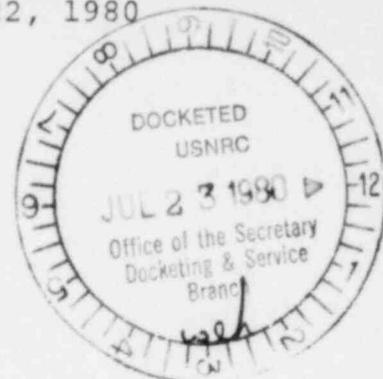


July 22, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE COMMISSION

In the Matter of	)	
	)	
NORTHERN STATES POWER COMPANY,	)	Docket No. STN 50-484
ET AL.	)	(Order to Show Cause)
	)	
(Tyrone Energy Park, Unit 1)	)	

LICENSEES' ANSWER TO DAKOTA COMMISSIONS'  
MOTION TO DEFER COMMISSION ACTION,  
PETITION TO INTERVENE OUT OF TIME,  
AND REQUEST FOR HEARING

On June 16, 1980, the Director, Office of Nuclear Reactor Regulation, issued on behalf of the Commission an Order to Show Cause why Construction Permit No. CPPR-157 should not be revoked. 45 Fed. Reg. 42093 (June 23, 1980). In response to the Order, the North Dakota Public Service Commission and the South Dakota Public Utilities Commission (collectively "Dakota Commissions") filed on July 11, 1980, a "Motion to Defer Commission Action, Petition to Intervene Out of Time, and Request for Hearing." Licensees Northern States Power Company, et al., submit this answer in opposition to the Dakota Commission's motion, petition and request.

Construction Permit No. CPPR-157, which authorized the construction of Tyrone Energy Park, Unit 1, in Dunn County, Wisconsin, was issued on December 27, 1977, pursuant to decisions of the Atomic Safety and Licensing Board in

LBP-77-30, 5 N.R.C. 1197 (1977), and LBP-77-71, 6 N.R.C. 1232 (1977). The Atomic Safety and Licensing Board's initial decision was made effective immediately, but did not become the final action of the Commission. During the course of the Atomic Safety and Licensing Appeal Board's review, as the Commission's delegate, of exceptions taken to the Licensing Board's initial decision, Licensees announced the cancellation of the Tyrone Energy Park project.<sup>1/</sup> In an Order dated August 30, 1979, the Appeal Board terminated all proceedings involving the application to license construction of this facility and dismissed the case.

On August 15, 1979, Badger Safe Energy Alliance petitioned the Director, Office of Nuclear Reactor Regulation, to institute a proceeding pursuant to 10 C.F.R. § 2.202 to revoke the construction permit.<sup>2/</sup> In response to this petition, the Director issued the June 16, 1980 Order to Show Cause. Licensees answered the Order to Show Cause on July 1, 1980, stating that they have no objection to the entry of an order revoking the construction permit.

The Order to Show Cause provided that "[t]he Licensee or any person whose interest may be affected by this Order may request a hearing within twenty-five (25) days of the date of the Order, setting forth with particularity the interest of the person in the proceeding and how that interest

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1/ Construction of the plant had not commenced because Licensees did not have the requisite approvals by the State of Wisconsin.

2/ Contrary to the assertion made by the Dakota Commissions, NSP did not request revocation of the construction permit.

may be affected by the results of the proceeding." 45 Fed. Reg. at 42094 (1980).

It is Licensees' position that no hearing should be held on the Order to Show Cause because Licensees have no intention of renewing efforts to license construction of the facility, because the Dakota Commissions have not actually requested a hearing, and because the Dakota Commissions do not have the requisite interest in the proceeding.

It has now been one year since Licensees cancelled the Tyrone Energy Park project. Since that time the actions of Licensees have finalized that decision. Notices of termination of all contracts associated with the project have been given to equipment vendors, and many of such contracts have been terminated. Licensees are actively negotiating the termination of all remaining contracts pursuant to such notices. Pursuant to an order of the Wisconsin Public Service Commission, Licensees Northern States Power Company and Dairyland Power Cooperative are actively seeking authorization from the Wisconsin Public Service Commission to construct coal-fired plants in western Wisconsin<sup>3/</sup> to meet the additional requirements of customers which were to have been served by Tyrone Energy Park. Consequently, it is entirely unrealistic to assume or hope that Licensees will ever construct Tyrone Energy Park under Construction Permit No. CPPR-157, which

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<sup>3/</sup> The Tyrone site is one of the western Wisconsin sites under consideration for a coal-fired plant.

was issued by the Nuclear Regulatory Commission on December 27, 1977. Furthermore, Licensees have no further intention ever to construct Tyrone Energy Park under such Construction Permit.

