

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED 09/13/00

COMMISSIONERS:

SERVED 09/13/00

Richard A. Meserve, Chairman  
Greta Joy Dicus  
Nils J. Diaz  
Edward McGaffigan, Jr.  
Jeffrey S. Merrifield

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In the Matter of )  
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NORTHERN STATES POWER COMPANY )  
 )  
Monticello Nuclear Generating Plant; )  
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Prairie Island Nuclear Generating Plant, )  
 )  
Units 1 and 2; )  
 )  
Prairie Island Independent Spent Fuel )  
Storage Installation )  
\_\_\_\_\_  
 )

Docket Nos. 50-263-LT, 50-282-LT, 50-306-LT, and 72-10-LT (consolidated)

CLI-00-19

**MEMORANDUM AND ORDER**

This proceeding involves Northern States Power Company's two applications for Commission approval of the proposed license transfers concerning the Monticello Nuclear Generating Plant, the Prairie Island Nuclear Generating Plants (Units 1 and 2), and the Materials License for the Prairie Island Independent Spent Fuel Storage Installation. The applications presented, among other things, an issue of first impression: whether a non-utility, non-owner entity whose sole responsibility is the actual operation of a nuclear facility must satisfy the financial qualification requirements of our regulations if costs to operate the facilities are ensured by a rate-regulated and NRC-licensed utility.

Ms. Carol Overland, the North American Water Office and the Prairie Island Indian Community sought intervention and a hearing to oppose the transfers. On August 1, 2000, we issued [CLI-00-14](#), denying these three petitions to intervene and requests for hearing. 52 NRC \_\_\_. In that order, however, we rejected Northern States' argument that the company to which it sought to transfer the operating responsibility for the above-named facilities (Nuclear Management Corporation) was, in effect, exempt from our financial qualification requirements. See id. at \_\_\_, slip op. at 9. We instead concluded that Nuclear Management was subject to, but had satisfied, those requirements on the record of this case. We based this conclusion on the nature of Nuclear Management's licensed "activities" -- i.e., operating the Prairie Island and Monticello plants, not funding them. See [10 C.F.R. § 50.33\(f\)](#). In view of Northern States's electric utility status (and its assurance of cost recovery through regulated rates) and its commitment to assume full financial responsibility for funding the safe operation, maintenance and decommissioning of the plants,<sup>(1)</sup> we found no "plausible concerns" that Northern States would not reliably fund safe operation of the plant. See id. at \_\_\_ n.17, slip op. at 10 n.17.

However, we recognized that "petitioners arguably [had] not had a full opportunity to address the precise theory on which we rest [the] finding that Nuclear Management is financially qualified." We therefore authorized them to file a consolidated request for reconsideration of CLI-00-14. See id. at \_\_\_, slip op. at 11-12 (emphasis in original). On August 15, 2000, Ms. Overland and the Water Office filed a timely consolidated request for reconsideration of CLI-00-14, indicating their understanding that the Indian Community was not intending to pursue the matter further. The request for reconsideration challenges the transfer of the operating authority from Northern States to Nuclear Management.<sup>(2)</sup> On August 29, 2000, Northern States filed an Answer opposing petitioners' request.

Petitioners' request for reconsideration fails to address the theory on which we based our ruling regarding Nuclear Management's financial qualifications. Petitioners instead reiterate their own interpretation of the germane regulations regarding financial qualifications -- an interpretation we fully considered and rejected in CLI-00-14 (52 NRC at \_\_\_, slip op. at 8-12).<sup>(3)</sup> In finding Nuclear Management financially qualified, our decision relied on the state regulator's revenue guarantee to Northern States. The decision also pointed to Northern States's own service agreement with Nuclear Management providing for cost-passthrough. Id. at \_\_\_, slip op. at 11 (emphasis omitted). In addition, of course, Northern States is legally obliged to fund safe operations at its nuclear facilities.

Petitioners, though, do not challenge Northern States' ability to honor its commitments under its license and under the contractual cost-passthrough provisions. Indeed, the request for reconsideration never even refers to the service agreement. Under these circumstances, we see no reason to revisit our finding that Nuclear Management is financially qualified or to hold a hearing on the question.

Petitioners do raise one new argument, albeit unrelated to Northern States's ability to honor its financial commitments. Petitioners interpret CLI-00-14 as requiring them to provide "affidavits of experts" -- a requirement petitioners consider inappropriate given that the issues here are legal rather than factual. We agree with petitioners that the issues raised in their petitions to intervene are legal and therefore did not lend themselves to factual affidavits. However, we never required petitioners to submit affidavits on those legal issues, nor did CLI-00-14 fault them for failing to do so. That order's only references to affidavits and experts appear in our general introductory description of the Commission's standards for standing and admissible issues in license transfer proceedings. See *id.* at \_\_, \_\_, slip op. at 5 (referring to affidavits showing that a petitioning organization is authorized to request a hearing on behalf of that member), 6 (referring to facts or expert opinion).<sup>(4)</sup>

For the reasons set forth above, the Commission denies Ms. Overland's and the Water Office's request for reconsideration.

IT IS SO ORDERED.

For the Commission<sup>(5)</sup>

[Original signed by Annette L. Vietti-Cook]

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 13<sup>th</sup> day of September, 2000.

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1. See *id.* at \_\_, slip op. at 10. We also approved the transfer of ownership from Northern States to that company's successor, New NSP.

2. The request does not challenge the transfer of ownership from Northern States to New NSP.

3. In their request for reconsideration, petitioners assert that Nuclear Management is a newly-formed entity that must satisfy a more stringent standard for financial assurance. This assertion alludes to the requirements of 10 C.F.R. § 50.33(f)(3)(i) and (ii) and is a verbatim reiteration of a statement both Ms. Overland and the Water Office included in the "Factual Background" section of their Petitions to Intervene regarding the Nuclear Management Application. Petitioners also raised related arguments, albeit in quite different language, as Issues 6 and 7 in their petitions to intervene, relying specifically on sections 50.33(f)(3)(i) and (ii). In CLI-00-14, we declined to admit those two issues. 52 NRC at \_\_-\_\_, \_\_, slip op. at 8-12, 19. We deemed Nuclear Management "financially qualified on the current record" and therefore found "the detailed financial reporting requirements of section 50.33(f)(3) not applicable." *Id.* at \_\_, slip op. at 19.

4. However, had petitioners in their motion for reconsideration chosen to challenge Northern States's ability to pay the expenses of the Prairie Island and Monticello facilities, such a challenge would have been factual in nature and therefore would have required expert opinion or documentary support.

5. Commissioner Dicus was not present for the affirmation of this Order. If she had been present, she would have approved it.