UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of NORTHERN STATES POWER COMPANY Monticello Nuclear Generating Plant; 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-00-14

MEMORANDUM AND ORDER

This proceeding involves two license transfer applications by Northern States Power Company ("Northern States").[1] Both applications were submitted pursuant to Section 184 of the Atomic Energy Act of 1954 ("AEA")[2] and section 50.80 of the Commission's regulations.[3]

The first application, dated October 29, 1999, seeks authorization for the transfer of the Facility Operating Licenses for three facilities -- the Monticello Nuclear Generating Plant ("Monticello") and the Prairie Island Nuclear Generating Plants (Units 1 and 2; collectively "Prairie Island") -- and the Materials License for the Prairie Island Independent Spent Fuel Storage Installation ("Prairie Island ISFSI").[4] Northern States proposes to transfer these licenses to a newly-formed entity which will also carry the name "Northern States Power Company" but which, for the sake of avoiding confusion, is denominated "New NSP" for purposes of this proceeding.

On March 24, 1999, Northern States entered into an agreement to merge with New Century Energy, Inc. The resulting entity will be named Xcel Energy, Inc. At the time of the merger, Northern States will transfer to New NSP all of Northern States's existing electric and natural gas utility facilities, as well as all responsibility for and control over operations of those facilities. New NSP will be a wholly owned subsidiary of Xcel, will be an electric utility under 10 C.F.R. § 50.2, will assume title to the facilities following approval of the proposed license transfer, will employ the same facility personnel that Northern States currently employs, and will (at least according to the first application) become responsible for the operation, maintenance, and eventual decommissioning of the four facilities. The application proposes no physical or operational changes to the facilities other than the transfer of operating authority to New NSP. See Northern States's Answer to Ms. Overland's Petition regarding the New NSP Application, dated March 9, 2000, at 2-3.

On February 10, 2000, the Commission published notices of this application in the Federal Register. 65 Fed. Reg. 6641 (Monticello facility), 6642 (Prairie Island facilities). In those notices, the Commission set a deadline of March 1, 2000, by which interested persons could seek to intervene and request a hearing on Northern States's October 29th application.

In a second (and related) application dated November 24, 1999, Northern States seeks authorization to transfer to a new entity, Nuclear Management Company, LLC ("Nuclear Management"), the operating authority for the four facilities.[5] Northern States indicates that substantially all of its operating personnel dedicated to the four facilities will be transferred to Nuclear Management, either as employees of that latter company or as Northern States employees under the supervision of Nuclear Management. The application proposes no physical or operational changes to the facilities other than the transfer of operating authority to Nuclear Management. See Northern States's Answer to Ms. Overland's Petition regarding the Nuclear Management Application, dated March 9, 2000, at 2-4.

On February 15, 2000, the Commission published notices of this application in the Federal Register. See 65 Fed. Reg. 7574. These notices set a deadline of March 6, 2000, for intervention petitions and hearing requests regarding Northern States's

November 24th application.

On February 27, 2000, Ms. Carol A. Overland filed petitions to intervene and requests for hearing regarding both applications and all facilities at issue. On February 29, 2000, the North American Water Office ("the Water Office") filed two petitions to intervene and requests for hearing which were, in most respects, the same as those of Ms. Overland. On March 6, 2000, the Prairie Island Indian Community ("the Indian Community") likewise submitted a similar petition and request concerning the two proposed Prairie Island license transfers to Nuclear Management. However, the Indian Community did not oppose the transfer to New NSP, nor did it oppose transfers involving the Monticello plant.

Northern States filed answers to these petitions and requests pursuant to 10 C.F.R. § 2.1307(a). All three petitioners filed replies pursuant to 10 C.F.R. § 2.1307(b). The staff has chosen not to participate as a party in the adjudicatory portion of the proceeding. See generally 10 C.F.R. § 2.1316(b), (c). We consider the petitions under Subpart M of our procedural rules. See 10 C.F.R. §§ 2.1300 et seq.

DISCUSSION

To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its "interest may be affected by the proceeding," i.e., it must demonstrate "standing." See AEA, § 189a, 42 U.S.C. § 2239(a); 10 C.F.R. §§ 2.1306, 2.1308. The Commission's rules for license transfer proceedings also require that a petition to intervene raise at least one admissible issue. See 10 C.F.R. § 2.1306. For the reasons set forth below, we conclude that petitioners have demonstrated standing but have failed to proffer admissible issues. We therefore deny their petitions to intervene and requests for hearing.

A. STANDING

For a petitioner to demonstrate standing in a Subpart M license transfer proceeding, the petitioner must

(1) identify an interest in the proceeding by

(a) alleging a concrete and particularized injury (actual or threatened) that

(b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and

(c) is likely to be redressed by a favorable decision, and

(d) lies arguably within the "zone of interests" protected by the governing statute(s).

(2) specify the facts pertaining to that interest.

See 10 C.F.R. §§ 2.1306, 2.1308; Niagara Mohawk Power Corp. (Nine Mile Point), CLI-99-30, 50 NRC 333, 340-41 and n.5 (1999) (and cited authority). Moreover, an organization seeking representational standing must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. See GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 202 (May 3, 2000) (and authority cited therein).

All three petitioners live, work or own property in the vicinity of the Prairie Island and Monticello plants. All claim that Northern States's corporate restructuring leaves unanswered questions about the financial and technical qualifications of the plants' new operator, and therefore creates a risk of shortcuts in safety that could adversely affect the surrounding area. All seek the same relief to preclude such injury (i.e., denial of approval of the license transfer). And all assert that the safety-related issues fall within the interests protected by the AEA and/or the National Environmental Policy Act.

