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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Administrative Law Judge

Morton B. Margulies

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 January 10, 1990

MEMORANDUM AND ORDER
(Request For Hearing)

I. Background

On November 17, 1989, Citizens For Responsible Government, Inc. (CRG), Technical Information Project (TIP), South Dakota Resources Coalition (SDRC) and Catherine M. Hunt jointly filed a "Supplement To Request For Hearing." The filing was in response to a Memorandum and Order of October 24, 1989, that requested additional information from the filers for the purpose of deciding the issue of standing. The three organizations submitted additional information to support their claim of standing. Mrs. Hunt also submitted additional information and requested that her interest be represented by SDRC.

On December 5, 1989, as authorized, Licensee Northern States Power Company (NSPC) submitted an answer to the "Supplement To Request For Hearing." It asserts that CRG, TIP and SDRC have

failed to meet standing requirements and that the request for a hearing should be denied.

In this Memorandum and Order, findings will be made that CRG and TIP have failed to meet standing requirements and that their hearing request shall be denied. Further, SDRC will be found to have standing, and to have fulfilled the requirements for the holding of a hearing, and therefore its request for a hearing will be granted. Additionally, schedules will be set for allowing the parties the opportunity to file objections to the participation of Judge Jerry R. Kline as a special assistant in the proceeding and permitting SDRC to respond to "Licensee's Request For Clarification Or Reconsideration Of Memorandum and Order (Hearing Request), dated October 24, 1989," of November 15, 1989.

In the Memorandum and Order of October 24, 1989, additional information was sought from the Requestors on the elements that comprise the judicial standard for standing. As pertinent, for an organization to have standing it must show injury in fact to its organizational interests or to the interest of members (or in the case where it has no members, sponsors) who have authorized it to act for them. Where the organization is depending upon injury to the interest of its members or sponsors to establish standing, the organization must provide with its petition identification of at least one member or sponsor who will be injured, a description of the nature of that injury, and an authorization for that organization to represent that individual

in the proceeding. The injury in fact must be arguably within the zone of interests protected by statutes covering the proceeding.

II. Standing

(a) CRG

CRG is a nonprofit corporation whose purpose among other things is to act to protect the environment of South Dakota. It has no members and relies upon representing the interest of sponsor Donald Pay, its secretary treasurer, for representational standings.

CRG alleges that Mr. Pay resides in Rapid City, South Dakota within approximately one mile of Interstate 90. Rapid City is some 350 miles from the Pathfinder site. Relying on an extract from the NSPC decommissioning plan, it asserts that truck shipments of low-level radioactive waste from the decommissioning will be routed along Interstate 90 en route to Hanford, Washington and will pass within a mile of Pay's residence.

CRG claims that an accident involving a truck shipment of radioactive waste from the Pathfinder Plant would result in the scope of radioactive material that would injure Pay. It stated it would cause him to receive an increased dose of radiation resulting in an increased risk of contracting cancer or other debilitating disease or condition. It is further claimed that Pay would be injured from "noncatastrophic impacts of transport of radioactive waste" and he would be injured in the same manner stated previously.

In its "Licensee's Response To Supplement To Request For Hearing," of December 5, 1989, Licensee does not take issue with the showings by CRG and the other organizations in establishing the elements for standing, of identification of at least one member or financial sponsor who will be injured by the proposed action and authorization by the member or sponsor for the organization to represent that person in the proceeding.

NSPC contests CRG's showing of injury in fact. It asserts that the transportation related claims of injury are conjectural, hypothetical and unsubstantiated and therefore do not meet the judicial standards for injury in fact. It claims that no basis is provided for believing that there is a realistic danger of a transportation accident on Interstate 90 in Rapid City, South Dakota, or at any other location. Licensee further asserts that no basis is provided for believing that an accident at the location would release radioactivity to the environment, or that the radioactivity released either as a result of an accident or otherwise would be sufficient to produce the health effects claimed.

Licensee in support of its position cites Exxon Nuclear Company, Inc. (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518 (1977). The proceeding involved a proposed fuel recovery and recycling facility in which a petitioner, who lived more than one hundred miles from the proposed facility , claimed standing on the assertion that there was likelihood that spent fuel rods would be shipped via the L & N railroad which passed

near her home and rental property, and, that, if an accident occurred in that vicinity, it would cause her bodily harm, loss of life, or loss of income.

