is no genuine dispute regarding any material fact because the NRC Staff has yet to finalize its draft license condition on high burnup fuel storage based on the results of its pending Safety Evaluation Report.

CONCLUSION

For the reasons discussed above, the NRC Staff does not agree that NSPM is currently entitled, as a matter of law, to the dismissal of Contention 6.

Respectfully submitted,

Signed (electronically) by
Christopher C. Hair
Counsel for NRC Staff

Dated in Rockville, Maryland
this 27th day of April 2015

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the "NRC STAFF'S ANSWER TO NORTHERN STATES POWER COMPANY'S MOTION FOR SUMMARY DISPOSITION OF THE PRAIRIE ISLAND INDIAN COMMUNITY'S CONTENTION 6 (HIGH BURNUP FUEL)" in the above captioned proceeding," dated April 27, 2015, have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above captioned proceeding, this 27th day of April, 2015:

Signed (electronically) by

Christopher C. Hair
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 415-2174
E-mail: Christopher.Hair@nrc.gov
Date of signature: April 27, 2015