We recently granted standing in the Oyster Creek license transfer proceeding to petitioners who (like those in the instant proceeding) raised similar assertions and either lived or were active quite close to the site. In a license transfer case where (as here) nearby petitioners plausibly claim that underfunding or other deficiencies may result in a general safety risk affecting their persons or property, they should have the opportunity to seek a hearing on their merits arguments. We therefore conclude that the petitioners in this proceeding have satisfied our standing requirements. See Oyster Creek, 51 NRC at 202-203.

B. ADMISSIBILITY OF ISSUES

To demonstrate that issues are admissible under Subpart M, a petitioner must

(1) set forth the issues (factual and/or legal) that petitioner seeks to raise,

(2) demonstrate that those issues fall within the scope of the proceeding,

(3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,

(4) show that a genuine dispute exists with the applicant on a material issue of law or fact, and

(5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on the issues, together with references to the sources and documents on which petitioner intends to rely.

See 10 C.F.R. §§ 2.1306, 2.1308; Nine Mile Point, CLI-99-30, 50 NRC at 342 (and cited authority). As we stated recently in Oyster Creek:

> These standards do not allow mere "notice pleading;" the Commission will not accept "the filing of a vague, unparticularized" issue, unsupported by alleged fact or expert opinion and documentary support. General assertions or conclusions will not suffice. This is not to say that our threshold admissibility requirements should be turned into a "fortress to deny intervention." The Commission regularly continues to admit for litigation and hearing issues that are material and are adequately supported.

CLI-00-06, 51 NRC at 203 (citations omitted). For the reasons set forth below, we conclude that petitioners have raised no admissible issues.[6]

1. Inapplicability of Financial Qualifications Filing Requirements to Nuclear Management (Issues 2, 2a, 3, 4, 4a, 5, 7, 8 (partial), 11, 12, 14, 16, 17, and 22)

a. Transfer of Part 50 License to Nuclear Management (Issues 2, 2a, 3, 4, 4a, 5, 7, 8 (partial), and 17)

Petitioners assert that the Nuclear Management application fails, in various ways, to meet the filing requirements of section 50.33(f) (or section 50.80, which requires compliance with section 50.33) for demonstrating financial qualifications. (These two regulations are reproduced in full in Appendices A and B to this order, respectively.) In response, Northern States argues that Nuclear Management's "cost-passthrough" contractual arrangement with Northern States, an electric utility with guaranteed revenues stemming from state-regulated rates, places Nuclear Management under the umbrella of the "electric utility" exception to the financial qualification requirements of section 50.33(f).[7]

We decline to admit Issues 2,[8] 2a,[9] 3,[10] 4,[11] 4a,[12] 5,[13] 7,[14] 8 (partial),[15] and 17,[16] insofar as they apply to the Nuclear Management application, though we reach this decision for reasons somewhat different from those proffered by the applicants. We disagree with them that Nuclear Management falls within the "electric utility" exception and is therefore absolved of any responsibility to show specific financial qualifications. Rather than applying the exception, we find on the current record that Nuclear Management, in effect, has made the necessary showing of financial qualifications because of its cost-passthrough contract with Northern States, an electric utility with guaranteed rate-backed revenues. This arrangement provides sufficient assurance of Nuclear Management's financial qualifications. Nothing in petitioners' pleadings gives us reason to question, or hold a hearing on, Northern States's ability to fulfill its contractual commitment. Our conclusion reflects sound regulatory policy and is consistent with both our enabling legislation and our health-and-safety regulations.

Section 182a of the AEA gives the Commission considerable flexibility in determining what kinds of qualifications are needed for particular kinds of licences. Specifically, that section charges us to review "such of the technical and financial qualifications of the applicant ... as the Commission may deem appropriate for the license." 42 U.S.C. § 2232(a). Our financial qualification rule, section 50.33(f), does not expressly address the form of transaction at issue here -- where an operating license is split, in effect, between an electric utility "owner" and a non-utility "operator." But, consistent with Congressional intent, the rule contains enough flexibility to allow for an appropriate financial qualification review. Section 50.33(f), in its introductory paragraph, demands only "information sufficient to demonstrate" an applicant's financial qualifications "to carry out ... the activities for which the permit or license is sought." And the same paragraph indicates that the detailed information-filing requirements contained elsewhere in section 50.33(f) (see subsections (1), (2) and (3)) come into play only "as applicable."

Here, after careful review of the Northern States transaction and consideration of all briefs filed in this adjudicatory proceeding, we find the detailed requirements of sections 50.33(f)(2) and (f)(3) not "applicable" to Nuclear Management. Our view is rooted in three factors: (1) the nature of Nuclear Management's licensed "activities" -- i.e., operating the Prairie Island and Monticello plants, not funding them; (2) Northern States's electric utility status; and (3) Northern States's contractual commitment to assume full financial responsibility for funding the safe operation, maintenance and decommissioning of the plants. See, e.g., Nuclear Management Application, Attachment 13 ("Prairie Island Nuclear Power Plant Operating Services Agreement") at 5, 8, 10, 13, 14, 15-16.

