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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282-LR and 50-306-LR; ASLBP No. 08-871-01-LR]

### Atomic Safety and Licensing Board; Northern States Power Co. (Formerly Nuclear Management Company, LLC.) (Prairie Island Nuclear Generating Plant, Units 1 and 2); Notice and Order (Scheduling Oral Argument)

October 16, 2008.

**Before Administrative Judges: William J. Froehlich, Chairman; Dr. Gary S. Arnold; Dr. Thomas J. Hiron**

Oral argument will be heard on standing and contention admissibility issues presented in the hearing request received on August 18, 2008, from the Prairie Island Indian Community (Petitioner).<sup>1</sup> This proceeding arises from an application filed on April 11, 2008, by Nuclear Management Company, LLC (NMC)<sup>2</sup> for renewal of Facility Operating License Nos. DPR-42 and DPR-60 for an additional 20 years of operation at the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP).<sup>3</sup> PINGP is located near the City of Red Wing, Minnesota, on the west bank of the Mississippi River.

The participants are advised of the following information regarding the scheduling of the oral argument:

*Date:* Wednesday, October 29, 2008.

*Time:* 9 a.m. Central Time (CT).

*Location:* Dakota County Judicial Center—Courtroom 2E, 1560 Highway 55, Hastings, MN 55033.

The format of oral argument, including the allocation of time to the various participants, will be determined at the outset of the session. Generally, the Board asks that the Parties refrain from simply rehashing the content of their pleadings. Rather, the Board wishes to further explore with the

<sup>1</sup> In response to a June 17, 2008, notice of opportunity for hearing published in the **Federal Register** (73 FR 34335), Petitioner timely filed a request for hearing and a petition to intervene in accordance with 10 CFR 2.309.

<sup>2</sup> The NRC has approved the transfer of operating authority over Prairie Island Nuclear Generating Station, Units 1 and 2, from Nuclear Management Company, LLC (NMC) to Northern States Power Company (Northern States). See Order Approving Transfer of License and Conforming Amendment (September 15, 2008), at 3 (ADAMS Accession No. ML082521182).

<sup>3</sup> The operating licenses for PINGP, Units 1 and 2, expire on August 9, 2013, and October 29, 2014, respectively. The April 11, 2008, application for renewal was supplemented by a letter dated May 16, 2008.

Parties the positions they took in their written submissions. The oral argument will serve principally to assist the Board in the discharge of its decisional responsibilities regarding the admissibility of the Petitioner's proffered contentions. At the same time, however, it should provide counsel with a valuable opportunity to clarify for the Board those issues to be addressed.

The Board has identified 12 specific issues it wishes the Parties to address at oral argument. Counsel should arrive fully prepared to discuss each topic that is a matter of concern to his or her client(s). While the following list does not purport to include all issues that may arise, it should help to guide the Parties in their preparation.

(1) Does the NRC Staff still challenge Mr. Mahowald's representation, in light of the Petitioner's September 19, 2008, Reply at footnote 1 and Mahowald Declaration II?

(2) As to Contention 1, what does the Petitioner allege to be lacking from Applicant's Environmental Report (ER)? Provide citations to any cases, regulations, or statutes which spell out the requirements.

(3) As to Contention 2, Applicant, Petitioner, and Staff should be prepared to argue whether and to what extent the MACCS2 code is applicable to the severe accident mitigation analysis (SAMA) or the license extension. Applicant should be prepared to address "user inputs" to the code. The Board wishes to explore the extent to which the calculation that converts level of contamination to decontamination cost is controlled by user input.

(4) As to Contention 3, Applicant, Petitioner, and Staff should be prepared to discuss the level of detail with which Applicant must analyze impacts on endangered species in the ER. Parties should provide legal support for their positions.

(5) As to Contention 4, Applicant, Petitioner, and Staff should be prepared to address whether any "special circumstances" exist that would make the NRC's category 1 finding inapplicable. Petitioner should discuss the necessity to request a waiver in this case.

(6) As to Contention 5, Applicant should be prepared to discuss the demographics analysis in the ER and whether the Indian Community was specifically included. All Parties should be prepared to identify any requirements for addressing environmental justice in the ER that Applicant has not met.

(7) As to Contention 6, Applicant, Petitioner, and Staff should be prepared

to address whether or not the "coatings issues" are addressed as part of the Current Licensing Basis (CLB). Petitioner should be prepared to address any plant specific data relied upon to support this contention.

(8) As to Contention 7, Applicant should be prepared to explain how the surveillance capsules are used. Applicant should also be prepared to address the current vessel surveillance plan and the proposed enhancements. If the proposed changes are significant, when would interested parties have a chance to review them? Petitioner's contention alleges that vessel internals are subject to embrittlement, that embrittlement could cause internals to fail during a loss-of-coolant accident, and that such a failure could lead to an uncoolable core geometry. Petitioner should be able to articulate the facts or expert opinion within the original contention supporting each one of these links.

(9) As to Contention 8, Petitioner should be prepared to address whether the "stress corrosion cracking" issue is addressed as part of the CLB. All Parties should be prepared to address the generic question: If an issue is subject to an Aging Management Plan (AMP) during the current license period, is it required to be addressed by an AMP as a part of relicensing?