The Atomic Safety and Licensing Board denied the petition for lack of standing on the basis that the "allegations of possible physical and/or economic injury are entirely speculative in nature, being predicated on the tenuous assumptions that the spent fuel will be shipped by the named carrier, and that an accident might occur in the area" proximate to her properties.

As NSPC, I too am satisfied from the submittals that CRG and the other organizations have satisfied the requirements for standing insofar as the representational aspects. I further find that CRG and TIP have not established the necessary elements of injury in fact for standing but that SDRC has done so.

For CRG to validly claim an injury in fact to its sponsor Pay, who is located 350 miles from the decommissioning site, it must show a reasonable opportunity of his being injured arising from the decommissioning process or from a creditable accident involving it. There must be some causal relationship between the proposed decommissioning and the injury alleged. Mr. Pay is located far from the decommissioning site so that he cannot be presumed to have an interest which might be affected by the

decommissioning.[1] CGR has provided no nexus between the injury claimed and the proposed decommissioning. Without such connection, the claim of injury is purely speculative and legally insufficient to establish standing.

CRG's case is somewhat stronger than that of the petitioner in Exxon Nuclear, cited above. In that proceeding, the expected route of movement of the spent fuel was not established. Here there is a reasonable likelihood that the truck shipments of waste will move via Interstate 90 through Rapid City. However, the critical element in both cases, the link between the injury claimed and the proposed licensing activity, remains absent.

Nuclear waste safely and regularly moves via truck and rail throughout the nation under regulations of the NRC and Department of Transportation (49 C.F.R. Parts 100-179). The mere fact that additional radioactive waste will be transported if decommissioning is authorized does not ipso facto establish that there is a reasonable opportunity for an accident to occur at Rapid City, or

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[1] With respect to power plant licensing, there is a "fifty-mile radius" rule, which provides as a general proposition that a person whose base of normal activities within 50 miles of the site can be presumed to have an interest which might be affected by reactor construction or operation. In promulgating the Informal Rules the Commission rejected the "50 mile radius" rule for materials licensing. This was done because of potential lower radiation exposure involved in particular materials licensing cases as compared to power reactor licensing cases. The Commission also rejected a proposal to create a presumption that anyone residing and working outside of a five-mile radius of the site where nuclear materials in question are possessed does not have standing. 52 Fed. Reg. at 8272 (1989).

for the radioactive materials to escape because of accident or the nature of the substance being transported.

Absent a claim by CRG that the subject decommissioning plan is deficient or defective in a manner so as to cause the injuries described, CRG's presentation is inadequate to establish standing and its request for a hearing must be denied.

(b) TIP

TIP is a nonprofit corporation whose purpose among others is to become involved in judicial proceedings when such involvement will allow more input that could affect the public in the areas of the environment and public health.

TIP seeks standing based on its organizational interest. Its corporate offices are in Rapid City, South Dakota, also near Interstate 90. It has an executive director and employees that work in the office. TIP's concern is injury to these employees.

TIP basically repeats the same allegations that CRG did in attempting to establish injury in fact. Based on the similar record, the ruling on standing must be the same for TIP, as it was for CRG, for the same reasons. TIP's presentation is inadequate to establish standing and its request for a hearing must be denied.

(c) SDRC

SDRC, of Brookings, South Dakota is a nonprofit organization among whose purposes is to protect the environment and promote conservation. Its Chairperson is Catherine M. Hunt, who is retired. Her home is in Garretson, South Dakota approximately

ten miles northeast of the Pathfinder plant. She states that in the summer the prevailing winds are from the south and that she passes the entrance to the plant en route to Sioux Falls, South Dakota, generally once or twice a week.

Ms. Hunt provides a list of alleged inventories of the radionuclide content of the waste proposed for decommissioning, transport and disposal. She asserts that high levels of radioactivity still remain within the plant and that it will be available for release to the environment during decommissioning.

She states an "incorrectly decommissioned plant" will result further in a continued high risk of cancer and other debilitating diseases. She feels especially at risk because the drinking water in Garretson exceeds the water quality standard for radium. Ms. Hunt claims she can be further injured by contamination of the soil, air and water by incomplete decommissioning. She asserts that radioactive debris, not properly cleaned up or left, will continue to decay on site and that an improper or incomplete decommissioning will result in the wind carrying particulates from the plant site to her residence and water supply.

She also alleges, based on an abstract from the decommissioning plan, that the reactor vessel will move by rail through Garretson a few blocks from her home. She fears increased risk of cancer and other debilitating conditions either from an accident or simply from the passage of the highly radioactive vessel so close to her home.

