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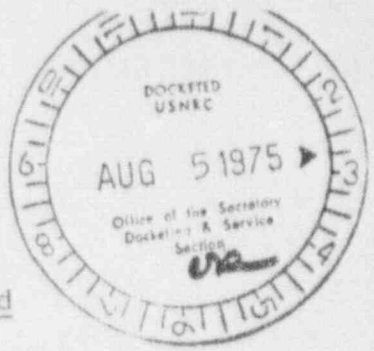

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
NORTHERN STATES POWER COMPANY	)	Docket No. 50-263
	)	
(Monticello Nuclear Generating Plant, Unit 1)	)	

MEMORANDUM AND ORDER

MPCA's Motion Concerning Anticipated Transients Without Scram

On May 7, 1975, during a hearing session in the above-captioned proceeding, Intervenor Minnesota Pollution Control Agency (MPCA) filed with the presiding Atomic Safety and Licensing Board (Board) and parties a document entitled "Submission of Additional Contentions." The contentions raised therein related to the Applicant's analysis of the consequences of anticipated plant transients in the event of a postulated failure to scram. At the request of the Board, MPCA filed a reframed contention in the form of a "Submission of Revised Additional Contention" (hereafter, Contention C.1) on May 14, 1975. In response to the requests of the parties on May 15, 1975 (Tr. 1817), the Board agreed to defer its ruling on MPCA's motion to admit Contention C.1, in order to permit all parties to have the opportunity to file written legal arguments. Thereafter,

on June 2, 1975, Northern States Power Company, (the Applicant) and the Nuclear Regulatory Commission Staff (the Staff) each filed a response to MPCA's submission of the additional contention. In addition MPCA filed a memorandum of law dated June 3, 1975.

By way of background, it is to be noted that one of MPCA's contentions in this proceeding (Contention II-33) was admitted as a challenge to the appropriateness of the staff assertions of low probability of Class 9 accidents as set forth in the Final Environmental Statement. Pursuant to an agreement between counsel for the Staff and MPCA, the Staff's prepared testimony on Contention II-33 was limited to consideration of two kinds of Class 9 accidents, pressure vessel failure and anticipated transients without scram (ATWS). The Staff's testimony on ATWS was considered during the evidentiary hearing in this proceeding on May 6 and 7, 1975. As noted above, MPCA's motion to introduce additional ATWS contentions was presented during the course of the evidentiary hearing on May 7, 1975.

Contention C. 1, as revised is as follows:

The Monticello plant, as it is currently engineered and operated, does not conform to the Staff's safety objective with regard to the probability of ATWS. Therefore, the plant should be modified so as to reduce the probability of such incidents.

The basis for the contention is stated to be the following:

(1) "Supplemental Testimony of Nuclear Regulatory Commission Staff on Contention II-33," particularly pp. 3 and 92.

(2) "Technical Report or Anticipated Transients Without Scram for Water-Cooled Reactors," WASH-1270, which is referenced in the Supplemental Testimony and was served on the parties along with the Supplemental Testimony.

(3) Cross-examination of Staff witnesses (Tr. at 1043-1049).

(4) "Anticipated Transients Without Scram: Study for the Monticello Generating Plant," NEDO- 20846.

(5) Letter of April 1, 1975, from L.O. Mayer, Manager of Nuclear Support Services, Northern States Power Company, to A. Giambusso, Director, Division of Reactor Licensing, U.S. Nuclear Regulatory Commission.

In its response, Applicant requests that the Board reject Contention C.1 because it is overly vague as well as being premature. With regard to the latter, Applicant argues that WASH-1270 makes it clear that for the Monticello

plant (and others in its category), "the Staff's position as to its safety objective is to be determined by the Staff on an individual case basis," and that the Staff evaluation which has not yet been done for Monticello, will take from four to six months to complete.

