

E-002/CN-91-19 ORDER AFTER RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of an Application  
for a Certificate of Need for  
Construction of an Independent  
Spent Fuel Storage Installation

ISSUE DATE: October 28, 1992

DOCKET NO. E-002/CN-91-19

ORDER AFTER RECONSIDERATION

**PROCEDURAL HISTORY**

**I. Proceedings to Date**

On August 10, 1992 the Commission issued its ORDER GRANTING LIMITED CERTIFICATE OF NEED in the above-entitled matter. In that Order the Commission authorized Northern States Power Company (NSP or the Company) to build a temporary dry cask nuclear waste storage facility at its Prairie Island nuclear power plant. The Commission limited the number of dry casks authorized to 17, instead of the 48 requested by the Company, finding that the record did not demonstrate that dry cask storage would be the most prudent, cost-effective option past the year 2001. Seventeen casks would allow full scale production at Prairie Island through that year.

On August 14, 1992 the Prairie Island Mdewakanton Sioux Indian Community filed a petition for reconsideration of the August 10 Order. The Prairie Island Coalition Against Nuclear Storage (the Coalition) filed for reconsideration on August 27; the Company filed on August 31.

On August 27, 1992 the Coalition filed a petition for rehearing. That petition asked the Commission to vacate the August 10 Order and reopen the record to admit new evidence on an earthquake the Coalition said could affect the siting of a permanent federal nuclear waste repository.

Each of the parties listed above filed responses to the petitions of the other parties. The Department of Public Service and the Minnesota Department of Health did not seek reconsideration, but responded to the petitions of the other parties.

The Commission heard oral argument on the petitions on October 7, 1992. The following parties presented oral argument: Northern States Power Company, represented by Michael J. Bradley and Michael J. Ahern, Moss & Barnett, 4800 Norwest Center, 90 South Seventh Street, Minneapolis 55402 and Michael Connelly, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401;

Prairie Island Mdewakanton Sioux Indian Community, represented by Richard A. Duncan and Sandi B. Zellmer, Faegre & Benson, 2200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402 and Kurt V. BlueDog and William J. Hardacker, BlueDog Law Office, Suite 555, 5001 West 80th Street, Bloomington, Minnesota 55437;

Prairie Island Coalition Against Nuclear Storage, represented by Eila Savela, Minnesota Public Interest Research Group, 2512 Delaware Street Southeast, Minneapolis, Minnesota 55414; and by Kenneth E. Tilsen, Public Interest Project of Hamline University School of Law, G.P.C., 1536 Hewitt Avenue, St. Paul, Minnesota 55104-1284;

Minnesota Department of Public Service, represented by Eric F. Swanson and Amy V. Kvalseth, Special Assistant Attorneys General, 1100 Bremer Tower, Seventh Place and Minnesota, St. Paul, Minnesota 55101; and

Minnesota Department of Health, represented by Paul G. Zerby, Special Assistant Attorney General, Suite 500, 525 Park Street, St. Paul, Minnesota 55103.

Having reviewed the entire record herein and having heard the arguments of all parties, the Commission makes the following findings, conclusions, and order.

## **FINDINGS AND CONCLUSIONS**

### **II. The Petition for Rehearing**

The Coalition asked the Commission to vacate the August 10 Order and reopen the record to admit new and material evidence on a June 1992 earthquake in Nevada and its effects on federal efforts to site a permanent nuclear waste repository. The Coalition claimed the earthquake proved the Yucca Mountain site tentatively selected by the Department of Energy was unsuitable and cast further doubt on that agency's ability to establish a permanent repository. As explained below, the Commission does not consider evidence relating to the June earthquake new and material.

The earthquake evidence is not material because the decision to grant a limited certificate of need was not based on a finding that Yucca Mountain would be the site of the permanent federal nuclear waste repository; it was based on a finding that the federal government would meet its obligation to remove spent fuel from Prairie Island. Therefore, even if the Department of Energy removed the Yucca Mountain site from further consideration, the Commission's decision would be unaffected.

Neither is evidence relating to the effect of earthquake activity on the suitability of the Yucca Mountain site new. The record of this proceeding includes a description of the area's earthquake potential and recognition that the federal government has chosen not to disqualify the site on that account. Although the earthquake occurred after the record was closed, the issues it raises have been recognized and thoroughly debated by parties to the federal siting process since at least 1989.

The Coalition attached to its petition an August 1992 affidavit from a specialist in geological engineering and hydrogeology employed by the State of Nevada. He stated that the June 1992 earthquake demonstrated that Yucca Mountain was not a suitable site for a permanent nuclear waste repository. At the same time, however, he attached materials submitted by the State of Nevada to the Department of Energy in 1989, making the same argument for the same reasons. In short, the potential for earthquake activity at Yucca Mountain has been a factor in repository siting discussions and decisions since at least 1989. These arguments are not new and do not justify reopening this proceeding's already voluminous record.

The Commission will deny the Coalition's petition for rehearing.

### **III. Petitions for Reconsideration**

For the most part, the petitions for reconsideration presented arguments made earlier in this proceeding. The Commission appreciates the complexity of this case and has examined those arguments once again. Having done so, the Commission affirms its August 10 Order.

The Commission will make two clarifications to that Order, however. First, in discussing the meaning of the Radioactive Waste Management Act, the Commission inadvertently mischaracterized the proposed storage facility as a "disposal" facility. That characterization appears in the first full paragraph on page 12, which should be amended to read as follows. (The language to be deleted appears in strike-outs.)

The Commission disagrees on two counts. First, the proposed facility is not a facility where waste can or will be "permanently stored." The Company is seeking a Nuclear Regulatory Commission license to build an interim storage facility. The facility is not designed for permanent storage and cannot function in that role. ~~It is therefore a "disposal" facility, not a "permanent storage" facility, and qualifies for the point of generation exemption even under the most restrictive reading of the statute.~~

Second, the Order erred in describing the cask monitoring system. At page 5 the Order states, "One fence will house a cask monitoring panel, showing pressure levels within the casks." Actually, the cask monitoring panel will be located in a shed outside both fences, and the pressure between the casks' two seals, not interior cask pressure, will be monitored. The sentence quoted above should be deleted and replaced with the more accurate sentence below:

A cask monitoring panel will be located outside the fences, showing pressure levels in the space between the double seals of every cask.

With these two changes, the Commission affirms its August 10 Order.

#### ORDER

1. The petition for rehearing filed by the Prairie Island Coalition Against Nuclear Storage is denied on the merits.
2. The petitions for reconsideration filed by Northern States Power Company, the Prairie Island Mdewakanton Sioux Indian Community, and the Prairie Island Coalition Against Nuclear Storage are denied on the merits, with the exception of the two textual changes noted above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)