Ms. Hunt wants to be represented in the proceeding by SDRC of which she is Chairperson.

NSPC makes the same argument against standing involving the rail transportation of the vessel as it did in regard to the truck transport of the radioactive waste.

In regard to Hunt's claim based on residence within ten miles of the plant, Licensee asserts that the stated injury is clearly conjectural, hypothetical and speculative. It states that SDRC and Hunt do "not even allege that Licensee's decommissioning plan will cause the claimed injury." Licensee claims that SDRC only alleges that injury will result from an "incorrectly decommissioned plant" or by "incomplete decommissioning" but that there is no claim that Licensee's decommissioning plan is "incorrect or incomplete." It denies that the standard for injury in fact has been met.

In making its argument against SDRC's standing Licensee wholly ignores Ms. Hunt's regular commute which takes her to the entrance of the plant once or twice a week. The plant site may have a significant radionuclide inventory from past power plant operations as alleged. Placing Ms. Hunt in such close proximity to the plant on a regular basis in conducting her normal activities is sufficient to establish the requisite interest that she might be affected by the decommissioning.

Compare Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), 9 NRC 54, 57 (1979). In that proceeding involving an application for an amendment to

enable the expansion of the capacity of the spent fuel, a petitioner who resided 45 miles distant from the plant and who engaged in canoeing in the general vicinity of the plant, on that basis was found to have established the requisite interest. Commuting from a residence ten miles from the plant, in whose direction prevailing winds from the plant blow during the year strengthens the grounds for invoking the presumption of having the requisite interest.

The inapplicability of the "fifty-mile radius" rule to these type of proceedings does not bar the application of a similar kind of presumption as long as it is based upon the circumstances of the case as they relate to the factors set forth in 10 C.F.R. §2.1205(g), 54 Fed. Reg. at 8272.

When the presumption of having the requisite interest is applied, it becomes unnecessary to establish a causal relationship between the claimed injury and the requested action. Virginia Electric and Power Company, supra. No useful purpose would be served in conducting an exercise to determine whether all of the claimed injuries have a causal connection with the proposed decommissioning.

SDRC has established the requisite injury in fact for standing and to represent the interest of Catherine M. Hunt in this proceeding.

III. Areas of Concern

I ruled in the Memorandum and Order of October 24, 1989 that it was premature to determine whether the Requestors' specified

areas of concern are germane to the subject matter of this proceeding without first determining the standing of the Requestors. Now that the first task has been accomplished, the issue of the sufficiency of SDRC's concerns should be addressed. SDRC and the other Requestors had jointly submitted concerns in the "Request For Hearing" of September 20, 1989.

The rules of practice for informal materials licensing adjudications provide in 10 C.F.R. §2.1205(d)(3) that a requestor, in filing a request for a hearing, must describe in detail the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and in 10 C.F.R. §2.2105(g) that in ruling on a request for a hearing, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding.

Licensee, in its October 6, 1989 answer to the September 29, 1989, "Request For Hearing," argues that for the most part the areas of concern are too broadly stated for meaningful comment by Licensee and that it would be appropriate for the presiding officer to require greater specificity before granting the hearing request.

There is some merit to Licensee's argument about a lack of specificity in Requestor's concerns. However, the procedural rules help to fashion this result. 10 C.F.R. §2.1231 provides that within 30 days of the presiding officer's entry of an order granting a request for a hearing, the NRC Staff should file the hearing file in the docket. The process requires that the

requestor must enunciate its areas of concern, and have them ruled upon to establish the right to a hearing, before the hearing file is first made available.[2]

The Commission evidently recognized this handicap of requestors of only having limited information available to them before having to enunciate concerns and set a relaxed standard as to what would be sufficient to satisfy the regulations.

The Commission in its responses to comments for promulgating 10 C.F.R. Part 2, Informal Hearing Procedures for Materials Licensing Adjudications stated:

> This statement of concerns need not be extensive, but it must be sufficient to establish that the issues the requestor wants to raise regarding the licensing action fall generally within the range of the matters that properly are subject to challenge in such a proceeding. (Emphasis supplied).

54 Fed. Reg. 8272.

It further stated:

> Of course, the intervenor is required to identify the areas of concern it wishes to raise in the proceeding, which will provide the presiding officer with the minimal information needed to ensure the intervenor desires to litigate issues germane to the licensing proceeding and therefore should be allowed to take the additional steps of making a full written presentation under §2.1233. (Emphasis supplied).

