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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Administrative Law Judge

Morton B. Margulies

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED OCT 26 1989

In the Matter of )

NORTHERN STATES POWER COMPANY )

(Pathfinder Atomic Plant,  
Byproduct Material License  
No. 22-08799-02 )

) Docket No. 30-05004-MLA

) ASLBP No. 90-599-01-ML

) October 24, 1989

MEMORANDUM AND ORDER  
(Hearing Request)

On August 24, 1989, the Nuclear Regulatory Commission published in the Federal Register (54 Fed. Reg. 35267) a notice of opportunity for hearing on the proposed amendment of Byproduct Material License No. 22-08799-02, issued to Northern States Power Company (licensee), which would authorize it to perform final decommissioning of the fuel handling building and the reactor building of the Pathfinder Atomic Plant, in Minnehaha County, South Dakota, in accordance with the licensee's decommissioning plan. The notice states that the reactor terminated operation in September, 1967. Subsequently, the fuel was removed, the reactor was permanently disabled and the facility was refitted with three package boilers that burn fossil fuel. The fuel handling and reactor buildings were partially dismantled and decontaminated,

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placed in a safe-storage condition and isolated from the balance of the plant.

By a joint petition timely filed September 22, 1989, Requestors Citizens For Responsible Government, South Dakota Resources Coalition, Technical Information Project and Catherine Hunt seek a hearing on the proposed amendment.

This proceeding is governed by 10 C.F.R. Part 2, "Subpart L - Informal Hearing Procedures For Material Licensing Adjudications," 10 C.F.R. 1201-1263. On October 11, 1989, pursuant to 10 C.F.R. 2.1207, I was designated to rule on the request for a hearing and, if necessary, to serve as the presiding officer to conduct a hearing. In turn, I have appointed, in accordance with 10 C.F.R. 2.1209(j), Administrative Judge Jerry R. Kline from the Atomic Safety and Licensing Board Panel as a special assistant to assist me in taking evidence and preparing a suitable record for review. Judge Kline's background will be discussed further in this Memorandum.

Northern States Power Company has not filed an answer to Requestors' petition for a hearing. NRC Staff, by letter of October 18, 1989, informed me that it had decided not to participate in this proceeding as a party but that it is willing to assist upon request.

Considering the posture of the proceeding, it would be premature to request Staff's assistance at this time. However, recognizing that the proposed amendment is to permit

decommissioning and an NRC environmental impact statement or assessment will become part of the hearing file, a request for Staff participation may be made by me at some future time during the course of the proceeding.

This Memorandum will request additional information from each of the Requestors in order that there be sufficient information available to rule on the request for a hearing.

#### Legal Requirements

10 C.F.R. 2.1205(g) provides that in ruling on a request for a hearing, the presiding officer shall determine, inter alia, that "the requestor meets the judicial standards for standing." Although the "Informal Hearing Procedures for Adjudications In Material Licensing Proceedings" have only recently been promulgated, i.e., February 28, 1989, the judicial standards for standing have long been in effect.

Judicial concepts of standing require a showing that (a) the action sought in a proceeding will cause injury-in-fact and (b) the injury is arguably within the zone of interests protected by statutes covering the proceeding. Metropolitan Edison Co. (Three Mile Island) Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327,332 (1983). A petitioner should allege in a Nuclear Regulatory Commission proceeding an injury-in-fact which is within the zone of interests protected by the Atomic Energy Act of 1954 or the National Environmental Policy Act of 1969, as amended. Niagara

Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 215 (1983).

Economic interest as a ratepayer does not confer standing in NRC licensing proceedings. Metropolitan Edison, supra, at 332 n. 4). Those economic concerns are more properly raised before state economic regulatory agencies. Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984). Economic injury gives standing under the National Environmental Policy Act only if it is environmentally related. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977). Assertions of broad public interest in (a) regulatory matters, (b) the administrative process, and (c) the development of economical energy resources do not establish the particularized interest necessary for participation by an individual or group in Nuclear Regulatory adjudicatory process. Metropolitan Edison, supra, at 332.

For an organization to have standing, it must show injury in fact to its organizational interests or to the interest of members who have authorized it to act for them. If the organization is depending upon injury to the interests of its members to establish standing, the organization must provide with its petition identification of at least one member who will be injured, a description of the nature of that injury, and an authorization for the organization to represent that individual in the proceeding. Philadelphia Electric Company (Limerick

Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982).

Where an organization has no members, its sponsors can be considered equivalent to members where they financially support the organization's objectives and have indicated a desire to be represented by the organization. Consolidated Edison Company of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), LBP-82-25, 15 NRC 715, 734-36 (1982).

An organization cannot meet the interest requirements for standing by acquiring a new member who meets the interest requirements, more than two months after the deadline for filing of intervention petitions, without establishing good cause for the out of time filing. Washington Public Power Supply System (WPPS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 335 (1979).

#### The Requests For A Hearing

Having reviewed applicable law, it is apparent that the Requestors have not submitted sufficient information to make a determination on their standing to request a hearing.