The Staff supports the admission of MPCA's Contention C. 1 as an issue in controversy in this proceeding and urges the Board to find that MPCA has shown good cause for the nontimely filing of the contention.

The sufficiency of Contention C.1 must be measured against the requirements of 10 CFR §2.714 of the Commission's Rules of Practice. In accordance with §2.714(a), the contention must be stated with reasonable specificity and with some basis provided. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) ALAB-107, RAI-73-3 at 188, 194 (March 29, 1973). If the filing is nontimely, the petitioner must also make a substantial showing of good cause for failure to file on time. We believe that Contention C.1 is clearly stated with reasonable specificity and with sufficient basis provided. (See: Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2) ALAB-146, RAI-73-9 at 631, 633 (September 14, 1973); Public Service Electric and Gas Company (Salem Nuclear Generating Station,

Units 1 and 2) ALAB-136, RAI-73-7 at 487, 489 (July 12, 1973)). In order to determine whether MPCA has shown good cause for the late filing of the revised contention, it is necessary to consider the history of the ATWS matter as it relates to the Monticello plant.

In September, 1973 the Staff issued a "Technical Report on Anticipated Transients Without Scram (ATWS) for Water-Cooled Power Reactors", WASH-1270. This Report established three categories (A, B, and C) of nuclear power reactors and prescribed "programs of implementation" with respect to ATWS considerations for each category. (Id.,Appendix A). Monticello falls within Category C, applicable to plants for which neither the Commission's Safety Evaluation Report nor the Advisory Committee on Reactor Safeguard's Report at the construction permit stage identified ATWS as a matter under review. For Category C plants the Staff required submission by October 1, 1973 of analyses of ATWS consequences and reviews of reactor shutdown system design. Thereafter, the Staff would determine the need for plant changes on "an individual case basis". (Id., p. 90).

Pursuant to WASH-1270, the Applicant submitted on October 1, 1974, a review of the design of Monticello's reactor protection system (NEDO-20635, "Evaluation Report--Common Mode Failure Vulnerability of Reactor Protection System Instrumentation for the Monticello Nuclear Generating Station") and was granted an extension until April 1, 1975 to file its analysis of ATWS consequences. On April 1, 1975, the Applicant filed this analysis in a document entitled "Anticipated Transients Without Scram Study for the Monticello Nuclear Generating Plant" (NEDO-20846).

MPCA states that its revised contention is based upon the Applicant's April 1, 1975 submittal on ATWS consequences (including the covering letter thereto) and the testimony of Staff witnesses at the recently completed hearing session. In NEDO-20846 the Applicant's vendor (General Electric) clearly states that "... if a serious ATWS event is postulated, the conditions could exceed the General Electric guidelines without plant changes". (p.3) For that reason, G. E. continues, "... minimal plant modifications are considered in this analysis". G.E. then proceeds to enumerate the following plant modifications: recirculation pump trip, feedwater pump trip, and modification of the Automatic Depressurization System. The Staff concluded after reviewing NEDO-20846 that "... the analysis submitted was not for the facility presently constituted. It was for a hypo-

thetical facility." (Tr. 1054) The report does not, therefore, comply with the requirements set forth in WASH-1270, i.e., an analysis of ATWS consequences based on existing Monticello configuration. (Appendix A, particularly pp. 89-90)

A further conflict between the Staff and Applicant regarding ATWS was revealed in the April 1, 1975 submittal and the Staff's response thereto at the recent hearing. The Applicant, despite its recognition that plant changes will be necessary to accommodate serious ATWS events, concludes in its covering letter (p. 2) that "... we do not believe backfitting of Monticello is presently warranted." Responding to that conclusion a Staff witness stated that "... the letter does not agree with the present Regulatory Staff position that backfitting is required for the Monticello facility." (Tr. 1143)

It is apparent, therefore, that MPCA could not have known the Applicant's position on whether backfitting is required until it received, at the same time as the Staff, the April 1, 1975 report. Nor could MPCA have known the Staff's position on backfitting until it heard the testimony of the Staff at the recent hearing session.