Id.

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[2] In footnote 4, at page 8, of "Licensee's Response To Supplement To Request For Hearing," NSPC argues that because SDRC attached three pages of excerpts from Licensee's decommissioning submittals to the NRC, it must be assumed it had available a copy of the plan as filed with NRC. Even accepting the argument as totally valid, the plan is but a part of the hearing file. See 10 C.F.R. §2.1231(b).

Of Requestor's nine stated concerns, the first six are of matters that fall generally within the range of issues that properly are subject to challenge in such a proceeding and provide the minimal information needed to insure that the issues sought to be litigated are germane to the licensing proceeding. The first six concerns meet the requirements of 10 C.F.R. §§2.1205(d)(3) and 2.2105(g).

Concern seven must be declared invalid because of vagueness. Concerns eight and nine are not substantive concerns of a type recognized by 10 C.F.R. §2.1205(d)(3) and therefore they cannot be considered as concerns within the regulations.

Licensee contends that Requestor's nine stated concerns appear on their face to be inappropriate for consideration in this proceeding. Each of the concerns and the objections will be discussed in turn.

Requestor's first concern is that the extent of present contamination must be clearly known in order to effectively decommission the site. It claims that the decommissioning plan inadequately documents present contamination at the site. Licensee contends that the proposed amendment does not seek to decommission "the site" but only the Fuel Handling Building and the Reactor Building, and the concern cannot extend beyond the scope of the proposed amendment.

Licensee does not object to the substance of the concern, only to its extent. Apparently Licensee would limit the scope of the concern to the two buildings. This is too narrow an

interpretation of the scope of the proceeding. Surely, the land upon which the building are located must be considered as part of the proceeding. The use of the buildings could have resulted in there being a source of radioactive contamination that has spread and impacted on surrounding areas. Such contaminated environs would be interrelated with the use of the buildings and any final decommissioning of the buildings would have to account for such contamination. Exterior contamination resulting from the use of the buildings is within the scope of the proposed amendment for final decommissioning of the buildings.

Licensee's extreme position of limiting the scope of the proceeding to the buildings would turn the regulatory process for protecting health and safety into a meaningless exercise. SDRC has submitted a valid concern.

SDRC's second concern is that a history of past activity at the site is required to elucidate areas at the site and offsite where contamination may have spread. It claims that the decommissioning plan inadequately documents historical activity including partial decommissioning activities.

Licensee claims that concerns that extend to site areas and potential offsite areas where contamination may have spread are inappropriate because the application only extends to the two buildings and not to other areas of the Pathfinder site. Licensee further contends that if Requestor has a concern with earlier decommissioning activities carried out under other

licenses, the appropriate remedy is to file a request for an order to show cause pursuant to 10 C.F.R. §2.206.

Again Licensee is concerned with the extent of the concern and not its substance. It would limit documentation of past activities, as to where contamination may spread, to the two buildings. For the reason given in respect to the first concern, the Licensee's objection is without merit. SDRC's concern of documenting where contamination has or may spread, on and offsite, is a proper issue for review in this proceeding.

As to its third concern, Requestor states that the decommissioning plan and safety analysis take inadequate measures to assure worker protection, long term health monitoring and long term health care for workers who may be injured. It prefaces its concern with the assertion that a high number of workers on the original decommissioning of the Pathfinder Plant died of various cancers and that one worker had acute radiation poisoning. Licensee disputes that the deaths and radiation poisoning occurred and asserts that the occupational impacts of that decommissioning are not germane to this proceeding.

Licensee's criticism of Requestor's third concern does nothing to dispute the validity of SDRC's concern predicated on the allegation that the decommissioning plan and safety analysis take inadequate measures to assure worker protection and to provide monitoring and health care.

Licensee's claim as to there being no deaths or injuries goes to the merits and there is no way to decide the issue at this juncture. It is a matter in dispute.

The assertion of Licensee that the partial decommissioning is a wholly separate matter and that it cannot be considered in this proceeding is without merit. This is the final decommissioning of buildings that were previously partially decommissioned by the same Licensee. The two decommissionings are interrelated. Any inadequacies in the prior decommissioning should not be permitted to be perpetuated in the final decommissioning. That is not to say that the entire prior decommissioning is to be rehashed.

It is recognized that Requestor's third concern does not directly relate to possible injury to Ms. Hunt. However, it is in accordance with Commission practice to permit a party in licensing proceedings to raise matters that are beyond its narrow interest. Requestor's third concern is valid and shall be considered.