In the context of this case, a detailed examination of Nuclear Management's costs, resources and corporate structure, as contemplated by sections 50.33(f)(2) and (f)(3), is unnecessary to meet the objectives of the rule. It is Northern States's contractual duty, not Nuclear Management's, to fund safe operation of the Monticello and Prairie Island plants. And Northern States's ability to pay the costs of running the plants safely has not been called into serious question.[17] Because Northern States is an electric utility regulated by the Minnesota Public Utilities Commission, it has reasonable assurance of receiving sufficient rate revenue to fund the safe operation of its plants. Indeed, our regulations presume that rate-regulated utilities like Northern States are financially qualified to own or operate nuclear power plants, and therefore expressly exempt them from a further financial qualification showing. See 10 C.F.R. § 50.33(f) ("electric utility" exception).[18]

It is true, of course, as petitioners stress, that the proposed licensed plant operator, Nuclear Management, is not itself an electric utility, but the combination of the state regulator's revenue guarantee to Northern States and Northern States's own service agreement with Nuclear Management providing for cost passthrough offers reasonable assurance as to the payment of Nuclear Management's costs, and allows us to find in the current record "information sufficient to demonstrate [Nuclear Management's] financial qualification ... to carry out the activities for which the license ... is sought." 10 C.F.R. § 50.33(f). Even the bankruptcy of Nuclear Management presumably would not endanger the public health and safety, for Northern States would remain both obliged and able to fund the plants' continued safe operation (or safe shutdown). For these reasons, we find Nuclear Management financially qualified based on the current record, see no reason for further hearing on petitioners' financial contentions, and conclude that the financial aspects of transferring the plants' operating licenses to Nuclear Management will not place in jeopardy the public health and safety.

We acknowledge that petitioners arguably have not had a full opportunity to address the precise theory on which we rest today's finding that Nuclear Management is financially qualified. Thus, we grant petitioners permission to file a consolidated request for reconsideration within ten business days of the date of this order. Cf. 10 C.F.R. §§ 2.771, 2.786(e). See generally Louisiana Energy Services (Claiborne Enrichment Center), CLI-96-8, 44 NRC 107, 110 n.2 (1996). Northern States may file a response within ten business days of receiving from petitioners any such request.

b. Transfer of Part 72 ISFSI License to Nuclear Management (Issues 11-12, 14, and 22)

In **Issues 11-12**, petitioners assert that the license transfer poses undue risk to public health and safety because it does not show that the applicant either will have the necessary funds (either by possessing funds or by having a reasonable assurance of obtaining funds) available to cover estimated operating costs over the planned life of the ISFSI, and that the applicant will have the necessary funds to cover estimated decommissioning costs after the removal of spent fuel from storage. 10 C.F.R. § 72.22(e)(2), (3).

We conclude, for the same reasons set forth in the preceding section, that Nuclear Management has demonstrated the necessary financial qualifications to operate the ISFSI by providing assurances that Northern States will continue to pay the operation and maintenance expenses for the ISFSI. Because Northern States's own status as an electric utility remains unchanged, there will be no change in the financial qualifications of the party ultimately responsible for the safe operation, maintenance and decommissioning of the ISFSI. Moreover, Northern States has committed in its Nuclear Power Plant Operating Services Agreement with Nuclear Management to continue financing the decommissioning trust funds, and as an electric utility it retains its rate-based ability to finance those funds. We therefore decline to admit this issue.[(19)]

Petitioners in **Issue 22** argue that "[t]he license transfer application poses undue risk to public health and safety because[,] ... although it does include a contract between Northern States Power Company and Nuclear Management Company, L.L.C., for the generating plants, the Prairie Island contract only mentions that [Northern States] operates an ISFSI, but ... does not specifically include provisions for operations, maintenance, decommissioning and nuclear waste storage at the Prairie Island ISFSI." (This issue in not included in the Petition regarding the New NSP Application.)

Petitioners' position reflects a misreading of the Nuclear Power Plant Operating Services Agreement for the Prairie Island site. Under the terms of that agreement, Northern States agrees to pay the operating, decommissioning and capital improvement costs for "the plant" -- a term the Agreement defines to include "a nuclear power plant and independent spent fuel storage installation near Red Wing, Minnesota." See Prairie Island Agreement at 1, 2, 10, appended to Nuclear Management Application as "Attachment 13." We therefore reject this issue.

c. Transfer of Both Part 50 and Part 72 Licenses to Nuclear Management (Issue 16)

In **Issue 16**, petitioners argue (in part) that "[t]he license transfer poses undue risk to public health and safety because the applicant has not provided documentation that 'Nuclear Management Company, LLC' has any independent assets...." Northern States responds that Nuclear Management will have assets in the form of cost-reimbursement payments it will receive from Northern States and the personnel it will inherit from Northern States or have at its headquarters. See Answer to Ms. Overland's Petition regarding the Nuclear Management Application at 29-30. We decline to admit this issue on the same grounds specified earlier in this order.

2. Inapplicability of "Electric Utility" Exception to New NSP (Issues 2-7, 11-12, and 16)

a. Transfer of Part 50 License to New NSP (Issues 2-7 and 16)

Northern States in the New NSP application explains that the latter company will be an electric utility and is therefore not required to provide the information specified in section 50.33(f)(2). See Northern States's Answer regarding Ms. Overland's Petition regarding the Nuclear Management Application at 11-14. Northern States relies on our definition of "electric utility" in 10 C.F.R. § 50.2, i.e., an entity that will distribute electricity and recover its costs through regulatorily-established rates.[(20)] It then claims that New NSP's status as an "electric utility" will exempt it from the financial qualifications requirements of 10 C.F.R. § 50.33(f), which provides that "[e]ach applicant shall state: ... [e]xcept for an electric utility applicant ..., information sufficient to demonstrate ... the financial qualification of the applicant....").

Petitioners assert that New NSP must comply with the financial qualifications filing requirements of 10 C.F.R. § 50.33(f). See, e.g., Ms. Overland's Petition regarding the New NSP Application at 10-11. We disagree. The rationale for the electric utility exception is equally applicable to future utilities as it is to existing ones -- i.e., the ratemaking process (federal and/or state) provides reasonable assurance that the utilities will have access to the funds necessary to operate their facilities safely.