(10) As to Contention 9, Petitioner should be prepared to identify what piping system(s) it is referring to and what safety-related function(s) those systems play. The Applicant should be prepared to explain the extent to which the Prairie Island facility has buried piping, what types of systems utilize these buried pipes, and which pipes, if any, are within the scope of license renewal.

(11) As to Contention 10, Petitioner will be asked if it has withdrawn this contention based on the statements in its Reply of September 19 at page 24.

(12) The oral argument will conclude with summary statements by the Parties on the pending motion to strike filed by Applicant on September 29, 2008, the NRC Staff's Response of October 9, 2008, and the Petitioner's Answer filed on October 10, 2008.

As an informational matter, the participants are advised that current planning calls for the proceeding to be made available for live viewing via the following Internet Web streaming feed: Prairie Island Oral Argument.

Please be advised that this Web stream will be available for viewing for 90 days after or until Tuesday, January 27, 2009.

It is so ordered.

For the Atomic Safety and Licensing Board.

Rockville, Maryland, October 16, 2008.

**William J. Froehlich,**

*Chairman, Administrative Judge.*

[FR Doc. E8-25148 Filed 10-21-08; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50-528]

### Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Unit 1; Temporary Exemption

#### 1.0 Background

The Arizona Public Service Company (APS, the licensee) is the holder of the Renewed Facility Operating License No. NPF-41 which authorizes operation of the Palo Verde Nuclear Generating Station (PVNGS), Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Maricopa County, Arizona.

#### 2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.12, "Specific exemptions," APS has, by letter dated March 8, 2008, and supplemented by letter dated September 10, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML080790524 and ML082620212, respectively), requested a temporary exemption from 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," and Appendix K to 10 CFR 50, "ECCS Evaluation Models," (Appendix K). The regulation in 10 CFR 50.46 contains acceptance criteria for the emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR Part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The temporary exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46, and Appendix K is needed to irradiate lead fuel assemblies (LFAs) comprised of

different cladding alloys at PVNGS, Unit 1. The scope of the staff's review of this temporary exemption request is limited to the current burnup limits; i.e., 60 gigawatt days per metric ton unit (GWD/MTU). Extending the burnup of these LFAs will require further NRC staff review.

The temporary exemption requested by the licensee would allow up to eight LFAs manufactured by AREVA NP consisting of fuel rods with M5 cladding material to be inserted into the PVNGS, Unit 1 reactor core in non-limiting locations during operating Cycles 15, 16, and 17. The use of M5 LFAs will allow APS to evaluate cladding for future fuel assemblies that need to be of a more robust design than the current fuel assemblies to allow for possible higher duty or extended burnup.

#### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

#### *Authorized by Law*

This temporary exemption would allow the licensee the use of M5 LFAs to evaluate cladding for future fuel assemblies that may need to be of a more robust design than the current fuel assemblies to allow for possible higher duty or extended burnup. The regulations specify standards and acceptance criteria only for fuel rod clads with Zircaloy or ZIRLO™. Thus, a temporary exemption is required to use fuel rods clad with an advanced alloy that is not Zircaloy or ZIRLO™. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed temporary exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

#### *No Undue Risk to Public Health and Safety*

In regard to the fuel mechanical design, the PVNGS, Unit 1 temporary exemption request relates solely to the specific types of cladding material specified in the regulations. No new or altered design limits for purposes of 10 CFR 50, Appendix A, General Design Criterion 10, "Reactor Design," need to be applied or are required for this program. Also, the NRC staff's review was limited to the exemption request and does not address the core physics, core thermal hydraulics, fuel thermal-mechanical design, or the safety analysis aspects of the LFAs associated with the Updated Safety Analysis Report nor their placement in a non-limiting core location. APS has notified the staff of their intent to evaluate the LFAs as a change to the plant in accordance with 10 CFR 50.59. Furthermore, APS has provided information related to their planned evaluation of the LFAs as part of their exemption request (letter dated March 8, 2008) and in response to RAIs (letter dated September 10, 2008).

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. The staff's review and approval of topical report BAW-10227P-A, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," dated February 4, 2000 (ADAMS Accession Nos. ML003681479 and ML003681490), addressed all of the important aspects of M5 with respect to ECCS performance requirements: (1) Applicability of 10 CFR 50.46(b) fuel acceptance criteria, (2) M5 material properties including fuel rod ballooning and rupture strains, and (3) steam oxidation kinetics and applicability of Baker-Just weight gain correlation. A subsequent NRC-approved topical report, BAW-10240P-A, "Incorporation of M5 Properties in Framatome ANP Approved Methods," May 5, 2004 (ADAMS Accession No. ML041260560), further addressed M5 material properties with respect to loss-of-coolant accident (LOCA) applications.

Based on an ongoing LOCA research program at Argonne National Laboratory (ANL) and Research Information Letter 0801, titled, "Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46," dated May 30, 2008 (ADAMS Accession No. ML0813502251), cladding corrosion (and associated hydrogen pickup) has a significant impact on post-quench ductility. Pre-test characterization of irradiated M5 fuel cladding segments at ANL provide further evidence of