Section 2.714 of 10 CFR establishes a standard for admission of nontimely filings. That standard requires a petitioner to make "a substantial showing of good cause" to justify the lateness of his/her actions. Four factors are set out, to which the Board must give special consideration. They are:

> (1) The availability of other means whereby the petitioner's interest will be protected.
>
> (2) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
>
> (3) The extent to which petitioner's interest will be represented by existing parties.
>
> (4) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

While it is true that WASH-1270 has been available for some one and one-half years, its application to this proceeding and to this plant was finally established only in the Staff's testimony on MPCA Contention II-33, served on the parties in late February, 1975. Further, it was not until the receipt of the Applicant's April 1, 1975 letter transmitting NEDO-20846, that MPCA became aware that the Applicant's position on this issue was in such fundamental conflict with that of the Staff. Until that time, MPCA might have determined that the Applicant and the Staff could come to agreement as to the appropriate retrofit for

Monticello, thereby negating the necessity for the Board to consider this matter. Finally, it was not until MPCA's cross-examination of Staff witnesses during the recent evidentiary session in this proceeding, that the conflict between the Applicant and the Staff became direct and obvious, and therefore became an issue to which MPCA could legitimately and appropriately respond.

In view of the above, the question of tardiness does not arise. MPCA has acted as expeditiously as possible in an effort to bring the issue before the Board as soon as its scope and details became clear to MPCA.

An examination of the factors cited in 10 CFR 2.714 shows that MPCA's contention C.1 should be admitted as an issue in this proceeding.

There are no other means by which the safety of the Monticello plant in the event of an ATWS and the extent of the consequences of such an event can be considered fully and publicly before an impartial tribunal such as this Atomic Safety and Licensing Board. With regard to whether MPCA's participation on this issue may assist in developing a sound record, had MPCA not raised this issue, there would be no record at all. Similarly, one cannot conclude that as to MPCA's interest in the matter of ATWS events and

their consequences can be adequately represented by "existing parties." While there is an obvious conflict between the Applicant and the Staff on this issue, if MPCA's contention is not admitted, there will be consideration of this issue before the Board, but no party will represent MPCA's position.

The Appeal Board has provided some guidance as to the extent to which delay in the proceeding should preclude consideration of new issues. In considering a motion to reopen the record, the Appeal Board in the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Docket No. 50-271, ALAB-124, RAI-73-5, 358 at 365, said:

> In this same vein, the applicant has suggested that the effect of granting the motion to reopen would be to permit intervenors to seize upon, as a justification for reopening a hearing, every letter which the staff, in the exercise of its continuing regulatory responsibility, sends to an applicant. Thus, according to the applicant, an intervenor would be able to prevent indefinitely the termination of the proceeding and the rendition of an initial decision authorizing the issuance of an operating license.

> We cannot accept the applicant's unstated premise that the desirability of completing the hearing outweighs the need to resolve potentially serious safety matters. This is so even though the staff believes that the matters raised by a letter do not warrant consideration in the hearing but instead can be handled by the staff outside the hearing process. The intervenors have every right, in presenting contentions for consideration, to rely upon consequential safety matters brought to light by the staff's technical experts.
>
> In short, delay in the issuance of an operating license attributable to an intervenor's ability to present to a licensing board legitimate contentions based on serious safety problems uncovered by the staff would establish not that the licensing system is being frustrated, but that it is working properly. Any delay in such a situation would be fairly attributable not to the intervenors but to the non-readiness of the facility for operation. Delay in the issuance of the license is entirely appropriate -- indeed, mandated -- in that circumstance.

(Emphasis added.)