Moreover, the fact that New NSP is a "newly-formed entity" is beside the point. Although section 50.33(f)(3) imposes certain additional financial-information requirements on "newly-formed entities," these requirements are subject to the same electric-utility exception cited above. Consequently, those additional requirements do not apply to New NSP. We therefore decline to admit their issues 2-7 and 16[(21)] insofar as they apply to New NSP's proposed ownership of the Prairie Island and Monticello facilities.

b. Transfer of Part 72 ISFSI License to New NSP (Issues 11, 12, 14, and 16)

We draw a similar conclusion regarding the transfer of ISFSI ownership, though for a somewhat different reason. Section 72.22(e) of our regulations sets forth the financial qualifications requirements for the owner or operator of an ISFSI. Unlike section 50.33(f), it neither specifies particular information-filing requirements nor includes an explicit "electric utility" exception. Petitioners have not explained, even in cursory terms, why state-regulated rates are insufficient to enable New NSP to meet its operating and decommissioning cost obligations. See, e.g., Ms. Overland's Petition regarding the New NSP Application at 11-12, 13 (Issues 11, 12, 14, 16). For this reason, we decline to admit those issues insofar as they apply to New NSP's proposed ownership of the ISFSI.[(22)]

3. Reactor License Transfer Requirements pursuant to Sections 50.80 and 50.90 (Issues 8-10, 13, and 18)

Issues 8 and 9: "The license application poses undue risk to public health and safety because it fails to disclose in sufficient detail the identity, financial and technical qualifications of the proposed transferee as would be required if the application were for an initial license. 10 C.F.R. Part 34; 10 C.F.R. § 50.80."

We reject these issues insofar as they challenge either application. Petitioners do not explain what "sufficient detail[s]" are lacking with regard to the identity of either New NSP or Nuclear Management. We find no such details to be missing. See New NSP Application at A1 - A4; Nuclear Management Application at 1, 3. Moreover, as explained supra, New NSP is not required to meet the financial qualification requirements of section 50.33(f) and, as discussed previously, Nuclear Management has also satisfied those requirements. Petitioners also fail to explain why the license transfers would have any effect on the technical qualifications of either New NSP or Nuclear Management. Mere conclusions or assertions do not suffice to establish admissible issues under Subpart M. See Oyster Creek, 51 NRC at 203. Here, Nuclear Management (which we understand will eventually be the facilities' operator) expects to employ substantially the same personnel and use essentially the same on-site organizations as are now employed and used by Northern States. Consequently, we see no grounds on which to question either New NSP's or Nuclear Management's technical qualifications, and we decline to admit the issue.

Issue 13: "The license transfer poses undue risk to public health and safety because the applicant has not provided the applicant's technical qualifications to engage in operating the ISFSI as if it were an initial application. 10 C.F.R. § 72.28." We reject Issue 13 on the same ground as we rejected analogous Issues 8 and 9, above, regarding technical qualifications to operate the nuclear reactors.

Issue 18: "The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specification Pages, relies on the technical qualifications of Northern States Power, but the applicant, Nuclear Management Company, LLC, must demonstrate technical qualifications. [Nuclear Management] Application, Exhibits 3-11." (This argument is also Issue 21 of Ms. Overland's Petition regarding the New NSP Application, citing Exhibits F, G, H.) To the extent this issue is intended to address the New NSP application, we reject it on the ground that it refers only to Nuclear Management. In the context of the Nuclear Management application, we reject this issue on the same ground that we rejected analogous Issues 8 and 9 regarding technical qualifications to operate the nuclear reactors and Issue 13 regarding technical qualifications to operate the ISFSI.

Issue 10: "The license amendment requested by applicant poses undue risk to public health and safety because it does not follow the form and does not provide the information prescribed for original applications. 10 C.F.R. [§] 50.90." We do not believe that the two applications are flawed in this respect. Section 50.90 provides, in relevant part, that the licensee "follow[] as far as applicable, the form prescribed for the original applications." The inclusion of the phrase "as far as applicable" makes clear that we do not require applicants to follow slavishly the form for original applications. In any event, petitioners have not satisfied their obligation to explain what parts of "the form ... or information" for original applications Northern States improperly failed to include in its two license transfer applications.

4. Corporate-Related Issues (Issues 1, 6, 15, 16, 17, 18, and 23)

Issue 1: "The license application poses undue risk to public health and safety because it fails to disclose the names and addresses of corporate officers, and the application is premature as the applicant is in fact unable to make this disclosure, stating in the application that the names of the officers are not known. 10 C.F.R. § 50.33(d)(3)(ii); 10 C.F.R. § 72.22(d)(3)(ii)." Regarding the New NSP application, petitioners go on to state that New NSP "does not exist to make the application as proposed licensee."

We reject this issue on the ground that Northern States has provided the information for both New NSP (see Northern States's Answer to Ms. Overland's Petition regarding the New NSP Application at 10; "Supplement 1 to Request for Transfer of NRC Licenses and Application for License Amendments Dated October 29, 1999," dated March 14, 2000) and Nuclear Management (see Northern States's Answer to Ms. Overland's Petition regarding the Nuclear Management Application at 11; Application regarding Nuclear Management at 5-7).

Issue 6: "The license application poses undue risk to public health and safety because it fails to disclose the legal and

financial relationships it has or proposes to have with its stockholders or owners. 10 C.F.R. § 50.33(f)(3)(i)."