SDRC's fourth concern relates to the standards and procedures that are to be applied to determine which wastes will be classified as low level radioactive waste requiring disposal in a low level radioactive waste facility and which waste will be disposed of in a municipal solid waste landfill. SDRC "oppose[s] any application of the BRC policy to this decommissioning."

Requestor's fifth concern questions which standards and procedures are to be applied to determine the release of lands

for unrestricted use. Requestor want to assure that such standards and procedures will not result in a release of lands for unrestricted use, if such release would endanger public health and safety.

Licensee submits a single response to concerns four and five. It asserts that the standards referred to are not specifically identified, and to the extent they are identified as standards embodied in NRC regulatory requirements, they may not be subject to challenge in this proceeding. It cites 10 C.F.R. §2.1239.

Requestor's concerns about which standards and procedures will be employed to protect health and safety in classifying waste for disposal and releasing land for unrestricted use are valid and are a proper matter for consideration. It has a right to reasonable assurance that the correct standards and procedures are applied. As to its opposition to applying "BRC policy," SDRC's position is not fully understood. NRC has not promulgated regulations establishing a standard for waste that is "below regulatory concern." To the extent SDRC opposes the establishment of such a standard, the licensing proceeding is not the proper forum for such concern.

Licensee's assertion that NRC regulatory standards may not be subject to challenge in this proceeding is not the total story. 10 C.F.R. §2.1239(b) cited by Licensee provides that a party to an adjudication may petition for a Commission regulation to be waived or for an exception to be made for the particular

proceeding. The manner in which this may be accomplished is detailed in that section.

Requestor's sixth concern is about the procedures to be used to dismantle, load and ship radioactive portions of the facility. It seeks to limit both exposures of the workers and general public to dangerous radiation and asbestos and the inadvertent release or spread of contamination.

Licensee asserts that packaging and transportation are governed by 49 C.F.R. Parts 100-179 and environmental impacts of transportation of waste from the site are specified in Tables S-4 of 10 C.F.R. §51.52. It states that they are not subject to litigation in this proceeding and are beyond its scope.

It does not appear from concern six, as was also the case with concerns four and five, that Requestor seeks to challenge regulations. Rather it is concerned as to whether proper standards and procedures will be employed to limit possible dangerous exposures and the spread of contamination. To the extent there are regulatory standards in place, it would appear that Requestor's concerns can be reduced or eliminated with Licensee providing assurance that those standards will be followed in the decommissioning. Concern six is valid and will be considered.

For concern seven, Requestor states that the factual and legal adequacy of the decommissioning plan, the safety analysis and the environmental report and environmental analysis are of concern. Licensee states that the concern is so lacking in

specificity that it provides no meaningful information and does not establish that the issue falls generally within the range of matters that properly are subject to challenge.

Licensee's objection is meritorious. The concern is extremely vague and does not meet the minimum standard for satisfying 10 C.F.R. §2.1205(d)(3). The minimal information needed to ensure that Requestor's desire to litigate issues germane to the proceeding is not provided. Concern seven is rejected.

Requestor's eighth concern goes to the legal adequacy of the procedures in the proceeding. The concern specifies due process, adequate discovery, ex-parte communication, environmental scoping and implementation of NEPA.

Licensee counters that the Commission's Rules of Practice in 10 C.F.R. Part 2 govern, that they are not readily subject to challenge, and that concern about hearing procedures is not a "concern about the licensing activity" addressed in 10 C.F.R. §2.1205(d)(3).

Although it is a concern of all litigants that the procedures followed in a proceeding be fair and afford due process, it is not a concern contemplated by 10 C.F.R. §2.1205(d)(3). The regulation relates to substantive concerns about the licensing activity and not the adequacy of the hearing process that may follow. Despite the fact that Requestor raises a concern that is not recognized as being valid under the cited

regulation, it has the protection afforded by the Commission's Rules of Practice to satisfy this concern.

SDRC's mention of "environmental scoping" and "implementation of NEPA" is so vague it does not meet the minimum standard for satisfying 10 C.F.R. §2.1205(d)(3). That part of concern eight is also rejected.

SDRC's ninth stated concern is that it reserves the right to narrow or broaden its enumerated areas of concern as documents are provided. Licensee asserts that raising additional issues at a later time would be tantamount to making an untimely filing which is controlled by 10 C.F.R. §2.1205(k) and requires the requestor to justify the untimeliness.

