

file

50-263

January 28, 1970

PDR

Honorable Chet Holifield, Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Holifield:

During the hearings yesterday before the Joint Committee, testimony was presented concerning events involving the Northern States Power Company's applications to AEC and the Minnesota Water Pollution Control Agency to construct and operate the Monticello Nuclear Generating Plant. There was some implication by a Minnesota witness that AEC representatives did not participate in or did not consult with the Minnesota Water Pollution Control Agency.

I am enclosing for the Joint Committee's information a chronology of the important events concerning this matter, including the role of the Minnesota Pollution Control Agency. This chronology summarizes the numerous meetings and correspondence between the AEC and the Minnesota Pollution Control Agency in connection with the Monticello facility. As the chronology shows, there was a great deal of consultation between AEC and State representatives on the substantive aspects of the proposed MPCA permit as well as procedural and jurisdictional questions. The chronology also indicates that an AEC representative did appear before the MPCA in a public hearing on the permit.

At another point in the hearings, in the testimony by the Executive Director of the MPCA, it was alleged that AEC representatives were not cooperative with the MPCA. I can assure you that this was not the case, except of course AEC had to preserve its position on Federal pre-emption.

The attached chronology recounts many instances of cooperation between AEC and MPCA. In addition, the correspondence between Chairman Seaborg and Governor LeVander shows AEC's offer to cooperate in delegating regulatory authority over radioisotopes to the State under Section 274 of the Atomic Energy Act. I also

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offered to the Governor and State officials the opportunity for the State to cooperate with AEC and the U.S. Public Health Service in monitoring radioactive effluents from Monticello and other nuclear power plants. A copy of my Minnesota speech in which this area of cooperation is outlined is attached.

To my knowledge, we have received no affirmative reaction to these offers of cooperation with the State of Minnesota.

Sincerely,

James T. Ramey
Commissioner

Enclosure:
Chronology
Remarks by Comm. Ramey in
Minnesota 10/11/69

Distribution:
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Honorable Chet Holifield, Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Chet:

During the hearings yesterday before the Joint Committee, testimony was presented concerning events involving the Northern States Power Company's application to construct and operate the Monticello Nuclear Generating Plant. I am enclosing for the Joint Committee's information a chronology of the important events concerning this matter, particularly the role of the Minnesota Pollution Control Agency. This chronology summarizes the numerous meetings and correspondence between the AEC and the Minnesota Pollution Control Agency in connection with the Monticello facility.

Sincerely,

James T. Ramey
Commissioner

Enclosure:
Chronology

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Chronology of Significant Events
Involving the Northern States Power Company's
Monticello Nuclear Generating Plant

The Northern States Power Company (NSP) of Minneapolis, Minnesota, filed an application dated August 1, 1966, with the AEC for a permit to construct Unit 1 of the Monticello Nuclear Generating Station, near Monticello, Minnesota. Subsequently, on October 4, 1966, NSP filed an application with the Minnesota Water Pollution Control Commission for a permit to discharge liquid effluent from the plant into the Mississippi River.

A public hearing on the NSP application was held before an atomic safety and licensing board on May 25-26, 1967, in Buffalo, Minnesota. At this hearing a representative of the Minnesota Water Pollution Control Commission read a statement which noted that NSP had applied for a discharge permit but that no action had been taken on it. The representative stated that no problems were anticipated with respect to its issuance. Also, in May 1967, Minnesota established the Minnesota Pollution Control Agency (MPCA) which superseded the Minnesota Water Pollution Control Commission and assumed the authority of the former Commission to control the discharge of waste into State waters, including the authority to issue permits for the discharge of waste. On July 29, 1967, Governor Harold LeVander appointed the seven members of MPCA.

On June 19, 1967, the atomic safety and licensing board issued an initial decision authorizing the issuance of the construction permit to NSP. Provisional Construction Permit CPPR-31 was issued on June 19, 1967.

NSP filed a revised application for a permit to discharge cooling water and other plant effluents from the plant with the MPCA on July 11, 1967. This application stated that radioactive wastes to be discharged from the plant would be in accordance with AEC regulations.

On January 16, 1968, the MPCA held an open meeting with representatives of NSP to discuss the application for a discharge permit. At that meeting MPCA member Steve J. Gadler raised the question for the first time as to whether the State or the Federal Government had jurisdiction regarding the regulation of radiological matters. The General Counsel of NSP stated that the AEC had this jurisdiction.

At its next meeting on February 13, 1968, the MPCA received a letter from the Mayor of Minneapolis requesting that the NSP application for a discharge permit be denied on the grounds that the granting of such a permit could result in a serious health threat to the city and "could lead to radioactive contamination of plants and animals over a large area." This meeting was also attended by a number of interested citizens, including faculty members from the University of Minnesota, who registered their opposition to the issuance of the permit.

On February 27, 1968, NSP filed with the MPCA a legal brief supporting its position that the AEC had exclusive jurisdiction over radiological matters at nuclear power plants.

At a meeting on March 12, 1968, the MPCA agreed to appoint an outside expert consultant to assist in reviewing the NSP application. The MPCA retained the services of Dr. Ernest C. Tsivoglu of the Georgia Institute of Technology.

On June 4, 1968, Mr. Robert Tuveson, Chairman of the MPCA and Mr. John Badalich, Executive Director of MPCA met at their request with the Director of Regulation and members of his staff in Bethesda. At this meeting the AEC safety standards regarding the discharge of radioactivity from power reactors were discussed.