As we held earlier in this order, we deem Nuclear Management financially qualified on the current record and find the detailed financial reporting requirements of section 50.33(f)(3) not applicable. There is, in any event, no apparent issue here. Northern States's application clearly discloses the legal and financial relationship that Nuclear Management will have with the stockholders and owners upon which it will rely for funds to operate the four facilities. Specifically, Northern States points to the application's identification of Nuclear Management's owners, explanation of the relationship between one such owner and Northern States, and further explanation of the relationship between Nuclear Management and Northern States. See Application at 1-3; Northern States's Answer to Ms. Overland's Petition regarding the Nuclear Management Application at 17-18. Neither Ms. Overland's nor the Water Office's Reply addresses this information. We find Northern States's Answer convincing and, accordingly, do not admit this issue.

Issue 15: Petitioners offer slightly different variations of this issue as it pertains to each of the two applications.

Petitioners proffer the following issue regarding the Nuclear Management Application: "The license transfer poses undue risk to public health and safety because the applicant proposes that Nuclear Management Company, LLC, operate the Monticello and Prairie Island nuclear generating plants and ISFSI, together with several other plants owned by Wisconsin Electric Power Company, Alliant Energy Corporation, and Wisconsin Public Service Corporation; that the corporate structure of that transfer includes yet another layer of corporations, named NSP Nuclear Corporation, Alliant Energy Nuclear, LLC, WEC Nuclear Corporation, and WPS Nuclear Corporation, which further legally insulates the parent corporations from liability for Nuclear Management Company, LLC, and nuclear operations generally."

We recently rejected a similar "limited liability" argument in Oyster Creek. CLI-00-06, 51 NRC at 208. In that proceeding, an intervenor had asserted "that a limited liability company is 'inherently unqualified to own and operate' a nuclear power plant." We disagreed, ruling that limited liability companies are no different from corporations in that both are legally structured to limit the liability of their shareholders, and that the Commission has issued reactor licenses to such limited liability organizations for decades. We find the reasoning in that decision dispositive of this issue.[(23)]

Petitioners present a more broadly worded Issue 15 in their challenge to the New NSP Application: "The license transfer poses undue risk to public health and safety because the applicant repeatedly states that 'New NSP' will be operating the plants and ISFSI, despite NSP's application of November 24, 1999, that demonstrates otherwise -- that the plants and ISFSI, together with several other plants owned by Wisconsin Electric Power Company, Alliant Energy Corporation, and Wisconsin Public Service Corporation, will be operated by 'Nuclear Management Company, LLC,' another newly-formed entity, and that the corporate structure of that transfer includes another layer of corporations, named NSP Nuclear Corporation, Alliant Energy Nuclear, LLC, WEC Nuclear Corporation, and WPS Nuclear Corporation, further insulating the parent corporations from liability for Nuclear Management Company, LLC and nuclear operations generally."

It seems that petitioners are here proffering two separate arguments. Insofar as petitioners are challenging the limited liability of the New NSP, we reject it on the ground stated immediately above. To the extent that they are also arguing that the New NSP application is inconsistent with the Nuclear Management application regarding which of those entities will have operating authority, we find petitioners' literal reading to be accurate, but suggestive of nothing more than the complexity of the restructuring which underlies the proposed license transfers.

Corporations such as Northern States often structure their mergers and acquisitions in a way that provides them alternative means of accomplishing their goals. We view the current dual applications as merely a reflection of this fact. As we read the applications and their supporting documents, they indicate to us that Northern States wants to have the option of either passing along the operating authority to New NSP (which would presumably later pass the authority along to Nuclear Management after receiving the Commission's approval of an as-yet-unfiled license transfer application), or to transfer that same authority directly to Nuclear Management. This is consistent with our understanding that Northern States intends to take the first of these options, i.e., it will act first on the New NSP transfer (by shifting its assets and licenses to that company) and only later will New NSP seek to transfer the operating authority to Nuclear Management. When viewed in this light, the apparent contradiction between the provisions of the two applications vanishes. New NSP would need operating authority during the interim period between the facilities' operation by the current Northern States and the Commission's action on an application for a transfer of operating authority to Nuclear Management. See footnote 5, supra. For these reasons, we decline to admit Issue 15 as it applies to New NSP.

Petitioners also raise a similar argument in what we denominate Issue 23:[(24)]

> "Applicant repeatedly states both that NSP will 'continue' to exist as a legal entity and that after the merger, a []newly formed, wholly owned utility operating company subsidiary, 'New NSP' shall be formed. Both are not possible. Under the merger, NSP and [New Century Energy] will merge and become 'Xcel,' and 'Old NSP' will cease to exist. A 'New NSP' will be formed, and this 'New NSP' is, as applicant admits, a NEW legal entity. As such, a new entity cannot 'continue' anything, it will begin. The repeated conflations and statements that the new entity will 'continue' does [sic] not belie the fact that the 'New NSP' is admittedly a newly formed entity and as such, 'New NSP' must provide financial assurance as required for any other new entity. Application at A-2, A-3, A-4, A-7. Exhibit H (Information Notice 89-25)."

(Emphasis in original petition.) Again, we find petitioners' literal reading to be inconsequential. New NSP will be an electric utility and will therefore be exempt from the financial assurance requirements to which petitioners allude, i.e., 10 C.F.R. § 50.33(f)(3) (regarding new entities).[(25)]

Issue 17: "The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specification Pages, relies on the prior financial qualifications of Northern States Power, a corporation that will cease to exist upon completion of the merger, when under federal regulations, it is the applicant, Nuclear Management Company, LLC, which must demonstrate financial qualifications and assurance. [Nuclear Management] Application, Exhibits 3-11."[(26)] We have already excluded this issue as it relates to the Nuclear Management application. Given that Nuclear Management is the sole focus of this issue, we also reject it as irrelevant to the New NSP application.