The facts giving rise to this decision are closely analogous to the extant situation and the decision should be dispositive of any argument based on delay. As in the Vermont Yankee decision, the intervenor, here MPCA, has raised before the Board a serious safety question. Indeed, an argument based on delay is even weaker in this proceeding since the record in this proceeding has not been closed, so any inconvenience or prejudice attendant to admission of the contention is surely less than it would have been in the Vermont Yankee setting.

More general guidance as to the standard which the Board must use has also been provided by the Commission. Its order of September 29, 1972, in Matter of Indiana and Michigan Electric Company (Donald C. Cook Nuclear Plant, Units 1 and 2) has long provided a precedent for Licensing Boards in considering new issues. The Commission said:

> We note our longstanding practice of permitting amendments to petitions to intervene for good cause shown. Unless special considerations dictate otherwise in specific circumstances, new information appearing in previously unavailable documents would generally constitute good cause for amendment, assuming of course that the request to amend is expeditiously presented and is otherwise proper. Such determinations rest in the sound discretion of the Licensing Board.

(Emphasis added.)

As noted earlier, MPCA's Contention C.1 is based on documents and information available only shortly before the motion to add the contention was made. Therefore, according to the Commission's standard, MPCA has made a fully satisfactory showing of "good cause" for its filing of Contention C.1 at this point in the proceeding. Because the issue raises a serious safety question, any possible delay in the issuance of Monticello's full term operating license due to admission of this contention is entirely appropriate -- indeed, mandated. Accordingly, MPCA's motion is granted and Contention C.1 is admitted as an issue in this proceeding.

Appendix I Implementation At Monticello

During the course of the hearing the Commission issued a new regulation, Appendix I to 10 CFR 50. Inasmuch as many of MPCA's contentions were directed at quantities of radioactive effluents released by the Monticello plant and the attendent health effects, the Board asked the parties for guidance as to how the new regulation should be applied in this proceeding. Oral arguments were heard on two occasions during the recently concluded session of the hearing. Counsel for Applicant argued that with the adoption of Appendix I, the Intervenor's contentions dealing with "as low as practicable" were mooted; and that the hearing should be concluded without those contentions. He pointed out that under Appendix I, the Applicant had a choice of options. (1) The Appendix I, Section II guides could be met by the plant or (2) the Applicant could demonstrate that the radioactive emission from the plant would be kept "as low as practicable" as provided in Sec. I.

The Board was advised that Applicant was not prepared to state which option it would choose at this time. Further Applicant has until June 4, 1976 to submit its proposal for meeting Appendix I guides. MPCA argued that whether the present contentions are moot depends upon the option chosen by the Applicant. Therefore, counsel for MPCA moved for

permission to submit new contentions and suggested that the record be held open until the Applicant has submitted its proposal for complying with Appendix I, so that at that time MPCA would be in a position to revise its contentions or choose to withdraw them. The NRC Staff counsel is of the opinion that present contentions are moot, but urges that the record be held open and that MPCA be given an opportunity to submit revised contentions.

The Board has carefully weighed all arguments. We consider that compliance with Appendix I is an important issue and is the heart of the MPCA's contentions. However we do not believe that a requirement for the presentation of further testimony would be productive prior to the receipt of Applicant's proposal for implementation. Therefore, the Board has determined to hold the record open in this proceeding, until resolution of the Appendix I issue is possible.

The Board notes that the Staff has agreed to keep the Intervenors advised during the coming months while revised technical specifications are being considered and a final position document is prepared by the NRC Staff. The Board urges all parties to work together in an attempt to reach a stipulation concerning the Intervenor's contentions. If at any time it becomes apparent to any party that such an

agreement is not possible, or that the Applicant's proposal for complying with Appendix I is not satisfactory to either the Staff or Intervenors, we will entertain a motion for reconvening the hearing for the receipt of further evidence on this issue.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Robert M. Lazo

Robert M. Lazo
Chairman

Dated at Bethesda, Maryland
this 5th day of August, 1975.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
6th day of Aug 1975.

Peggy A. Downing
Office of the Secretary of the Commission

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