In another case where a nuclear plant project was terminated while the Atomic Safety and Licensing Appeal Board was reviewing the Atomic Safety and Licensing Board's initial decision authorizing issuance of the permit, the Appeal Board instructed the Director of Nuclear Reactor Regulation to revoke the outstanding construction permit. See Rochester Gas and Electric Corporation (Sterling Power Project, Nuclear Unit No. 1), ALAB-596, 11 N.R.C. \_\_\_\_ (June 17, 1980). Licensees believe that the same action is warranted here and that the Commission should grant, without a hearing, the relief requested by the Badger Safe Energy Alliance. In view of Licensees' clear abandonment of the project, we also oppose the Dakota Commissions' motion to defer Commission action. There is no persuasive reason to defer the achievement of administrative finality in this docket.

Second, the Dakota Commissions have not requested a hearing as provided in the Order to Show Cause. On page 6 of their pleading the Dakota Commissions state that:

In light of the limited relief sought by the Dakota Commissions, there would appear to be no need to require a hearing or other formal proceeding at this time. However, if the Commission determines that a hearing is required to act on the Motion set forth herein, Dakota Commissions request such hearing.

In short, the Dakota Commissions seek a hearing only if one is required to rule on their motion to defer Commission issuance

of the proposed Order for 12 months. Clearly, however, the Commission may rule upon such a procedural request without the conduct of an evidentiary hearing. The Order to Show Cause specifically provides that the only subject of any hearing held shall be "[w]hether, on the basis of the Licensee's announced decision to cancel construction of the Tyrone Energy Park, Unit 1 facility, this Order should be sustained." In the absence of a challenge to the merits of the Order, there is nothing to be heard. Further, where a licensee consents to an order and does not demand a hearing, a hearing is not required by 10 C.F.R. § 2.202 and would be entirely at the Commission's discretion.

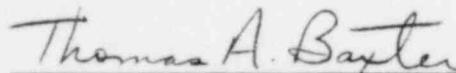
Finally, Licensees question whether the Dakota Commissions have the requisite interest to be granted any hearing on the Order. Under the Atomic Energy Act and the Commission's Rules of Practice, in order to allege sufficiently an interest which may be affected by the Order, the Dakota Commissions must allege, inter alia, an interest arguably within the zone of interests to be protected or regulated by the statute sought to be invoked. See Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1420 (1977), quoting Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 N.R.C. 1143, 1144-1145 (1977). The Atomic Energy Act was not intended to protect a person's interest in the rates charged by a utility for the electricity it supplies. Watts Bar, supra, 5 N.R.C.

at 1421 (1977). The Commission has squarely held that (at least outside the antitrust sphere) an interest in electric rates does not fall within the "zone of interests" protected by the Atomic Energy Act. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 614 (1976). The only interest asserted here by the Dakota Commissions is in the consequences of the Tyrone Energy Park cancellation costs on the retail electric rates regulated by those commissions. This is not an interest which the Nuclear Regulatory Commission may protect under the Atomic Energy Act.

For all of the foregoing reasons, Licensees urge the Commission to deny the Dakota Commissions' motion to defer Commission action, petition to intervene and request for hearing.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



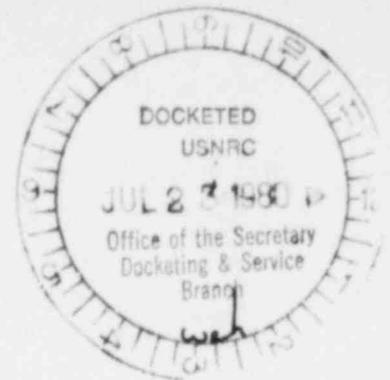
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Dated: July 22, 1980

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NUCLEAR REGULATORY COMMISSION



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Licensees' Answer to Dakota Commissions' Motion to Defer Commission Action, Petition to Intervene Out of Time, and Request for Hearing" were served this 22nd day of July, 1980 by deposit in the U.S. mail, first class, postage prepaid, upon the following:

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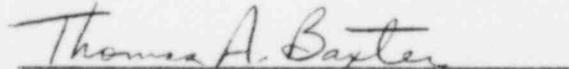
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