5. NEPA Issues (Issues 19-20)

Issue 19: "The license transfer application violates NEPA because it does not adequately address financial qualifications and assurance and the potential impact of corporate failure, multi-layered limited liability, and abdication of financial responsibility on the surrounding community's tax base, property values, and electric rates." (This argument is also Issue 17 of Ms. Overland's Petition regarding the New NSP Application.) AND

Issue 20: "The license transfer application violates NEPA [the National Environmental Policy Act] because it does not adequately address technical qualifications of the applicant to operate, decommission, and handle the nuclear waste without posing undue risk to public health and safety." (This argument is also Issue 18 of Ms. Overland's Petition regarding the New NSP Application.)

We reject these two issues because the Commission has made a generic determination that license transfers will not have a significant effect on the environment (see 10 C.F.R. § 51.22(c)(21)) and petitioners have given us no reason to determine otherwise in this proceeding. Consequently, NEPA issues are not germane to the proceeding.

6. Price-Anderson Issue (Issue 21)

Issue 21: "The license transfer application poses undue risk to public health and safety because it is proposed that only NSP, which will cease to exist upon completion of the merger, have and maintain financial protection under Section 170 of the Atomic Energy Act of 1954 [referring to the Price-Anderson Act] to cover public liability claims. 'Nuclear Management Company, LLC,' as the licensed operator, must provide this coverage as well. 'New NSP' and 'NSP Nuclear Corporation,' as the owners, must provide this coverage as well, and must maintain coverage to address liability responsibility for financial assurance purposes." (This argument is Issue 22 in the Petition regarding the New NSP Application, where petitioner similarly asserts that "'New NSP,' as the licensee, must provide this coverage as well, and must maintain coverage to address liability responsibility for financial assurance purposes.")

The four non-adjudicatory orders which the staff issued earlier in this proceeding render moot this issue insofar as it pertains to New NSP and Nuclear Management. Those staff orders require that Nuclear Management and New NSP each be added to the indemnity agreement and the nuclear liability insurance policies, and also that they participate in the secondary retrospective insurance pool.[(27)] Insofar as petitioners' argument addresses the responsibilities of NSP Nuclear Corporation (not a participant in this proceeding), petitioners ignore the fact that 10 C.F.R. §§ 140.1, 140.2(a), 140.10 and 140.11(a) call only for "licensees" to maintain financial protection -- a group within which NSP Nuclear Corporation does not and presumably will not fall.

7. General Issues Proffered by the Indian Community

The Indian Community raises two general issues. First, it argues that Northern States has failed to demonstrate the qualifications of Nuclear Management to hold the operating license for the Prairie Island plants and ISFSI. More specifically, the Indian Community does not share Northern States's view that the application and license changes are of merely an "administrative" nature, nor does it share Northern States's "expectation" that current plant and ISFSI personnel will transfer essentially intact to Nuclear Management. The Indian Community sees nothing in the application that would demonstrate either the technical or the personnel qualifications of Nuclear Management -- a company which, according to the Indian Community, has no history, virtually no employees and no performance record. Similarly, the Indian Community sees in the application no showing of Nuclear Management's financial viability, especially as the company has no apparent assets. The Indian Community is also concerned about Northern States's proposal to separate the operational responsibility (which would reside with Nuclear Management) from the financial responsibility (which would remain with Northern States). See Indian Community's Petition to Intervene, dated March 6, 2000, at 4-5.

Second, the Indian Community contends that Northern States has failed to provide as much information on Nuclear Management as would be required of an initial applicant and has thereby failed to show that its license transfer request is otherwise consistent with law. Regarding this second issue, the Indian Community asserts that Northern States is using the separation of financial and operational responsibilities to avoid the provisions of 10 C.F.R. §§ 50.80 and 72.50 requiring applicants to provide "as much of the information ... with respect to the identity and technical and financial qualifications of the proposed transferee as would be required ... if the application were for an initial license." According to the Community, this absence of information exposes it to "the dangers of failures to perform by [Nuclear Management]." See id. at 5-6.

The Commission has addressed each facet of these two general issues in its discussion of the issues raised by Ms. Overland and the Water Office. We reject these general issues on the same grounds as we rejected the more specific issues proffered by Ms. Overland and the Water Office.

C. REQUEST FOR CONSOLIDATION

Ms. Overland requests that these two license transfer applications be consolidated with similar applications seeking to transfer operating authority of other nuclear facilities (e.g., Point Beach, Kewaunee, Duane Arnold) to Nuclear Management. See Ms. Overland's Reply, dated March 15, 2000, at 17; Ms. Overland's Petition regarding the Nuclear Management Application at 2 n.1. Our rejection of the three hearing requests in this proceeding renders Ms. Overland's request moot. In any event, there are no pending adjudications regarding the other facilities, so there would be no adjudicatory proceedings into which the instant one could be consolidated.

CONCLUSION

For the reasons set forth above, the Commission:

(1) Denies the petitions to intervene and requests for hearing filed by Ms. Overland, the Water Office and the Indian Community;

(2) Dismisses as moot Ms. Overland's request for consolidation.

(3) Authorizes petitioners to file a consolidated request for reconsideration within ten business days of the date of this order, and further authorizes Northern States to file a response within ten business days of receiving petitioners' request.

IT IS SO ORDERED.

For the Commission[28]

[Original Signed by
Annette L. Vietti-Cook]

_____
Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of August, 2000.

APPENDIX A

10 C.F.R. § 50.33: Contents of applications; general information.

Each application shall state:

* * * * * *

(f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

(1) If the application is for a construction permit, the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction costs of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as is required in an application for an initial license.

(3) Each application for a construction permit or an operating license submitted by a newly-formed entity organized for the primary purpose of constructing or operating a facility must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) Its financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(4) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

APPENDIX B

10 C.F.R. § 50.80: Transfer of licenses.

(a) No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.

