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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Administrative Law Judge

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Morton B. Margulies

**SERVED FEB 02 1990**

In the Matter of	)	Docket No. 30-05004-MLA
NORTHERN STATES POWER COMPANY	)	
(Pathfinder Atomic Plant,	)	ASLBP No. 90-599-01-ML
Byproduct Material License	)	
No. 22-08799-02)	)	February 2, 1990

MEMORANDUM AND ORDER

(Ruling On Licensee's Request For Reconsideration  
Dated November 15, 1989 and Setting of Schedule)

Northern States Power Company (NSPC) on November 15, 1989 filed "Licensee's Request For Clarification Or Reconsideration Of Memorandum and Order (Hearing Request), Dated October 24, 1989." Licensee's request was that the proceeding go forward and not await the completion of the environmental assessment or safety evaluation report.

The request was in response to the "Memorandum and Order (Hearing Request)," dated October 24, 1989, in which, in commenting on a suggestion by Requestors' that any hearing date should await completion of all necessary documentation, more particularly the environmental assessment, I found that the suggestion was consistent with the procedures set forth in the regulations, which are to be followed.

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My comment was made without consideration of Licensee's October 6, 1989 answer to Requestors' joint request for a hearing because of a mistaken belief that no answer had been filed. In its answer NSPC had argued that concerns could be identified and resolved without completion of all necessary documentation.

NSPC, in its request for reconsideration of November 15, 1989, argued that while completion of the proceeding might not be feasible prior to the completion of the environmental assessment other steps in the proceeding should continue. Those named were (1) determination of Requestors' standing; (2) identification of Requestors' concerns that are germane to the subject matter of the proceeding; (3) simplification and specification of the issues; (4) submission of written presentations on issues based upon claimed deficiencies or omissions in the license application; and (5) submission by the presiding officer of written questions (if any) and responses thereto.

NSPC based its argument on the claim that the hearing is intended to consider the adequacy of the proposed license amendment, and not the Staff's review of it. The presiding officer was requested to exercise his discretion to have the identification of the issues and the submissions of written presentations made without delay for the completion of the environmental assessment or safety evaluation report.

In the "Memorandum and Order (Request For Hearing)," dated January 10, 1990, the standing of the Requestors was determined. Of the Requestors', only South Dakota Resources Coalition (SDRC)

was found to be a proper party to the proceeding and its concerns that are germane to the proceeding were identified.

Additionally, SDRC, newly admitted as a party, was requested to respond to the unanswered "Licensees Request For Clarification Or Reconsideration Of Memorandum and Order (Hearing Request), dated October 24, 1989."

SDRC filed an answer dated January 23, 1990. In it, SDRC points out that of the five steps Licensee claims could be completed prior to the preparation of the environmental assessment and safety evaluation report, two already have been done. Requestors' standing has been determined and the concerns of SDRC that are germane to the subject matter of the proceeding have been identified.

Of the last three steps specified by NSPC, SDRC argues that they should not be taken until the environmental analysis and safety evaluation report are issued. It claims that the Staff analyses may substantially affect the issues in contention, their simplification and specifications and the responses to any questions of the presiding officer. It considers it a waste of time and effort to proceed when the situation can change substantially in the next few weeks. It further asserts that due

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\* NSPC and SDRC were given the opportunity to file any objection they might have to the participation of the appointed special assistant in the proceeding because of a family connection with the Licensee. Each party advised they had no objection to his participation and that puts the matter to rest.

process and economy require that no action be taken until the documentation is complete.

Following the filing of the SDRC response of January 23, 1990, NRC Staff in a letter to me dated January 29, 1990, advised that the hearing file in the proceeding will be filed on or before February 9, 1990 and that it will not contain the environmental assessment or safety evaluation report. However, it is expected that they will be completed and available for distribution on or about March 16, 1990. The Staff letter was in response to an inquiry I made in a letter of January 16, 1990.

It is evident that the course of events has overtaken the issue raised in Licensee's request for reconsideration of November 15, 1989 and have, in effect, rendered it moot.

Of the five steps Licensee requested be taken, two have already been completed. All of the actions sought by NSPC to be taken were premised on the assumption that there would be delay in the preparation of the environmental assessment or the safety evaluation report. Licensee's request to proceed with the specified five steps was to avoid delay that would result from awaiting the completion of the Staff analysis.

Based on Staff's representations on the forthcoming submission of the analyses, Licensee's cause for concern and its need for relief are eliminated. The analyses should be available close to the time the hearing file is established. The expected wait for the environmental assessment and safety evaluation report is de minimis in nature.

With the availability of a basically complete hearing file, it should be possible to focus and simplify the issues and expedite the resolution of contested matters. Both parties in their filing have recognized the need to do this. To that end, SDRC should file in advance of the submission of written presentations under 10 C.F.R. §2.1233, a statement of issues that specify the deficiencies or omissions in the plan for decommissioning, the bases of SDRC's understanding that they constitute omissions or deficiencies, and their relationship to the identified concerns that are germane to the subject matter of the proceeding. This technique for focusing and simplifying the issues was first used in Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility), LBP-89-25, 30 NRC 187, 192 (1989).

It is Commission policy to encourage settlement of outstanding issues. Following the submission of SDRC's statement of issues, the parties will be given time to work out and settle their differences. To the extent that they cannot settle their differences, they should so advise the presiding officer and specify what differences remain, and should they desire, they may request holding a prehearing conference for a further narrowing of the issues. Unfocused litigation is not in the interest of anyone.

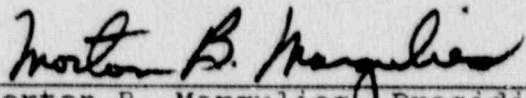
ORDER

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

- (1) Licensee's request for reconsideration, dated November 15, 1989, is denied because of mootness.

(2) SDRC must file (mail) a statement of proposed issues within 20 days after receipt of the hearing file, which is to include the environmental assessment and safety evaluation report.

(3) NSPC and SDRC must file (mail) within 40 days after receipt of the hearing file, which is to include the environmental assessment and safety report, a report advising of their attempts to work out a settlement, what differences remain and whether a prehearing conference is needed for further narrowing the issues.

  
Morton B. Margulies, Presiding Officer  
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland  
February 2, 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 MEMO. & ORDER DATED 2/2/90 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

Administrative Law Judge  
Morton B. Margulies  
Presiding Officer  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Jerry R. Kline  
Special Assistant  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Bernard M. Bordenick Esquire  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Jay E. Silberg, Esq.  
Shaw, Pittman, Potts and Trowbridge  
2300 N Street, NW  
Washington, DC, 20037

Thomas Parker  
Northern States Power Company  
414 Nicollet Mall  
Minneapolis, MN 55401

Donald Pay  
Secretary/Treasurer  
Citizens for Responsible Government  
P. O. Box 5613  
Rapid City, SD 57709

Deborah Rogers  
Executive Director  
Technical Information Project  
P. O. Box 1371  
Rapid City, SD 57709

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

Dated at Rockville, Md. this  
2 day of February 1990

*Emile F. Julian*  
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Office of the Secretary of the Commission