

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
)
Northern States Power Company) Docket No. 50-263
)
(Monticello Nuclear Generating Plant,)
Unit 1))

ORDER AND MEMORANDUM PERTAINING TO
DISCOVERY AND DEFINITION OF CONTENTIONS
AND SCHEDULING OF PREHEARING CONFERENCE
AND REOPENING OF HEARING

This order and memorandum finalize with certain modifications a proposed order which the chairman discussed with the parties and their counsel at a conference in St. Paul, Minnesota, on July 14, 1970, pursuant to the chairman's notice to the parties of such conference by telegram of July 9, 1970.

I

To the end of providing for a fair and orderly hearing and of avoiding delay, the chairman, under the authority conferred upon him at 10 CFR §2.718 and with the concurrence of the two technical members of the board who have been consulted with respect hereto, ORDERS:

- A. That Messrs. Dzugan, Pepin and Burnett and Minnesota Environmental Control Citizens Association (MECCA) serve on all the other parties and the board at or before

the prehearing conference hereinafter scheduled a statement of their respective contentions in support of their opposition to the proposed operating license -- such contentions to be those based in whole or in part upon considerations arising out of the regulatory staff's inspection reports (as made available to the parties), including discovery proceedings relating thereto and provided for herein.

- B. That the contentions referenced in paragraph A shall be individually enumerated in specific terms.
- C. That cross-examination by Messrs. Dzugan, Pepin and Burnett and by MECCA at the reopened hearing will be limited to such cross-examination based on the inspection reports which might reasonably be expected to elicit testimony supportive of the aforesaid contentions.
- D. That discovery shall be made available to Messrs. Dzugan, Pepin and Burnett and to MECCA between the date of this order and the hereinafter scheduled prehearing conference on the following basis:
 - 1. The applicant shall make available to Messrs. Dzugan, Pepin and Burnett for inspection at the applicant's offices in Minneapolis, Minnesota, on

weekdays during normal business hours between the date of this order and the prehearing conference the Monticello Operations Manual. *

2. Upon reasonable notice, including identification of the material in the regulatory staff's inspection reports of interest to them by page and paragraph, Messrs. Dzugan, Pepin and Burnett, and MECCA may take depositions of appropriate personnel of the applicant and its contractors and vendors and also may serve written interrogatories upon such personnel of the applicant's contractors and vendors not available for depositions at the applicant's offices in Minneapolis, Minnesota. The depositions may be taken at the applicant's Minneapolis offices on any weekday during normal business hours between the date of this order and the scheduled prehearing conference. The written interrogatories shall be served upon appropriate personnel of the applicant's contractors or vendors and responses thereto shall be made by affidavit and returned within three days from receipt of the

* For pertinent board commentary, see heading IV herein.

interrogatories, all to be accomplished between the date of this order and the prehearing conference. Interrogatories and responses shall be served via special delivery, airmail. Copies shall be served upon the parties not directly involved and upon the board members in the same manner or in such other manner as would provide equivalent or better delivery service.

3. Upon reasonable notice, including identification of the material in the regulatory staff's inspection reports of interest to them by page and paragraph, Messrs. Dzugan, Pepin and Burnett, and MECCA may take depositions of appropriate personnel of the regulatory staff and may serve written interrogatories upon such personnel. The depositions may be taken on any weekday during normal business hours between the date of this order and August 1, 1970 at the regulatory staff's offices in Bethesda, Maryland, and at the AEC's Chicago Operations Office. The written interrogatories may be served upon appropriate personnel of the regulatory staff and responses

thereto shall be made by affidavit and returned within three days from receipt of the interrogatories, all to be accomplished between the date of this order and the prehearing conference. Interrogatories and responses shall be served via special delivery, airmail. Copies shall be served upon the parties not directly involved and upon the board members in the same manner or in such other manner as would provide equivalent or better delivery service.

4. The individuals subject to discovery examination hereunder shall be selected by the applicant and by the regulatory staff, as the situation calls for, from among their own personnel or personnel of their contractors or vendors who are knowledgeable about those parts of the inspection reports identified as being of interest to Messrs. Dzugan, Pepin and Burnett and to MECCA for cross-examination purposes.
5. Transcripts of all the depositions, whether of the applicant's witnesses or of the regulatory staff's, shall be available in the same manner as are transcripts of the hearing. Counsel for the regulatory

staff shall use his good offices to arrange for court reporter service for the taking of depositions hereunder by the intervenors and the intervenors shall make every effort to accommodate their deposition requirements to the practicalities of the situation with respect to the availability of court reporter service.