##### A. Citizens For Responsible Government

Requestor Citizens For Responsible Government describes itself as a nonprofit corporation organized under the laws of the State of South Dakota, that is governed by a three member Board of Directors, and has no members.

It, and the three other requestors all subscribe to the same set of stated interests. They say in substance:

(1) Requestors and their members are taxpayers with the State of South Dakota. An inadequate or inappropriate decommissioning of the plant will cause state and local taxes to rise, to their detriment.

(2) Requestors and their members reside within and hold property within the area reasonably expected to be impacted by decommissioning activities. An inadequate or inappropriate decommissioning will jeopardize the health and safety of requestors and their members and will diminish the value of their property.

(3) Requestors and their members are ratepayers within the area serviced by Northern States Power Company. An inadequate or inappropriate decommissioning will cause a rise in charges for electricity by the utility and affect requestors in a detrimental fashion.

(4) Requestors and their members will be affected by the environmental and radiological impacts of the decommissioning. An inadequate or inappropriate decommissioning will degrade the soil, water, and air in violation of state and federal laws and regulations.

Citizens For Responsible Energy has not provided sufficient information for determining its standing. The purpose of the corporation is unknown. It has no members so that it evidently

cannot be proceeding in their behalf. Should it have financial sponsors that support the organization's objectives and desire to be represented by Citizens For Responsible Government, it can represent them. To do so, Requestor must identify at least one sponsor who will be injured, give a description of the nature of that injury, and provide an authorization for the organization to represent that sponsor in the proceeding.

Whether an organization seeks standing on its own, or in a representational capacity, it must specifically answer the question, "What is the injury-in-fact, within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act, upon which Requestor relies?"

Looking to its four stated interests, I find that, as to (1), its economic interest as a state and local taxpayer, does not provide a basis for standing in this proceeding. It is not within the zone of interests, protected by the Atomic Energy Act or the National Environmental Policy Act. Likewise, as to (3), requestors economic interest as a ratepayer, it is not protected by the Nuclear Regulatory Commission. The proper forums for such interests are state and local agencies.

As to interest (2), residing and holding property within an area expected to be impacted by decommissioning activities so as to jeopardize the health and safety of the requestors, this can provide a satisfactory basis to establish standing.

The interest as set forth is too general to be legally sufficient. A Requestor acting in its own behalf or in any representative capacity should set forth the nature of the property and its proximity to the plant, as well as for any residence relied upon, and should state more specifically how the health and safety of the requestor is expected to be jeopardized. Citizens For Responsible Energy should supplement their request with such information.

As to Requestor's additionally stated interest in (3), of not having the value of its property diminished, this injury cannot be considered, unless it can be shown that economic injury is protected against by the Atomic Energy Act or the National Environmental Policy Act.

As to stated interest (4), concerning environmental and radiological impacts of the decommissioning that will degrade the soil, water and air in violation of federal laws and regulations, again it is too general to be legally sufficient. Information should be furnished to establish the locale of the soil, water and air that is the subject of the concern, the relationship of the organization to it and a statement as to the nature of the environmental and radiological impacts that are expected to cause the alleged degradation.

Requestors further stated interest in (4), for prohibiting violations of state laws and regulations, would best be handled by the appropriate state bodies.



B. South Dakota Resources Coalition

The organization is described as a nonprofit, South Dakota Corporation having 120 citizen members and ten member groups. It subscribes to the same interests that were previously set forth. The same rulings on interest made as to Citizens For Responsible Government are equally applicable to South Dakota Resources Coalition. Similar omissions of information, as previously discussed, exist as to this Requestor and should be furnished so that a ruling can be made as to its standing.

Because South Dakota Resources Coalition has members, it can representationally participate for the interest of members who have authorized it to act for them. In so doing, the organization must provide with its petition identification of at least one member who will be injured, a description of the nature of that injury, and an authorization for the organization to represent that member in the proceeding.

It is noted from the signatures on the petition that Catherine Hunt is president of South Dakota Resources Coalition. She also seeks individual participation status on the basis that she resides in Garretson, South Dakota, within 20 miles of the Pathfinder Plant, that she owns land and property which would be affected by the decommissioning and travels a road located within a few hundred feet from the plant.

South Dakota Resources Coalition may base its standing on representing Catherine Hunt, it being assumed from her office in

the organization that she is a member and has authorized the corporation to act for her. However, she must describe her alleged injury in greater detail than she has.

The proximity of a person's home or property can be relevant to standing depending on the radiological materials and the potential hazard involved. There must be sufficient information provided to determine that there is a possibility of injury.

A presumption of standing may exist if one is frequently within a few hundred feet of a site. Catherine Hunt should supplement the information she provided by describing the nature of her travel near the plant including its frequency.

C. Catherine Hunt

Catherine Hunt can have her interest protected by participating as an individual or by having South Dakota Resources Coalition represent her interest. It would be detrimental to the process to have a person appear in the proceeding individually and to be represented by an organization. Assuming Catherine Hunt has provided all the necessary information to establish standing individually or for representation by the organization, she should elect whether to appear individually or to be represented by the organization. If she wishes to proceed with both representations, she should inform the presiding officer of the reasons for the need to do so. This should be done when the other additional information requested is filed.