(b) An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the information required by § 50.33a. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards. The application shall include also a statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data pursuant to § 50.37. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility involved.

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines:

(1) That the proposed transferee is qualified to be the holder of the license; and

(2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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1. Although the Commission ordinarily considers applications separately, we consolidate the proceedings which address these two applications because they share so many issues and involve the same four facilities.

2. 42 U.S.C. § 2234 (precluding the transfer of any NRC license unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing).

3. 10 C.F.R. § 50.80. This regulation reiterates the requirements of AEA § 184, sets forth the filing requirements for a license transfer application, and establishes the following test for approval of such an application: (1) the proposed transferee is qualified to hold the license and (2) the transfer is otherwise consistent with law, regulations and Commission orders.

4. This application also requests NRC approval of the transfer of Northern States's Part 30 byproduct materials licenses to New NSP. Those transfers are not challenged in this proceeding.

5. Approval of both applications would permit either New NSP or Nuclear Management to operate the facilities at issue. Northern States would thus be free to transfer operating authority to either of these entities. Were Northern States to transfer operating authority to New NSP at the outset, any subsequent transfer of operational authority to Nuclear Management would necessarily be from New NSP, and could not go into effect without our granting yet another application -- seeking approval of the subsequent transfer from New NSP. We understand that Northern States expects to complete the transfer of the licenses to New NSP (through the merger with New Century Energy, Inc.) prior to any transfer of operating authority to Nuclear Management. Hence, it would appear that Northern States wants New NSP to have the authority to operate the plant prior to (or in the absence of) any Commission's approval of a transfer to Nuclear Management. It would also appear that Northern States filed the Nuclear Management license transfer application to enable Northern States itself to use the latter company's services in the event that the transfer to New NSP is postponed or does not occur.

6. Because the issues raised by Ms. Overland and the Water Office are virtually identical (with the exception of two issues raised by the latter but not the former), we will consider them together. We will use, to the extent possible, the numerical order in Ms. Overland's Petition regarding the Nuclear Management Application (issues 1 - 22) and denote the Water Office's two additional issues as 2a and 4a, because they are closely related to Ms. Overland's issues 2 and 4. See Ms. Overland's

Petition regarding the Nuclear Management Application, dated Feb. 27, 2000, at 10-22; Ms. Overland's Petition regarding the New NSP Application, dated Feb. 27, 2000, at 9-15; Water Office's Petition regarding the Nuclear Management Application, dated Feb. 29, 2000, at 6-10, Water Office's Petition regarding the New NSP Application, dated Feb. 29, 2000, at 5-8. Moreover, because these two petitioners use the same issues to challenge both of the license transfer applications, we will address each issue in the context of both applications.

7. See, e.g., Northern States's Answer to Water Office's Petition regarding the Nuclear Management Application, dated March 13, 2000, at 15.

8. Issue 2: "The license application poses undue risk to public health and safety because it fails to demonstrate financial qualification of the applicant to carry out the activities for which the permit or license is sought, specifically that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. 10 C.F.R. § 50.33(f)(2)."

9. Issue 2a (Water Office's Issue 3): "The license transfer [to Nuclear Management] poses undue risk to public health and safety because it does not show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two the applicant the applicant will have the necessary funds available to cover reactor maintenance expenses that can reasonably be expected to escalate above historical levels as reactor components, including steam generator tubes, deteriorate prematurely and fail at accelerating rates. The potential for these costs to escalate dramatically is amply demonstrated by the record of the NSP v. Westinghouse lawsuit and other lawsuits brought by nuclear utilities against Westinghouse, and by the recent steam tube rupture at Indian Point. 10 C.F.R. [§] 50.33(f)(2)."

10. Issue 3: "The license application poses undue risk to public health and safety because it fails to provide estimates for total annual operating costs for each of the first five years of operation of the facility. 10 C.F.R. § 50.33(f)(2)."

11. Issue 4: "The license application poses undue risk to public health and safety because it fails to disclose the source of funds to cover the operating costs for the facility. 10 C.F.R. § 50.33(f)(2)."

12. Issue 4a (Water Office's Issue 4) "The license transfer [to Nuclear Management] poses undue risk to public health and safety because it fails to disclose any other source of funding, such as the Settlement Agreement between NSP and Westinghouse [E]lectric Corp. that may be necessary to cover reactor maintenance expenses that can reasonably be expected to escalate above historical levels as reactor components, including steam generator tubes, deteriorate prematurely and fail at accelerating rates, As noted above, there is ample record demonstrating the virtual certainty that such costs will escalate dramatically with in the next five years. 10 C.F.R. [§] 50.33(f)(2)."

13. Issue 5: "The license application poses undue risk to public health and safety because it fails to include the same financial information as is required in an application for an initial license. 10 C.F.R. § 50.33(f)(2)."

14. Issue 7: "The license application poses undue risk to public health and safety because it fails to disclose its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur. 10 C.F.R. § 50.33(f)(3)(ii)."

15. Issue 8 (partial): "The license application poses undue risk to public health and safety because it fails to disclose in sufficient detail the ... financial ... qualifications of the proposed transferee as would be required if the application were for an initial license. 10 C.F.R. [§] 50.80."

16. Issue 17: "The license transfer application poses undue risk to public health and safety because the applicant, in its proposed Operating License and Technical Specification Pages, relies on the prior financial qualifications of Northern States Power, a corporation that will cease to exist upon completion of the merger, when under federal regulations, it is the applicant, Nuclear Management Company, LLC, which must demonstrate financial qualifications and assurance."