During the period from September 3, 1968, to February 17, 1969, letters were exchanged between the AEC regulatory staff and Mr. Badalich of the MPCA regarding radiological safety questions.

On January 31, 1969, in a Memorandum of Law, the Special Assistant Attorney General for the State of Minnesota concluded that, absent an agreement with the AEC, states have only "certain peripheral, complementary jurisdiction in the atomic energy field which may be freely exercised when it does not conflict with national nuclear policy. There is no concurrent state-federal jurisdiction."

In a letter dated February 17, 1969, Mr. Badalich forwarded to Chairman Seaborg a copy of a report prepared by Dr. Tsivoglu recommending that MPCA apply more stringent controls over radioactive discharges from the Monticello plant than those specified in 10 CFR Part 20 of the AEC's regulations. Mr. Badalich requested the views of the AEC on the report and documentation of our position regarding the limitations of the States in establishing controls over the discharge of radioactive materials from nuclear facilities. Receipt of this letter was acknowledged by the Chairman on March 12, 1969.

On April 11, 1969, Mr. Badalich transmitted to Chairman Seaborg a preliminary draft of a waste disposal permit for the Monticello plant which the MPCA intended to consider at a May 12 meeting. The proposed permit set discharge limits for radioactive effluent below those provided for in 10 CFR Part 20. Messrs. Tuveson and Badalich met with Mr. Price on April 24, 1969, in Washington, D. C.

On May 8, 1969, Chairman Seaborg responded to Mr. Badalich's letter, calling attention to the limits on state authority over the regulation of radiological discharges from the plant imposed by the Atomic Energy Act.

On May 3, 1969, an opinion of the General Counsel of the AEC was published in the Federal Register as 10 CFR Part 8 of the Commission's regulations. In this opinion on the AEC jurisdiction over nuclear facilities and materials under the Atomic Energy Act, it was concluded that a state had no jurisdiction to regulate radioactive discharges from reactors from the standpoint of radiological health and safety.

On May 12, 1969, AEC representative (Howard Shapar) appeared at a public meeting of the Minnesota Pollution Control Agency on the waste disposal permit for NSP. At the conclusion of the meeting, a permit relating to radioactive wastes was issued although Mr. Shapar indicated that the Atomic Energy Act does not permit state regulation of radioactive discharges from nuclear power plants.

On May 12, 1969, Governor LeVander advised Chairman Seaborg of waste disposal permit issuance, stated he would have anticipated AEC would have acted affirmatively to assert exclusive jurisdiction before MPCA acted, and urged that AEC not issue any operating license that does not respect the State MPCA regulations. Chairman replied on June 2, 1969.

On May 20, 1969, Chairman Seaborg responded to a request by Senator Muskie for AEC comments on recommendations to the MPCA by its consultant, Dr. Tsivoglu. Copies of AEC comments were forwarded to Governor LeVander.

On May 28, 1969, Mr. Badalich transmitted a copy of the MPCA waste disposal permit to NSP. The permit contained restrictions on radiological discharges below those specified in 10 CFR Part 20. The permit was dated May 20, 1969.

On August 26, 1969, NSP filed a complaint in the United States District Court, District of Minnesota, contending that MPCA lacked legal authority to regulate levels of radioactive discharges from the Monticello plant and requesting that all conditions contained in the MPCA permit relating to radioactive wastes be declared invalid.

On August 28, 1969, NSP filed a notice of appeal in courts of the State of Minnesota from the conditions imposed on NSP in the MPCA permit alleging that the Atomic Energy Act precludes the State exercise of jurisdiction over radioactive wastes from the plant.

On September 12, 1969, Harold Price, AEC Director of Regulation, transmitted to Mr. Paul Engstrom, President of the Minnesota Environmental Control Citizen Association, answers to a series of questions by Mr. Gadler (MPCA) regarding the NSP nuclear generating plant at Monticello.

On October 9, 1969, representatives of the AEC and Department of the Interior met with several members of the Minnesota-Wisconsin congressional delegation. AEC outlined its licensing and regulatory controls over power reactors.

On October 10-11, 1969, AEC representatives participated in a Symposium on Nuclear Power and the Public at the University of Minnesota.

On October 24, 1969, the State of Minnesota filed an answer to the complaint filed by NSP in the U. S. District Court contesting the State's jurisdiction to regulate radiological discharges.

On October 30, 1969, NSP transmitted its comments on and objections to the Minnesota Pollution Control Agency waste disposal permit for the Monticello plant to Mr. Tuveson, Chairman of the Agency.

On December 3, 1969, the State of Michigan sought leave to file a brief as amicus curiae in support of Minnesota in the NSP litigation.

On December 11, 1969, State of Illinois sought leave to file a brief as amicus curiae in support of the State of Minnesota in the NSP litigation in U. S. District Court.

On January 8-10, 1970, the Advisory Committee on Reactor Safeguards completed its review of the application for a provisional operating license for NSP's Monticello Nuclear Generating Unit and believes that, if due regard is given to the items mentioned in its letter dated January 10, 1970, there is reasonable assurance that the Monticello plant can be operated at power levels up to 1670 MW(t) without undue risk to the health and safety of the public. Copies of the report were transmitted to Governor LeVander and Mr. Tuveson on January 21, 1970.