D. Technical Information Project

Technical Information Project is a nonprofit, South Dakota corporation governed by a ten member Board of Directors and has nine member groups. Like the other organizations, its purpose is unknown. That information should be furnished along with the type of information requested of the other organizations. In that its stated interests are identical to the others, the same ruling on interest is made as to Technical Information Project.

It should be pointed out that an organization acting in a representational capacity for its standing does so based on the interest of its members. In that Technical Information Project only has member groups, its acting in a representational capacity only extends to its member groups and not to the member groups' members.

The information requested above of the Requestors shall be filed (mailed) by November 17, 1989. Without this information, it is premature to determine whether Requestors' specified areas of concern are germane to the subject matter of this proceeding.

Additional Rulings

Requestors have requested that if a hearing is granted that it be held in Sioux Falls, South Dakota. It should be pointed out that under the rules, the granting of a request for a hearing is not synonymous with the granting of an oral hearing. 10 C.F.R. 2.1233 provides that the hearing process will commence with written presentations. 10 C.F.R. 2.1235 allows for oral

presentations upon a determination that it is necessary to create an adequate record for decision or in the discretion of the presiding officer. It is the Commission's practice to hold oral hearings in the area of the plant site. Should an oral hearing be held, it will be held in Sioux Falls, Minnehaha County, South Dakota.

Requestors suggest that any hearing date regarding this matter await completion of all necessary documentation, more particularly the Environmental Assessment. The suggestion is consistent with the procedures set forth in the regulations, which will be followed. 10 C.F.R. 2.131 provides for the filing of the hearing file in the docket within 30 days of the entry of an order granting a hearing. It should "consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application." 10 C.F.R. 2.1233 further provides that after the NRC Staff has made the hearing file available, the parties and participants shall be afforded the opportunity to submit their written presentations.

For future filings in the proceeding, whether of pleadings or statements, the signatures that appear on the documents should be those of the individuals for whom the documents were prepared and not those of individuals signing for the persons.

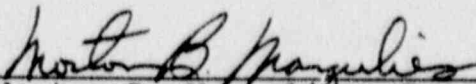
Appointment of Administrative Judge Kline

I have appointed Administrative Judge Jerry R. Kline as a special assistant for taking evidence and preparing a suitable record for review because of his technical abilities. He is well qualified, being an environmental scientist and having served as an Administrative Judge for seven years with the Atomic Safety and Licensing Board Panel.

In an attached statement, Judge Kline calls attention to certain facts that relate to a family connection with the licensee, which he believes do not disqualify him from participation.

Judge Kline's participation in this proceeding has been held in abeyance pending (1) a determination of who the parties to the proceeding will be and (2) a review is made of any objections from the parties as to his participation in the case. Following a determination of who the parties to the proceeding will be, they will be given ten days within which to file any objection to his participation.

It is so ORDERED.

  
Morton D. Margulies, Presiding Officer  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland  
October 24, 1989

STATEMENT OF JUDGE KLINE

Judge Kline advises of the following facts which might have a bearing in his participation in this case as special adviser to Judge Margulies.

(1) My father, Frederick A. Kline (deceased), was employed by Northern States Power Company in Minneapolis, Minnesota from approximately 1931 to approximately 1970.

(2) My father drew a retirement pension from the company from approximately 1970 until his death in 1980.

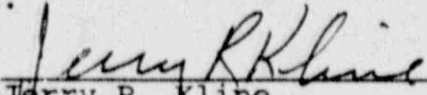
(3) My mother now receives a monetary pension from the company.

(4) My mother lives in Minneapolis, Minnesota and is not a member of my immediate household which is located in Silver Spring, Maryland.

(5) I am not a fiduciary on my mother's behalf.

(6) My mother has no financial interest in the subject matter of this proceeding or any other interest that could be affected by the outcome of the proceeding.

I conclude that none of the foregoing facts require me to disqualify myself from this case under the standards of 28 U.S.C. 455(b). The foregoing information is disclosed to the parties so that they may have the opportunity to object to my participation in this case under the standards of 28 U.S.C. Section 455(a) which requires a judge to disqualify himself if his impartiality might reasonably be questioned.

  
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Jerry R. Kline  
ADMINISTRATIVE JUDGE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

NORTHERN STATES POWER COMPANY

(Pathfinder Atomic Plant  
By ~~BAFBBUEE~~ Material Lic. 22-08799-02)

Docket No. (s) 30-05004-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing M&O (HEARING REQUEST) - 10/24 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Jerry R. Kline  
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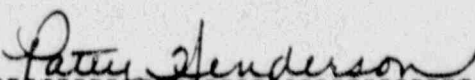
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Deborah Rogers  
Executive Director  
Technical Information Project  
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Rapid City, SD 57709

Catherine Hunt  
P. O. Box 309  
Garretson, SD 57030

Dated at Rockville, Md. this  
26 day of October 1989

  
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Office of the Secretary of the Commission