17. There may occasionally be unusual situations in which a rate-regulated utility's financial condition might affect the operator's ability to obtain sufficient funds to meet its technical health-and-safety responsibilities. See Gulf States Util. Co. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43 (1994). In River Bend, we permitted a hearing because the intervenors had raised plausible concerns that the plant owner, although an electric utility, was under such financial pressure that it would not reliably pass through its rate-backed revenues to fund safe operation of the plant. Petitioners here have raised no such concerns, although, as we explain below, we will give petitioners an additional opportunity to do so.

18. See Final Rule, "Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants," 49 Fed. Reg. 35,747, 35,749 ("the rate process ... assure[s] that regulated utilities will have the financial resources needed to operate safely") (Sept. 12, 1984).

19. Petitioners proffer a similar argument denominated as Issue 14: "The license transfer poses undue risk to public health and safety because the applicant has not provided financial assurance for decommissioning the ISFSI as if it were an initial application. 10 C.F.R. § 72.30." We conclude (for the same reasons as set forth above regarding Issues 11 and 12) that the application meets our regulatory requirements. We therefore decline to admit this issue.

20. The Stipulation and Agreement between Northern States and the Minnesota Attorney General (and filed with the Minnesota Public Utilities Commission) provides that "all certificates of need, franchises, rate schedules, and other authorities provided or issued by operation of law or by order of the [Minnesota Public Utilities Commission] to [Northern States], be deemed to be held by New NSP ... effective upon the merger's closing." See Ms. Overland's two Petitions, Exhibit A at 1

(emphasis added).

21. Issue 2: "The license application poses undue risk to public health and safety because it fails to demonstrate financial qualification of the applicant to carry out the activities for which the permit or license is sought, specifically that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. 10 C.F.R. § 50.33(f)(2)."

Issue 3: "The license application poses undue risk to public health and safety because it fails to provide estimates for total annual operating costs for each of the first five years of operation of the facility. 10 C.F.R. §50.33(f)(2)."

Issue 4: "The license application poses undue risk to public health and safety because it fails to disclose the source of funds to cover the operating costs for the facility. 10 C.F.R. §50.33(f)(2)."

Issue 5: "The license application poses undue risk to public health and safety because it fails to include the same financial information as is required in an application for an initial license. 10 C.F.R. §50.33(f)(2)."

Issue 6: "The license application poses undue risk to public health and safety because it fails to disclose the legal and financial relationships it has or proposes to have with its stockholders or owners. 10 C.F.R. §50.33(f)(3)(i)."

Issue 7: "The license application poses undue risk to public health and safety because it fails to disclose its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur. 10 C.F.R. §50.33(f)(3)(ii)."

Issue 16: "The license transfer poses undue risk to public health and safety because the applicant has not provided documentation that New NSP has any independent assets nor has it demonstrated that [New NSP] is anything more than a shell corporation to which operating expenses will be transferred as needed by the parent corporation."

22. Issues 11 and 12: The license transfer poses undue risk to public health and safety because it does not show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds or that by a combination of the two the applicant will have the necessary funds available to cover estimated operating costs over the planned life of the ISFSI, and that the applicant will have the necessary funds available to cover estimated decommissioning costs and the necessary financial arrangements to provide reasonable assurance prior to transfer of the license that decommissioning will be carried out after the removal of spent fuel from storage. 10 C.F.R. § 72.22(e)(2), (3).

Issue 14: "The license transfer poses undue risk to public health and safety because the applicant has not provided financial assurance for decommissioning the ISFSI as if it were an initial application. 10 C.F.R. § 72.30." We reject this issue on the same grounds as we rejected analogous Issues 11 and 12.

Issue 16: "The license transfer poses undue risk to public health and safety because the applicant has not provided documentation that New NSP has any independent assets nor has it demonstrated that [New NSP] is anything more than a shell corporation to which operating expenses will be transferred as needed by the parent corporation."

23. Petitioners proffer a similar argument denominated Issue 16: "The license transfer poses undue risk to public health and safety because the applicant has not ... demonstrated that [Nuclear Management Company] is anything more than a shell corporation to which operating expenses will be transferred as desired by the generating plant and/or ISFSI owner." We reject this issue on the same grounds as we decline to admit Issue 15.

24. This issue is enumerated as Issue 19 of Ms. Overland's Petition regarding the New NSP Application, but is not included in her Petition regarding the Nuclear Management Application.

25. In addition, Northern States will not cease to exist upon the completion of the merger; rather, it will simply do business under a new name. It is our understanding of the merger that Northern States is purchasing New Century Energy, that Northern States will be the surviving entity, and that it will thereafter change its name to Xcel.

26. This argument is also included as Issue 20 of Ms. Overland's Petition regarding the New NSP Application, citing Application, Exhibits F, G, H.

27. See Staff Orders concerning transfer of Monticello operating authority to Nuclear Management at 4 (condition 2) (May 15, 2000); Staff Orders concerning transfer of Prairie Island operating authority to Nuclear Management at 4 (condition 2) (May 15, 2000); Staff Order concerning transfer of Monticello ownership to New NSP at 3 (condition 1) (May 12, 2000); Staff Order concerning transfer of Prairie Island ownership to New NSP at 4 (condition 1) (May 12, 2000). See also each of the Safety Evaluations at ¶ 4.0, appended to each of these four staff orders. Moreover, petitioners' argument ignores New NSP's obligation and commitment to maintain the financial protection required by the Price-Anderson Act. See New NSP Application at A-7; Northern States's Answer to Ms. Overland's Petition regarding the New NSP Application at 28. See also Northern States's Answer to Ms. Overland's Petition regarding the Nuclear Management Application at 34 and n.17.

28. Chairman Meserve and Commissioner Diaz were not available for affirmation to this Memorandum and Order. Had they been present, they would have affirmed the Memorandum and Order.