6. Within the period specified for discovery, the places, the days and the hours for the taking of depositions as set forth herein may be expanded by mutual agreement between the parties concerned.
7. Deponents are expected to waive the fees due to be paid by the parties taking their depositions.
8. The provisions at 10 CFR §2.740, which generally relate to a different situation than the one prompting this order, shall be regarded as relevant only to the extent that the provisions are clearly appropriate to the discovery described herein. Should the parties not be able to agree among themselves as to the applicability or inapplicability of a provision at 10 CFR §2.740, or about any matter relating to the implementation of this order, they shall communicate at once with the chairman.

E. That at the hearing, once it is reopened, the applicant and the regulatory staff shall make available as witnesses for cross-examination purposes such of their personnel, including personnel of their contractors and vendors, who provided information in the discovery proceeding which might be reasonably regarded as supportive of any of the specific contentions of the intervenors referred to at paragraph A in opposition to the proposed license. Messrs. Dzugan, Pepin and Burnett, and MECCA shall identify such personnel in their respective statements called for at paragraph A, and they shall see to it that the applicant and regulatory staff, who have the burden to produce the witnesses at the hearing, shall have information as to the identity of those personnel by July 31, 1970. If Messrs. Dzugan, Pepin and Burnett or MECCA desire to have as a witness at the hearing a person who has already given testimony at an earlier hearing session and whose deposition had not been taken because of his unavailability in the Minneapolis/St. Paul area or elsewhere where depositions were in fact taken, they shall also identify the name of any such person to the applicant and the regulatory staff on July 31 or before and shall include

such name in their respective paragraph A statements with a reasonable explanation therefor.

- F. That all parties shall proceed at once and in good faith to implement the foregoing procedure and to develop the details needed to carry out the intent herein of placing discovery in its proper position in the proceeding and thereby enabling the hearing to be free of immaterial matters and to focus on meaningful contentions.
- G. That nothing in this order shall be construed to foreclose Messrs. Dzugan, Pepin and Burnett or MECCA from undertaking depositions and written interrogatories at their own expense pursuant to existing regulations.

II

In behalf of the board, the chairman ORDERS:

- A. That a prehearing conference shall be held in the United States Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota, at Courtroom 4 (7th floor) on Tuesday, August 4, 1970, at 10:00 a.m.
- B. That the hearing shall reopen at the same place beginning Wednesday, August 5, 1970, at 9:00 a.m.

- C. That this order reopening the hearing and providing for a prehearing conference shall be published promptly in the Federal Register and shall be the subject of a public announcement by the Commission's Division of Public Information.

III

The board is of the opinion after having reviewed in some detail the inspection reports, both with and without the deletions, that there has now been ample time and there is ample basis for Messrs. Dzugan, Pepin and Burnett and MECCA to proceed forthwith with detailed development of their contentions arising from the inspection reports as presently available to them and that the possible availability of further data resulting from response of the atomic safety and licensing appeal board to this board's certified questions of July 6, 1970, does not of itself necessitate a holding up of the proceeding at this time.

Rather, it is desirable now to move ahead with the proceeding. Further, it should be borne in mind that the pending objections to the regulatory staff's compliance with the subpoena raise not only issues of general principle, which were discussed in the board's certification, but also an issue of the reasonableness, need or necessity of the discovery sought and denied in the particular context of the proceeding. The latter

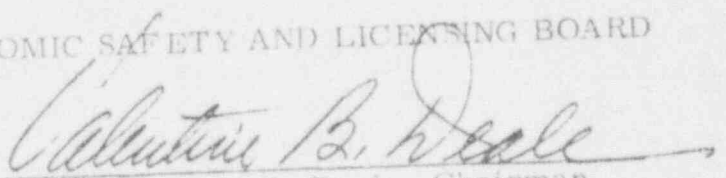
issue is one which the board has deferred decision on for a combination of considerations, including the fact that the board has not had to date a satisfactory basis for making a definitive judgment. Following the completion of the hearing scheduled to begin on August 5, the board anticipates giving further attention to the issue.

IV

The Monticello Operations Manual is made available to Messrs. Dzugan, Pepin and Burnett for their inspection in order to provide whatever orientation assistance the manual may serve them in connection with that part of their previously identified case as now remains to be presented, namely, cross-examination arising out of the inspection reports. In light of this limited purpose of the manual's availability, the board sees no requirement for the applicant to place into evidence the Monticello Operations Manual and thereby to occasion cross-examination at the hearing concerning its contents. The applicant's case as presented defines the ultimate boundaries of cross-examination and it does not, and under the Commission's regulations it need not, include the operations manual.

ATOMIC SAFETY AND LICENSING BOARD

By


Valentine B. Deale, Chairman

July 17, 1970
Washington, D. C.