Requestor's ninth concern, like its eighth, is not a concern that comes within 10 C.F.R. §2.1205(d)(3). It raises a procedural hearing issue governed by the Commission's Rules of Practice.

Newly obtained information may be used to modify or supplement existing issues. However, a party has no unconditional right to raise new issues because of new information. The raising of new issues in this type proceeding is not unlike raising new issues in operating license application proceedings. In those instances the Commission requires that a petitioner satisfy a five point test in justification, contained in 10 C.F.R. §2.714(a)(1). Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8 23 NRC 241, 244 (1986).

Subpart L - Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings has a comparable provision, contained in 10 C.F.R. §2.1205(k), which a party would have to satisfy before raising a new issue. It requires a showing that there is an excusable basis for the new filing and that granting of the petition will not result in undue prejudice or undue injury to any other participant in the proceeding.

Concern nine, like concern eight, is not a substantive concern about the licensing activity and therefore does not satisfy the requirements of 10 C.F.R. §2.1205(d)(3). However, the cited rule covers its concern.

SDRC has satisfied the requirements of 10 C.F.R. §2.105(d)(3) and 2.2105(g) as to six of its concerns. In so doing it has fulfilled all of the requirements of subsection 2.2105(g) for granting it a hearing. It was previously found in this Memorandum that SDRC has met the judicial standard for standing. In the "Memorandum and Order (Hearing Request)," of October 24, 1989, at 2, it was reported that SDRC's petition for hearing was timely filed. The SDRC request for a hearing is therefore granted.

IV. Additional Matters - Scheduling

(a) Possible objection to special assistant.

In a statement in the October 24, 1989, "Memorandum and Order (Hearing Request)," Administrative Judge Jerry R. Kline, appointed as a special assistant, called attention to certain facts relating to a family connection with the Licensee, which he

believes do not disqualify him from participation in the proceeding.

His participation has been held in abeyance pending (1) a determination of who the parties to the proceeding will be and (2) a review of any objection from the parties as to his acting in the case.

Now that it has been determined that NSPC and SDRC are the parties to the proceeding they are given ten days from the service of this Memorandum and Order to file any objection to Judge Kline's participation. Any objection shall be made as prescribed in 10 C.F.R. §2.704(c).

(b) Permitting SDRC to respond to "Licensee's Request For Clarification Or Reconsideration Of Memorandum And Order (Hearing Request), dated October 24, 1989."

In its "Request For Hearing," dated September 20, 1989, SDRC suggested that any hearing date regarding the proceeding await completion of all necessary documentation more particularly the environmental assessment. In the "Memorandum and Order (Hearing Request)," dated October 24, 1989, I stated that the suggestion is consistent with the procedures set forth in the regulations, which will be followed.

The October 24, 1989 Memorandum was prepared in the erroneous belief that NSPC never filed an answer to the "Request For Hearing." This prompted NSPC, to file on November 15, 1989, "Licensee's Request For Clarification Or Reconsideration Of Memorandum And Order (Hearing Request), dated October 24, 1989." In it, Licensee requests that the presiding officer make clear

that the identification of the issues and the submission of written presentations will not be delayed pending completion of the environmental assessment or safety evaluation report." None of the Requestors responded to the NSPC filing.

Now that SDRC has been named as a party to the proceeding, I want its view on this procedural matter before making a decision. SDRC is given ten days from the service of this Memorandum and Order to file an answer to Licensee's request.

SDRC should understand that in the future any failure to respond to a filing within the time allotted by the regulations will result in no further opportunity to file, absent specific authorization to do so.

ORDER

Based on all of the foregoing, it is hereby ordered that:

(1) the request for a hearing by CRG and TIP is denied;

(2) The request for a hearing by SDRC is granted;

(3) NSPC and SDRC are given ten days from the service of this Order to file any objections to Administrative Judge Jerry R. Kline's participation in the proceeding as a special assistant; and

(4) SDRC is given ten days from the service of this Order to file an answer to NSPC's November 15, 1989," Licensee's

Request For Clarification Or Reconsideration Of Memorandum And Order (Hearing Request) Dated October 24, 1989."

Morton B. Margulies, Presiding Officer
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland
January 10, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	
NORTHERN STATES POWER COMPANY	Docket No.(s) 30-05004-MLA
(Pathfinder Atomic Plant Byproduct Material Lic. 22-08799-02)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (REQUEST FOR HEARING) 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.

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Dated at Rockville, Md. this
10 day of January 1990

Patty Henderson
Office of the Secretary of the Commission